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Dear Ms Ward,

## REVIEW OF THE CHILD PROTECTION (WORKING WITH CHILDREN) ACT 2012 (NSW)

The Law Society is grateful for the opportunity to comment on the "Review of the Child Protection (Working With Children) Act 2012 Discussion Paper" (**Discussion Paper**). This letter will first set out some general observations before addressing specific proposals and questions from the Discussion Paper in turn. The Law Society's Children's Legal Issues and Indigenous Issues Committees contributed to this submission.

### General principles

We note that a Working With Children Check (**WWCC**) is a clearance which permits a person to engage in "child-related work",<sup>1</sup> and, to obtain a WWCC, a person is subject to a screening process which considers criminal history and any findings of misconduct to determine whether the applicant poses an unacceptable level of risk to children. The *Child Protection (Working With Children) Act 2012* (NSW) (**WWCC Act**) regulates the WWCC scheme.

WWCCs are one of a range of tools which can ensure child safety. To adequately address child safety concerns, WWCCs must be used in concert with other child safe strategies, including effective workplace policies and practices, leadership, governance, culture, selection and screening, and training. Indeed, the Royal Commission into Institutional Responses to Child Sexual Abuse noted the following:<sup>2</sup>

WWCCs are one of a range of strategies needed to make organisations child-safe. They are one part of an organisation's recruitment, selection and screening practices. While an important tool, WWCCs – in the absence of broader child-safe strategies – do not make organisations safe for children. In fact, an over-reliance on WWCCs can be detrimental to children's safety. They can provide a false sense of comfort to parents and communities, and may cause organisations to become complacent due to the belief that people who have undergone WWCCs do not pose any risks to children – this is not the case.

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<sup>1</sup> The definition of "child related work" is set out at s 6 of the *Child Protection (Working With Children) Act 2012* (NSW).  
<sup>2</sup> *Royal Commission into Institutional Responses to Child Sexual Abuse: Working with Children Checks* (Report, August 2015) 3 [3] ('*Royal Commission Report WWCC*').

WWCCs determine risk to children on the basis of a person's criminal history and prior reports of misconduct. However, many perpetrators of child sexual abuse do not have a criminal history which would indicate risk of such offending.<sup>3</sup>

Significantly, WWCCs are a blanket assessment of a person's risk to working with all children, and not an assessment of individual's risk to a specific child, or the degree of risk they pose in a specific role. Rather, WWCC screening processes assess general risk to children, to the extent it is reflected in a person's criminal history and history of misconduct.

Relatedly, the WWCC scheme applies to a diversity of workplaces and in a range of contexts, involving contact with all children and young people under 18. This means that the scheme must account for significant variation in the characteristics, needs and degree of vulnerability of children with whom a person may be working. For example, pre-school children are markedly more vulnerable than 17-year-olds. We appreciate that this range must be reflected in the WWCC scheme. However, noting that the WWCC is a universalised tool, we suggest that it cannot and should not attempt to capture every situation where an adult may be in contact with a child. Indeed, we suggest that there are other more appropriate child safety tools and mechanisms which can account for the particular characteristics and vulnerabilities of the children that specific workplaces engage with.

Criminal history checks also disproportionately affect Aboriginal and Torres Strait Islander people, reflecting broader systemic factors that contribute to the overrepresentation of Aboriginal and Torres Strait Islander people within the criminal justice system.<sup>4</sup> Accordingly, the disproportionate effect of expanding the WWCC scheme on Aboriginal and Torres Strait Islander people must be considered when assessing the impact of each proposal. Further, in evaluating the proposals outlined in the Discussion Paper, we emphasise the need to consider the NSW Government's commitments in the National Agreement on Closing the Gap, which include Target 7, to increase the proportion of Aboriginal and Torres Strait Islander young people in employment, education or training to 67 per cent by 2031,<sup>5</sup> and Target 8, to increase the proportion of Aboriginal and Torres Strait Islander people aged 25–64 who are employed to 62 per cent.<sup>6</sup>

We also underline concerns regarding the absence of an external administrative review pathway, which was removed in September 2025 and replaced with an internal review mechanism. The availability of an independent external appeal pathway allows people affected by adverse decisions to have their case reviewed by a body independent of the original decision-maker, which can enable errors to be corrected, improve the quality of decisions, ensure transparency and engender public confidence in the integrity of government administration. The unavailability of an external review pathway will also inform our position on the proposals set out in the Discussion Paper.

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<sup>3</sup> For 51 per cent of alleged child sexual abuse offenders proceeded against for one or more child sexual offences in 2021–2022 in all Australian States and Territories other than the ACT (due to data limitations), it was their first or only police proceeding for a sexual offence: see Tom Sullivan et al, *Sexual offending in Australia 2021 – 22* (Australian Institute of Criminology Statistical Report 47, 11 July 2024) 13. The Royal Commission into Institutional Responses to Child Sexual Abuse (2017) states “There is no typical profile of a person who sexually abuses children” and that “there is often little that distinguishes people who sexually abuse children from the general population, other than their criminal behaviour”: *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) vol 2, 94.

<sup>4</sup> See Megan Davis, *Family is Culture Final Report – Independent review into Aboriginal Out-Of-Home Care in NSW* (Review Report, October 2019) 297 (*Family is Culture Report*).

<sup>5</sup> ‘Socio-economic outcome area 7 – Aboriginal and Torres Strait Islander youth are engaged in employment or education’, *Productivity Commission* (Web Page) [1] < <https://www.pc.gov.au/closing-the-gap-data/dashboard/outcome-area/youth-engagement/>>.

<sup>6</sup> ‘Socio-economic outcome area 8 – Strong economic participation and development of Aboriginal and Torres Strait Islander people and communities’, *Productivity Commission* (Web Page) [1] < <https://www.pc.gov.au/closing-the-gap-data/dashboard/outcome-area/economic-participation/>>.

We also note the Agreement to Deliver National Working With Children Check Reform (**Agreement**),<sup>7</sup> which has been endorsed by the Standing Council of Attorneys General.<sup>8</sup> The Agreement sets out six priority areas, which include “meaningful consistency” in automatic exclusion criteria (priority area 2) and risk assessment frameworks (priority area 3). We note that proposals within the Discussion Paper touch on issues related to these priority areas.

### **Issue 3.1 Clarifying the definition of child-related work**

#### Question 1: Does the definition of child-related work need clarifying?

We are of the view that the definition of child-related work under s 6 of the WWCC Act would benefit from greater clarification.

In particular, we suggest that the phrase “usual part of and more than incidental”, which form part of the current definition under ss 6(1)(a) and 6(3)(a) of the WWCC Act, is ambiguous and requires clarification. By way of example, an aspect of a person’s work may be incidental, but nonetheless routine or regular, such as a domestic violence counsellor who works with adults and may have incidental contact with their client’s children on a daily basis.

We suggest that there may be value in exploring a definition which provides greater clarity to employers and applicants.

#### Question 2: Should the definition of child-related work include reference to contact that is written, spoken and electronic?

We support reference to written, spoken and electronic contact within the definition of child-related work under s 6 of the WWCC Act. In particular, expanding the definition to include electronic contact not only recognises the increase in services being provided virtually, but also the potential harm that children may be exposed to through online interactions.

In respect of the definition, the Discussion Paper proposes defining child-related work consistent with Recommendation 7 of the Royal Commission, as follows: “direct contact, including written, oral or electronic contact, by the worker with a child or children and that contact is a usual part of and more than incidental to the work.” We note our concerns with the ambiguity of these phrase “usual part of and more than incidental”. Subject to these concerns, we support inclusion of written, oral and electronic contact in the definition of child-related work.

#### Question 3: Considering the current list of child-related work or volunteer roles in Appendix B, what roles should be required to have a WWCC?

It is our view that the current list of sectors set out at s 6(2) of the WWCC Act, in addition to the explanatory list set out in Part 2 of the *Child Protection (Working with Children) Regulation 2013* (NSW) (**Regulations**), is cumbersome and duplicative. The s 6(2) list, and the further explanation in the Regulations should be consolidated into a single, non-exhaustive list in the WWCC Act for greater clarity. The WWCC Act could provide the ability to prescribe further sectors in the Regulations.

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<sup>7</sup> Standing Council of Attorneys-General, Agreement to Deliver National Working With Children Check Reform (15 August 2025): <https://www.ag.gov.au/sites/default/files/2025-11/scag-agreement-to-deliver-national-working-with-children-check-reform.PDF>.

<sup>8</sup> Attorney-General’s Department (Cth), ‘Delivering urgent reform of Working with Children checks’ (Media Release, 15 August 2025) [1].

### 3.3 Exemptions from the requirement for a WWCC

#### Question 7: Is the current list of exemptions in NSW listed appropriate? What changes should be made?

We suggest that the following exemptions to the requirement to hold a WWCC be re-examined.

##### *Police officers*

In our view, there may be value in re-considering the exemption for police officers to obtain a WWCC<sup>9</sup> given the particular power wielded by police officers, which is amplified when wielded in relation to children, who may be offenders, witnesses, victims of crime or the children of such persons. The desirability of police also being required to hold a WWCC is supported by the intersection between youth offending and out-of-home care, and the issues with treatment of children and young people in police custody, particularly Aboriginal and Torres Strait Islander young people, some examples of which are set out below.

We emphasise that children whom police come into contact with can be particularly disadvantaged or vulnerable. For example, of the young people aged ten to 13 years who had contact with the NSW criminal justice system in 2023:<sup>10</sup>

- 82% had been identified in a child protection report as at risk of significant harm (**ROSH**) and 60% had received 10 or more ROSH reports;
- 1 in 4 (24%) had been in Out of Home Care (**OOHC**);
- More than a third (37%) had accessed specialist homelessness services;
- 56% had been recorded by NSW Police as victim of violence; and
- 66% had a parent who had appeared in court and 40% had a parent who had been in custody.

These statistics emphasise the particular vulnerability of children with whom police are likely to come into contact in the course of their duties. The vulnerability of these children is compounded by the relative position of power that police, as both law enforcement officers and adults, hold over such children.

We note that the Royal Commission into Child Sexual Abuse recommended exempting police from requiring a WWCC, on the basis that police are already subject to rigorous screening practices.<sup>11</sup> We recognise that these processes are robust and able to assess an applicant's general suitability to engage in policing work and any general risk they may pose in that role, which would also incidentally capture most risk to children.

However, the WWCC provides a specialised assessment of risk with regards to children, which we contend should be undertaken for police given the coercive powers they are able to wield in respect of children and the nature of their interactions with some children, which can involve limited or no supervision. In addition, although the screening processes to join the police force are robust, we understand that they occur pre-employment, and that there is no formalised mechanism for ongoing monitoring in the same manner as a WWCC. Additionally, we understand that NSW Police is solely responsible for assessment of an applicant's professional suitability. We suggest that an external assessment of an applicant's suitability to work with children, by the specialist OCG, will bolster both NSW Police's and the public's confidence in the suitability of officers to work with children.

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<sup>9</sup> Police officers and members of the Australian Police Force are exempt from the requirement to have a WWCC: *Child Protection (Working with Children) Regulation 2013* (NSW) reg 20(1)(h).

<sup>10</sup> NSW Bureau of Crime Statistics and Research, 'The involvement of young people aged 10 to 13 years in the NSW criminal justice system' (Media Release, August 2024).

<sup>11</sup> Royal Commission Report WWCC (n 2) 79.

### *School administrative staff*

We also note that school administrative staff who do not have student-facing roles may still regularly support children who are unwell, lost or need to navigate the school system.<sup>12</sup> As it is not uncommon for such staff to attend to and assist children on an unsupervised basis, which we suggest carries a not insignificant degree of risk, we suggest reconsideration of this particular exemption.

### *Parents or guardians volunteering for services or activities provided to their children*

Additionally, in respect of parents or guardians who volunteer for services or activities that are usually provided to their children in respect of that activity,<sup>13</sup> we suggest that a threshold on the basis of time spent engaged in this activity be introduced, as the presence of that person's child may not prevent that person from harming other children or using the activity to access other children. We understand that some volunteer organisations, including Scouts Australia, have a policy of requiring all parent helpers to have a WWCC, regardless of whether it is one activity or an ongoing attendance, indicating recognition by those organisations as to the degree of risk associated with such activities.

## **3.4 Requiring under-18s to obtain a WWCC**

Question 8: Should the current exemption for children under 18 years of age be removed for children when they are engaging in: a. paid child-related work b. paid or unpaid child-related work as part of a workplace placement during a post-school qualification?

We are of the view that the exemption for children under 18 years of age should be maintained for children engaging in paid child-related work or a work placement.

We recognise the safety concerns raised in the Discussion Paper for the safety of children in organisations who employ workers or trainees under the age of 18. However, we consider that requiring children and young people under 18 to obtain a WWCC is not the most appropriate mechanism for protecting child safety in this context. Rather, we suggest that any risks posed by children under 18 to their co-workers under 18 would be more appropriately managed through adequate monitoring and supervision, workplace policies and practices, governance and training. Given the blanket application of the WWCC scheme, we consider tailored, employer-generated child safety mechanisms to the specific risks that arise in a workplace will be more effective in protecting children than requiring WWCCs in this context.

We hold particular concerns regarding the consequences of removing this exemption for children who have contact with the criminal justice system. Children with criminal histories are more likely to have recorded offences or charges where the complainant is under 18, by way of their association with age-appropriate peers with whom they have greater likelihood of everyday exposure. Understandably, the WWCC Act and Regulations treat criminal histories and recorded misconduct involving children with particular seriousness. However, if this proposal is implemented, children under 18 with criminal records may be unable to engage in relevant employment or work placements, which could undermine or jeopardise their rehabilitation.

Additionally, implementing this proposal may deter employers from employing children, and limit access to employment for young people, which is undesirable given the financial, social, educative and developmental benefits that can flow from young people being employed.

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<sup>12</sup> *Child Protection (Working with Children) Regulation 2013* (NSW) reg 20(1)(a).

<sup>13</sup> *Child Protection (Working with Children) Regulation 2013* (NSW) reg 20(1)(f).

### 3.5 Requiring co-workers and supervisors of employed children to have a WWCC

#### Question 9: Should adult employees working alongside children be subject to WWCC requirements?

We are unable to support this proposal. We acknowledge the serious concerns set out in the Discussion Paper regarding the risks that children and young people are exposed to in the workplace as a result of power imbalances that often exist between employed children and their adult supervisors and co-workers. However, as set out in our response to Question 8, we consider that these risks are better addressed through strong, specific workplace policies and governance, as well as relevant legal protections, which consider and address child safety.

As raised in our response to Question 8, we are concerned that requiring supervisors and co-workers hold a WWCC would likely adversely affect children's access to employment by making employers less likely to employ children if all their adult workers are required to obtain a WWCC.

### 3.6 Exempting kinship and relative carers

#### Question 11: Should relative and kinship carers be exempt from the definition of child-related work when caring for children and young people in OOHC?

We welcome consideration of whether and how the WWCC regime should apply to relative and kinship carers. We recognise that there may be a diversity of views on this issue. On balance, for the reasons set out below, we are of the view that relative and kinship carers should be exempt from requiring a WWCC and, in lieu of this requirement, a more tailored risk assessment process be introduced which considers the prospective carer's risk to the specific child proposed to come into their care.

Differences between a kin or relative carer and other authorised carers include the unique benefit provided to a specific child by a kinship placement, as well as the motivation to care for a family member as compared with the alternative of unknown placements. The positive outcomes for children in kinship placements are well known, including with respect to the child's stability, connectedness and sense of identity,<sup>14</sup> as well as in relation to mental health outcomes and emotional development.<sup>15</sup> Critically, kinship placements allow Aboriginal and Torres Strait Islander children to maintain connection to family, community and culture, a right recognised in Article 30 of the UN Convention on the Rights of the Child,<sup>16</sup> and the Aboriginal and Torres Strait Islander Young Persons Principle in the *Children and Young Persons (Care and Protection) Act 1998 (NSW) (Care Act)*.<sup>17</sup>

However, the requirement that relative and kinship carers hold a WWCC is a known barrier to prospective Aboriginal and Torres Strait Islander family members becoming authorised carers, due to the overrepresentation of Aboriginal and Torres Strait Islander peoples in the criminal justice system.<sup>18</sup> Concurrently, Aboriginal and Torres Strait Islander children are overrepresented in the care jurisdiction,<sup>19</sup> meaning that many prospective carers are prevented from providing OOHC care placements to Aboriginal children which would facilitate the child's safety, welfare and well-being. Such outcomes are at odds with the Care Act, including its objects and the paramount principles for its administration,<sup>20</sup> the Permanent Placement Principles,<sup>21</sup> and the Aboriginal and

<sup>14</sup> Meredith Kiraly, Julieanne James and Cathy Humphreys, 'It's a Family Responsibility': Family and Cultural Connection for Aboriginal Children in Kinship Care' (2014) 40(1) *Children Australia* 23.

<sup>15</sup> Yanfeng Xu and Charlotte Lyn Bright, 'Children's mental health and its predictors in kinship and non-kinship foster care: A systematic review' (2018) 89 *Children and Youth Services Review* 243.

<sup>16</sup> *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).

<sup>17</sup> *Children and Young Persons (Care and Protection) Act 1998 (NSW)* s 12A(2)(e).

<sup>18</sup> Family is Culture Report (n 5).

<sup>19</sup> Australian Institute of Health and Welfare, 'Child protection Australia 2023 – 2024' (11 December 2025) <<https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2023-24/data>>.

<sup>20</sup> *Children and Young Persons (Care and Protection) Act 1998 (NSW)* ss 8–9.

<sup>21</sup> *Ibid* s 10A.

Torres Strait Islander principles set out at Part 2 of that Act. Concerningly, we understand from our members that designated agencies are sometimes unable to place children with family members known to them and within a broader community of safe adults and spaces, due to willing kinship or relative carers not being able to obtain a WWCC.

In light of these barriers, and the recognised benefits for children being placed with family members or kin, we support exempting kinship and relative carers from requiring a WWCC to become an authorised carer. Indeed, there is an argument that the standard applied to kin or relative carers should be differentiated from that applied to carers looking after children completely removed from their family or community of origin. We recognise that a placement with family does not remove the risk that a child will be abused in care and accordingly, do suggest that relative and kinship carers be subject to a different assessment process, which assesses the person's specific circumstances and suitability to provide relative or kinship care for a specific child. This assessment, insofar as it applies to Aboriginal and Torres Strait Islander carers, should be co-designed with the Aboriginal and Torres Strait Islander communities, to ensure that it can address safety in a culturally tailored way, without being imbued with similar biases which disadvantage Aboriginal and Torres Strait Islander carers in the WWCC process.

Alternatively, the WWCC requirement could be maintained, with specific provision made requiring the OCG to consider that person's relationship to the child or young person and identified strengths in the proposed placement if an application proceeds to risk assessment or disqualification reassessment.

Ultimately, targeted consultation with Aboriginal and Torres Strait Islander communities on this proposal is critical and, if our view on this issue differs from those of Aboriginal and Torres Strait Islander communities, we would defer to their views on this issue.

### **3.7 Continuing residence approvals**

Question 12: Should residence approvals be expanded to include broader categories of people who reside on the same property as an authorised carer, including: a. young people returning to reside in a former OOHC placement, or with their family or kin who are authorised carers or live in a carer household; b. adult family members with physical or other disabilities, or who are elderly, who require care by authorised carers or someone in the carer's household.

*Young people returning to reside in a former OOHC placement or with family or kin*

We support expanding s 11D of the WWCC Act, which empowers the OCG to grant a continuing residence approval for a person to reside on the same property as an authorised carer even though the person does not hold a WWCC clearance, to young people returning to reside in a former OOHC placement or with family or kin who are authorised carers or live in a carer household. Particularly, given that there are often issues with the standard of planning for young people leaving care, the return of young people to households which they have found to be stable and supportive should be supported in this way. However, we suggest that this should be qualified to ensure that the expansion is not misused. For example, the legislation could require that the young person resided, or was supposed to have resided, in the household for a specific number of non-consecutive days.

*Adult family members requiring care by authorised carers or someone in the carer's household'*

We express some caution regarding this proposed expansion, on the basis that there could be some scope for misuse.

In addition to the above proposals, we also note that may be opportunity for the legislation to be amended to make it clear that the approval is also available for household members of prospective adoptive parents, noting

that authorised carers seeking to adopt are required to be assessed under the *Adoptions Act 2000* (NSW) in addition to their authorisation under the Care Act. While it is accepted that the OCG must conduct a risk assessment process for a continuing residence approval, the review may be an opportunity to consider how the process might be easier to engage with for designated agencies, carers and household members.

#### **4.1.3 OCG discretion to extend the 5-year expiry of a WWCC in special circumstances**

Question 13: Should OGC be able to extend the period of a holder's WWCC clearance in special circumstances?

We are not opposed to the OCG having the discretion to extend a WWCC in special circumstances considering the reasons set at 4.1.2 in the Discussion Paper, which notes the current limited ability of OGC to account for exceptional circumstances, including in instances where a person is unable to renew their WWCC clearance due to circumstances beyond their control, and where a WWCC clearance may be critical to a person's employment and livelihood.

#### **4.2.3 Mandatory education**

Question 14: Should mandatory child abuse prevention education and training be required before receiving a WWCC?

In principle, we would support the introduction of education and training regarding identifying and preventing child abuse. We also support the OCG having a role in relation to training design and delivery.

However, we suggest further consideration be given to making such education effective and accessible, and suggest that making it mandatory may have greater disbenefits than benefits. First, requiring mandatory training would likely delay the application process. Further, there is a question as to whether such training is in fact required for all applicants, noting that adults living or staying with authorised carers must have clearances regardless of how involved they are with the caring activities. Designated agencies sometimes experience difficulties in engaging household members to ensure probity, and such challenges will increase if these individuals must participate in training.

Should education and training be mandatory, the consequences of failing to complete the training, or failing tests or benchmarks in the training should be made clear, including accessible pathways to rectification. We note our concern that these impacts may disproportionately affect particular, already vulnerable, cohorts.

We suggest that if the OCG makes educational materials available, co-design and delivery of the training should be undertaken with Aboriginal and Torres Strait Islander people, in order to meet accessibility needs of Aboriginal and Torres Strait Islander people. Consideration must also be given to the accessibility needs of culturally and linguistically diverse people, people with disability and for people who may not have access to technology or the internet.

## **5.2 Matters leading to disqualification**

Questions 18–21: Offences that should be included as disqualifying offences under Schedule 2 of the WWCC Act.

We are of the view that the current list of offences in Schedule 2 of the WWCC Act should not be extended to any further offences.

Given that the consequence of being convicted of a Schedule 2 offence is disqualification, and that, while there is the entitlement to an internal disqualification reassessment by the OCG, there is no other review mechanism, we caution against expanding the list of Schedule 2 offences. We are also concerned that doing so would

disproportionately affect Aboriginal and Torres Strait Islander applicants and children and young people who have been, or are criminalised, for the reasons expressed above.

### 5.3 Domestic and family violence offences

Questions 23–24: Should certain new domestic violence offences (such as choking, suffocation and strangulation and coercive control) or patterns of such offending trigger a risk assessment? How should Apprehended Domestic Violence Orders (ADVOs) be treated under the WWCC scheme?

The Discussion Paper raises for consideration the inclusion of the following as risk assessment triggers:

- The offence of choking, suffocation and strangulation without consent;<sup>22</sup>
- The offence of coercive control;<sup>23</sup> and
- A final ADVO and breaches of ADVOs.

We acknowledge that these offences, as well as, or in conjunction with, a final ADVO can indicate that the person poses a risk to children. We also recognise the need to address the prevalence of domestic violence and to understand the impact domestic violence related behaviour has on children. However, for the reasons that follow, we are of the view that, rather than becoming automatic risk assessment triggers, the OCG should continue to determine on a case-by-case basis whether a risk assessment is necessary, pursuant to its general discretion under s 15(3) of the WWCC Act.

First, we are concerned about the potentially negative outcomes for young people who have been charged with a relevant offence or had an ADVO made against them in respect of a family member or a household member, including in an OOHC placement. This is particularly the case where a child offends against, or is subject to an ADVO protecting, another child. As above, we are concerned about how the WWCC presently disproportionately impacts children who have been criminalised, affecting their employment prospects and therefore their engagement with prosocial activities to assist with their rehabilitation.

If implemented, these reforms would also likely disproportionately effect Aboriginal and Torres Strait Islander people, who are significantly overrepresented in domestic and family violence proceedings.<sup>24</sup> Given the barriers that Aboriginal and Torres Strait Islanders experience with the existing WWCC scheme, noted above, we are of the view that introducing these offences and ADVOs as risk assessment triggers would only exacerbate these systemic issues.

In relation to the proposal to make a final ADVO a risk assessment trigger, we make the following additional comments. ADVOs do not amount to findings of guilt to the criminal standard, particularly where consented to without admission, and generally offer limited probative information regarding risk. Further, not all domestic violence related ADVOs will indicate risk to children, particularly if no children were involved in the allegations. Indeed, children may sometimes be included on an ADVO only because they are in a domestic relationship with the adult person in need of protection (**PINOP**) at the time of the application. We note that in the 2017 Statutory Review of the WWCC Act, it was found that even final ADVOs should not be routinely considered in risk assessments, and that consideration should only be given to final orders initiated by police where a child is named on the order as a PINOP.<sup>25</sup>

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<sup>22</sup> *Crimes Act 1900* (NSW) s 37(1A).

<sup>23</sup> *Ibid* s 54D.

<sup>24</sup> See Australian Institute of Health and Welfare, 'Family, domestic and sexual violence: Aboriginal and Torres Strait Islander people' (Website, 24 February 2026) < <https://www.aihw.gov.au/family-domestic-and-sexual-violence/population-groups/aboriginal-and-torres-strait-islander-people>>.

<sup>25</sup> Office of the Children's Guardian (NSW), *Statutory Review of the Child Protection (Working with Children) Act 2012* (Report, August 2017) 23.

Given that the OCG retains the general discretion to conduct a risk assessment, we suggest that introducing new domestic violence offences and ADVOs as risk assessment triggers does not make the WWCC application process more robust and instead risks exacerbating the existing systemic disadvantages of certain groups.

## **6.2 Clarifying and expanding the scope of employers subject to WWCC obligations**

Question 28: Should the definition of employer be clarified to include both placement and host organisations, even if the host organisation has no direct employment or contractual relationship with the worker?

In our view, the definition of employer should be limited to the organisation or entity with which the worker has the contractual relationship. In including both the agency which engages the worker and the organisation which hosts the worker within the definition of employer, there is a risk that there will be duplication in work or confusion as to how verification must occur. The responsibility of verifying a worker's WWCC most practically sits with the agency that collects the information from the worker in the course of onboarding and engaging them.

## **6.3 Expanding who should be notified of clearance refusal, cancellation and interim bars**

Questions 31-32: Should any employer of a person with a WWCC, not just an employer or proposed employer, be notified if there is a change in a person's WWCC clearance status? Should any organisation that has verified a worker's WWCC clearance status be notified?

We support the proposal to amend the definition of notifiable person to include not only the employer or proposed employer in respect of child-related work, but any verifying organisation or individual such as a parent who has verified a tutor. The WWCC Act should also be amended to require that either the OCG or the verifying employer inform any other child-related organisation to whom the employer provides the worker of a change in a person's WWCC clearance status.

The notification of a refusal, cancellation or bar to employers where the worker is not engaging in child-related work is not supported. The legislation does not currently preclude employers who are not required to ensure that their employees have WWCCs from nonetheless doing so. As a result, the WWCC process is utilised by some employers to conduct general screening. There is a question as to whether this is an appropriate or fair use of the scheme, particularly where an employer uses the refusal of a WWCC as a basis not to employ an individual.

Given the wide use of the WWCC scheme, the limited risk to children where the person is not employed in child-related work, and the possibility that this information will be used adversely, we are of the view that only child-related employers should be required to be notified of any bar or cancellation. The Discussion Paper notes that there are employers who "face genuine uncertainty in determining whether a role involves child-related work, given the complex notion of "more than incidental" contact with children."<sup>26</sup> We suggest that this indicates the need to clarify this term, rather than extend the notification requirements to employers of people not engaged in child-related work.

## **8.2 Other technical and miscellaneous amendments to the WWCC Act**

Question 36: Are there any other amendments that will improve or clarify the operation of the WWCC Act?

We are of the view that the following would improve or clarify the operation of the Act:

- *General discretion to refuse applications*

We are of the view that the Children's Guardian should have the discretion to refuse to assess an application on specific grounds, including where an applicant is not engaged in child-related work. As

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<sup>26</sup> Office of the Children's Guardian (NSW), 'Review of the Child Protection (Working with Children) Act 2012' (Discussion Paper, November 2025) 63.

above, this could reduce the use of the WWCC scheme as a general screening process by employers, which we suggest can create unfairness. It would likely lead to a reduction in delays, as it would reduce the number of applications that the OCG must process. If this proposal were to be implemented, safeguards such as a review mechanism would need to be implemented to ensure that refusals made in error could be quickly rectified.

- *Improvement of risk assessment process*

We have received feedback from legal practitioners that the risk assessment process could be further streamlined. We understand that, at present, the process is quite cumbersome, and includes consideration of all factors at s 15(4) of the WWCC Act, even where there are factors which have no bearing to the relevant offences which have triggered a risk assessment. Accordingly, we suggest that the OCG consider how the risk assessment process could be simplified.

- *Risk assessment triggers – findings of misconduct involving children*

Under Schedule 1, clause 2 of the WWCC Act, a finding that a person engaged in a sexual offence or sexual misconduct against, with, or in the presence of a child, or a serious physical assault of a child, by a reporting body, or by a relevant entity within the meaning of Part 4 of the *Children's Guardian Act 2019* (NSW) (**CG Act**), triggers a risk assessment.<sup>27</sup> We suggest that this threshold should be lowered to include any assault of a child if it occurred while the person was an adult, given the seriousness of such a finding and the risk that it indicates.

Additionally, under Part 4 of the CG Act, a relevant entity is required to give written notice about a reportable allegation or conviction as defined under ss 18 and 19 of that Act, which triggers a risk assessment as explained above.<sup>28</sup> However, the CG Act does not specify when such a notification in relation to a reportable conduct matter is required to be made, and whether this is before or after the finalisation of an investigation by the reporting body. We have received feedback that reporting bodies do not have a consistent practice as to when they notify the OCG. We suggest that it may be appropriate for the legislation to be amended to clarify when the reporting body is required to notify the OCG that the relevant conduct has occurred, and that this should be when the reporting body becomes aware of the alleged conduct. This is because an investigation by a reporting body could take some time, during which the person may be able to work with children.

Thank you for the opportunity to comment. Questions at first instance may be directed to Ursula Paetzholdt, Policy Lawyer, at (02) 9926 0130 or [Ursula.Paetzholdt@lawsociety.com.au](mailto:Ursula.Paetzholdt@lawsociety.com.au).

Yours sincerely,



**Ronan MacSweeney**  
President

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<sup>27</sup> *Child Protection (Working with Children) Act 2012* (NSW) sch 1 cl 2; *Children's Guardian Act 2019* (NSW) s 14.

<sup>28</sup> *Children's Guardian Act 2019* (NSW) s 29.