

Implementation of
recommendations arising from
previous inquiries of relevance to
the Royal Commission into
Institutional Responses to Child
Sexual Abuse

Final Report
Compendium B: Legislation verifications

Parenting Research Centre
Commissioned by the Royal Commission into
Institutional Responses to Child Sexual Abuse



Parenting Research Centre
raising children well

This document is a compendium to the final report for the project titled 'Implementation of recommendations arising from previous inquiries of relevance to the Royal Commission into Institutional Responses to Child Sexual Abuse'.

Established in 1997, the **Parenting Research Centre** (PRC) is Australia's only national, independent non-profit research, development and implementation specialist organisation with an exclusive focus on parenting and families. The PRC is dedicated to gathering scientific knowledge of effective parenting and developing practical programs to help all parents raise happy, healthy children. The PRC's work focuses on supporting the efforts of practitioners, managers, organisations and governments to effectively and sustainably adopt and implement evidence-informed practices and programs.

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The views and findings expressed in this report are those of the author(s) and do not necessarily reflect those of the Royal Commission. Any errors are the author's responsibility.

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Royal Commission
into Institutional Responses
to Child Sexual Abuse

Preface

On Friday 11 January 2013, the Governor-General appointed a six-member Royal Commission to inquire into how institutions with a responsibility for children have managed and responded to allegations and instances of child sexual abuse.

The Royal Commission is tasked with investigating where systems have failed to protect children, and making recommendations on how to improve laws, policies and practices to prevent and better respond to child sexual abuse in institutions.

The Royal Commission has developed a comprehensive research program to support its work and to inform its findings and recommendations. The program focuses on eight themes:

1. Why does child sexual abuse occur in institutions?
2. How can child sexual abuse in institutions be prevented?
3. How can child sexual abuse be better identified?
4. How should institutions respond where child sexual abuse has occurred?
5. How should government and statutory authorities respond?
6. What are the treatment and support needs of victims/survivors and their families?
7. What is the history of particular institutions of interest?
8. How do we ensure the Royal Commission has a positive impact?

This research report falls within theme eight.

The research program means the Royal Commission can:

- Obtain relevant background information
- Fill key evidence gaps
- Explore what is known and what works
- Develop recommendations that are informed by evidence and can be implemented, and respond to contemporary issues.

For more information on this program, please visit

www.childabuseroyalcommission.gov.au/research

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Important note

The implementation ratings in this document relate to recommended legislative action only. These legislation verifications should be considered in conjunction with the relevant document audit.

Final implementation ratings for each full recommendation can be found in Compendium A: Document Audit.

LEGISLATION VERIFICATION: AUSTRALIAN CAPITAL TERRITORY

Recommendation number	2.2
Commission/ Inquiry of origin	Review of the Safety of Children in Care in the ACT and of ACT Child Protection Management (Territory as parent), 14 May 2004, ACT
Recommendation made	<i>The Review recommends that s.161(3) of the Children and Young People Act 1999 be amended so as to ensure that the Chief Executive must act in relation to a report made to him or her under s.158 or s.159 in relation to a child or young person for whom the Chief Executive has parental responsibility.</i>
Government response	Completed: Agreed in principle but legal advice will be obtained to determine how to achieve this goal whilst retaining Chief Executive discretion as to the nature of the response.
Document name	The Children and Young People Act 2008 (CYP Act, s360 & s 507) consistent with above? When did relevant changes to the Act occur? <div></div>
Implementation	
As recommended	Yes.
Included content	S.360 of the <i>Children and Young People Act 2008</i> (replaced <i>Children and Young People Act 1999</i>) provides that Director-general must consider all child concern reports and must carry out an initial assessment to of the matters raised in the report to decide if the child or young person may be in need of care and protection. S. 361 provides that if the Director-general decides that a child concern report is a child protection report, then the Director-general must take the action that the Director-general considers appropriate in relation to the report. S.506 provides that if the Director-general has daily care responsibility for a child or young person and the Director-general decides that a child concern report about the child or young person is a child protection report, and the Director-general then carries out a child protection appraisal for the child or young person, then the Director-general must give the public advocate a report about the incident and what action (if any) the Director-general has taken because of the appraisal.
Excluded content	NA
Implementation rating for legislative action	Implemented in full Refer to document audit for final assessment of implementation status

Recommendation number	3.7
Commission/	Review of the Safety of Children in Care in the ACT and of ACT Child Protection Management (Territory as parent), 14 May 2004, ACT

Inquiry of origin	
Recommendation made	<i>The Review recommends that a charter of rights be developed within the Children and Young People Act 1999; it should encapsulate the rights of children subject to the Act in relation to their health, wellbeing and participation in decisions about their lives.</i>
Government response	Implemented
Document name	<u>The Children and Young People Act 2008</u>
Implementation	
As recommended	No
Included content	<p>S.7 of the Children and Young People Act 2008 states the main objects of the Act. S.8 provides that the best interests of the child are paramount. s.9 states the principles to applying in the Act S.10 states the Aboriginal and Torres Strait Children and Young People principle.</p> <p>Various objects and principles relate to the health and wellbeing of children and young people and their participation in decisions about their lives.</p>
Excluded content	The <i>Children and Young People Act 2008</i> does not contain a “charter of rights”.
Implementation rating for legislative action	<p>Partially implemented</p> <p><i>Refer to document audit for final assessment of implementation status</i></p>

Recommendation number	8.24
Commission/ Inquiry of origin	Review of the Safety of Children in Care in the ACT and of ACT Child Protection Management (Territory as parent), 14 May 2004, ACT
Recommendation made	<i>The Review recommends that a statutory Commission for Children and Young People in the ACT be established with advocacy, investigation and intervention powers together with a Tribunal power.</i>
Government response	Implemented
Document name	<u>Human Rights Commission Act 2005</u>
Implementation	
As recommended	Yes.
Included content	<p>Section 3.5 of the <i>Human Rights Commission Act 2005</i> provides for a Children and Young People Commissioner within the Human Rights Commission.</p> <p>S.19B provides that the Children and Young People Commissioner has the following functions:</p>

- (a) to exercise functions for the commission in relation to services for children and young people; and
- (b) to exercise any other function given to the commissioner under this Act or any other territory law.

S.14 of the Act provides the functions of the Human Rights Commission and these include advocacy, investigation and intervention functions.

The Human Rights Act provides the Human Rights Commissioner with the right to intervene in civil or criminal legal proceedings initiated by other parties, with the permission of the court or tribunal. S30.

Division 4.4 of the Act provides that in considering complaints, the Commission has a power to ask for information, documents and other things; require the attendance of a person and provide privilege against self-incrimination.

Excluded content

Implementation rating for legislative action

Implemented in full

Refer to document audit for final assessment of implementation status

Recommendation number	8.6
Commission/ Inquiry of origin	Review of the Safety of Children in Care in the ACT and of ACT Child Protection Management (Territory as parent), 14 May 2004, ACT
Recommendation made	<p><i>The Review recommends that the Children and Young People Act be amended to provide the Children's Services Council with a specific overview role for care and protection services and to allow the Council to share the Territory Parent responsibility. Council members should be remunerated in accordance with their responsibilities.</i></p> <p><i>Recommendation elements:</i></p> <ol style="list-style-type: none"> <i>1. Overview role of care and protection services</i> <i>2. Share parent responsibility</i> <i>3. Be remunerated</i>
Government response	Implemented
Document name	Part 2.2 of the Children and Young People Act 2008
Implementation	
As recommended	No
Included content	<p>Re 1 above.</p> <p>S.28 of the Children and Young People Act 2008 provides that the Children and Youth Services Council has two functions:</p> <p>(a) to report to the Minister, at the Minister's request, on anything relating to the operation or administration of this Act;</p> <p>(b) to make recommendations to the Minister.</p> <p>Re 3 above.</p>

Excluded content	<p>S.31 provides that the conditions of appointment of the chair of the Council are the conditions agreed between the Minister and the chair, subject to any determination under the Remuneration Tribunal Act 1995.</p> <p>Re 1 above. The role of the Council is not an overview role for care and protection services. Reports to the Minister from the Council are limited to matters on which the Minister requests a report.</p> <p>Re 2 above. There is no provision in the Act for the Children and Youth Services Council to “share the Territory Parent responsibility” or similar provision.</p> <p>Re 3 above. There is no reference in the Act to remuneration for members of the Council other than the Chair.</p>
Implementation rating for legislative action	<p>Not implemented</p> <p><i>Refer to document audit for final assessment of implementation status</i></p>

Recommendation number	8.4
Commission/ Inquiry of origin	The Territory's Children: Ensuring safety and quality care for children and young people - Report on the Audit and Case Review (Gwenn Murray, July 2004)
Recommendation made	<i>When a child is on an order and there is a report of harm being caused to them by an adult in the place of residence, a special appraisal needs to be conducted regardless of whether the child is living at home or in care.</i>
Government response	Implemented
Document name	<p>Consistency of recommendation with The Children and Young People Act 2008 – Section 507</p> <div data-bbox="523 1288 1513 1335" style="border: 1px solid black; height: 20px; width: 100%;"></div>
Implementation	<p>As recommended</p> <p>Included content</p> <p>S.360 of the <i>Children and Young People Act 2008</i> provides that Director-general must consider all child concern reports and must carry out an initial assessment to of the matters raised in the report to decide if the child or young person may be in need of care and protection.</p> <p>S. 361 provides that if the Director-general decides that a child concern report is a child protection report, then the Director-general must take the action that the Director-general considers appropriate in relation to the report.</p> <p>S.506 provides that if the Director-general has daily care responsibility for a child or young person and the Director-general decides that a child concern report about the child or young person is a child protection report, and the Director-general then carries out a child protection appraisal for the child or young person, then the Director-general must give the public advocate a report about the incident and what action (if any) the Director-general has taken because of the appraisal.</p>

Excluded content

The *Children and Young People Act 2008* does not require the Director-general to conduct a special appraisal upon any child or young person, including a child subject to a report of harm being caused to the child by an adult in a place of residence. However, if the initial assessment indicates the child protection concern report, then the Director-general may decide to seek agreement to, or an order for, a child protection appraisal. S. 368 (2) and (3).

Implementation rating for legislative action

Minor difference – partial

Refer to document audit for final assessment of implementation status

Recommendation number

9.9

**Commission/
Inquiry of origin**

The Territory's Children: Ensuring safety and quality care for children and young people - Report on the Audit and Case Review (Gwenn Murray, July 2004)

Recommendation made

Investigation is undertaken to develop systems for employment screening, similar to 'Working With Children Checks' conducted by the NSW Commission for Children and Young People.

Government response

Implemented

Document name

[Working with Vulnerable People \(Background Checking\) Act 2011](#)

Implementation**As recommended**

Yes.

Included content

The *Working with Vulnerable People (Background Checking) Act 2011* commenced in November 2011.

The provisions relating to people engaged in activities and services for children commenced in November 2012.

The Act provides that it is an offence for a person to engage in regulated activity for which the person not registered S.13. The Act also provides it is an offence for an employer to engage a person in regulated activity for which person not registered S.14.

The legislation also provides for background checking for people engaged with a range of other vulnerable peoples to be introduced over prescribed periods.

The regime for checking is similar to the "Working With Children Checks" conducted by the NSW Commission for Children and Young People.

Excluded content

NA

Implementation rating for legislative action

Implemented in full

Refer to document audit for final assessment of implementation status

Recommendation number	25
Commission/ Inquiry of origin	The rights, interests and well-being of children and young people Report Number 3 (Standing Committee on Community Services and Social Equity, August 2003)
Recommendation made	<p><i>The Committee recommends that the Government:</i></p> <p><i>i. investigate ways to streamline the procedural mechanisms for mandatory reporting;</i></p> <p><i>ii. develop and implement a protocol for responding to instances where mandated persons have failed to report abuse; and</i></p> <p><i>iii. review the penalty within the Act for the offence of failing to report a suspected case of abuse.</i></p>
Government response	Implemented in full
Document name	Child and Young Persons Act 1999, s159
Implementation	S Act provided
As recommended	Unable to determine.
Included content	S. 356 of the <i>Child and Young Person Act 2008</i> provides that it is an offence for a mandated reporter who, in the course of employment believes on reasonable grounds that a child or young person has experienced or is experiencing sexual abuse or non-accidental physical injury fails to report the matter to the Director-general as soon as possible.
Excluded content	
Implementation rating for legislative action	<p>Undetermined</p> <p>Insufficient evidence provided to assess whether:</p> <ol style="list-style-type: none"> 1. Ways to streamline the procedural mechanisms for mandatory reporting were investigated; 2. A protocol for responding to instances where mandated persons have failed to report abuse has been developed and implemented; and 3. The penalty within the Act for the offence of failing to report a suspected case of abuse has been reviewed.
	<i>Refer to document audit for final assessment of implementation status</i>

LEGISLATION VERIFICATION: COMMONWEALTH

Recommendation number	12.1
Commission/Inquiry of origin	Management Response to Allegations of Paedophile Activity within the Foreign Affairs Portfolio: Report to the Public Service Commissioner, Pamela O'Neil, May 1997
Recommendation made	<i>I recommend that agencies, in consultation with the relevant staff associations and unions and the PSMPC, develop a complaints procedure, including a procedure for the handling of allegations of a breach of the Code of Conduct. The procedure should incorporate the following elements: an acknowledgement that there are ways of dealing with matters of personal behaviour, particularly of a less serious nature, which do not involve employing the formal process prescribed by the Public Service Act; the need to identify allegations which are of relevance to the employer. If the view is taken that an allegation is not of relevance to the employer the person making the allegation should be informed; the need for respect for privacy and for the requirements of natural justice and procedural fairness to be observed in the handling of any allegations of misconduct; the need for matters to be dealt with speedily. The facts need to be established before memories fade; an allegation involving a possible breach of Australia criminal law, and which is of relevance to the employer, should be reported to the appropriate law enforcement authority; and there should be a preference for regarding an allegation of misbehaviour as a misconduct matter, in addition to any requirement for dealing with the matter in some other manner. Agencies should ensure that they have in place appropriate awareness programs to provide staff and, where appropriate, members of their households, with necessary information about personal behaviour, complaints mechanisms and related matters. Suitable induction programs and refresher programs should also be provided.</i>
Government response	See attachment rr_2332_C-NP-xx_2013-10-04_Commonwealth Page 3/274 for full response:
Document name	http://www.comlaw.gov.au/Details/C2013C00310 Public Service Act 1999 http://www.comlaw.gov.au/Details/F2013L00448 Australian Public Service Commissioner's Directions 2013 http://www.comlaw.gov.au/Details/C2013A00002 Public Service Amendment Act 2013 http://www.apsc.gov.au/aps-employment-policy-and-advice APSC Employment Policy & Advice http://www.apsc.gov.au/publications-and-media/current-publications/handling-misconduct Handling Misconduct guidelines
Implementation	
As recommended	No.
Included content	Code of conduct: The Australian Public Service (APS) Values and the Code of Conduct are set out in the <i>Public Service Act 1999</i> at sections 10 and 13. The <i>APS Commissioner's Directions 2013</i> (the Directions) set out the procedural requirements for dealing with breaches of the APS Code of Conduct.

The APSC has also published *Handling Misconduct – A human resource practitioners guide to the reporting and handling of suspected and determined breaches of the APS Code of Conduct*.

The recommended elements:

1. Acknowledging alternative ways of dealing with suspected misconduct.

The Directions note that not every failure to comply with the APS Values needs to be dealt with through misconduct procedures, and performance management may be appropriate (Preamble to Chapter 1). Handling Misconduct provides guidance on consideration of options for handling less serious cases of misconduct (pages 14 and 29).

2. Allegations relevant to employment.

Section 13 of the PS Act 1999 (as amended by the PS Amendment Act 2013) codifies the APS Code of Conduct and sets out provisions for dealing with alleged breaches by and APS employee when acting in “connection with APS employment” (sections 13(1), (2), (3), (4), (7), (9)). Other allegations may be relevant to the employer if they concern conduct referred to in sections 13(5), (6), (8), (10), (11), (12), (13), even though these provisions do not require conduct to occur “in connection with APS employment”.

3. Allegation is not of relevance to the employer the person making the allegation should be informed.

No evidence was found in the cited documents to indicate this aspect of the recommendation has been implemented.

4. Privacy, natural justice and procedural fairness.

Handling Misconduct states that the rights of an employee suspected of misconduct include a right to confidentiality and that the identity of the employee should be managed on a needs-to-know basis.

The PS Act requires that all procedures should have regard to procedural fairness (section 15(4)) and whistle-blowers are protected under section 16 of the PS Act.

5. Dealing with matters speedily.

Misconduct investigations must be conducted with little formality and as much expedition as proper consideration allows (Section 6.6 of the Directions), and in a timely manner (Handling Misconduct pages 45 & 79).

6. Reporting possible breaches of the criminal law to appropriate authorities.

Handling Misconduct advises that minor misconduct issues might be dealt with through the performance management system or by other procedures. Cases of more serious suspected misconduct would appropriately be dealt with under misconduct procedures.

Each case of suspected misbehaviour should be considered on its merits to determine the appropriate system response.

Handling Misconduct also directs agencies to discuss suspected behaviour that involves potentially serious criminal conduct, with the relevant law enforcement agency (page 17).

7. Preference for regarding misbehaviour as a misconduct matter, in addition to any requirement for dealing with the matter in some other manner.

There is no stated preference for regarding an allegation of misbehaviour as a misconduct matter. As described in 1 and 5 above, each case should

	<p>be considered on its merits and case appropriate process / response adopted.</p> <p>8. Awareness programs for staff and, where appropriate family members; induction and refresher programs.</p> <p>A range of awareness materials are posted on the APSC website. There does not appear to be any information specifically for family members. The Department stated in its response that an online induction program that included information on APS Values, Employment Principles and the Code of Conduct and was available for agencies to use in their internal induction programs. The induction program was not sighted.</p>
Excluded content	<ul style="list-style-type: none"> There is no stated preference for regarding misbehaviour as a misconduct matter, in addition to any requirement for dealing with the matter in some other manner. <p><i>The cited legislation, directions and advice make it clear that:</i></p> <ul style="list-style-type: none"> <i>each case should be considered on its merits;</i> <i>not all cases need to become misconduct investigations and other appropriate responses should be considered;</i> <i>cases of more serious suspected misconduct should be dealt with under misconduct procedures; and</i> <i>agencies are directed to discuss suspected behaviour that involves potentially serious criminal conduct with the relevant law enforcement agency.</i> <ul style="list-style-type: none"> There is no information available specifically for family members. There are no directions or advice to the effect that a person making an allegation of misconduct that is determined not to be of relevance to the employer, should be informed of the determination.
Implementation rating for legislative action	<p>Partially implemented</p> <p><i>Refer to document audit for final assessment of implementation status</i></p>

Recommendation number	9-1
Commission/Inquiry of origin	Uniform Evidence Law Report: ALRC Report 102; NSWLRC Report 112; VLRC Final Report – December 2005, Australian Government Law Reform Commission; NSW Law Reform Commission and Victorian Law Reform Commission
Recommendation made	<p><i>9. The Opinion Rule and its Exceptions</i></p> <p><i>9-1 - Section 79 of the uniform Evidence Acts should be amended to provide that, to avoid doubt, the provision applies to evidence of a person who has specialised knowledge of child development and behaviour (including specialised knowledge of the effect of sexual abuse on children and of their behaviour during and following the abuse), being evidence in relation to either or both of the following:</i></p> <p><i>(a) the development and behaviour of children generally;</i></p>

Government response

(b) the development and behaviour of children who have been the victims of sexual offences, or offences similar to sexual offences.

See attachment rr_2332_C-NP-xx_2013-10-04_Commonwealth Page 8/274 for the government's full response.

This recommendation was considered by the Standing Council of Attorneys-General at its meeting of 26-27 July 2007. Model provisions are available in the Model Uniform Evidence Bill, s79 (2).

In the Commonwealth jurisdiction, this recommendation has been implemented by the *Evidence Act 1995* (Cth), s79 (2) [amended by *Evidence Amendment Act 2008*, Schedule 1, item 38].

Document name

1. Model Uniform Evidence Bill, s79(2).
http://www.sclj.gov.au/agdbasev7wr/sclj/documents/pdf/model_law_uniform_evidence.pdf
2. *Evidence Act 1995* (Cth), s79(2)
<http://www.comlaw.gov.au/Details/C2012C00518>
[amended by *Evidence Amendment Act 2008*, Schedule 1, item 38]
<http://www.comlaw.gov.au/Details/C2011C00176>

Implementation

As recommended

Yes

Included content

A draft Model Uniform Evidence Bill based on the *NSW Evidence Act 1995*, as amended by the Evidence Amendment Bill 2007, was prepared by the Parliamentary Counsel's Committee and endorsed by the Standing Committee of Attorneys-General on 26 July 2007.

The *Evidence Act 1995* (Cth) (as amended by the *Evidence Amendment Act 2008*) contains the following relevant provisions.

s. 79 Exception: opinions based on specialised knowledge

(1) If a person has specialised knowledge based on the person's training, study or experience, the opinion rule does not apply to evidence of an opinion of that person that is wholly or substantially based on that knowledge.

(2) To avoid doubt, and without limiting subsection (1):

(a) a reference in that subsection to specialised knowledge includes a reference to specialised knowledge of child development and child behaviour (including specialised knowledge of the impact of sexual abuse on children and their development and behaviour during and following the abuse); and

(b) a reference in that subsection to an opinion of a person includes, if the person has specialised knowledge of the kind referred to in paragraph (a), a reference to an opinion relating to either or both of the following:

- (i) the development and behaviour of children generally;*
- (ii) the development and behaviour of children who have been victims of sexual offences, or offences similar to sexual offences.*

Excluded content	NA
Implementation rating for legislative action	Implemented in full <i>Refer to document audit for final assessment of implementation status</i>
Recommendation number	18.2
Commission/Inquiry of origin	Uniform Evidence Law Report: ALRC Report 102; NSWLRC Report 112; VLRC Final Report – December 2005, Australian Government Law Reform Commission; NSW Law Reform Commission and Victorian Law Reform Commission
Recommendation made	<i>The uniform Evidence Acts should be amended to include provisions dealing with warnings in respect of children's evidence similar to those contained in ss 165(6), 165A and 165B of the Evidence Act 1995 (NSW). Section 165B should be amended to make it clear that a trial judge is not to give a warning about the reliability of the evidence of a child solely on account of the age of the child.</i>
Government response	<p>See attachment rr_2332_C-NP-xx_2013-10-04_Commonwealth Page 9-10/274 for the government's full response.</p> <p>Considered by Standing Committee of A-Gs July 2007. Model uniform evidence bill may be relevant?</p> <p>Implemented via Evidence Act 1995 (Cth) s165A [amended by Evidence Amendment Act 2008, schedule 1, item 72]</p>
Document name	<p>http://www.austlii.edu.au/au/legis/nsw/consol_act/ea199580/ <i>Evidence Act 1995 (NSW)</i></p> <p>Evidence Act 1995 (Cth) s165A [amended by Evidence Amendment Act 2008] http://www.comlaw.gov.au/Details/C2012C00518 <i>Evidence Act 1995 (Cth)</i></p> <p>http://www.sclj.gov.au/agdbasev7wr/sclj/documents/pdf/model_law_uniform_evidence.pdf <i>Model Uniform Evidence Bill,</i></p> <div style="border: 1px solid black; height: 20px; width: 100%;"></div>
Implementation	
As recommended	Yes.
Included content	<p>The Model Uniform Evidence Bill contains provision at s165, 165A and 165B consistent with those of the <i>Evidence Act 1995 (NSW)</i>.</p> <p>The amendments to the <i>Evidence Act 1995 (Cth)</i> as amended by the <i>Evidence Amendment Act 2008 (Cth)</i>, are consistent with the Model Uniform Evidence Bill and the <i>Evidence Act 1995 (NSW)</i> and are significantly more extensive than just the amendment to s165A referred to in the Government response.</p> <p>The amendments are consistent with the recommendations of the ALRC and include:</p>

	<ul style="list-style-type: none"> • amendments to s.165 to provide that a judge may not warn or inform a jury that the reliability of a child's evidence may be affected by the age of the child; • S.165A which relates to judges not issuing warnings to juries about: the reliability of the evidence of children as a class; the evidence of children being less reliable than the evidence of adults; the reliability of the evidence of a particular child because of the age of the child; the dangers of convicting on the uncorroborated evidence of a child. • S.165B which relates to warnings that a judge must, or may not, give in relation to forensic disadvantage because of delay.
Excluded content	NA
Implementation rating for legislative action	Implemented in full
	<p>Query. The second sentence of the ALRC recommendation quoted at the top of the page refers to an amendment to S165B and relates to judicial warning and the evidence of a child. S 165B actually deals with warnings to the jury about forensic disadvantage. I think the reference is to s165 and the recommendation has been given effect to in s165(6).</p> <p><i>Refer to document audit for final assessment of implementation status</i></p>

Recommendation number	8
Commission/Inquiry of origin	Forgotten Australians: A Report on Australians who experienced institutional or out-of-home care as children (2005)
Recommendation made	<p><i>That the Commonwealth establish an external complaints review mechanism, such as a national commissioner for children and young people who would have the power to:</i></p> <ul style="list-style-type: none"> • <i>investigate and mediate complaints received by complainants dissatisfied with Church processes with the relevant Church authority;</i> • <i>review the operations of Church sponsored complaints mechanisms to enhance transparency and accountability;</i> • <i>publicise the existence of Church-sponsored complaints mechanisms widely throughout the community.</i>
Government response	<p>'Key aspects of this recommendation were implemented'</p> <p>See attachment Cth Tranche 1 Response attachment for full response</p>
Document name	<ol style="list-style-type: none"> 1. http://www.comlaw.gov.au/Details/C2012A00089 The Australian Human Rights Commission Amendment (National Children's Commissioner) Act 2012 2. http://www.comlaw.gov.au/Details/C2013C00274 The Australian Human Rights Commission Act 1986, Part 11AA and 46MB
Implementation	
As recommended	Y/N
Included content	<i>The Australian Human Rights Commission Act 1986 was amended by the Australian Human Rights Commission Amendment (National Children's</i>

Commissioner) Act 2012, to provide for a National Children's Commissioner. The first Commissioner was appointed on 25 February 2013. The appointment was part of the Commonwealth's commitment under the First National Framework for Protecting Australia's Children 2009 – 2020

- (1) The following functions are conferred on the Commission:
- (a) to submit a report to the Minister that complies with subsection (3) as soon as practicable after 30 June in each year;
 - (b) to promote discussion and awareness of matters relating to the human rights of children in Australia;
 - (c) to undertake research, or educational or other programs, for the purpose of promoting respect for the human rights of children in Australia, and promoting the enjoyment and exercise of human rights by children in Australia;
 - (d) to examine existing and proposed Commonwealth enactments for the purpose of ascertaining whether they recognise and protect the human rights of children in Australia, and to report to the Minister the results of any such examination s.64(MB)(1)

The annual report to the Minister must deal with matters relating to the enjoyment and exercise of human rights by children in Australia and may include recommendations as to the action to be taken to ensure the exercise and enjoyment of these rights s.64(MB)(3)

The Commissioner may give particular attention to vulnerable or at risk children s.64(MB)(4)

In performing functions the Commissioner may consult with children, State and Territory departments and agencies, non-government organisations and agencies - local and international s.64(MB)(5).

The Commissioner must also have regard to the Universal Declaration of Human Rights and a range of conventions and covenants as amended and in force in Australia s.64(MB)(6)

Excluded content

The essence of the recommendation was for an external complaints review mechanism (such as a commissioner for children and young people) to investigate and mediate complaints involving churches, to review church complaint handling mechanisms so as to enhance transparency and accountability, to report to parliament on the complaints received, and to publicise the complaint handling mechanisms of the churches.

The National Children's Commissioner does not have a complaints handling role. The Government response submitted this was consistent with the mandate that the Commissioner focus on groups of children rather than on individual children. The response also notes that the Commissioner had the discretion to focus on matters relating to the exercise and enjoyment of human rights as appropriate.

The government has submitted that "key aspects of the recommendation were implemented".

There are no legislative references to any role for the Commissioner in:

- mediating complaints received by complainants dissatisfied with church processes with the relevant church authority;
- reviewing the operations of church sponsored complaints mechanisms to enhance transparency and accountability;
- reporting annually to the Parliament on the operation of the churches complaint schemes, including data on the number and nature of complaints: or
- Publicising the existence of church-sponsored complaints mechanisms widely throughout the community.

**Implementation rating
for legislative action**

Partially – very partially.

Note. It appears (from the Govt response) that there is a fourth power recommended for the complaint review mechanism i.e. a power to report annually on the number of complaints received (as included in the third dot point in the panel above). If this is correct then the Recommendation Made panel above needs to be amended accordingly.

Refer to document audit for final assessment of implementation status

Recommendation number 15

**Commission/Inquiry
of origin**

Lost Innocents and Forgotten Australians Revisited (2009)

**Recommendation
made**

15: *The Committee recommends that the Ministerial Council for Police and Emergency Management (Police) develop and implement a national policy on the prosecution of, and data collection and sharing about, historical crimes of sexual and physical abuse of children in care; and that the establishment or further development of specialist State police units be considered as part of this policy development process.*

Breakdown of components:

1. National prosecution policy of historical crimes
2. Sharing information on historical crimes of sexual and physical abuse of children in care.
3. Development of specialist State police units

Government response

See attachment Commonwealth – tranche 2 response Page 6/7 for the government's full response.

While this specific recommendation was not implemented the Commonwealth has taken steps to address the intent of the recommendation.

On March 2010, the Crimes Amendment (Working with Children – Criminal History) Act 2010 received Royal Assent. This Act amended the Crimes Act 1914 to include an exception to Part VIIC of the Crimes Act ('Pardons, quashed convictions and spent convictions') to help protect children from sexual, Ophysical and emotional harm by permitting criminal history information to be

Document name	<p>disclosed and taken into account in assessing the suitability of persons for work with children.</p> <p><i>Crimes Amendment (Working With Children—Criminal History) Act 2010</i> http://www.comlaw.gov.au/Details/C2010A00028</p> <p><i>Crimes Act 1914 (Cth)</i> http://www.comlaw.gov.au/Details/C2013C00369/Html/Volume_2</p> <p>http://www.coag.gov.au/national_security_and_community_safety#Exchange of Criminal History Information for People Working with Children</p>
Implementation	No
As recommended	
Included content	<p>Amendments to the <i>Crimes Act 1914</i> were introduced under the <i>Crimes Amendment (Working With Children—Criminal History) Act 2010</i> to help protect children from sexual, physical and emotional harm by permitting criminal history information to be disclosed and taken into account in assessing the suitability of persons for work with children.</p> <p>Prior to the amendment, Divisions 2 and 3 of the <i>Crimes Act 1914</i> provided that if a person's conviction for an offence had been quashed or spent, the person was not required to disclose to any person, for any purpose, the fact that the person had been charged with, or convicted of an offence.</p> <p>The amendments provided that Divisions 2 and 3 did not apply to the disclosure of information to a prescribed person or body, nor did they apply in relation to the taking into account of information by the prescribed person or body to which the information was provided. (Division 6 – Exclusions. Subdivision A (Exclusions to Division 2 and 3)</p> <p>A prescribed person or body is one required or permitted to obtain and deal with information about persons who work or seek to work with children. S. 85ZZGE</p> <p>The Act defines “work” in this context. S.85ZZGF</p> <p>In November 2008, COAG agreed to a 12 month trial program for inter-jurisdictional exchange of criminal history information for screening people working with children.</p> <p>The trial exchange started on 30 November 2009, and is continuing to operate, under the Memorandum of Understanding for a National Exchange of Criminal History Information for People Working with Children.</p>
Excluded content	<p>A national policy on the prosecution of historical crimes of sexual and physical abuse of children in care has not been developed.</p> <p>The Government submitted that: <i>Directors of Public Prosecutions have statutory independence and it would not be appropriate for Ministers to direct them as to how to perform their prosecutorial functions. State Directors of Public Prosecutions operate according to prosecution policies and guidelines that apply the public interest as the paramount criterion in determining whether a prosecution is to be undertaken, as well as within the laws of the relevant jurisdiction.</i></p> <p>This exercise has not sought to verify the establishment of specialist State police units.</p>

**Implementation
rating for legislative
action**

The Government submitted that: *The question of specialist State police units is a matter for individual State and Territory governments and does not require national coordination through Ministerial Council for Police and Emergency Management.*

Partially implemented

Refer to document audit for final assessment of implementation status

LEGISLATION VERIFICATION – NEW SOUTH WALES

Recommendation number	62
Commission/Inquiry of origin	<p>The Hon Justice JRT Wood Royal Commission into the New South Wales Police Service: Final Report – Volume V: The Paedophile Inquiry (1997)</p> <p>Volume IV (Recs 8, 62, 64): http://www.pic.nsw.gov.au/files/reports/RCPS%20Report%20Volume%204.pdf</p>
Recommendation made	<p><i>Amendment of s. 22(4) of the Children (Care and Protection) Act 1987 to remove any ambiguity or inconsistency with s. 22(3) of the Act (para. 10.29).</i></p> <p><i>The Children (Care & Protection) Act 1987 has been fully repealed. Section 22, in particular, was repealed in 2000 (refer to Attachment L-1). The reporting scheme in the current Act does not have this ambiguity.</i></p>
Government response	<p><i>Children (Care & Protection) Act 1987 [the Act was repealed by sec 3 of the Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009. No 13 with effect from 30.6.2010].</i></p>
Document name	<input type="text"/>
Implementation	
As recommended	Y
Included content	<p>Section 22(3) in the repealed legislation contained an obligation to comply with the requirement in s. 22(4) to notify the Director-General where a person has 'reasonable grounds' to suspect abuse, yet s. 22(4) assumed an obligation to comply with the provision where 'any grounds' for such suspicion are entertained. This ambiguity has been removed in the current mandatory reporting provision (s.27 Children and Young Persons (Care and Protection) Act 1998 (NSW)).</p>
Excluded content	NA
Implementation rating for legislative action	<p>Implemented in full</p> <p><i>Refer to document audit for final assessment of implementation status</i></p>

Recommendation number	11.1(viii)
Commission/Inquiry of origin	<p>Special Commission of Inquiry into Child Protection Services in NSW (Wood Inquiry) (2008)</p> <p>Vole 2: http://www.dpc.nsw.gov.au/publications/news/stories/?a=33797</p>
Recommendation made	<p><i>Section 29(1)(f)[of the Children and Young Persons (Care and Protection) Act 1998] should be amended to permit the disclosure of the reporter's details to a law enforcement agency pursuant to the investigation of a serious crime committed upon a child or young person, where that might impact on the child's safety, welfare or well-being.</i></p>

Government response	Legislation giving effect to this recommendation has been enacted, commencing 24 January 2010. The relevant sections are ss29(4A), (4B), (4C) and (6). (FACS Document 2).
Document name	
Implementation	
As recommended	Y
Included content	<p>Sections 29(4A), (4B) & (4C) of the C&YP(C&P)A impose more restrictions on the ability to disclose the identity of persons who make reports of potential harm to a child, than those envisaged in the recommendation, i.e.:</p> <ul style="list-style-type: none"> • The disclosure must be <i>necessary</i> for the “safety, welfare and wellbeing” of a child, rather than there being a possibility that the disclosure <i>might impact</i> on a child’s safety (subsection(4A)(b)); • There must be certification in writing that it is either impractical to obtain the consent of the person making the report to disclose their identity or to do so would prejudice the investigation (subsection(4B)); • The person disclosing the identity of the report must notify them of the disclosure unless it’s not reasonably practicable, or to do so or to do would prejudice the investigation (subsection (4C)). <p>However the exception to confidentiality is cast wider than that recommended in one respect, i.e., disclosure may be allowed where to do so is necessary to safeguard or promote the safety etc., of <i>any child</i>, and not only of the child victim.</p>
Excluded content	NA
Implementation rating for legislative action	Implemented in full Refer to document audit for final assessment of implementation status

Recommendation number	23.4
Commission/Inquiry of origin	<p>Special Commission of Inquiry into Child Protection Services in NSW (Wood Inquiry) (2008)</p> <p>Vol.3: http://www.dpc.nsw.gov.au/publications/news/stories/?a=33798</p>
Recommendation made	<i>Information obtained by persons appointed by the Minister as official visitors should be available to the regulator/accreditor of OOHC with appropriate procedural fairness safeguards and s.8 of Community Services (Complaints, Reviews and Monitoring) Act 1993 and clause 4 of Community Services (Complaints, Reviews and Monitoring) Regulation 2004 should be amended to achieve this outcome.</i>
Government response	<p>The recommendation has been fully implemented.</p> <p>The recommendation was included in amendments of the <i>Community Services (Complaints, Reviews and Monitoring) Act 1993</i>, section 8A. (FACS Document 3). This was proclaimed on 24 January 2010.</p>
Document name	

Implementation

As recommended

In Part

Included content

See Government response above in relation to the introduction of section 8A to the CS(C,R &M)A. The amendment goes further than that envisaged by the recommendation by *mandating* the disclosure of relevant information by Official Community Visitors.

Excluded content

Clause 4 of the CS(C,R &M) Regulation has not been amended to include the new function of Official Community Visitors introduced by section 8A of the CS(C,R &M)A.

Neither the CS(C,R &M)A nor regulations made pursuant to the Act makes provision to ensure procedural fairness applies in relation to this function.

Implementation rating for legislative action

Partially implemented

Refer to document audit for final assessment of implementation status

Recommendation number

23.8

Commission/Inquiry of origin

Special Commission of Inquiry into Child Protection Services in NSW (Wood Inquiry) (2008)

Vol.3: <http://www.dpc.nsw.gov.au/publications/news/stories/?a=33798>

Recommendation made

The Commission for Children and Young People Act 1998 should be amended to require background checks as follows:

- a. *in respect of CS and other key human service agencies all new appointments to staff positions that work directly or have regular contact with children and young persons (that is, permanent, temporary, casual and contract staff held against positions including temporary agency staff)*
- b. *any contractors engaged by those agencies to undertake work which involves direct unsupervised contact to children and young persons, and, in the case of CS, access to the KiDS system or file records on CS client*
- c. *students working with CS officer*
- d. *children's services licensees*
- e. *authorised supervisors of children's services*
- f. *principal officers of designated agencies providing OOHC or adoption agencies*
- g. *adult household members, aged 16 years and above of foster carers, family day carers and licensed home based carers*
- h. *volunteers in high risk groups, namely those having extended unsupervised contact with children and young persons.*

Government response

The *Commission for Children and Young People Act 1998* (CCYP Act) was amended in 2009 in response to the Wood recommendations. The Working with Children Check (WWCC) was reviewed twice in 2010, through a statutory review of the CCYP and by the Auditor General. These reports are attached (**NSW CCYP Documents 1 and 2**). These reviews resulted in the new *Child*

Protection (Working With Children) Act 2012 (WWC Act) which will commence on 15 June 2013.

The Wood recommendations are addressed below.

Part 7, Division 1, Section 33 of the CCYP Act defines child-related employment as employment of a certain kind that “primarily involves direct contact with children where that contact is not directly supervised by a person having the capacity to direct the person in the course of their employment”.

Employment involving the provision of child protection services has always been listed as primary child-related employment. However, other Community Services staff that do not have direct and unsupervised contact with children as a primary part of their role have not been captured.

The Division 1, Section 6(4) of the WWC Act changes the requirement for a worker to have direct and unsupervised contact with children as a primary part of their role, to simply “direct contact”, being (a) physical contact or (b) face to face contact. Therefore, those staff that may not previously have been captured due to their level of unsupervised contact with children and young people will be required to have a WWCC.

The Commission for Children and Young People Regulation 2009 introduced the Certificate for Self-Employed People (CSEP), for self-employed people in child-related work. The Commission commenced issuing certificates to self-employed people in May 2009. To date, there have been 21,325 certificates issued to self-employed people since the system was implemented. The certificate system is administered by the CCYP and involves a national criminal records check of convictions for serious sex or child-related personal violence offences. Parents and other employers of self-employed people can currently check that a self-employed person’s certificate is valid online. However, once the new WWCC begins, certificates will need to be verified by CCYP staff over the phone.

Self-employed people and contractors in child-related work will also be subject to the new WWCC. Background checking provisions for these workers will be strengthened under the new check, as they will be subject to the same records checks and assessment requirements as all other child-related workers.

Part 7 (2) of the WWC Act also makes provision for those staff engaged in work that involves access to confidential records information about children may be required to get a WWCC clearance.

Amendments were also made to the CCYP Act to include employment of a kind listed in Wood recommendations 23.8(c) – (h) within the Act as primary child-related employment, currently listed at Division 3, Section 37(6)(c), (c1), (c2) and (c3). Each of these groups are currently required to have a WWCC, and will likewise be required to have a WWCC in the new system to be implemented in June 2013. These are defined at Division 1, Section 6 and Section 7 of the WWC Act.

Document name	
Implementation	
As recommended	In part
Included content	<p>The new Child Protection (Working With Children) Act 2012 (WWC Act) which commenced on 15 June 2013 imposes a requirement for background checks for those categories of people listed in the recommendation that are engaged in child-related work via the following provisions:</p> <ol style="list-style-type: none"> All staff of Community Services and other key human service agencies, regardless of the form of their employment – see s6. Note: Given the prohibition of conducting “child-related work” without a clearance (s9), and the definition of “worker” in s5, the requirement relates to new <i>and existing</i> staff, including volunteers, and therefore is broader in scope than the recommendation. Contractors (including self-employed people) engaged by those agencies, whose work or role is listed in section 6, or who provides any other service that is prescribed by the regulations, are required to obtain clearance under the Act (see definition of “worker” in s5). Note: The definition of “child-related work” does not require that the work be unsupervised, and therefore is broader in scope than the recommendation. <p>All workers, other than volunteers, who have access to confidential records or information relating to children and young persons “may” be required by an employer to obtain clearance under the Act – see s 7(2). While this provision brings a wider category of people with access to records within the scope of the legislation, it does not impose the mandatory requirement envisaged by the recommendation and specifically excludes volunteers, but leaves it up to the discretion of the employer.</p> <ol style="list-style-type: none"> Students on placement as part of an educational or vocational course are covered, but younger students doing work experience are not - see definition of “worker” in s5. Children’s services licensees - see s6 and definition of “worker” in s5. Authorised supervisors of children’s services - see s6(3)(b) Principal officers of designated agencies providing OOHC or adoption agencies – see s6(3)(e) & (f) Adult household members, aged 16 years and above of foster carers, family day carers and licensed home based carers – see s10 Volunteers in high risk groups, namely those having extended unsupervised contact with children and young persons – Section 12

allows for a volunteer engaged in child-related work to obtain a children check clearance. However employers may employ a volunteer who has not obtained a check where the volunteer has been engaged in that volunteer work for 30 consecutive days or less – see s12(2). While this provision brings a wider category of volunteers within the scope of the legislation, it does not ensure that a check is obtained at the outset.

Excluded content

See comments above relating to b and c

**Implementation rating
for legislative action**

Partially implemented

Refer to document audit for final assessment of implementation status

Recommendation number 24.6

**Commission/Inquiry
of origin**

Special Commission of Inquiry into Child Protection Services in NSW (Wood Inquiry) (2008)

Vol 2: <http://www.dpc.nsw.gov.au/publications/news/stories/?a=33797>

**Recommendation
made**

The Children and Young Persons (Care and Protection) Act 1998 should be amended to permit the exchange of information between human services and justice agencies, and between such agencies and the nongovernment sector, where that exchange is for the purpose of making a decision, assessment, plan or investigation relating to the safety, welfare and well-being of a child or young person in accordance with the principles set out in Chapter 24. The amendments should provide that, to the extent inconsistent, the provisions of the Privacy and Personal Information Protection Act 1998 and Health Records and Information Privacy Act 2002 should not apply. Where agencies have Codes of Practice in accordance with privacy legislation their terms should be consistent with this legislative provision and consistent with each other in relation to the discharge of the functions of those agencies in the area of child protection.

Breakdown of components

1. Permit the exchange of information between agencies for the purpose of making decisions etc., re safety, wellbeing and welfare of a child or young person;
2. The provisions of certain privacy acts not apply;
3. Codes of practice consistent with legislation and with each other.

Government response

The recommendation has been fully implemented.

The legislative amendments applying to the exchange of information about children and young people commenced on 30 October 2009. **(FACS Document 8)** Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* clearly prioritises the safety, welfare, and wellbeing of a child or young person over an individual's right to privacy.

Chapter 16A allows government agencies and non-government organisations who are prescribed bodies to exchange information that relates to a child's or young person's safety, welfare or wellbeing, whether or not the child or young person is

known to Community Services, and whether or not the child or young person consents to the information exchange.

Chapter 16A also requires prescribed bodies to take reasonable steps to coordinate decision making and the delivery of services regarding children and young people.

Factsheets, guidance, checklists, and form letters to request and provide information are available in the Interagency Guidelines which can be found at http://www.community.nsw.gov.au/kts/guidelines/info_exchange/info_index.htm. There has been no formal evaluation of Chapter 16A, however, the Department of Premier and Cabinet commissioned 'KPMG Final Report: Keep them Safe Interim Review: Location Based Evaluation' (November 2012) (FACS Document 9). The Report found that in the locations evaluated - Liverpool, Newcastle and Tamworth – 'information sharing between agencies has improved since the implementation of KTS. Chapter 16A was consistently cited among reforms to have had the greatest impact on service provider's capacity to respond to vulnerable and at-risk children and young people' (FACS Document 9, pp 9-11).

Document name

Implementation

As recommended

Y.

Included content

See Government response above.

Chapter 16A implements the recommendation in a more comprehensive and detailed way than envisaged. The Interagency Guidelines are consistent with the legislative requirements under Chapter 16A and promote consistency in practice.

Excluded content

NA

Implementation rating for legislative action

Implemented in full

Refer to document audit for final assessment of implementation status

Recommendation number

6

Commission/Inquiry of origin

NSW Ombudsman: Improving Probity Standards for Funded Organisations (2010)

http://www.ombo.nsw.gov.au/data/assets/pdf_file/0015/3381/SR_Improving_ProbityStandards_Dec10.pdf

Recommendation made

Ageing Disability and Home Care (ADHC), as an agency of the Department of Human Services, provide advice to Government on the best way of effectively dealing with the current shortcomings of the Community Services Regulation 2010, insofar as it fails to require that all existing licensees, licensed managers and direct care staff of licensed boarding houses be subject to criminal record checks.

Government response

Implemented in full.

Summary of the outcome of implementation:

In April 2012, the NSW Government approved a final reform proposal for the regulation of boarding houses in NSW, which included the introduction of a new Act, the *Boarding Houses Act 2012* (refer to Attachment C-1). The Act, which was passed in October 2012 and commenced on 1 July 2013 together with the Boarding Houses Regulation 2013 (refer to Attachment C-2), regulates 'general' boarding houses, i.e. those accommodating 5 or more people for fee or reward, and 'assisted' boarding houses, i.e. those which accommodate 2 or more 'people with additional needs' (previously these premises were known as licensed boarding houses).

The Act replaced and repealed the *Youth and Community Services Act 1973* and the *Youth and Community Services Regulation 2010*, which previously regulated licensed boarding houses. The provisions relating to assisted boarding houses require new and existing boarding house proprietors (whether as individuals or as members of a company, trust or unincorporated body), 'close associates', managers and staff members to undergo criminal record checks prior to commencing the position and every 3 years thereafter. A person applying to be a boarding house proprietor and any 'close associates' must also undergo financial probity checks. Referee checks and reference to any enforcement action taken in relation to relevant individuals is also taken into account.

The Act also prohibits persons who have been convicted of a 'serious criminal offence' from being employed in an assisted boarding house.

Records of staff probity checks are required to be kept by the boarding house operator for 7 years, and be made accessible to FACS enforcement officers on request.

Document name

Implementation

As recommended

Y

Included content

See Government response above and sections 45, 46 & 49 of the Boarding Houses Act 2012 (NSW) and clauses 8 & 9 of the Boarding Houses Regulation 2013 (NSW)

Excluded content

NA

Implementation rating for legislative action

Implemented in full

Refer to document audit for final assessment of implementation status

LEGISLATION VERIFICATION: NORTHERN TERRITORY

Recommendation number	1
Commission/Inquiry of origin	A Life Long Shadow. Report of a partial investigation of the child protection authority (2011)
Recommendation made	<p>Recommendation 1</p> <p><i>That Section 34 of the Care and Protection of Children Act (CPC Act) be amended to extend the authority of the CPA to request information: 'that may be relevant in connection with or incidental to a child's wellbeing', or 'relevant to information received about a child'.</i></p>
Government response	<p>In full</p> <p>On 1 July 2012 a range of information sharing provisions came into force with the proclamation of the Information Sharing amendments of the Care and Protection of Children Act.</p> <p>The changes:</p> <ul style="list-style-type: none"> • include broader information gathering powers for authorised officers; and • clarify that any information relating directly or indirectly to the inquiry can be sought and the information can be requested from anyone the authorised officer reasonably believes has the specified information. The effect is that the information gathering powers under an inquiry are much broader than they were previously.
Document name	Care and Protection of Children Act Section 34
Implementation	
As recommended	Yes
Included content	<p>The object of Div 4 of the <i>Care and Protection of Children Act</i> is to ensure the CEO and Police officers have the powers to take steps to determine whether the wellbeing of a child is at risk. The exercise of the power is not reliant on a S26 (mandatory notification) report being received but can be exercised upon the receipt of information that raises concerns about the child's wellbeing.</p> <p>S.34(2) provides that the inquiring officer may, for the inquiries, request any of the specified persons to give the officer specified information about the child or another person (for example, a family member of the child) that directly or indirectly relates to the inquiry. The list of specified persons includes a person whom the officer reasonably believes has the specified information.</p>
Excluded content	NA
Implementation rating for legislative action	<p>Implemented in full</p> <p>Refer to document audit for final assessment of implementation status</p>

Recommendation number	2
Commission/Inquiry of origin	A Life Long Shadow. Report of a partial investigation of the child protection authority (2011)
Recommendation made	<i>Recommendation 2</i> <i>That a provision is inserted into Section 34 of the CPC Act to allow the CEO: ‘to make those inquiries of any other persons who may reasonably be expected to have information about a child’.</i>
Government response	In full As above
Document name	<i>Care and Protection of Children Act S34</i>
Implementation	
As recommended	Yes
Included content	S.34 of the <i>Care and Protection of Children Act</i> provides that an officer conducting inquiries in relation to the wellbeing of a child may request a person whom the officer reasonably believes has the specified information to give the officer specified information about the child or another person (for example, a family member of the child) that directly or indirectly relates to the inquiry.
Excluded content	NA
Implementation rating for legislative action	Implemented in full <i>Refer to document audit for final assessment of implementation status</i>

Recommendation number	4
Commission/Inquiry of origin	A Life Long Shadow. Report of a partial investigation of the child protection authority (2011)
Recommendation made	<i>Recommendation 4</i> <i>Further that Section 15(2) of the CPC Act define harm to include: ‘A child or young person of school going age frequently does not attend school without a reasonable excuse’.</i>
Government response	Alternative mechanism to achieve ends Amendments made to Part 4 of the NT Education Act provide greater power to authorised officers to achieve reengagement. This recommendation will not be implemented by a change to the Act. The Act (s. 15) defines ‘harm’ as a significant detrimental effect caused by any act, omission or circumstance on the child. Including failure to attend school in s.15 would expand mandatory reporting (s.26) to

Document name	include failure to attend school. While ensuring children attend school is a priority across NT Government, amending the Act in this way is not considered to be the appropriate mechanism.
Implementation	Section 15(2) of the <i>Care and Protection of Children Act</i>
As recommended	No
Included content	NA
Excluded content	NA
Implementation rating for legislative action	<p>Not at all.</p> <p>NT Government response was that it did not consider the inclusion of “failure to attend school” into the definition of harm and, by doing so, expand the grounds for mandatory notification to include failure to attend school, to be the appropriate mechanism for ensuring children attend school.</p> <p>Part 4 S.6 of the <i>NT Education Act</i> provides that the CEO may disclose relevant information, or other information known to the CEO, to another Agency or body (including from another jurisdiction) if:</p> <p>(a) the Agency or body has responsibilities in relation to children (whether specifically or generally); and</p> <p>(b) the CEO considers the disclosure is appropriate to assist the Agency or body in meeting those responsibilities.</p> <p>Under S.23B (2) of the <i>NT Education Act</i>, the CEO may direct attendance at a compulsory conference by the child concerned, parent(s) of the child and “other persons the CEO believes necessary to achieve compliance” and provides the following examples: social worker, child psychologist, school principal, church representative, traditional elder. It is not clear if this power of direction extends to other government agencies or departments.</p> <p><i>Refer to document audit for final assessment of implementation status</i></p>

Recommendation number	5
Commission/Inquiry of origin	A Life Long Shadow. Report of a partial investigation of the child protection authority (2011)
Recommendation made	<p><i>Recommendation 5</i></p> <p><i>That Section 26 of the Care and Protection of Children Act be amended to extend the mandatory reporting requirement to frequent non-attendance at school without a reasonable excuse.</i></p>

Government response	<p>Alternative mechanism to achieve ends</p> <p>A guide for professionals on mandatory reporting in the NT has been developed and is available from the Department of Children and Families website. The publication guides decision making.</p> <p>To help all new health professionals in the NT understand the NT's mandatory reporting provisions, a mandatory online training course has been developed and rolled out to 89 doctors and nurses. The course will form part of the mandatory orientation program for Department of Children and Families staff in early 2014.</p> <p>Alternative mechanism as above, rec 4.</p>
Document name	<i>Care and Protection of Children Act S26</i>
Implementation	
As recommended	No See Rec 4
Included content	NA
Excluded content	NA
Implementation rating for legislative action	<p>Not implemented</p> <p><i>Refer to document audit for final assessment of implementation status</i></p>

Recommendation number	9.4
Commission/Inquiry of origin	Growing Them Strong, Together: promoting the safety and wellbeing of the Northern Territory's Children (2010)
Recommendation made	<p><i>Recommendation 9.4</i></p> <p><i>That an independent body is auspiced to review investigations into allegations of 'abuse in care' undertaken by the Department of Health and Families. The Office of the Children's Commissioner would be an appropriate body to take on this role.</i></p>
Government response	<p>In progress</p> <p>Two Bills introduced in October 2013 Legislative Assembly Sittings:</p> <p>Legal Representation and Other Matters Bill:</p> <ul style="list-style-type: none"> - Introduces new function for DCF to investigate allegations of abuse in care, with the requirement that a substantiation be reported to the Children's Commissioner. If the Children's Commissioner chooses, he has the power to investigate the response under his own motion investigation powers. <p>Children's Commissioner Bill:</p> <ul style="list-style-type: none"> - Creates an explicit function for the Children's Commissioner of monitoring the way DCF responds to allegations of abuse in care. <p>Legislation check</p> <p>Legal Representation and Other Matters Bill</p> <p>Children's Commissioner Bill</p>
Document name	Legal Representation and Other Matters Bill

Children's Commissioner Bill	
Implementation	
As recommended	No.
Included content	<p>S.84A of the <i>Care and Protection of Children Act</i> provides that if the CEO believes on reasonable grounds that a child who is in the CEO's care:</p> <ul style="list-style-type: none"> (a) has suffered harm or exploitation while in the CEO's care; or (b) is suffering harm or exploitation; or (c) is likely to suffer harm or exploitation while in the CEO's care, the CEO may initiate an investigation into the suspected or potential harm or exploitation. <p>S.84C provides that if the investigation disclosed that the child has suffered harm or exploitation while in the CEO's care – the CEO will report that matter to the Commissioner as soon as practicable.</p> <p>S.10(1)(f) of the <i>Children's Commissioner Act</i> provides that the Commissioner will monitor ways in which the CEO deals with suspected or potential harm or exploitation of children in the care of the CEO.</p> <p>The Commissioner may undertake inquiries relating to the care and protection of vulnerable children on own initiative or at the direction of the Minister S.30 <i>Children's Commissioner Act</i>.</p>
Excluded content	<p>The recommendation was that an independent body (Children's Commissioner) review investigations into abuse in care conducted by the department.</p> <p>The legislation is narrower than the recommendation and provides that the department will refer to the Children's Commissioner only those investigation reports where allegations of abuse in care were substantiated by the department.</p>
Implementation rating for legislative action	<p>Partially implemented</p> <p>Refer to document audit for final assessment of implementation status</p>

Recommendation number	11.1
Commission/Inquiry of origin	Growing Them Strong, Together: promoting the safety and wellbeing of the Northern Territory's Children (2010)
Recommendation made	<p>Recommendation 11.1</p> <p><i>That the Act be amended to:</i></p> <p><i>1. provide a workable framework that permits and encourages the exchange of information between public sector organisations, between these organisations, the non-government sector and, where appropriate, individual community members, where that exchange is for the purpose of making a decision, assessment, plan or investigation relating to the safety and/ or wellbeing of a child or young person; and</i></p>

	<i>2. provide that, to the extent that provisions are inconsistent, the Information Act (NT) should not apply.</i>
Government response	Complete Amending legislation commenced 1 July 2012
Document name	<i>Care and Protection of Children Act</i>
Implementation	
As recommended	In full
Included content	<p>Chapter 5 Part 5.1A of the <i>Care and Protection of Children Act</i> sets out the legislative framework for ensuring the safety and wellbeing of children by enabling particular persons and bodies having responsibilities for a child to request or give particular information about the child.</p> <p>The underlying principle is that rules about protecting confidentiality and privacy of individuals should not prevent the sharing of information for ensuring the safety and wellbeing of children.</p> <p>S.239C defines a wide range of persons to be “information sharing authorities” who may request or receive information under this section of the Act.</p> <p>“Individual community members” are not listed among the information sharing authorities however, under Section 34(2) of the Act, information can be obtained from community members.</p> <p>The legislative framework is supported by the Information Sharing Guidelines, 1 July 2012, Published by the Chief Executive (CE) of the Department of Children and Families under s.293H of the Care and Protection of Children Act 2007.</p> <p>Section 293J provides that legislative framework for information exchange has effect despite the operation of any other law of the Territory that prohibits or restricts the disclosure of information and does not affect the operation of any other provision in the Act that relate to giving information about a child.</p>
Excluded content	NA
Implementation rating for legislative action	Implemented in full <i>Refer to document audit for final assessment of implementation status</i>

Recommendation number	8
Commission/Inquiry of origin	Ampe Akelyernemane Meke Mekarle Little Children are Sacred (2007)
Recommendation made	<i>Recommendation 8</i>

<i>That employment screening be mandatory for all employed persons and volunteers working with children as described in the draft Care and Protection of Children Bill 2007.</i>	
Government response	<p>Complete</p> <p>The Working With Children Clearance - Ochre Card was one of a range of initiatives introduced under the Act to ensure the safety of children and young people in the community. It operates to prevent those people who may harm or exploit children from working with them in either a paid or voluntary capacity.</p> <p>It has been a requirement from 1 July 2011 that people engaged in child related employment apply for a Working With Children Clearance.</p>
Document name	<p>Care and Protection of Children Act</p> <p>Part 56 of the Act pertaining to the Office of the Children's Commissioner</p>
Implementation	
As recommended	Yes.
Included content	<p>The prescribed employed persons and volunteers working with children contained in Chapter 3 Part 3.1 S.184 of the <i>Care and Protection of Children Act</i> are the same as those described in the draft Care and Protection of Children Bill 2007.</p> <p>Chapter 3, Pts 3.1 and 3.2 (except for s.187), which define child related employment, commenced in Dec 2008.</p>
Excluded content	<p>S.187 which makes it an offence to be in child related employment without a clearance notice or, to engage in child related employment, a person who does not have a clearance notice, commenced in July 2011.</p> <p>NA</p>
Implementation rating for legislative action	<p>Implemented in full</p> <p><i>Refer to document audit for final assessment of implementation status</i></p>

Recommendation number	9
Commission/Inquiry of origin	Ampe Akelyernemane Meke Mekarle Little Children are Sacred (2007)
Recommendation made	<p><i>Recommendation 9</i></p> <p><i>That a position of Commissioner for Children and Young People be established, with duties and responsibilities as described in the draft Care and Protection of Children Bill 2007. The Inquiry further recommends that:</i></p> <p><i>a. The Commissioner should have a broad role not limited to individual complaints handling with the power to conduct inquiries into any issues affecting children and young people in the Northern Territory, but with an emphasis on child protection and child abuse prevention.</i></p>

Government response

Complete

Part 56 of the Act pertaining to the Office of the Children's Commissioner was commenced in May 2008 and the first Commissioner commenced in the position on 23 June 2008. Legislative amendments were introduced on 1 July 2011 that expanded the Children's Commissioner's powers to include services to all vulnerable children. An increased funding of \$0.4M in 2010-11 and an annual increase of \$0.7M from 2011-12 has been provided to the Office of the Children's Commissioner.

The Children's Commissioner has undertaken investigations into complaints about services provided or required to be provided to protected children by service providers, including monitoring the ways in which service providers have responded to reports made by the Children's Commissioner. The Office of the Children's Commissioner acts as the secretariat for the Child Death Review and Prevention Committee and the Children's Commissioner has been appointed as the Convenor of the Committee. The Committee has met its statutory requirements in terms of the number of formal meetings it is required to hold. The Committee has undertaken the co-sponsorship of research relating to the Northern Territories Indigenous infant death rate

The Children's Commissioner Bill, introduced into the NT Legislative Assembly in the October 2013 sittings will increase the powers of the Children's Commissioner and include the power to undertake systemic inquiries.

Document name

Care and Protection of Children Act

Part 56 of the Act pertaining to the Office of the Children's Commissioner

Implementation**As recommended**

Yes.

Included content

The first Children's Commissioner commenced in 2008.

The *Children's Commissioner Act 2013* came into force on 2 January 2014 and effectively replaced Part 56 of the *Care and Protection of Children Act*.

The functions and powers of the Commissioner under the *Children's Commissioner Act 2013* include all the powers and functions for a Commissioner described in the Care and Protection of Children Bill 2007. Additional functions contained in the Act include undertaking inquiries related to the care and protection of vulnerable children S.10(1)(d); monitoring ways in which the CEO deals with suspected or potential harm or exploitation of children in the care of the CEO S.10(1)(f); and promoting an understanding of the rights of children S.10(1)(h).

The Commissioner may undertake inquiries relating to the care and protection of vulnerable children on own initiative or at the direction of the Minister S.30; and the Commissioner may investigate a complaint or investigate a matter if the Commissioner believes it may form a ground for the making of a complaint S28.

The Commissioner is required to review the operation and effectiveness of the *Care and Protection of Children Act* in so far as it relates to

	vulnerable children at least once every 3 years; and prepare and give the Minister a report of the findings of the review. The Minister must table the report in the Legislative Assembly within 6 sitting days after receiving it. S.50.
Excluded content	NA
Implementation rating for legislative action	Implemented in full <i>Refer to document audit for final assessment of implementation status</i>

Recommendation number	29
Commission/Inquiry of origin	Report on the Law Relating to the Investigation and Prosecution of Sexual Assault in the Northern Territory, Northern Territory Law Reform Committee (1999)
Recommendation made	<i>Recommendation 29 That in considering future appointments to the judiciary or magistracy the Attorney-General may consider inter alia, the potential capacity of any person (whether by training or personality) to understand and appreciate the special problems associated with cases of sexual assault.</i>
Government response	
Document name	Supreme Court Act. S.32
Implementation	
As recommended	No
Included content	
Excluded content	<p>The <i>Supreme Court Act</i> provides that the Administrator, by commission, appoints judges.</p> <p>The statutory requirements for appointment of judges are that the appointee is less than 70 yrs of age and had been a lawyer admitted to the legal profession for at least ten years, or has been a judge of a Court of the Commonwealth, State or Territory. S.32</p> <p>Magistrates are appointed under the provisions of the NT <i>Magistrates Act</i>. Eligibility criteria are that the person is a lawyer, admitted to the legal profession for at least five years in a specified jurisdiction, or has held a position of magistrate in one of the specified jurisdictions.</p> <p>No material has been sighted relating to the criteria considered by the Attorney General in making recommendations to the Administrator for judicial or magistrate appointments.</p>

Implementation rating for legislative action

Not implemented.

Refer to document audit for final assessment of implementation status

LEGISLATION VERIFICATION: QUEENSLAND

Recommendation number	5.21
Commission/Inquiry of origin	Inquiry into Abuse of Children in Foster Care - Protecting children: An Inquiry into Abuse of Children in Foster Care (2004)
Recommendation made	<i>That a position of Child Guardian, to be situated within the Commission for Children and Young People, be established, whose sole responsibility would be to oversee the provision of services provided to, and decisions made in respect of, children within the jurisdiction of the Department of Child Safety.</i>
Government response	<p>Implemented:</p> <p>The <i>Child Safety Legislation Amendment Act 2004</i> extended the statutory office of the Commissioner for Children and Young People to become the office of the Commissioner for Children and Young People and Child Guardian (CCYPCG).</p> <p>The Commissioner has jurisdiction to monitor and investigate the actions of the department with respect to children in its jurisdiction. The CCYPCG may also monitor and investigate the actions of other government and non-government service providers.</p> <p>A new statutory office of Assistant Commissioner was created, to be responsible to the Commissioner for the proper performance of the Child Guardian functions.</p>
Document name	<p><i>Commission for Children and Young People and Child Guardian Act 2000</i> https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/C/CommisChildA00.pdf</p> <p><i>Child Safety Legislation Amendment Act 2004</i></p>
Implementation	
As recommended	Yes
Included content	<p>The Commissioner for Children and Young People has become the office of the Commissioner for Children and Young People and Child Guardian (CCYPCG).</p> <p>The Assistant Commissioner is responsible to the Commissioner for the proper function of the Commissioner's child guardian functions. S.19</p>

	<p>The Commissioner's Child Guardian functions include:</p> <ul style="list-style-type: none"> the monitoring, audit and review functions relating to children in the child safety system (s.18); investigating matters relating to services provided to children in the child safety system by the child safety department, other service provider, and licensees s.17(1)(d); and resolving disputes about reviewable decisions 9s.17(1)(e). <p>The Assistant Commissioner has all the powers of the Commissioner under the Act that are necessary or convenient to perform the Assistant Commissioner's role s.21(1)</p>
Excluded content	NA
Implementation rating for legislative action	<p>Implemented in full</p> <p><i>Refer to document audit for final assessment of implementation status</i></p>

Recommendation number	6.13
Commission/Inquiry of origin	Inquiry into Abuse of Children in Foster Care - Protecting children: An Inquiry into Abuse of Children in Foster Care (2004)
Recommendation made	<i>That mandatory reporting of child abuse be extended to registered Queensland nurses by legislating under the Health Act.</i>
Government response	<p>Implemented</p> <p>The <i>Public Health Act 2005</i> now obliges doctors and registered nurses to notify the department of any harm or potential harm, actual or suspected to a child.</p> <p>Queensland Health developed a standard form for health professionals to use to report suspicions of child abuse directly to the department.</p> <p><i>Public Health Act 2005</i> - Division 5 Notification of child abuse and neglect</p> <p>https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/P/PubHealA05.pdf</p>
Document name	
Implementation	
As recommended	Y
Included content	<p>S.191 (1) (a) of the <i>Public Health Act 2005</i> (Qld) provides that if a professional becomes aware, or reasonably suspects, during the practice of his or her profession, that a child has been, is being, or is likely to be, harmed; and</p> <p>(b) as far as the professional is aware, no other professional has notified the chief executive (child safety) under this section about the harm or likely harm</p> <p>(2) The professional must immediately give notice of the harm or likely harm to the chief executive (child safety)—</p>

	(a) orally; or (b) by facsimile, email or similar communication.
	A “professional” is defined in the <i>Public Health Act 2005</i> to mean a doctor or registered nurse. S158
Excluded content	NA
Implementation rating for legislative action	Implemented in full <i>Refer to document audit for final assessment of implementation status</i>

Recommendation number	6.15
Commission/Inquiry of origin	Inquiry into Abuse of Children in Foster Care - Protecting children: An Inquiry into Abuse of Children in Foster Care (2004)
Recommendation made	<i>That section 76K of the Health Act be amended to make it mandatory for doctors and nurses to notify the Department of Child Safety about their suspicion of child abuse.</i>
Government response	Implemented The <i>Public Health Act 2005</i> now obliges doctors and registered nurses to notify the department of any harm or potential harm, actual or suspected to a child. Queensland Health developed a standard form for health professionals to use to report suspicions of child abuse directly to the department.
Document name	<i>Public Health Act 2005</i> <div></div>
Implementation	
As recommended	Yes
Included content	See 6.13 above.
Excluded content	The mandatory reporting obligations under S191 relate only to a suspicion that arises “during the practice of his or her profession”. NA
Implementation rating for legislative action	Implemented in full <i>Refer to document audit for final assessment of implementation status</i>

Recommendation number	7.1
Commission/Inquiry of origin	Inquiry into Abuse of Children in Foster Care - Protecting children: An Inquiry into Abuse of Children in Foster Care (2004)
Recommendation made	<i>That the Department of Child Safety be responsible for receiving and investigating notifications of child abuse and neglect, and take over</i>

Government response

responsibility for the final assessment and certification of all carers, and for assessing the appropriateness of carers' re-approvals.

Implemented

The responsibility for receiving and investigating notifications was carried over from the former Department of Families to the department.

Screening and assessment of carers can still be undertaken on behalf of the department by licensed NGOs or independent contractors. However, some requirements, such as conducting and interpreting personal history checks and granting final approval, rest solely with the department. The Central Screening Unit manages the screening of all foster carers, kinship carers, their adult household members and people associated with licensed care services.

The ambit of the *Child Protection Act 1999* has been broadened so that foster carers, kinship carers and provisionally approved carers all fall within its regulatory framework. Chapter 4 of the *Child Protection Act 1999* creates an obligation on the chief executive to ensure that children are cared for in a way that meets the standards of care contained in the Act.

Document name

Child Protection Act 1999

<https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/C/ChildProtectA99.pdf>

Implementation

As recommended

Yes

Included content

The *Child Protection Act 1999* provides that if the chief executive becomes aware (whether because of notification given to the chief executive or otherwise) of alleged harm or alleged risk of harm to a child and reasonably suspects the child is in need of protection, the chief executive must immediately—

- (a) have an authorised officer investigate the allegation and assess the child's need of protection; or
- (b) take other action the chief executive considers appropriate. S.14(1)

The Commission for Children and Young People and Child Guardian (CCYPCG) issue a blue card or an exemption card to indicate that a person is eligible to work with children and young people in Queensland.

Those wishing to be accredited as a foster carer or a kinship carer, or for renewal of their foster care certificate or kinship care certificate, must apply to the Chief Executive who may or may not grant the application for a foster carer certificate or a kinship carer certificate. S.133 and 134.

The Chief Executive may not grant the application unless the applicant and all their adult members hold a blue card or an exemption card and other assessment criteria have been met S135(1).

Excluded content	NA
Implementation rating for legislative action	Implemented <i>Refer to document audit for final assessment of implementation status</i>
Recommendation number	7.11
Commission/Inquiry of origin	Inquiry into Abuse of Children in Foster Care - Protecting children: An Inquiry into Abuse of Children in Foster Care (2004)
Recommendation made	<i>That the Child Protection Act 1999 be amended to regulate voluntary placements.</i>
Government response	Implemented The <i>Child Protection Act 1999</i> was amended so that if there is a voluntary agreement between a child's parents and the department to place the child temporarily in the care of someone else, custody of the child automatically passes to the department while the agreement is in force. One of the practical effects of this amendment is that other parts of the Act then require the carer, with whom the child is placed, to have undergone a suitability assessment.
Document name	<i>The Child Protection Act 1999</i> <div></div>
Implementation	
As recommended	Yes
Included content	<p>In circumstances where:</p> <ul style="list-style-type: none"> • There is no assessment order or child protection order in place, • The chief executive reasonable suspects a child is need of protection, • No order has been made granting custody or guardianship to another person, • The child's wishes have been considered (where ascertainable) • The chief executive is satisfied that the child's parents are able and willing to work with the chief executive, and • It is likely that at the end of the proposed intervention, the parents will be able to meet the child's needs for care and protection, S.51Z <p>Then the chief executive must give consideration to intervening with the parents agreement. S.51ZB</p> <p>The chief executive may enter a care agreement for the child with the child's parents for the short-term placement of the child in the care of someone other than the parents. S.51ZD(1)</p> <p>S.51ZF provides the requirements for a care agreement.</p> <p>While a child protection care agreement is in force for the child, the chief executive has custody of the child.S.51ZG</p> <p>The alternative carer would be subject to a suitability assessment as a foster carer or kinship carer. See 7.1 above.</p>

Excluded content

NA

Implementation rating for legislative action

Implemented

*Refer to document audit for final assessment of implementation status***Recommendation number**

7.18

Commission/Inquiry of origin**Inquiry into Abuse of Children in Foster Care - Protecting children: An Inquiry into Abuse of Children in Foster Care (2004)****Recommendation made**

That a framework be developed for supporting relative care that includes enhanced screening and monitoring of carers and the provision of training opportunities and other support for carers. There should be an extensive consultation process, especially with Indigenous communities, in the development of the framework.

Government response

Implemented

Chapter 4 of the *Child Protection Act 1999* provides a process for the licensing of care services and the approval of carers.

All carers are required to complete a number of steps to become approved carers. These steps include:

- completion of a household safety study;
- completion of an application for approval;
- the applicant and any other adult members of the household must obtain a blue card (working with children check);
- a health and wellbeing questionnaire is completed;
- referee checks are made and

Interviews are conducted as required.

Document name

Other documentation supplied for audit

Chapter 4 of the *Child Protection Act 1999*

<http://www.communities.qld.gov.au/childsafety/foster-care/carers-training/foster-carer-training/orientation>

<http://www.communities.qld.gov.au/childsafety/child-safety-practice-manual/chapters/8-regulation-of-care>

Implementation**As recommended**

Yes

Included content

For legislative process for the approval of foster carers and kinship carers see 7.1 above.

Chapter 8 of the Department's Child Safety Practice Manual – Regulation of Care, details the requirements of and supports for potential carers during the application and approval processes. These include:

- pre-application – provision of information kit, invite to information sessions, home interview and household safety check
- pre service training, blue card applications, carer health and wellbeing survey, identification verification

- assessment - of carer and household members, personal history check, blue card, assessment interview and completion of pre service training

Approval of a foster carer or kinship carer will be granted by the CSSC manager (under delegation from the Chief Executive) who must be satisfied that the applicant is suitable on ALL grounds of suitability.

The pre application and assessment activities may be undertaken by departmental staff, staff of a foster or kinship care service or by a contracted fee-for-service professional.

The Department's website <http://www.communities.qld.gov.au/childsafety> indicates a range of resources are available to assist actual and potential carers including information on training and carer support.

The monitoring of children in care is now an express function of the CCYPCG as described in relation to Rec 5.21 above.

Excluded content

No material was available relating to the consultation process, especially with Aboriginal communities, in the development of the framework.

Implementation rating for legislative action

Implemented

Note: Or does the failure to report on the involvement of Aboriginal communities make it an "undetermined"?

Refer to document audit for final assessment of implementation status

Recommendation number

7.26

Commission/Inquiry of origin

Inquiry into Abuse of Children in Foster Care - Protecting children: An Inquiry into Abuse of Children in Foster Care (2004)

Recommendation made

That the Child Protection Act be amended to incorporate specific obligations on the part of the Department of Child Safety to disclose relevant information to carers.

Government response

Implemented

The *Child Protection Act 1999* has always required that a carer and the department have written agreements. These agreements provide relevant information that is known about the child or young person. The focus of the agreement is the provision of sufficient information to allow the carers to provide adequate care and ensure the safety of the child or young person, the carers and other members of the carer's household.

The department also provides carers with a copy of the child's birth certificate and other relevant records such as Medicare card or number.

Additional documents supplied for audit.

Document name	<i>Child Protection Act 1999</i>
Implementation	
As recommended	Yes
Included content	<p>S. 83A. Before placing the child in care under section 82, the chief executive must give to the proposed carer the information that the chief executive has about the child that the proposed carer reasonably needs to help him or her make an informed decision whether to agree to the placement. The child must also be give information the chief executive has about the proposed carer and members of the proposed carer's household that the child reasonably needs to participate meaningfully in the decision about who will be the child's carer; and if possible, the child should be given an opportunity to meet the proposed carer and members of the proposed carer's household. S.83A(1)</p> <p>When placing the child in care, and while the child is in care, the chief executive must give the carer information that the chief executive has relating to the child that the carer reasonably needs— (a) to provide care for the child under this Act; and (b) to ensure the safety of the child, the carer and other members of the carer's household. S82A(2)</p> <p>Similar provisions apply in relation to providing information to licensees. S.82A(3)</p> <p>In deciding the information about the child to give to someone the chief executive must have regard to— (a) the views and wishes of the child, having regard to the child's age and ability to understand; and (b) the proposed length of time of the placement; and (c) the child's right to privacy under the charter of rights. S.82A(4)</p> <p>Before giving information about the child to someone under this section, the chief executive must tell the child what information is being given and why it is being given. S.82A(5)</p> <p>The decision about what information is relevant for carers is a decision of the chief executive. S81A(4)</p>
Excluded content	NA
Implementation rating for legislative action	Implemented <i>Refer to document audit for final assessment of implementation status</i>

Recommendation number	7.27
Commission/Inquiry of origin	Inquiry into Abuse of Children in Foster Care - Protecting children: An Inquiry into Abuse of Children in Foster Care (2004)
Recommendation made	<i>That the Child Protection Act incorporate a general disclosure obligation on the Department of Child Safety to inform other departments, Government agencies and non-government agencies (including AICCs) of all information</i>

reasonably necessary to ensure their cooperation, assistance and participation within the child protection system. The Act should provide examples of what sort of information will be provided. The person to whom the disclosure is made (the 'receiver') will be bound by the confidentiality provision contained in section 188.

Breakdown of components:

- 1. Disclosure obligation on Department Child Safety to inform other agencies of necessary information*
- 2. Examples of information provided*
- 3. Receivers of information to be bound by confidentiality provisions.*

Government response

Implemented

Section 187 is the central confidentiality provision in the *Child Protection Act 1999*. The provision operates to ensure that any person performing duties under the Act, who obtains personal information in relation to a child protection matter, is prohibited from disclosing that information except in certain circumstances. The confidentiality provisions apply to public service employees.

The Act recognises that in performing functions under the Act there will be a need for the sharing of information.

The Act ensures that the release of information is only for purposes related to a child's protection or wellbeing.

The Act specifically authorises the release of information for the purposes of coordinated service provision or where required under another law.

Document name

Child Protection Act

Section 187 – as recommended?

section 188 – check this applies & describe briefly

Implementation

As recommended

Y/N

Included content

S159N of the Child Protection Act 1999 lists the principles of coordinating service delivery and exchange of information, including the primary responsibility of the chief executive for investigating, assessing and responding to allegations of harm to children and making plans for their protection. This may involve sharing of information or a request for an agency to provide a service.

The Act provides that a range of persons (including all public servants, approved carers, licensees etc) may not use or disclose information about another person's affairs, unless necessary to perform his or her function under the Act or related to a child's protection or well being. S.188.
Example provided at S.187(3)(b)

The Act also provides that a prescribed entity (defined at s.159M) must provide relevant information held by the entity, to another entity, if

Excluded content	requested to do so by the other entity S159N (1) and (2) , although under prescribed conditions the entity may not comply with the request. NA
Implementation rating for legislative action	Implemented <i>Refer to document audit for final assessment of implementation status</i>

Recommendation number	7.28
Commission/Inquiry of origin	Inquiry into Abuse of Children in Foster Care - Protecting children: An Inquiry into Abuse of Children in Foster Care (2004)
Recommendation made	<i>That the department ensure that it had clear policies and procedures on disclosure of information and that it incorporate them in the training provided to departmental and agency staff.</i>
Government response	Status: Implemented The Child Safety Practice Manual sets out procedures for information sharing among government departments and non-government services in accordance with the <i>Child Protection Act</i> . The department's improved information management systems also make it easier to share accurate information with other agencies.
Document name	<i>Child Protection Act 1999</i> The information sharing policy is available online and can be found at: http://www.communities.qld.gov.au/resources/childsafety/child-protection/information-exchange-and-service-delivery-coordination-403.pdf
Implementation	
As recommended	
Included content	Policy CPD403-3 Information exchange and service delivery coordination sets out the policy, principles, objectives and scope of this area. The procedures for the sharing of information are contained in the Child Safety Practice Manual – Chapter 10.3 and include case examples.
Excluded content	In its response the Department made no comment about the incorporation of its policies and procedures for the exchange of information into its training for department and agency staff. Access to the SDM training packages on the web is restricted to Department staff.
Implementation rating for legislative action	Undetermined <i>Refer to document audit for final assessment of implementation status</i>

Recommendation number	9.2
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Commission/Inquiry of origin	Inquiry into Abuse of Children in Foster Care - Protecting children: An Inquiry into Abuse of Children in Foster Care (2004)
Recommendation made	<i>That the Child Protection Act be amended to ensure that it regulates the assessment and approval of all carers.</i>
Government response	Implemented This recommendation was implemented by a range of amendments to the <i>Child Protection Act 1999</i> . See also discussion of recommendation 7.15
Document name	<i>Child Protection Act 1999</i> <div></div>
Implementation	
As recommended	Yes
Included content	See Rec 7.1 and Rec 7.18 above
Excluded content	NA
Implementation rating for legislative action	Implemented <i>Refer to document audit for final assessment of implementation status</i>

Recommendation number	3
Commission/Inquiry of origin	Project AXIS (Volume 2) Child Sexual Abuse in Queensland: Responses to the Problem (November 2000)
Recommendation made	<i>That the Government consider including, as a requirement of their accreditation, that non-government schools have in place adequate policies for responding to suspicions or disclosures of child sexual abuse (see also Recommendations 12 and 16).</i>
Government response	Implemented in full See attachment QLD 2 – rr_2443_Folder 1
Document name	Education (Accreditation of Non-State Schools) Act 2000 Education (Accreditation of Non-State School Regulation) Act 2001 <div></div>
Implementation	
As recommended	Yes
Included content	<i>Education (Accreditation of Non-State Schools) Regulation 2001</i> ß.10 Health, safety and conduct of staff and students, provides that: (1) A school must have written processes about the health and safety of its staff and students, that accord with relevant workplace health and safety legislation. (2) Also, the school must have written processes about the appropriate conduct of its staff and students, that accord with legislation applying in the State about the care or protection of children.

Excluded content	(3) Without limiting subsection (2), the processes must include— (a) a process for the reporting by a student to a stated staff member of behaviour of another staff member that the student considers is inappropriate; and (b) a process for how the information reported to the stated staff member must be dealt with by the stated staff member. NA
Implementation rating for legislative action	Implemented <i>Refer to document audit for final assessment of implementation status</i>

Recommendation number	10
Commission/Inquiry of origin	Project AXIS (Volume 2) Child Sexual Abuse in Queensland: Responses to the Problem (November 2000)
Recommendation made	<i>That the Government establish a working party including representatives from the Department of Corrective Services, the QPS and Families Youth and Community Care Queensland, and other relevant government and community agencies, to develop a coordinated response to the treatment, monitoring and supervision of child sex offenders in the community.</i>
Government response	Implemented in full See attachment QLD 2 – rr_2443_Folder 1
Document name	<ol style="list-style-type: none"> 1. <i>Child Protection (Offender Reporting) Act 2004 (CPORA)</i> 2. <i>Dangerous Prisoners (sexual Offenders) Act 2003 (DPSOA)</i> 3. <i>Child Protection (offender Prohibition Order) Act 2008 (CPOPOA)</i> 4. <i>Corrective Services Act 2006</i>
Implementation	
As recommended	Yes
Included content	<p><i>Child Protection (Offender Reporting) Act 2004</i> This legislation gave effect to the National Child Protection Register, which allowed for registering and cross-jurisdictional sharing of information in relation to convicted child sex offenders.</p> <p>The Act requires particular offenders who commit sexual, or other serious, offences against children to keep police informed of their whereabouts and other personal details for a period of time after their release into the community.</p> <p><i>Dangerous Persons (Sexual Offenders) Act 2003</i> Provides for the continued detention in custody or the supervised release of offenders convicted of serious sexual offences beyond the expiry date of their sentence.</p> <p><i>Child Protection (Offender Prohibition Order) Act 2008</i> This Act provides for the protection of children by allowing the court to make an offender prohibition order, which prohibits particular sexual</p>

	offenders from engaging in conduct posing a risk to the lives or sexual safety of children
	<i>Corrective Services Act 2006</i> Provides for the disclosure of a sexual offender's details to approved members of the community.
Excluded content	NA
Implementation rating for legislative action	Implemented <i>Refer to document audit for final assessment of implementation status</i>

Recommendation number	12
Commission/Inquiry of origin	Project AXIS (Volume 2) Child Sexual Abuse in Queensland: Responses to the Problem (November 2000)
Recommendation made	<i>That the Government consider including, as a requirement of accreditation, that non-government schools have in place adequate policies for employment screening (see also Recommendations 3 and 16).</i>
Government response	Implemented in full See attachment QLD 2 – rr_2443_Folder 1
Document name	<ol style="list-style-type: none"> 1. Education (Accreditation of Non-State Schools) Act 2001 2. Commission for Children and Young People and Child Guardian Act 2000 3. Education (Queensland College of Teachers) Act 2005, including s11, 12, 12A 4. College of Teachers Act, s76 & 77 & 80
Implementation	
As recommended	Y/N
Included content	<p>Each Director of a non-state school must hold a blue card or an exemption notice. Ss 15, 35. <i>Education (Accreditation of Non-State Schools) Act 2001</i></p> <p>Non-state schools can only employ an approved teacher. The Queensland College of Teachers determines if a person is an approved teacher and assesses suitability having regard to available information including criminal history information from police. <i>Education (Queensland College of Teachers) Act 2005</i> Ss11, 12, 12A</p> <p>The <i>Commission for Children and Young People and Child Guardian Act 2000</i> provides that other persons providing voluntary or paid services in a school must have a blue card. Chapter 8.</p> <p>If a school investigates an allegation of harm to a child caused, or likely to be caused by a teacher, the school must notify the College of Teachers. S76 EQCT Act. The College must also be notified if an investigation commences and the teacher is dismissed or resigns S76, 77; if the teacher is dismissed</p>

	on matters of competency; or if the teacher is indicted for trial on an indictable offence or is convicted of an indictable offence S88.
Excluded content	NA
Implementation rating for legislative action	Implemented <i>Refer to document audit for final assessment of implementation status</i>

Recommendation number	32
Commission/Inquiry of origin	Briton, J, Gordon P, Parker S & Airo-Farulla G, (1999) Review of the Queensland Children's Commissioner and Children's Services Appeals Tribunal Act 1996: Report and Recommendations
Recommendation made	<i>That the title official visitor be changed to 'community visitor'.</i>
Government response	In full See attachment QLD 2 – rr_2443_Folder 1
Document name	<i>Commission for Children and Young People and Child Guardian Act 2000</i> <div></div>
Implementation	
As recommended	Yes
Included content	The Act refers to "Community visitors". References in the Act to "official visitors" relate to transitional arrangements.
Excluded content	NA
Implementation rating for legislative action	Implemented <i>Refer to document audit for final assessment of implementation status</i>

Recommendation number	33
Commission/Inquiry of origin	Briton, J, Gordon P, Parker S & Airo-Farulla G, (1999) Review of the Queensland Children's Commissioner and Children's Services Appeals Tribunal Act 1996: Report and Recommendations
Recommendation made	<i>That private homes be generally exempt from the community visitor program, but be included if:</i> <ul style="list-style-type: none"> <i>More than a specific number of unrelated children and young people, say four or more, are placed in the same foster home; and</i> <i>A private home is providing accommodation for a child in care and a complaint has been made which hasn't been or can't reasonably and practicably be resolved by internal grievance processes.</i>

Government response	In full See attachment QLD 2 – rr_2443_Folder 1
Document name	<i>Commission for Children and Young People and Child Guardian Act 2000</i> <div></div>
Implementation	
As recommended	Partially
Included content	<p>The purpose of Chapter 5 Community Visitors, is to provide for community visitors to promote and protect the rights, interests and wellbeing of the following children—</p> <p>33. a child residing at a residential facility or detention centre, or at an authorised mental health service under the Mental Health Act 2000; (visitable sites S.87)</p> <p>(b) a child in the custody or guardianship of the chief executive (child safety) under the Child Protection Act 1999 who, under section 82 of that Act, has been placed in the care of an approved carer or someone else other than a parent of the child; (visitable home S 88)</p> <p>I a child who, under a care agreement under the Child Protection Act 1999, has been placed in the care of someone other than a parent of the child. (Visitable home S.88)</p> <p>S.89 provides that the commissioner must make arrangements for each visitable site and each visitable home to be visited by a community visitor regularly and frequently.</p> <p>S.102 details the powers of a community visitor relating to visitable homes.</p> <p>The Act does not expressly exempt private homes from the CV Program, however children and young persons in categories (b) and (c) above are most likely to be residing in private homes and therefore the private home would be a visitable site (by a Community Visitor) and a residential facility.</p>
Excluded content	<p>The Act does not require a specific number of unrelated children to be present in a private home in order for it to become a visitable site. Nor does it require an unresolved complaint to have been made in a private home in order for it to become a visitable site.</p>
Implementation rating for legislative action	<p>Partially implemented</p> <p><i>Refer to document audit for final assessment of implementation status</i></p>

Recommendation number **34**

Commission/Inquiry of origin	Briton, J, Gordon P, Parker S & Airo-Farulla G, (1999) Review of the Queensland Children's Commissioner and Children's Services Appeals Tribunal Act 1996: Report and Recommendations
Recommendation made	<i>That the community visitor program be extended to cover children and young people who live in residential facilities but who aren't subject to statutory care orders.</i>
Government response	In full See attachment QLD 2 – rr_2443_Folder 1
Document name	<i>Commission for Children and Young People and Child Guardian Act 2000</i> <div></div>
Implementation	
As recommended	Yes
Included content	The community visitor program covers a child or young person residing at a residential facility. There is no requirement that the child be subject to statutory care orders.
Excluded content	NA
Implementation rating for legislative action	Implemented <i>Refer to document audit for final assessment of implementation status</i>

Recommendation number	35
Commission/Inquiry of origin	Briton, J, Gordon P, Parker S & Airo-Farulla G, (1999) Review of the Queensland Children's Commissioner and Children's Services Appeals Tribunal Act 1996: Report and Recommendations
Recommendation made	<i>That the role and purpose of community visitors be to develop trusting relationships with children and young people in residential facilities to facilitate their ability to advocate on the child's or young person's behalf as necessary.</i>
Government response	In full See attachment QLD 2 – rr_2443_Folder 1
Document name	Commission for Children and Young People and Child Guardian Act 2000, s68
Implementation	
As recommended	Yes
Included content	Among other functions, a community visitor has the following functions in relation to children and young people in visitable sites and visitable homes: <ul style="list-style-type: none"> to develop trusting and supportive relationships with the children, so far as is possible;

	<ul style="list-style-type: none"> to advocate on behalf of the children by listening to, giving voice to, and facilitating the resolution of, their concerns and grievances. S.93(1)(a) and (b) <p>The legislation goes further than the recommendation in including visitable homes, which were not covered by the program at the time the recommendation was made.</p>
Excluded content	NA
Implementation rating for legislative action	Implemented <i>Refer to document audit for final assessment of implementation status</i>

Recommendation number	36
Commission/Inquiry of origin	Briton, J, Gordon P, Parker S & Airo-Farulla G, (1999) Review of the Queensland Children's Commissioner and Children's Services Appeals Tribunal Act 1996: Report and Recommendations
Recommendation made	<i>That community visitors be authorised to facilitate 'on site' resolution of complaints, and to refer serious matters to the Commission in accordance with formal protocols and guidelines.</i>
Government response	In full See attachment QLD 2 – rr_2443_Folder 1
Document name	Commission for Children and Young People and Child Guardian Act 2000, s68 & 93 <div></div>
Implementation	
As recommended	Yes
Included content	It is a function of a community visitor to advocate on behalf of the children by listening to, giving voice to, and facilitating the resolution of, their concerns and grievances. S 93(1)(b). As soon as practicable after visiting a visitable site or visitable home, a community visitor must prepare, and give to the commissioner, a report about the visit. S.93(1)
Excluded content	NA
Implementation rating for legislative action	Implemented <i>Refer to document audit for final assessment of implementation status</i>

Recommendation number	37
Commission/Inquiry of origin	Briton, J, Gordon P, Parker S & Airo-Farulla G, (1999) Review of the Queensland Children's Commissioner and Children's Services Appeals Tribunal Act 1996: Report and Recommendations

Recommendation made	<i>That community visitors be authorised to access otherwise confidential information held at residential facilities about the children and young people who reside there, subject to the same overarching principles and confidentiality requirements as other Commission staff.</i>
Government response	In full See attachment QLD 2 – rr_2443_Folder 1
Document name	<i>Commission for Children and Young People and Child Guardian Act 2000.</i> <div></div>
Implementation	
As recommended	Yes
Included content	A community visitor may <ul style="list-style-type: none"> • inspect or copy a document held at a visitable site S.99 • require staff of a visitable site to give help to obtain information s.100 • require staff to produce for inspection a document held at the site relating to a child or young person resident at the site s 102. <p>Community visitors are covered by the confidentiality provisions of S. 385 of the Act.</p>
Excluded content	NA
Implementation rating for legislative action	Implemented <i>Refer to document audit for final assessment of implementation status</i>

Recommendation number	38
Commission/Inquiry of origin	Briton, J, Gordon P, Parker S & Airo-Farulla G, (1999) Review of the Queensland Children's Commissioner and Children's Services Appeals Tribunal Act 1996: Report and Recommendations
Recommendation made	<i>That the Act oblige the management and staff of residential facilities to cooperate with community visitors in the exercise of their functions.</i>
Government response	In full See attachment QLD 2 – rr_2443_Folder 1
Document name	<i>Commission for Children and Young People and Child Guardian Act 2000</i> <div></div>
Implementation	
As recommended	Yes
Included content	S.100(1) A community visitor may, at any reasonable time, require a staff member of a visitable site to give the visitor reasonable help to— (a) obtain information about the site and its operation; or (b) have access to a child residing at the site; or I talk with a child residing at the site, out of the hearing of staff and management of the site and other persons at the site; or

	(d) exercise the visitor's powers under section 99.
Excluded content	See Rec 37 above NA
Implementation rating for legislative action	In full. <i>Refer to document audit for final assessment of implementation status</i>

Recommendation number	39
Commission/Inquiry of origin	Briton, J, Gordon P, Parker S & Airo-Farulla G, (1999) Review of the Queensland Children's Commissioner and Children's Services Appeals Tribunal Act 1996: Report and Recommendations
Recommendation made	<i>That consideration is given to 'harmonising' the legislative and administrative frameworks applying to community visitor and the programs under the Children's Commission and Juvenile Justice Acts and envisaged adult guardianship and mental health legislation.</i>
Government response	Partial See attachment QLD 2 – rr_2443_Folder 1
Document name	<i>Commission for Children and Young People and Child Guardian Act 2000</i> <div></div>
Implementation	
As recommended	Yes – partially
Included content	The functions of the community visitor scheme under the CCYPCG Act now cover the visitable sites of residential facilities, detention facilities, and authorised mental health services un the <i>Mental Health Act 2000</i> and visitable homes. S.99
Excluded content	The CCYPCG Act does not cover the role and functions of the adult guardian. NA
Implementation rating for legislative action	Partially implemented <i>Refer to document audit for final assessment of implementation status</i>

LEGISLATION VERIFICATION: SOUTH AUSTRALIA

Recommendation number	4
Commission/ Inquiry of origin	Review of Child Protection in South Australia (Layton review) (2002)
Recommendation made	<p><i>That a statutory Office of Children and Young Persons' Guardian be created and placed in the Office of the Commissioner, having a separate function namely:</i></p> <ul style="list-style-type: none"> • <i>(1) to ensure that children and young people under the Guardianship of the Minister are cared for in accordance with guidelines set out in a Charter of Rights of Children in Care to be developed consultatively and enshrined in legislation in similar fashion to the Child Protection Act 1999 (Qld)</i> • <i>(2) include functions similar to the "community visitors" set out in the Commission for Children and Young People Act 2000 (Qld)</i> <p><i>Also:</i></p> <ul style="list-style-type: none"> • <i>(3) monitoring the annual reviews of children and young people in long term care as discussed in Chapter 9</i> • <i>(4) receiving information from DHS/FAYS.</i> <p><i>That FAYS have responsibility to inform the Children and Young Persons' Guardian on matters of significant concern regarding a child or young person in care. Such matters would include repeated placement breakdown, serious abuse in care, criminal conduct, chronic truancy, homelessness and major health problems.</i></p> <p>Recommendation elements:</p> <ol style="list-style-type: none"> 1. Charter enshrined in legislation 2. Community visitor functions 3. Monitor annual reviews 4. Receive information
Government response	<p>Implemented.</p> <p>Unclear whether based on QLD act</p>
Document name	<ul style="list-style-type: none"> • Children's Protection Act 1993, amendment 2006 • Schedule 1 Child Protection Act 1993 QLD Community visitors in Part 4 Commission for Children & Young People Act 2000 (QLD)
Implementation	
As recommended	<ol style="list-style-type: none"> 1. Yes 2. Yes 3. Yes 4. Yes
Included content	<p>Division 3 ss. 52EB, EC, ED, and EE of the <i>Children's Protection Act 1993</i> provide for the development, review, consultation about, and approval of, a Charter of Rights for Children and Young People.</p> <p>A Charter has been developed and approved and is promoted and monitored by the Office of the Guardian for Children and Young People.</p>

The legislation provides that any person involved with children in care in a formal capacity such as a social worker or a carer must consider and “seek to implement to the fullest extent possible, the terms of the Charter”. S52EF

The functions of the Guardian for Children and Young People S.52C of the *Children’s Protection Act 1993* are very similar to the child guardian functions of the Queensland Commissioner for Children and Young People and Child Guardian. S.19 *Commission for Children and Young People and Child Guardian Act 2000 (Qld)*.

One of the functions of the Guardian for Children and Young People is to monitor the circumstances of children under the guardianship, or in the custody, of the Minister. S 52C(1)l.

S.52C(2)l requires the Guardian to receive and consider information, reports and materials relevant to carrying out the Guardian’s functions.

Government and non-government organisations involved in the provision of services to children, must, at the Guardian’s request, provide relevant information to the Guardian. S52CA(1).

Excluded content

NA

Implementation rating for legislative action

Implemented

Refer to document audit for final assessment of implementation status

Recommendation number	54
Commission/Inquiry of origin	Review of Child Protection in South Australia (Layton review) (2002) http://www.decd.sa.gov.au/speced2/files/links/Child_Protection_Review_FU.pdf
Recommendation made	<i>That the Children’s Protection Act 1993 be amended to include:</i> <ul style="list-style-type: none"> • (1) all church personnel including ministers of religion (except in confessionals) • (2) all individuals in services providing care to or supervision of children • all volunteers who are working with children (including both volunteers working in a supervised and unsupervised settings) • (3) all people who may supervise or be responsible for looking after children as part of a sporting, recreational, religious or voluntary organisation • (4) as mandated notifiers.
Government response	Implemented
Document name	<i>Children’s Protection Act 1993</i> <div></div>
Implementation	
As recommended	Yes
Included content	S11 Notification of abuse and neglect provides that, among others, the following persons must notify the department if they suspect,

	<p>on reasonable grounds, that a child has been or is being abused or neglected;</p> <ul style="list-style-type: none"> • a minister of religion S.11(2)(ga) • a person who is an employee of, or volunteer in, an 58ehavior58ion formed for religious or spiritual purposes S.11(2)(ga) • any other person who is an employee of, or volunteer in, a government or non-government 58ehavior58ion that provides health, welfare, education, sporting or recreational, child care or residential services wholly or partly for children, being a person who— <p>34. is engaged in the actual delivery of those services to children; or</p> <p>(ii) holds a management position in the relevant behavior on the duties of which include direct responsibility for, or direct supervision of, the provision of those services to children S.11(2)(j)</p>
Excluded content	NA
Implementation rating for legislative action	<p>Implemented</p> <p>Refer to document audit for final assessment of implementation status</p>

Recommendation number	94
Commission/Inquiry of origin	<p>Review of Child Protection in South Australia (Layton review) (2002)</p> <p>http://www.decd.sa.gov.au/speced2/files/links/Child_Protection_Review_FU.pdf</p>
Recommendation made	<p><i>That, in keeping with Recommendation 100 of the ALRC Report, the Evidence Act 1929 (SA) be amended to provide that corroboration of the evidence of a child witness whether sworn or unsworn, should not be required.</i></p> <p><i>That Judges be legislatively prohibited from warning or suggesting to a jury that children are an unreliable class of witness. An example of such legislation is section 106D of the Evidence Act 1906 (WA).</i></p> <p><i>That in accordance with Recommendation 100 of the ALRC Report, legislation provide that judicial warnings about the evidence of a particular child witness should be given only where</i></p> <p><i>1) a party requests the warning, and</i></p> <p><i>2) that party can show that there are exceptional circumstances warranting the warning.</i></p> <p><i>Such exceptional circumstances should not depend on the mere fact that the witness is a child, but on objective evidence that the particular child's evidence may be unreliable.</i></p> <p><i>That the warnings which are given should follow the formula in Murray v R to reduce the effect of an individual Judge's bias against, or general assumptions about, the abilities of children as witnesses.</i></p>
Government response	Implemented in part. Warning jury about uncorroborated evidence now conditional.
Document name	<ul style="list-style-type: none"> • Section 12A inserted in Evidence Act 1929 (SA)

Implementation	
As recommended	<ol style="list-style-type: none"> 1. No 2. Yes 3. Yes 4. Yes
Included content	<p>S.12A provides that in a criminal trial, a judge must not warn the jury that it is unsafe to convict on a child's uncorroborated evidence unless—</p> <ol style="list-style-type: none"> (a) the warning is warranted because there are, in the circumstances of the particular case, cogent reasons, apart from the fact that the witness is a child, to doubt the reliability of the child's evidence; and (b) a party asks that the warning be given. <p>(2) In giving any such warning, the judge is not to make any suggestion that the evidence of children is inherently less credible or reliable, or requires more careful scrutiny, than the evidence of adults.</p>
Excluded content	<p>The Act does not provide that corroboration of the evidence of a child witness whether sworn or unsworn, should not be required.</p> <p>The Act does not require a party asking for a warning to be able to show objective evidence that the particular child's evidence may be unreliable</p>
Implementation rating for legislative action	<p>Partially implemented</p> <p><i>Refer to document audit for final assessment of implementation status</i></p>

Recommendation number	97
Commission/Inquiry of origin	<p>Review of Child Protection in South Australia (Layton review) (2002)</p> <p>http://www.decd.sa.gov.au/speced2/files/links/Child_Protection_Review_FU.pdf</p>
Recommendation made	<p><i>That the Evidence Act 1929 (SA) be amended to include a similar section to section 106 G Evidence Act (WA) which prevents an unrepresented defendant from directly cross-examining a child. Such amendment to be applicable to all children and not just those under 16 years of age.</i></p>
Government response	<i>Implemented</i>
Document name	<ul style="list-style-type: none"> • Legislation check – 13, 13A, 13B Evidence Act 1929 (SA) • 106 G Evidence Act (WA)
Implementation	
As recommended	No

Included content	<p>Section 13B(1) provides that a defendant in a criminal trial may not cross-examine a witness who is the alleged victim of a serious offence unless the cross examination is by Counsel.</p> <p>If a vulnerable witness is to give evidence in criminal proceedings, and the vulnerable witness is a child of or under the age of 16 years and who is the alleged victim of a sexual offence—the court must order that an audio visual record be made of the witness’s evidence before the court. Section 13A(2)(b));</p>
Excluded content	<p>A child is defined under the Evidence Act 1029 as a person under the age of 18yrs.</p> <p>The vulnerable witness provision only apply to children 16 yrs and younger.</p>
Implementation rating for legislative action	<p>Partially implemented</p> <p><i>Refer to document audit for final assessment of implementation status</i></p>

Recommendation number	101
Commission/ Inquiry of origin	<p>Review of Child Protection in South Australia (Layton review) (2002)</p> <p>http://www.decd.sa.gov.au/speced2/files/links/Child_Protection_Review_FU.pdf</p>
Recommendation made	<p><i>(1) That the Evidence Act 1929 (SA) be amended to include the three models for taking of evidence in relation to a criminal trial involving sexual or violent offences against a child as provided in sections 106H to 106T of the Evidence Act (WA).</i></p> <p><i>(2) That the burden of proof remain on the prosecution to prove the charges beyond reasonable doubt.</i></p> <p><i>(3) That there is no requirement for a specialist court to sit on cases in which children are the alleged victims, instead the court must be comprised of Judges who have received special judicial training in respect of child development, victim responses and patterns of abusive behaviour.</i></p> <p><i>(4) That a court-based child witness support system similar to the Western Australian model be set up in South Australia.</i></p> <p><i>(5) That a committee(s) be set up to make recommendations as to the progressive implementation of strategically placed CCTV facilities and video rooms for courts using the Western Australian model as a basis. The design is to ensure the most cost effective manner of delivery of such services in South Australia.</i></p> <p>Recommendation elements.</p> <ol style="list-style-type: none"> 1. Models for taking evidence 2. Burden of proof 3. Judicial training 4. Child witness support system 5. CCTV committee.
Government response	Partially implemented

Document name	<ul style="list-style-type: none"> - Amendment to legislation 13C to the Evidence Act 1929 (SA) - CCTV facilities implemented - Staff training in development now - Witness Assistance Service (WAS) funded to provide support to child witnesses by specially trained social workers <ul style="list-style-type: none"> • amendment 13C to the Evidence Act 1929 (SA) • as per 106H & 106T Evidence Act WA (3 models for taking evidence)
Implementation	
As recommended	<ol style="list-style-type: none"> 1. Yes 2. Unchanged 3. No 4. No 5. Yes
Included content	<p>Section 13C (<i>Evidence and Procedure</i>) Act 2008 provides, in the case of a vulnerable witness who is a child of or under the age of 16 years and who is the alleged victim of a sexual offence, that the court must order that an audio visual record be made of the witness's evidence before the court (unless an order has already been made under s13A). The section further provides that in the case of any other vulnerable witness, the court may, on application by the prosecution, order that an audio visual record be made of the witness's evidence before the court. Such audio-visual records may be used at any re-trial.</p> <p>Section 13 and 13A provide wide general powers of a court to make special arrangements to protect and assist both witnesses in general and vulnerable witnesses in particular. These general powers allow for the use of closed-circuit tv, the taking of evidence outside the trial court and audio record, and the taking and pre-recording the evidence of children as a special arrangement.</p> <p>The Government submitted that all District Courts have CCTV facilities.</p>
Excluded content	<p>There is no court-based child witness support system in SA.</p> <p>The Office of the Director of Public Prosecutions (ODPP) operates a Witness Assistance Service (WAS).</p> <p>The Government submitted that while the WAS is not a service specifically for children, it has been funded to provide services to child witnesses by specially trained social workers.</p> <p>The Government submission made no specific reference to the recommendation that "the court must be comprised of Judges who have received special judicial training in respect of child development, victim responses and patterns of abusive behaviour." The submission did note that "the South Australian Government's Disability Justice Plan, which is currently</p>

being developed, will ensure staff who work with vulnerable witnesses in the criminal justice system are appropriately trained.”

The Courts SA website
<http://www.courts.sa.gov.au/OurCourts/DistrictCourt/Pages/Judicial-Officers.aspx> notes that ALL judges hear civil and criminal matters.

**Implementation rating
for legislative action**

Partially implemented
Refer to document audit for final assessment of implementation status

Recommendation number	104
Commission/ Inquiry of origin	Review of Child Protection in South Australia (Layton review) (2002) http://www.decd.sa.gov.au/speced2/files/links/Child_Protection_Review_FU.pdf
Recommendation made	<i>That the Evidence Act 1929 (SA) be amended to include a section similar to section 106F of the Evidence Act 1929 (WA) to allow for appointment of a child communicator to assist as an interpreter for a child in appropriate circumstances. In addition, the section to be available to all children and not only those under the age of 16 years. Further, that Recommendation 118 of the ALRC Report be implemented by amendment of the Evidence Act 1929 (SA) to include that a court may permit other means of evidence being adduced in the particular case of children with disabilities.</i> <i>Recommendation elements:</i> <ol style="list-style-type: none"> 1. <i>Child communicator</i> 2. <i>For all children</i> 3. <i>Other means of taking evidence for children with disabilities.</i>
Government response	Partially implemented
Document name	<ul style="list-style-type: none"> • section 13 Evidence Act 1929 (SA)
Implementation	
As recommended	<ol style="list-style-type: none"> 1. Yes. 2. No. 3. Yes.
Included content	<p>The wide general powers of Section 13 allow a court to make special arrangements to protect and assist both witnesses in general and vulnerable witnesses in particular. These general powers allow for special arrangements to be made for the taking of evidence and would allow for the use of a child communicator or intermediary for a child witness.</p> <p>Section 13(2)(f) provides that if the witness suffers from a physical or mental disability—an order may be made that the evidence be taken in a particular way (to be specified by the court) that will, in the court’s opinion, facilitate the taking of evidence from the witness or behavior the witness’s embarrassment or distress.</p>

	This section is not limited to children of 16 years or less.
Excluded content	The provisions relating to vulnerable children apply to children of 16 years or less.
	There is no legislative reference to the appointment of a child communicator, as such.
Implementation rating for legislative action	Partially implemented <i>Refer to document audit for final assessment of implementation status</i>

Recommendation number	130
Commission/ Inquiry of origin	Review of Child Protection in South Australia (Layton review) (2002) http://www.decd.sa.gov.au/speced2/files/links/Child_Protection_Review_FU.pdf
Recommendation made	<i>That a coordinated and comprehensive screening and monitoring system be developed in South Australia that is compatible with any National agreement or State/Territory system currently in operation.</i>
Government response	Implemented
Document name	<ul style="list-style-type: none"> • <i>Children's Protection Act 1993</i> • <i>Children's Protection Regulations 2010</i>
Implementation	
As recommended	Yes
Included content	<p>The functions of the Chief Executive in relation to criminal history checks are provided for at S8(A)(j)</p> <p>Division 3 of the <i>Children's Protection Act</i> details the powers and obligations of a responsible authority in respect of criminal histories.</p> <p>The <i>Children's Protection Regulation 2010</i> details the manner in which criminal history assessments are to be undertaken, provides for, amongst other things, the establishment of screening units, the collection and use of information, and the exchange of information between jurisdictions.</p>
Excluded content	
Implementation rating for legislative action	Implemented <i>Refer to document audit for final assessment of implementation status</i>

Recommendation number	131
Commission/ Inquiry of origin	Review of Child Protection in South Australia (Layton review) (2002) http://www.decd.sa.gov.au/speced2/files/links/Child_Protection_Review_FU.pdf

Recommendation made

That a working group be formed – the “**Screening and Monitoring Working Group**” to determine the most appropriate:

- **legislation**
- **policies, protocols and guidelines** and
- **declarations process for SA taking into consideration the proposed **National Paedophile Register** to be developed.**

That the working group consist of persons from the **key agencies** involved (SAPOL, Justice Department, DHS, Education sector, Non-Government, churches and Sport and Recreation, representatives of teachers’ unions and major unions covering employees including related employment and parent groups) and should involve the Commissioner for Children and Young Persons.

That **specific legislation be developed** to deem certain persons as described in the legislation to be unsuitable persons from working with children and young people and to be placed on an **Unsuitable Persons Register**. Such legislation could be known as the Child Protection (Unsuitable Persons) Act. Legislation to include:

- (1) specific provisions for the **establishment and maintenance** of an Unsuitable Persons Register,
- (2) provide for the **conditions** upon which a person is placed on the register and is thereby deemed unsuitable for employment in child related circumstances
- (3) provide for an **independent process** for a declaration from a District Court for **removal of a person from the register**
- (4) provide the **requirements of employers when employing persons in child-related activities** and that the provisions are **mandatory for employees but discretionary in respect of volunteers**
- (5) cover **all Government agencies, non-Government agencies, church organisations, sporting and recreation clubs** who provide employment in child-related activities
- (6) create **offences with penalties** for non-compliance.

Such legislation may in a general sense be modelled on the NSW scheme with particular modifications to minimise complexity and discretionary decision-making as well as placing the role of establishing and maintaining the register with SAPOL. Further, that the screening and monitoring working group consider the viability of providing persons screened and cleared a ‘portable’ photo card which can be used by employees.

Recommendation Elements:

1. Unsuitable persons register
2. Minimise complexity and discretionary decisions (note below)
3. Portable card system (note below)

Government response

Partially implemented:

Unsuitable Persons Register

Currently, no specific Unsuitable Persons Register exists. However, the comprehensive records maintained by the Screening Unit, which includes information as to whether or not a person has previously been denied a clearance to work with children, serves as a de facto register of this kind in South Australia. All individuals registered on the Australian National Child Offender Register pursuant to the Child Sex Offenders Registration Act 2006 are prohibited from applying to work in child-related employment, and South Australia Police

are notified immediately if/when an individual on ANCOR applies for child-related employment screening through the Screening Unit.

Minimise Complexity and Discretionary Decision-Making

The Standards for Dealing with information about the criminal history of employees and volunteers who work with children, issued by the Chief Executive, Department for Communities and Social Inclusion, currently outlines the methods for ensuring that all child-related employment screening risk assessments are undertaken in a consistent, defensible manner with a diminished need for discretionary decision-making.

Portable Card Based System

The Screening Unit currently provides clearances to people by way of a letter on special security paper and does not issue a card. Card-based systems are no longer considered best practice, and have been supplanted by a live internet database in some jurisdictions. These databases allow employers and volunteer organisations to check the status of their employees/volunteers at any time.

Consideration is being given to the feasibility of introducing such a system in South Australia.

Document name

Child Sex Offenders Registration Act 2006
<http://www.legislation.sa.gov.au/LZ/C/A/CHILD%20SEX%20OFFENDERS%20REGISTRATION%20ACT%202006.aspx>

Child Safe Environments.
 Standards for dealing with information obtained about the criminal history of employees and volunteers who work with children.
 Issued by the Chief Executive,
 Department for Education and Child Development
 (Section 8A, Children's Protection Act 1993 (SA))
<http://www.decd.sa.gov.au/docs/documents/1/CSEStdsInfoCrimHist.pdf>

Implementation

As recommended

1. No
2. Yes
3. No

Included content

Section 64 of the *Child Sex Offenders Registration Act 2006* prescribes child-related work.

Section 65 provides that a registrable offender must not apply for or engage in work that is child-related.

Section 66 provides that a registrable offender is a person charged with or convicted of a Class 1 or Class two offences – child sexual offences and other child related offences.

Child Safe Environments.

	Standards for dealing with information obtained about the criminal history of employees and volunteers who work with children. Issued by the Chief Executive, Department for Education and Child Development (Section 8A, Children's Protection Act 1993 (SA)) http://www.decd.sa.gov.au/docs/documents/1/CSEStdsInfoCrimHist.pdf
Excluded content	No unsuitable persons register in place. No portable card based system used.
Implementation rating for legislative action	Partially implemented <i>Refer to document audit for final assessment of implementation status</i>

Recommendation number	132
Commission/ Inquiry of origin	Review of Child Protection in South Australia (Layton review) (2002) http://www.decd.sa.gov.au/speced2/files/links/Child_Protection_Review_FU.pdf
Recommendation made	<i>1. That all agencies who employ persons who work with or have access to children either in paid or a volunteer capacity should develop appropriate child protection policies and guidelines.</i> <i>2. All agencies funded by State Government agencies will be required to develop child protection policies and guidelines as a prerequisite to receiving Government funding.</i>
Government response	Partially implemented: Policies and guidelines are universally required
Document name	Child Protection Act 1993 <div></div>
Implementation	
As recommended	1. Yes 2. No
Included content	Section 8C of the Act requires that government and non-government organisations that provide health, welfare, education, sporting or recreational, religious or spiritual, child care or residential services wholly or partly for children must have in place appropriate policies and procedures for ensuring that appropriate reports of abuse or neglect are made under Part 4; and that child safe environments are established and maintained within the behavior. The organization must, within ten days of putting the policies and procedures in place, lodge with the Chief Executive, a statement setting out the policies and procedures. S.8C(3)

Excluded content	The government response makes no reference to that part of the recommendation that all agencies funded by State Government agencies will be required to develop child protection policies and guidelines as a prerequisite to receiving Government funding.
	There is no legislative requirement for this.
Implementation rating for legislative action	Partially implemented <i>Refer to document audit for final assessment of implementation status</i>

Recommendation number	138
Commission/ Inquiry of origin	Review of Child Protection in South Australia (Layton review) (2002) http://www.decd.sa.gov.au/speced2/files/links/Child_Protection_Review_FU.pdf
Recommendation made	<i>That pending an Unsuitable Persons Register being set up as recommended in Chapter 17, the Teachers' Registration Board in consultation with all education sectors, progressively seek relevant police checks through SAPOL on all registered teaching personnel and that these police checks are updated each time renewal of registration is required.</i>
Government response	Implemented: 2004 legislation establishing Teachers Registration Board
Document name	<i>Teachers Registration and Standards Act 2004</i>
Implementation	
As recommended	Yes.
Included content	The Teachers Registration Board has been established under the <i>Teachers Registration and Standards Act 2004</i> . S.20 of the Act provides that a person may not undertake employment as a teacher unless registered. S21 provides for the Board to determine if an applicant for registration or renewal of registration is a fit and proper person. A criminal history record check is one criterion used by the Board to assess fitness and propriety. S22 and an applicant for registration or renewal of registration must consent to the conduct of a criminal record check and pay the required fee. S22.
Excluded content	NA
Implementation rating for legislative action	Implemented <i>Refer to document audit for final assessment of implementation status</i>

Recommendation number	170
Commission/ Inquiry of origin	Review of Child Protection in South Australia (Layton review) (2002) http://www.decd.sa.gov.au/speced2/files/links/Child_Protection_Review_FU.pdf
Recommendation made	<ol style="list-style-type: none"> 1. That Section 10 of the Children's Protection Act 1993 be amended to reflect the suggested amendments to sub-sections 6 (1) and 6 (2) of the Act as set out in Recommendation 166*. 2. In particular, if the contents of sub-section 6 (2) I (d) and I (presently excluded from applying to mandatory notification), are still regarded as necessary to be articulated in the legislation, these circumstances should be relevant to mandatory notification. 3. Further, subsection 6 (2) I of the Act should not be limited to children under 15 years, but to all children. <p>*N.B. Recommendation 166: It is recommended that sub-sections 6(1) and 6(2) of the Children's Protection Act 1993 be amended and replaced by a definitional concept based on the notion of risk of "significant harm" using sections 9, 10 and 14 of the Children's Protection Act 1999 (Qld) as a suitable guiding precedent.</p>
Government response	Partially implemented
Document name	<ol style="list-style-type: none"> 1. Children's Protection Act 1993, sub-sections 6 (1) and 6 (2), subsection 6 (2) I 2. Children's Protection Act 1999 (Qld)
Implementation	
As recommended	<ol style="list-style-type: none"> 1. Yes 2. No 3. No
Included content	<p>Section 6 of the Children's Protection Act 1993 'Interpretation' has been amended and now includes a definition of a child "at risk":</p> <p>Section 6 (2): <i>For the purposes of this Act, a child is at risk if –</i></p> <p>(aa) <i>if there is significant risk that the child will suffer serious harm to his or her physical, psychological or emotional wellbeing against which he or she should have, but does not have, proper protection;</i></p>
Excluded content	<p>The amended definition of "at risk" has not been included as part of the statutory criteria for mandatory notification.</p> <p>The Government submitted that it was not feasible to require notifiers to make notifications in relation to events of future abuse or neglect that had not yet occurred.</p> <p>Section 6 (2) I has not been expanded to include all children under 18 years.</p> <p>It was recommended that the following circumstances should be reflected in the criteria for mandatory notification:</p> <p>(d) the child is of compulsory school age but has been persistently absent from school without satisfactory explanation of the</p>

- absence; or
 © the child is under 15 years of age and is of no fixed address.

No amendments were made to Section 6 regarding mandatory notification in relation to children of compulsory school age or children under the age of 15 of no fixed address. The Government submitted that this would have unnecessarily expanded the criteria for mandatory notification.

**Implementation
rating for legislative
action**

Partially implemented

Refer to document audit for final assessment of implementation status

Recommendation number	21
Commission/ Inquiry of origin	Children on Anangu Pitjantjatjara Yankunytjatjara (APA) Lands Commission of Inquiry (Mullighan Inquiry) (2008) http://www.sa.gov.au/subject/Crime,+justice+and+the+law/Mullighan+Inquiry/Children+on+the+APY+Lands
Recommendation made	<i>That section 11 of the Children's Protection Act be amended to provide that it is an offence to prevent, obstruct or interfere with a person discharging or attempting to discharge the obligation of mandatory reporting pursuant to section 11(1) of that Act.</i>
Government response	Implemented
Document name	<i>Children's Protection Act 1993</i> <div></div>
Implementation	
As recommended	Yes
Included content	S.11(6) of the Act provides that a person must not threaten or intimidate, or cause damage, loss or disadvantage to, a person to whom this section applies because the person has discharged, or proposes to discharge, his or her duty under subsection (1). Maximum penalty: \$10 000.
Excluded content	
Implementation rating for legislative action	Implemented <i>Refer to document audit for final assessment of implementation status</i>

Recommendation number	3
Commission/ Inquiry of origin	Children in State Care Commission of Inquiry: Allegations of Sexual Abuse and Death from Criminal Conduct (Mullighan Inquiry) (2008) http://www.sa.gov.au/upload/franchise/Crime,%20justice%20and%20the%20law/Mullighan_Inquiry/CISC%20-%20Complete.pdf
Recommendation made	<i>That the application of section 8B of the Children's Protection Act 1993 be broadened to include organisations as defined in section 8C. [NOTE: Section 8B</i>

required govt organisations and non-govt schools to obtain a criminal history, or police report for people holding, or to be appointed to, positions that involve regular contact with, proximity to, or access to records concerning children. Section s 8C applied to organisations that provide health, welfare, education, sporting or recreational, religious or spiritual, child care or residential services wholly or partly for children and are govt departments, agencies, instrumentalities, or local govt or non-govt organisations.]

*That consideration is given to **reducing or waiving the fee** for an organisation applying for a **criminal history** reporting order to comply with section 8B.*

*That a **criminal history report** be defined as a report that includes information as to whether a person is on the Australian National Child Offender Register (ANCOR).*

Government response

Document name

Continuing implementation with phasing in period

The Children's Protection (Implementation of Report Recommendations) Amendment Bill 2009

Implementation

As recommended

1. Yes
2. Yes
3. No

Included content

1. Re S.8B and 8C

Division 3, S.8B details the powers and obligations of a responsible authority in relation to criminal history assessments and requires that a criminal history assessment be conducted before a person is appointed to a position. The section applies to government organisations; and non-government organisations that provide health, welfare, education, sporting or recreational, religious or spiritual, childcare or residential services wholly or partly for children.

S.8C details the obligations of certain organisations in relation to establishing a safe environment, reporting suspected abuse and neglect, and developing policies and procedures. This section applies to the same group of organisations as 8B above namely: government and non-government organisations that provide health, welfare, education, sporting or recreational, religious or spiritual, child care or residential services wholly or partly for children.

2. Re Waiving of fees.

S.8B(7)(h) provides that a regulation may confer discretionary powers on the Minister, Chief Executive or another person or body, for the waiving or remission of a fee.

3. Re ANCOR.

S.8 of the Regulation provides that a reference to a person's criminal history is taken to include:

- (a) convictions for offences committed by the person in South

	<p>Australia or elsewhere (whether those convictions relate to offences committed before or after the commencement of this regulation);</p> <p>(b) charges for offences alleged to have been committed by the person in South Australia or elsewhere (whether those charges relate to offences alleged to have been committed before or after the commencement of this regulation and regardless of the outcome of those charges);</p> <p>© information about convictions referred to in paragraph (a) and charges referred to in paragraph (b).</p>
Excluded content	The legislation does not require that a criminal history include information as to whether a person is on the Australian National Child Offender Register.
Implementation rating for legislative action	<p>Partially implemented</p> <p><i>Refer to document audit for final assessment of implementation status</i></p>

Recommendation number	4
Commission/ Inquiry of origin	<p>Children in State Care Commission of Inquiry: Allegations of Sexual Abuse and Death from Criminal Conduct (Mullighan Inquiry) (2008)</p> <p>http://www.sa.gov.au/upload/franchise/Crime,%20justice%20and%20the%20law/Mullighan_Inquiry/CISC%20-%20Complete.pdf</p>
Recommendation made	<p><i>That the Children's Protection Act 1993 be amended to require organisations to lodge a copy of their policies and procedures established pursuant to section 8C(1) with the chief executive and that the chief executive be required to keep a register of those policies and procedures. [NOTE: Section 8C(1) required certain organisations to establish appropriate policies and procedures for ensuring that mandated reports of abuse were made and that child safe environments are established and maintained in the organisation. There was a penalty of \$10,000 for non compliance. It applied to organisations that provide health, welfare, education, sporting or recreational, religious or spiritual, child care or residential services wholly or partly for children and are govt departments, agencies, instrumentalities, or local govt or non-govt organisations.]</i></p>
Government response	Implemented
Document name	<p>The Children's Protection (Implementation of Report Recommendations) Amendment Bill 2009</p> <p><i>Children's Protection Act 1993</i></p> <p>Children's Protection Regulations 2010</p>
Implementation	

As recommended	Yes
Included content	<p>Section 8C of the Act requires that government and non-government organisations that provide health, welfare, education, sporting or recreational, religious or spiritual, child care or residential services wholly or partly for children must have in place appropriate policies and procedures for ensuring that appropriate reports of abuse or neglect are made under Part 4; and that child safe environments are established and maintained within the behavior.</p> <p>The organization must, within ten days of putting the policies and procedures in place, lodge with the Chief Executive, a statement setting out the policies and procedures. S.8C(3)</p>
Excluded content	<p>There is no reference in the Act or the Regulation to the Chief Executive keeping a register of the policies and procedures of each organization. However, the provisions for non-compliance penalties (up to \$10,000) and the provisions relating to organisations responding to a request from the Chief Executive about their compliance with the requirement, suggest very strongly, that a register is maintained.</p>
Implementation rating for legislative action	<p>Implemented</p> <p><i>Refer to document audit for final assessment of implementation status</i></p>

Recommendation number	6
Commission/ Inquiry of origin	<p>Children in State Care Commission of Inquiry: Allegations of Sexual Abuse and Death from Criminal Conduct (Mullighan Inquiry) (2008)</p> <p>http://www.sa.gov.au/upload/franchise/Crime,%20justice%20and%20the%20law/Mullighan_Inquiry/CISC%20-%20Complete.pdf</p>
Recommendation made	<p><i>That Families SA extends its screening processes to cover known regular service providers to children and young people in care with disabilities, such as regular bus or taxi drivers.</i></p>
Government response	<p>Continuing implementation:</p> <p>It is intended that the Passenger Transport Regulations 2009 will be amended by June 2013.</p>
Document name	<p>Passenger Transport Regulations 2009</p> <div></div>
Implementation	No
As recommended	
Included content	
Excluded content	<p>Passenger Transport Regulations 2009 have not been amended to require a Background Screening and Criminal History Check to be conducted by the DCSI Screening Unit as a prerequisite condition to gain and retain driver accreditation. This approach was to have ensured that passenger transport drivers undergo a comprehensive assessment of their criminal history (including convictions for assaults against children and vulnerable adults and</p>

Implementation rating for legislative action

other relevant offences) as part of the accreditation process to address their suitability to work with children and vulnerable adults.

It was intended that the Passenger Transport Regulations 2009 be amended by June 2013.

Undetermined

It appears that a two-stage process including a criminal history screening and amendments to the Passenger Transport Regulations to list offences which would preclude accreditation. This amendment process has not been completed as at Jan 2014.

NOTE

Annual Report of November 2012

The transition of screening bus and taxi drivers by the Department of Planning, Transport and Infrastructure (DPTI) to the Department for Communities and Social Inclusion's (DCSI) "working with children" screening system is now complete. All new applications and renewal for driver accreditation must now have a Background Screening and Criminal History Check conducted by the DCSI Screening Unit.

The Department for Education and Child Development (DECD) has transitioned its drivers (e.g. school buses) to become accredited through DPTI. DPTI is facilitating this process through amendments to TRUMPS (the licence and accreditation data system) to identify DECD drivers for accreditation purposes.

As part of its response to this recommendation, the Government also committed to amend the Passenger Transport Act 1994 to introduce a list of disqualifying offences under section 31 of the Act to include assaults against a child or vulnerable adult. It is now intended that the Passenger Transport Regulations 2009 will be amended to require a Background Screening and Criminal History Check to be conducted by the DCSI Screening Unit as a prerequisite condition to gain and retain driver accreditation. This approach will ensure that passenger transport drivers undergo a comprehensive assessment of their criminal history (including convictions for assaults against children and vulnerable adults and other relevant offences) as part of the accreditation process to address their suitability to work with children and vulnerable adults.

The Government's response has been substantially implemented. It is intended that the Passenger Transport Regulations 2009 will be amended by June 2013.

Refer to document audit for final assessment of implementation status

Commission/ Inquiry of origin	Children in State Care Commission of Inquiry: Allegations of Sexual Abuse and Death from Criminal Conduct (Mullighan Inquiry) (2008) http://www.sa.gov.au/upload/franchise/Crime,%20justice%20and%20the%20law/Mullighan_Inquiry/CISC%20-%20Complete.pdf
Recommendation made	(1) <i>That the Children's Protection Act 1993 be amended to add a function to the Guardian for Children and Young People, namely to act as an advocate for a child or young person in State care who has made a disclosure of sexual abuse.</i> (2) <i>That in accordance with section 52B of the Act, the GCYP is provided with sufficient staff and resources to accomplish this function.</i>
Government response	Implemented
Document name	Children's Protection (Implementation of Report Recommendations) Amendment Bill 2009 <div></div>
Implementation	
As recommended	Yes
Included content	In 2009 the Guardian's functions under the Act were amended to include the provision that the Guardian is to act as an advocate for the interests of children under the guardianship, or in the custody, of the Minister and, in particular, for any such child who has suffered, or is alleged to have suffered, sexual abuse. S52C(1)(b)
Excluded content	S.52b provides that the Minister must provide the Guardian with the staff and other resources that the Guardian reasonably needs for carrying out the Guardian's functions. NA
Implementation rating for legislative action	Implemented <i>Refer to document audit for final assessment of implementation status</i>

Recommendation number	40
Commission/ Inquiry of origin	Children in State Care Commission of Inquiry: Allegations of Sexual Abuse and Death from Criminal Conduct (Mullighan Inquiry) (2008) http://www.sa.gov.au/upload/franchise/Crime,%20justice%20and%20the%20law/Mullighan_Inquiry/CISC%20-%20Complete.pdf
Recommendation made	<i>That a task force be established in South Australia to closely examine the redress schemes established in Tasmania, Queensland and Western Australia for victims of child sexual abuse; to receive submissions from individuals and relevant organisations on the issue of redress for adults who were sexually abused as children in State care; and to investigate the possibilities of a national approach to the provision of services.</i>
Government response	Implemented:

	Common law claims arising from sexual abuse in State care will be litigated compassionately or victims of such abuse can apply for ex gratia payments pursuant to the Victims of Crime Act 2001 as an alternative to litigation.
Document name	<i>Victims of Crime Act 2001</i> <input type="text"/>
Implementation	
As recommended	Yes.
Included content	Part 3 of the <i>Victims of Crime Act 2001</i> provides that the objects of the Act are <ul style="list-style-type: none"> (a) to give statutory recognition to victims of crime and the harm that they suffer from criminal offending; and (b) to establish principles governing how victims of crime are to be treated by public agencies and officials; and © to help victims of crime recover from the effects of criminal offending and to advance their welfare in other ways; and (d) to provide from public funds limited monetary compensation to victims most directly affected by criminal offending.
Excluded content	
Implementation rating for legislative action	In full. <i>Refer to document audit for final assessment of implementation status</i>

LEGISLATION VERIFICATION: TASMANIA

Recommendation number	62
Commission/ Inquiry of origin	Select Committee on Child Protection Final Report, Parliament of Tasmania (2011)
Recommendation made	<i>That there be a statutory obligation on community sector organisations who deliver out of home care residential services to comply with key standards and reporting criteria.</i>
Government response	Accepted
Document name	5 DHHS Government Response Public Final v3 6 DHHS Sharing Responsibility Implementation Framework www.children.tas.gov.au <input type="text"/>
Implementation	
As recommended	In part?

Included content

S.14(1)(k) of the *Children, Young Persons and their Families Act 1997* provides that an employee or volunteer in an organisation that receives any funding from the Crown for the provision health, welfare, education, child care or residential services wholly or partly for children, is a prescribed person.

Excluded content

S14(1)9l) provides that prescribed persons are mandated to report suspected abuse or neglect (arising from their employment) as soon as practicable.

There is no requirement in the *Children, Young Persons and their Families Act 1997* for community sector organisations delivering out of home care residential services to comply with key standards.

The Tasmanian Government, through the National Framework for Protecting Australia's Children, has committed to implementing the National Standards for out-of-home care. Reforming out-of-home care will bring this service into line with national standards.

Section 1.7.17 of New Directions for Child Protection in Tasmania: CHILDREN AND FAMILY SERVICES January 2008 states there is a need to establish a culture of quality throughout the Out of Home Care service system and that this process will be supported by the development of practice standards and key performance indicators that guide the work undertaken by Out of Home Care service providers and Child Protection and ensure that the services are accountable for the service they provide.

In reporting on Achievements and Highlights for 2012-13 the Department reported in relation to Strategy 5: Reforming Out-of-Home Care: The Department of Health and Human Services, through its care and protection program areas, is reforming Out-of-Home Care services across the service continuum. This includes establishing a dedicated Carer Portfolio to better focus effort, improving permanency and stability planning, and an inclusive review of funding to non-government organisations. Highlights include:

Actioning Reform Work has commenced to examine the full spectrum of Out-of-Home Care services in Tasmania and develop the steps necessary to transition the system to improve the provision of safe, permanent and secure placements. The initiative will complement the work being progressed through the broader Commissioning Framework agenda for the Department of Health and Human Services and the introduction of the National Standards for Out-of-Home Care.

Implementation rating for legislative action

Undetermined – work in progress.

Refer to document audit for final assessment of implementation status

LEGISLATION VERIFICATION: VICTORIA

Recommendation number	89
Commission/Inquiry of origin	Protecting Victoria's Vulnerable Children Inquiry (Cummins Inquiry) (2012)
Recommendation made	<p><i>The Government should amend the Child Wellbeing and Safety Act 2005 to establish a Commission for Children and Young People, comprising one commissioner appointed as the chairperson and such number of full-time and part-time additional commissioners as the Premier considers necessary to enable the Commission to perform its functions. Commissioners would be appointed by the Governor-in-Council. The Commission should have responsibility for overseeing and reporting to Ministers and Parliament on all laws, policies, programs and services that affect the wellbeing of vulnerable children and young people. The Commission would hold agencies to account for meeting their responsibilities as articulated in the Vulnerable Children and Families Strategy and related policy documents. The Commission would also retain the current roles and functions of the Child Safety Commissioner. The Commission would be required by legislation to give priority to the interests and needs of vulnerable children. The Commission should have authority to undertake own-motion inquiries into systemic reforms necessary to improve the wellbeing of vulnerable children and young people. The specific powers granted to the Ombudsman under section 20 of the Children, Youth and Families Act 2005 should be transferred to the Commission.</i></p> <p>Breakdown of components</p> <ol style="list-style-type: none"> 1. One commissioner as chair and additional commissioners as required 2. Appointed by Governor-in-Council 3. Oversight (and reporting to Minister and Parliament) of all laws, policies, programs and services that affect the wellbeing of vulnerable children and young people 4. Hold agencies to account for responsibilities under VC&FS 5. Retain the current roles and functions of the CSC Commissioner 6. Prioritising the needs of vulnerable children 7. Authority to undertake own-motion inquiries into systemic reforms 8. Ombudsman's powers under section 20 of the CY&FA transferred to the Commission
Government response	<p>This recommendation has been implemented.</p> <p>The Commission for Children and Young People (the Commission) is an important overall mechanism for monitoring the wellbeing and safety of vulnerable children and young people. The Commission holds advocacy functions as well as a preventative function. Legislation establishing the Commission was passed in November 2012, and the Commission commenced operation on 1 March 2013, implementing commitments made in the <i>Victoria's Vulnerable Children</i> Directions Paper (released 2012).</p>

The Commission has expanded responsibilities from the former Office of the Child Safety Commissioner, including the power to initiate inquiries into government and government-funded organisations where it believes there have been systemic issues in the delivery of services that affect children's safety and wellbeing.

The Commission brings increased scrutiny and accountability to the safety and wellbeing of vulnerable young people, including in the child protection and youth justice systems, and reports directly to the Victorian Parliament.

It also builds on many of the functions of the Child Safety Commissioner, including promoting the safety and wellbeing of children, monitoring out-of-home care, undertaking inquiries into the deaths of children known to child protection and functions related to working with children.

A critical leadership position within the Commission will be the Commissioner for Aboriginal Children and Young People. This Commissioner will soon be appointed to oversee policies and practices that affect Aboriginal children and young people.

Document name

COMMISSION FOR CHILDREN AND YOUNG PEOPLE ACT 2012

<http://www.parliament.vic.gov.au/static/www.legislation.vic.gov.au-lawtoday.html> – can be found under Victorian Law Today – Act Search Results

Implementation

As recommended

1. Y
2. Y
3. Partial
4. Y
5. Y
6. Y
7. Partial
8. Partial

Included content

1. See ss6, 11 & 12
2. See s11
- 3.

Responsibility for oversight of legislation, policies, strategies etc., would require a raft of broad functions and powers. The stated objectives of the Commission are conceived narrowly (i.e., promote continuous improvement and innovation in policies, practices, relating to safety and wellbeing). While the stated functions of the Commission are cast more broadly and involve advising, educating, promoting, monitoring, overseeing, reporting, making recommendations and investigating roles, these relate to discrete areas and/or specific pieces of legislation (s.8).

When taken *in toto*, the legislation may expand on the responsibilities of the now defunct Child Safety Commissioner, but the functions are clearly not as broad as those envisaged by the recommendation, particularly in relation to the oversight of legislation. The Commission really only has oversight powers relating to the *Working With Children Act 2005*, (i.e., by way of annual review). The recommendation may well have been cast too

broadly – query the capacity of any one office to oversee “all laws” that affect the wellbeing of children and young people.

The Commission’s powers relating to oversight of services are similarly limited. Responsibility for oversight of OOHC services is restricted to promoting participation of children in decision-making and advising the Minister on performance. The Commission’s investigatory powers in relation to OOHC services must be at the request of the Minister, (s. 28).

The provision relating to the Commission reporting to Parliament is limited specifically to reports arising from inquiries of systemic issues concerning service provision (ss.49 & 50).

2.

The Commission has the power to “hold agencies to account” for meeting their obligations under the VC&FS, via:

- the power to conduct an inquiry into the services provided (or not provided) to a child or young person under section 37; and
- the function of monitoring and reporting to the Minister on the implementation and effectiveness of strategies (s.81)

33. See ss65 & 66.

6.

While there is no explicit directive in the legislation to prioritise the needs and interests of vulnerable children and young people, they are identified throughout as a distinct sub-category. The question of priority could be determined by recourse to extraneous material e.g. Hansard.

7.

Commissioner of C&YP has the power to conduct own-motion inquiries into systemic reforms related to the provision of certain listed services only (health services, human services and schools), and this power is dependent on the Commission being adequately resourced to do so (s37, 39 CC&YPA)

8.

S 20 of the CY&FA, which outlined the Ombudsman’s investigative powers has been repealed. Those powers related to the (own-motion) investigation of administrative action (or failure to act) of:

- a registered community service (OOHC or community based child and family service);
- person in charge of Aboriginal organisation or registered community service given powers under the act; and
- assessors of community services and investigators of carers appointed under the act.

While the Commissioner for C&YP performs a broader function than the Ombudsman under the repealed s20 powers, and has wider powers to investigate certain matters (powers that are either mandated, at the request of the minister or on his/her own motion), the exercise of *own-*

	<p><i>motion powers relating to the provision of services, are more restricted than those of the Ombudsman under the CY&FA in that investigation can only occur where there is a persistent or recurring systemic issue and it is within resources of the Commissioner's office to investigate (s37 and 39 CC&YPA).</i></p> <p>The Commissioner of C&YP can investigate a broader range of services (health services, human services and schools) than was possible under the s20 powers.</p> <p>Also, the power to investigate the actions of investigators and assessors under the CY&FA, formerly vested in the Ombudsman, has not been transferred to the Commissioner of C&YP.</p>
Excluded content	See above
Implementation rating for legislative action	Partially implemented <i>Refer to document audit for final assessment of implementation status</i>

Recommendation number	89
Commission/Inquiry of origin	Parliament of Victoria: Inquiry into Sexual Offences Against Children and Adults (1995)
Recommendation made	<i>The Committee recommends that the Attorney General review penalties for sexual offences to ensure that the sexual assault of a child is regarded as seriously as the sexual assault of an adult.</i>
Government response	<p>This recommendation has been implemented.</p> <p>The <i>Sentencing and Other Acts (Amendment) Act 1997</i> increased the maximum penalties for various offences, including sexual offences against children. The reforms imposed the maximum term of imprisonment of 25 years for crimes of incest, sexual penetration against a child under 10, and maintaining a sexual relationship with a child under 16. These amendments placed such crimes on the same footing as rape.</p>
Document name	SENTENCING AND OTHER ACTS (AMENDMENT) ACT 1997 http://www.parliament.vic.gov.au/static/www.legislation.vic.gov.au-lawtoday.html – can be found under Victorian Law Today – Act Search Results
Implementation	
As recommended	N
Included content	See Government response above
Excluded content	While the maximum penalties for some sexual offences relating to children were increased by the amending legislation, there are a number of offences where maximum penalties for offences involving children do not have parity with sentences for apparently similar offences involving adult victims. See for example:

- S. 55 – Abduction or detention for sexual penetration (level 5, 10 years imprisonment) and section 56 – Abduction of child under 16 for sexual penetration (level 6, 5 years imprisonment).
- S.57(1) – Procuring sexual penetration by threats or intimidation (level 5, 10 years imprisonment) and s.58 - Procuring sexual penetration of child under 16 (level 6, 5 years imprisonment).

In addition, S. 46 – Sexual penetration of a child aged 10-16 attracts a considerably smaller maximum sentence (level 4, 15 years imprisonment – where the child is under care, supervision or authority, and; level 5, 10 years imprisonment in any other case), than the penalty for the same offence where the child is under the age of 10 (level 2, 25 years imprisonment).

S.185 specifies **grounds for reporting** children in need of therapeutic treatment, rather than **grounds for protection**.

The reasons for this may require further investigation.

Implementation rating for legislative action

Partially implemented

Refer to document audit for final assessment of implementation status

Recommendation number	102
Commission/Inquiry of origin	Parliament of Victoria: Inquiry into Sexual Offences Against Children and Adults (1995)
Recommendation made	<i>The Committee recommends that in the Children and Young Persons Act 1989, specified grounds for protection be extended to include children displaying early signs of sexually offending behaviour.</i>
Government response	<p>This recommendation has been implemented.</p> <p>The Victorian Parliament passed new legislation, the Children, Youth and Families Act 2005 which replaced the <i>Children and Young Persons Act 1989</i>. The grounds for protection of children and young people were expanded in this new Act in sections 185 and 210-213. Reporting, investigation and the making of orders in respect of a child between the ages of 10 and 14 who has exhibited sexually abusive behaviours were introduced through sections 244-258. These children are referred to as being 'in need of therapeutic treatment.' The therapeutic treatment provisions came into effect in October 2007.</p>
Document name	<p>CHILDREN, YOUTH AND FAMILIES ACT 2005</p> <p>http://www.parliament.vic.gov.au/static/www.legislation.vic.gov.au-lawtoday.html – can be found under Victorian Law Today – Act Search Results</p>
Implementation	
As recommended	N

Included content	The new legislation sets up a scheme for the making of orders for the <i>treatment</i> of a child exhibiting sexually abusive behaviours. Where a therapeutic treatment (placement) order has been made (see ss252—253) i.e., where such an order is deemed necessary for the treatment of the child, sole custody of the child is granted to the Secretary.
Excluded content	The grounds for protection as outlined in s162 do not include a child exhibiting sexually abusive behaviours. Provisions relating to the making of a therapeutic treatment order relate to treatment only, and not the child's protection. The range of orders available under the Act for children deemed in need of protection (supervision order, supervised custody order, custody or guardianship to the Secretary, or long-term guardianship to the Secretary), will only become available in relation to a child exhibiting sexual offending behavior where a therapeutic treatment (placement) order has been made (see ss252—253)
Implementation rating for legislative action	Partially implemented <i>Refer to document audit for final assessment of implementation status</i>

Recommendation number	105
Commission/Inquiry of origin	Parliament of Victoria: Inquiry into Sexual Offences Against Children and Adults (1995)
Recommendation made	<i>The Committee recommends that all convicted adult sex offenders shall be registered with the Victorian Sex Offender Registry for life.</i>
Government response	<p>This recommendation has been implemented in part.</p> <p>The <i>Sex Offenders Registration Act 2004</i> requires 'registrable offenders' to register with police. A registerable offender is a person sentenced by a court for a registerable offence, defined as either a Class 1 or Class 2 offence against children, or a non-registerable offence that results in the issuance of a sex offender register order. Schedules 1 and 2 of the <i>Sex Offenders Registration Act 2004</i> include a list of offences.</p> <p>Registered offenders are subject to a range of protective/prohibitive measures, for example, section 68 of the Act creates a prohibition on registrants working with children. Victoria is unique in that the <i>Sex Offender Registration Act 2004</i> applies to both people who offend against adults (adult sex offenders) as well as people who offend against children (child sex offenders).</p> <p>The length of a registered sex offender's reporting period depends upon the type and number of offences for which they were convicted and their age at the time of the offence.</p>
Document name	Sex Offenders Registration Act 2004 http://www.parliament.vic.gov.au/static/www.legislation.vic.gov.au-lawtoday.html – can be found under Victorian Law Today – Act Search Results

Implementation

As recommended	N
Included content	See Government response above
Excluded content	See Government response above
Implementation rating for legislative action	Partially implemented Refer to document audit for final assessment of implementation status

Recommendation number	115
Commission/Inquiry of origin	Parliament of Victoria: Inquiry into Sexual Offences Against Children and Adults (1995)
Recommendation made	<i>The Committee recommends that prior to a person being employed, including voluntary employment, in a position which has a duty of care or supervision over children, a criminal history check must be undertaken to determine if they are a fit and proper person.</i>
Government response	<p>This recommendation has been implemented.</p> <p>Section 33 of the <i>Working with Children Act 2005</i> makes it an offence for a person to knowingly engage in child-related work without a current assessment notice (see details of exemptions below under Item 8). However, the ‘fit and proper person test’ is not the test applied under the <i>Working with Children Act 2005</i>. Instead, the following tests are applied:</p> <ul style="list-style-type: none"> • <i>Unjustifiable Risk</i> – This test requires the decision maker to be satisfied the applicant or cardholder does not pose an unjustifiable risk to the safety of children. • <i>Appropriate to Refuse</i> – This test requires the decision maker to grant a Check on category 3 applications unless satisfied that it is appropriate to refuse to do so. • <i>Reasonable Person</i> – This test requires the decision maker to be satisfied that a reasonable person would allow his or her child to have direct contact with the applicant that was not directly supervised by another person while the applicant was engaged in any type of child-related work. • <i>Any type of Child-Related work</i> – This test requires the decision maker to be satisfied that the applicant’s engagement in any type of child-related work would not pose an unjustifiable risk to the safety of children. • <i>Public Interest</i> – This test prevents the Victorian Civil and Administrative Tribunal (VCAT) from ordering the Secretary to issue a Check to an applicant unless it is satisfied that it is in the public interest to do so. • <i>Exceptional Circumstances power and associated tests</i> – This provision allows the Secretary to refuse a Check based on offences other than those in categories 1, 2 and 3. The power is only enlivened if three connected, highly technical tests are met.

Document name	WORKING WITH CHILDREN ACT 2005 http://www.parliament.vic.gov.au/static/www.legislation.vic.gov.au-lawtoday.html – can be found under Victorian Law Today – Act Search Results
Implementation	
As recommended	Y, but not using specific wording
Included content	See Government response above
Excluded content	See Government response above
Implementation rating for legislative action	Implemented <i>Refer to document audit for final assessment of implementation status</i>

Recommendation number	118; page 281
Commission/Inquiry of origin	Parliament of Victoria: Inquiry into Sexual Offences Against Children and Adults (1995)
Recommendation made	<i>The Committee recommends that it be an offence to employ a person, in a position which has a duty of care or supervision over children, who has not passed a criminal history check by the Victoria Police.</i>
Government response	<p>This recommendation has been implemented.</p> <p>Section 35 of the <i>Working with Children Act 2005</i> makes it an offence to employ a person who does not have a current assessment notice. The Act provides for the following exemptions:</p> <ul style="list-style-type: none"> • parents engaged in volunteer activities in which his/her child is participating (s 27); • persons working with a closely related child (s 28); • children (aged under 18 years of age) (s 29); • teachers registered with the Victorian Institute of Teaching (VIT) under the <i>Education and Training Reform Act 2006</i> (s 30); • Victorian sworn police officers under the <i>Police Regulation Act 1958</i> (s 31); • members of the Australian Federal Police (s 31A); • workers who are not ordinarily resident in Victoria (s 32); and • drivers accredited under the <i>Transport (Compliance and Miscellaneous) Act 1983</i> (ss 32A and 32B).
Document name	WORKING WITH CHILDREN ACT 2005

<http://www.parliament.vic.gov.au/static/www.legislation.vic.gov.au-lawtoday.html> – can be found under Victorian Law Today – Act Search Results

Implementation

As recommended	Y
Included content	See Government response above
Excluded content	NA
Implementation rating for legislative action	Implemented <i>Refer to document audit for final assessment of implementation status</i>

Recommendation number

16

Commission/Inquiry of origin

Improving responses to allegations involving sexual assault (2006)

Recommendation made

*That the Department of Justice convene a working group comprising the Department of Human Services and the Department of Education and Training, Victoria Police and other relevant agencies to consider the implementation of pre-employment vetting that includes **mandatory referee checking of previous employers for public sector employees**. The Department of Justice should report on the outcomes within six months.*

Government response

While the Victorian Government initially supported this recommendation in principle, it was largely superseded with the establishment of the Working With Children Check Unit in 2006 following the introduction of the *Working With Children Act 2005* (noting that while this recommendation is broader than simply vetting public servants who work with children, the response outlined here focuses solely on child-related work in line with the Royal Commission's scope of investigation).

The Working With Children Check scheme provides a mechanism for pre-employment vetting of individuals whose work or volunteer activities include any contact, supervision or care of children. The scheme prescribes certain 'suitability requirements' under the *Working With Children Act 2005*. It also enables the prohibition of individuals with a relevant criminal history from engaging in 'child-related work'.

The Working With Children Check includes:

- an initial national police record check;
- relevant findings by prescribed bodies (Victorian Institute of Teaching and out of home care suitability panel);
- an assessment of suitability to work with children and weekly ongoing monitoring of relevant offences via Victoria Police; and
- a safeguard that operates in the event a cardholder is charged with a relevant offence, wherein the WWC Check Unit re-assesses their suitability to continue working with children.

	In addition, departments separately administer referee checking policies as part of their employment practices
Document name	WORKING WITH CHILDREN ACT 2005 http://www.parliament.vic.gov.au/static/www.legislation.vic.gov.au-lawtoday.html – can be found under Victorian Law Today – Act Search Results
Implementation	
As recommended	Y. The recommendation does not require mandatory reference checking to be included in the WWCA, but to become departmental practice when employing staff. It appears from the Government response that relevant departments have policies in place for the checking of references of prospective public service employees. Query whether proof of these policies is required.
Included content	The Vetting of public servants whose work comes within the definition of child-related work as set out in section 9, is covered under the WWCA. See Government response above
Excluded content	NA
Implementation rating for legislative action	Implemented Refer to document audit for final assessment of implementation status

Recommendation number	185; pages lxxiv – lxxv
Commission/Inquiry of origin	Law Reform Commission: Sexual Offences Final Report (2004)
Recommendation made	<p><i>Sections 48 and 49 of the Crimes Act 1958 should include a non-exhaustive list of the relationships covered by the section including the relationships of:</i></p> <ul style="list-style-type: none"> • <i>teacher and student;</i> • <i>foster parent, legal guardian, and the child for whom they are caring;</i> • <i>in the case of section 49 (which penalises non-penetrative sexual acts) parents, including step-parents and adoptive parents and their children;</i> • <i>religious instructors;</i> • <i>employers;</i> • <i>health professionals and young people who are patients; and</i> • <i>police and prison officers and young people in custody.</i>
Government response	<p>This recommendation has been implemented.</p> <p>Section 49(4) of the Crimes Act 1958 contains a non-exhaustive list of relationships, namely:</p> <ul style="list-style-type: none"> (a) the child's teacher; (b) the child's parent, adoptive parent, foster parent or step parent; (c) the child's legal guardian;

	<ul style="list-style-type: none"> (d) a minister of religion with pastoral responsibility for the child; (e) the child's employer; (f) the child's youth worker; (g) the child's sports coach; (h) the child's counsellor; (i) the child's health professional (j) a member of the police force acting in the course of his or her duty in respect of the child; (k) employed in, or providing services in, a remand centre, youth residential centre, youth justice centre or prison and is acting in the course of his or her duty in respect of the child.
	Relationships (f), (g) and (h) were included in this amendment in addition to the relationships requested by the recommendation.
Document name	<p>SECTIONS 48 AND 49 OF THE CRIMES ACT 1958</p> <p>http://www.parliament.vic.gov.au/static/www.legislation.vic.gov.au-lawtoday.html – can be found under Victorian Law Today – Act Search Results</p>
Implementation	
As recommended	Y
Included content	See Government response above.
Excluded content	NA
Implementation rating for legislative action	<p>Implemented</p> <p><i>Refer to document audit for final assessment of implementation status</i></p>

Recommendation number	7b
Commission/Inquiry of origin	Ombudsman Victoria: Improving responses to allegations involving sexual assault (2006)
Recommendation made	<p><i>That government-funded agencies providing 24-hour care:</i></p> <ul style="list-style-type: none"> <i>a) collect data to identify the incidence of sexual assault; and</i> <i>b) provide information about a resident's previous unproven allegations of sexual assault to other residents or their families after careful consideration on a case by case basis. The decision whether or not to release such information and the reasons for that decision should be documented.</i>
Government response	<p>The Department of Health and the Department of Human Services are the primary providers of 24-hour care.</p> <p>Recommendation 7a has been implemented by these departments. The implementation status of recommendation 7b is noted below by DH and DHS.</p>

Please note that the Victorian *Information Privacy Act 2000* (see Schedule 1) contains provisions governing the disclosure of personal information relating to criminal offences, and outline a range of circumstances in which an organisation may use or disclose information about a person for a purpose other than the primary purpose of collection. These circumstances include where:

- The organisation reasonably believes that the use or disclosure is necessary to lessen or prevent:
 - a serious and imminent threat to an individual's life, health, safety or welfare; or
 - a serious threat to public health, public safety, or public welfare.
- The organisation has reason to suspect that unlawful activity has been, is being or may be engaged in, and uses or discloses the personal information as a necessary part of its investigation of the matter or in reporting its concerns to relevant persons or authorities.
- The use or disclosure is required or authorised by or under law.
- The organisation reasonably believes that the use or disclosure is reasonably necessary for one or more of the following by or on behalf of a law enforcement agency:
 - the prevention, detection, investigation, prosecution or punishment of criminal offences or breaches of a law imposing a penalty or sanction;
 - the enforcement of laws relating to the confiscation of the proceeds of crime;
 - the protection of the public revenue;
 - the prevention, detection, investigation or remedying of seriously improper conduct;
 - the preparation for, or conduct of, proceedings before any court or tribunal; or
 - implementation of the orders of a court or tribunal.

The following policies are in place in 24-hour care facilities. While they do not permit the disclosure of allegations of unproven sexual assault, they provide guidance for managing allegations of sexual assault and making disclosures to both the victim and perpetrator's next of kin:

- DHS guidance entitled *Responding to Allegations of Physical and Sexual Assault Instruction* (2005)¹ provides guidance to front-line staff regarding the disclosure of alleged assaults involving the client (both the victim and/or perpetrator) to next of kin, following advice from Victoria Police. For clients under the age of 18 years, the client's next of kin or guardian is contacted by a senior staff member. For clients over the age of 18 years, the client decides whether to inform the next of kin of the allegations.
- The Office of the Chief Psychiatrist within the Department of Health issued guidelines² in 2012 on sexual assault in adult acute inpatient units, including guidance on responding to patients who

¹ http://www.dhs.vic.gov.au/_data/assets/pdf_file/0004/672898/dsd_respondingallegationsphysicalsexuassault_0805.pdf

² <http://docs.health.vic.gov.au/docs/doc/Promoting-sexual-safety-responding-to-sexual-activity-and-managing-allegations-of-sexual-assault-in-adult-acute-inpatient-units--June-2012>

are potential offenders and procedures for responding to allegations including past abuse or sexual assault outside the unit.

Document name

INFORMATION PRIVACY ACT 2000 (SCHEDULE 1) *and/or*
MENTAL HEALTH ACT 1986 (section 120A)
<http://www.parliament.vic.gov.au/static/www.legislation.vic.gov.au-lawtoday.html>

Implementation

As recommended

N. The Government response outlines the degree to which the disclosure of information as recommended can occur at the practice level, without breaching legal confidentiality requirements under the IPA but makes no reference to limitations imposed under the mental Health Act 1986.

Included content

The Information Privacy Act 2000 (IPA) establish “a regime for the responsible collection and handling of personal information in the Victorian public sector” (see s1(a)). Under Schedule 1 of the IPA, staff of care facilities other than psychiatric services, have limited scope to disclose personal information that is recorded in some form (see definition of “personal information” in s3 of the IPA) – primarily under:

- Clause 2.1(d), i.e., where the organisation reasonably believes that the use or disclosure is necessary to lessen or prevent:
 - a serious and imminent threat to an individual’s life, health, safety or welfare; or
 - a serious threat to public health, public safety, or public welfare
- Clause 2.1(e), i.e., where the organisation has reason to suspect that unlawful activity has been, is being or may be engaged in, and uses or discloses the personal information as a necessary part of its investigation of the matter or in reporting its concerns to relevant persons or authorities; and
- Clause 2.1(g)(1), i.e., The organisation reasonably believes that the use or disclosure is reasonably necessary for ... the prevention, detection, investigation, prosecution or punishment of criminal offences or breaches of a law imposing a penalty or sanction;

This preventative purpose meets the intention of the recommendation which seeks to protect other residents from sexual assault.

The situation is different for residential psychiatric services. Legislative limits imposed on disclosure of identifying information about a present or past patient of such a service is more stringent. Under section 120(2) of the Mental Health Act 1986 (MHA) information cannot be disclosed except to the extent necessary to:

- Carry out functions under any Act;
- Exercise powers under any Act in relation to a psychiatric service; or
- Where expressly authorised or permitted to disclose under any Act.

	<p>The section then goes on to list numerous exceptions to this confidentiality provision (s120 (2B) & (3)(a) – (l)). The ability to disclose information under s120(2) of the MHA is contingent upon there being a specific power, function or authority contained in legislation that requires it. It is beyond the scope of this review to ascertain whether any such legislative provisions are in place.</p> <p>The guidelines referred to do not deal directly with the disclosure of previous unproven allegations of sexual assault and must be read in the context of the legislative requirements.</p>
Excluded content	See above
Implementation rating for legislative action	Partially implemented <i>Refer to document audit for final assessment of implementation status</i>

Recommendation number	7.82
Commission/ Inquiry of origin	Victorian Auditor General's Office (VAGO) (1996) Protecting Victoria's Children: The Role of the Department of Human Services
Recommendation made	<p>The overriding factor, in audit opinion is that the interests of the child are paramount. In this regard, audit strongly supports the Crime Prevention Committee's recommendation for legislative change, action which has been supported by the Government in its whole-of- government response to the Committee's Report. A review of the legislation is highly desirable in order to address the current restrictions which are seen by the Victoria Police as giving rise to an imbalance of justice in favour of the alleged offender to the detriment of the child.</p> <p>The Report had noted two aspects of the criminal law that presented barriers to the prosecution of child sex offences. They were:</p> <ul style="list-style-type: none"> • The difficulty proving an exact date for offences against children. The Report noted the creation of the new offence of 'maintaining a sexual relationship with a child' (section 47A), but stated that this had been largely ineffective in improving prosecution rates. • The usual rule that when an offender is charged with a number of offences against different victims, the trials usually proceed separately, so that the jury does not get a complete picture of the offending. The Report noted that if the first trial did not succeed, subsequent trials were often abandoned.
Government response	A number of initiatives have been introduced
Document name	<i>Crimes Act 1958</i> <i>Crimes (Amendment) Bill 1997</i>

Implementation

As recommended

Included content

Section 47A of the *Crimes Act 1958* dealing with persistent sexual abuse of a child under the age of 16 was amended in 1997 following the VAGO's Report (and again in 2006 following the VLRC's Sexual Offences-Final Report 2004. This latter report noted that the offence had been used more often since the 1997 amendments and recommended the offence "maintains a sexual relationship with a child" be changed to "persistent sexual relationship with a child".)

Section 47A – Persistent sexual relations with a child, now provides that it is necessary to prove that an act that would constitute an offence took place during a particular period and that an act that would constitute an offence took place on at least two other occasions during that period. S. 47A(2)

The above acts need not be of a similar nature. S 47A(2A)

The relevant acts are listed in Subdivision 8A (Incest indecent assault) and 8C (Sexual offences against children).

It is not necessary to prove any of the acts with the same degree of specificity as to date, time, place, circumstance occasion as would be required if the accused were charged a specific act rather than the charge of persistent sexual abuse of a child under 16. S.47A(3).

Separation of Trials

The *Crimes (Amendment) Bill 1997* also made reforms in relation to the separation of trials. Under S.194 of the *Criminal Procedure Act 2009* there is a presumption that if one accused is charged in relation to two or more victims, those charges will be heard together, even if the evidence on one would be inadmissible on the other.

The court retains the discretion to order separate trials, but the legislation states that the presumption is not be rebutted merely on the basis of the inadmissibility of evidence on one charge in relation to another.

Excluded content

NA

Implementation rating for legislative action

Implemented

Refer to document audit for final assessment of implementation status

LEGISLATION VERIFICATION: WESTERN AUSTRALIA

Recommendation number	144
Commission/Inquiry of origin	Sue Gordon et al, <i>Putting the picture together: Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal communities (Gordon Report), 2002.</i> http://www.austlii.edu.au/au/journals/AILR/2002/65.html
Recommendation made	<i>The Inquiry recommends that a Children's Commissioner be established which is independent and reports directly to the Premier. The Implementation Body should consider the structure and responsibilities of other children's commissioners to decide on the most appropriate model for Western Australia.</i>
Government response	Under sections 25, 26 and 48 there is an expressly limited relationship between the Commissioner and the Minister responsible for administering the CCYP Act (currently the Attorney General)
Document name	http://www.ccyp.wa.gov.au/files/article/CommerForChildnAndYoungPeopleAct2006_00-d0-04.pdf <div></div>
Implementation	
As recommended	Partial
Included content	A Children's Commissioner was established under the <i>Commissioner for Children and Young People Act 2006</i> and commenced in Dec 2007. S. 25 provides that the Commissioner is not subject to direction by the Minister or any other person in the performance of the Commissioner's functions except that under S.26 the Minister may give written directions to the Commissioner as to the general policy to be followed in the performance of the Commissioner's functions. The Commissioner is to prepare an Annual Report, a report on any special inquiries conducted, and may prepare reports on other matters. S.42, 43, and 44. S.48 provides that the Commissioner must provide a copy of each draft report to the Minister and the Minister may make written comments which are to be included in the final report.
Excluded content	The Children's Commissioner does not report directly to the Premier unless the Premier is the Minister responsible for administering the <i>Commissioner for Children and Young People Act 2006</i> . The structure and functions of the Children's Commissioner are generally consistent with those in other jurisdictions although the WA Commissioner's functions relate to children and young people generally with no specific reference to the needs and wellbeing of children in care.
Implementation rating for legislative action	Partially implemented

Refer to document audit for final assessment of implementation status

Recommendation number	186
Commission/Inquiry of origin	Sue Gordon et al, Putting the picture together: Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal communities (Gordon Report), 2002. http://www.austlii.edu.au/au/journals/AILR/2002/65.html
Recommendation made	<i>The Inquiry find that there is a lack of information sharing between agencies in relation to family violence and child abuse, giving rise to considerable impediments in service delivery. The Inquiry recommends that further consideration be given to legislative and administrative changes to ensure information sharing between agencies</i>
Government response	<ul style="list-style-type: none"> • Section 23 of the <i>Children and Community Services Amendment Act 2010</i> provides for the exchange of child-related information between public authorities and other interested persons when the Department is the party providing or requesting information. • The Act introduced a new section 24A to permit the exchange of relevant information between prescribed public authorities without Departmental involvement, when the information is relevant to the wellbeing of a child or a class or group of children.
Document name	http://www.austlii.edu.au/au/legis/wa/consol_act/cacsa2004318/s23.html Children and Community Services Act 2004
Implementation	Working Together For A Better Future For At Risk Children And Families – A guide on information sharing for government and non-government agencies. http://www.dcp.wa.gov.au/ChildProtection/Documents/WorkingTogetherForABetterFuture.pdf
As recommended	In full
Included content	<p>S.23(2) provides that the CEO may disclose relevant information to, or request information from, a public authority, a Commonwealth agency, a corresponding authority, a service provider or an interested person so long as the CEO believes that the information is relevant to the wellbeing of a child or a class or group of children; or it relates to the performance of a function under this Act.</p> <p>S.24A(2) provides that the CEO of a prescribed authority may disclose information to, or request information from, the CEO of another prescribed authority (without Child Protection Department involvement) if, in the opinion of the CEO, the information is, or is likely to be, relevant to the wellbeing of a child or a class or group of children.</p> <p>Thus the CEO of the Child Protection Department may disclose information to, or request information from, a broad group of authorities and agencies, and also from service providers and interested persons.</p>

The CEO of a prescribed authority may only provide information to or request information from the CEO of another prescribed agency.

Administrative matters appear to have been addressed through the publication of Working Together For A Better Future For At Risk Children And Families – A guide on information sharing for government and non-government agencies.

<http://www.dcp.wa.gov.au/ChildProtection/Documents/WorkingTogetherForABetterFuture.pdf>

Excluded content

The recommendation was limited to information sharing between agencies and did not extend to service providers and individuals although the legislation provides for the CEO of the Department, but not other agency CEO's to share information with service providers and individuals.

Implementation rating for legislative action

Implemented

Refer to document audit for final assessment of implementation status

Recommendation number	68
Commission/Inquiry of origin	Prudence Ford, Review of the Department for Community Development, 2007
Recommendation made	<i>The State Solicitor's Office in conjunction with the Department of Child Safety and Wellbeing consider whether Section 23(2) of the Children and Community Services Act 2004 is sufficient or whether further legislative amendment is needed to give protection to Department of Child Safety and Wellbeing staff if they provide information to other interested agencies, service providers or individuals to ensure the safety and wellbeing of a child</i>
Government response	<ul style="list-style-type: none"> • People disclosing information in good faith under sections 23 and 24A are protected from criminal, civil and professional liability • Sections 23 and 24A now facilitate effective cooperation between key state government agencies on child protection matters, including joint case planning and decision making.
Document name	http://www.slp.wa.gov.au/legislation/statutes.nsf/main_mrtitle_132_homepage.html http://www.austlii.edu.au/au/legis/wa/consol_act/cacsa2004318/s23.html Children and Community Services Act 2004
Implementation	
As recommended	Yes
Included content	S.23 provides that information may be disclosed or requested under S.23(2) and (3) despite any written law relating to secrecy or confidentiality, and that if the information is disclosed in good faith then no civil or criminal liability is incurred and the disclosure is not a breach of any duty of confidentiality or secrecy, and can not be regarded as a breach of ethics or standards.

Excluded content	N/A
Implementation rating for legislative action	Implemented <i>Refer to document audit for final assessment of implementation status</i>

Recommendation number	26
Commission/Inquiry of origin	Ombudsman (WA), Report on Allegations Concerning the Treatment of Children and Young People in Residential Care, 2006 <i>Report on Allegations Concerning the Treatment of Children and Young People in Residential Care (30 August 2006)</i>
Recommendation made	<i>Government establish a mechanism to provide for the monitoring and evaluation of relevant government and non-government agencies' employee disciplinary processes where allegations of child maltreatment are involved</i>
Government response	<ol style="list-style-type: none"> 1. Where matters relate to allegations of child maltreatment, the CEO of a department/organisation under relevant sections of the Public Sector Management Act 1994 is required to report this to the Corruption and Crime Commission. 2. The Commission for Children and Young People has a role in monitoring how Government agencies investigate complaints of child maltreatment. 3. Where Government services that involve contact with children are contracted to third party service providers, it can be specified in the contract that action is required by the service provider in cases of child maltreatment. 4. Legislative amendments to allow the Commissioner to undertake a role for a 'one stop shop' for child sexual abuse complaints as part of the legislative review of the Commissioner for Children and Young People Act 2006 (as recommended by the 2012 Blaxell Inquiry) is currently being considered by the Attorney General
Document name	http://www.ccyp.wa.gov.au/files/article/CommerForChildnAndYoungPeopleAct2006_00-d0-04.pdf http://www.austlii.edu.au/au/legis/wa/consol_act/cacca2003338/ http://www.austlii.edu.au/au/legis/wa/consol_act/psma1994235/
Implementation	
As recommended	No.
Included content	<p>Re Gov response #1.</p> <p>S.28(2)(a) of the Corruption and Crime Commission Act 2003 provides that "notifying authority", which includes a department, must notify the Commission in writing if the principal officer of the notifying authority has reasonable grounds to suspect misconduct. If an appropriate authority takes action in relation to the matter, the Commission may play a monitoring role.</p> <p>A search of both the <i>Public Sector Management Act 1994</i> and the Corruption and Crime Commission Act 2003 indicate there are no references in either Act to "child", "children" or "maltreatment".</p>

A search of the *Public Sector Management Act 1994* indicated there was no reference in the Act to the Corruption and Crime Commission.

Re Gov response #2

S.19(d) of the Commissioner for Children and Young People Act provides that it is a function of the Commissioner to monitor the way in which a government agency investigates or otherwise deals with a complaint made by a child or young person and the outcome of the complaint.

Re Gov response #3

No documentation provided relating to this submission.

Re Gov response #4

No documentation provided relating to this submission.

Excluded content

No evidence provided of “a mechanism to monitor and evaluate employee disciplinary processes where allegations of maltreatment are involved”.

**Implementation rating
for legislative action**

Undetermined

Insufficient relevant evidence was provided

Refer to document audit for final assessment of implementation status

Recommendation number

28

**Commission/Inquiry of
origin**

Ombudsman (WA), Report on Allegations Concerning the Treatment of Children and Young People in Residential Care, 2006

[*Report on Allegations Concerning the Treatment of Children and Young People in Residential Care \(30 August 2006\)*](#)

Recommendation made

Government consult with key stakeholders and relevant experts to develop an appropriate legislative, policy and administrative framework to allow for timely and effective management responses to allegations against staff in the area of child protection; and that departments with child protection responsibilities develop a comprehensive and consistent Public Sector response to allegations of child abuse against staff

Government response

- Amendments to the disciplinary provisions of the *Public Sector Management Act 1994* (Part 5) were enacted in the *Public Sector Reform Act 2010*. These amendments reformed the discipline process by:
 1. streamlining the legislative procedural requirements from a three stage to a single stage process
 2. increasing the range of managerial responses available in disciplinary matters to include improvement action
 3. providing alternative options, such as suspension on pay, suspension from duties for dealing with the actions of employees and

4. mandating essential procedural requirements in Commissioner's instructions
5. Another critical change was to allow Commissioner's instructions to specify circumstances where disciplinary action may be commenced or continues in relation to former employees
6. While the PSM Act, Discipline Standard and the Commissioner's Instructions set a high standard re how disciplinary processes are conducted, individual agencies are empowered to put in place policies and procedures that reflect the operations and need of the agency. Failure to comply may be used as a ground of appeal to the WA Industrial Relations Commission or the Public Service Appeal Board.

Document name

http://www.austlii.edu.au/au/legis/wa/num_act/psra201039o2010267/

Implementation

As recommended

No

Included content

Re Gov response #1

S.81 Of the Public Sector Management Act 1994 provides that if the employing authority suspects a breach of discipline it may be dealt with as a disciplinary matter, as an improvement matter or no action taken. If the employing authority determines that the matter should be addressed by disciplinary action, the employing authority may direct a report to be prepared with findings and recommended action.

Re Gov response #2

Improvement action may be taken as an alternative to discipline action. S. 81(1)

S.82A(3) provides that if the employee is found to have committed a breach of discipline the employing authority may to take disciplinary action, or improvement action, or both disciplinary action and improvement action, or take no further action.

Re Gov response #3

S.82 provides that if disciplinary action is commenced in relation to an employee or if the employee is charged with having committed a serious offence, the employing authority may, suspend the employee on full pay, partial pay or without pay.

S.80A provides that where a breach of discipline is established disciplinary actions available to the employing authority include a reprimand; the imposition of a fine; transferring the employee to another public sector body; transferring the employee to another office, post or position in the public sector body in which the employee is employed; reducing in the monetary remuneration of the employee; reducing in the level of classification of the employee; and dismissal.

Re Gov response #4

82A. In dealing with a disciplinary matter an employing authority must proceed with as little formality and technicality as the circumstances of the matter permit; and is not bound by the rules of evidence; and may determine the procedure to be followed.

Re Gov response #5

S.76(4) provides that a former employee who may have committed a breach of discipline; and was an employee to whom this part of the Act applied at the time of the suspected breach, is to be taken to be an employee even though the person has ceased to be employed in the public sector. The Commissioner's instructions may specify the disciplinary action that may be taken in respect of the former employee.

Excluded content

Re Gov response #6

No evidence submitted to indicate that departments with child protection responsibilities have develop a comprehensive and consistent public sector response to allegations of child abuse against staff. It appears that while individual child protection agencies can put in place policies that accord with the Public Sector Management Act, they are not mandated to do so.

Implementation rating for legislative action

Partially implemented

Refer to document audit for final assessment of implementation status

Recommendation number

3

Commission/Inquiry of origin

Dr Maria Harries and Associate Professor Mike Clare, Mandatory Reporting of Child Abuse: Evidence and Options, Report for the Western Australian Child Protection Council, 2002.

[*Mandatory Reporting of Child Abuse: Evidence and Options \(July 2002\)*](#)

Recommendation made

If there is a strong recommendation from the Gordon Inquiry that the reporting of, and help to, sexually abused children (in particular minors) can only be achieved within a mandatory system, consideration be given to how this might be accomplished in all or in some part within the Health Act 1911.³ In this amended Act there is already an obligation for medical practitioners to report certain sexually transmitted infections – 300(1); 301; 306; 307; 308

Government response

- Mandatory reporting of suspected child sexual abuse (CSA) commenced on 1 January 2009 under which doctors, nurses, midwives, teachers and police officers must report all reasonable beliefs of CSA to the Department.
- In response to recommendation 187 of the Gordon Inquiry, protocols have been established between the Department, the Department of Health, Communicable Disease Control Directorate and the WA Police Child Protection Squad

³ http://www.austlii.edu.au/au/legis/wa/consol_act/ha191169/

Document name	http://www.slp.wa.gov.au/legislation/statutes.nsf/main_mrtile_3572_homepage.html
Implementation	http://www.slp.wa.gov.au/legislation/statutes.nsf/main_mrtile_3572_homepage.html
As recommended	Yes
Included content	S.124B of the <i>Children and Community Services Act 2004</i> provides that a doctor, nurse, midwife, police officer or teacher, who believes on reasonable grounds that a child has been the subject of sexual abuse; or is the subject of ongoing sexual abuse, and forms the belief in the course of the person's work (whether paid or unpaid) as a doctor, nurse, midwife, police officer or teacher, must report the belief as soon as practicable after forming the belief.
Excluded content	N/A
Implementation rating for legislative action	Implemented – although the mandatory reporting provisions, which relate to police officers and teachers in addition to a range of health professionals, are contained within the <i>Children and Community Services Act 2004</i> and not, as recommended, within the <i>Health Act 1911</i> . <i>Refer to document audit for final assessment of implementation status</i>