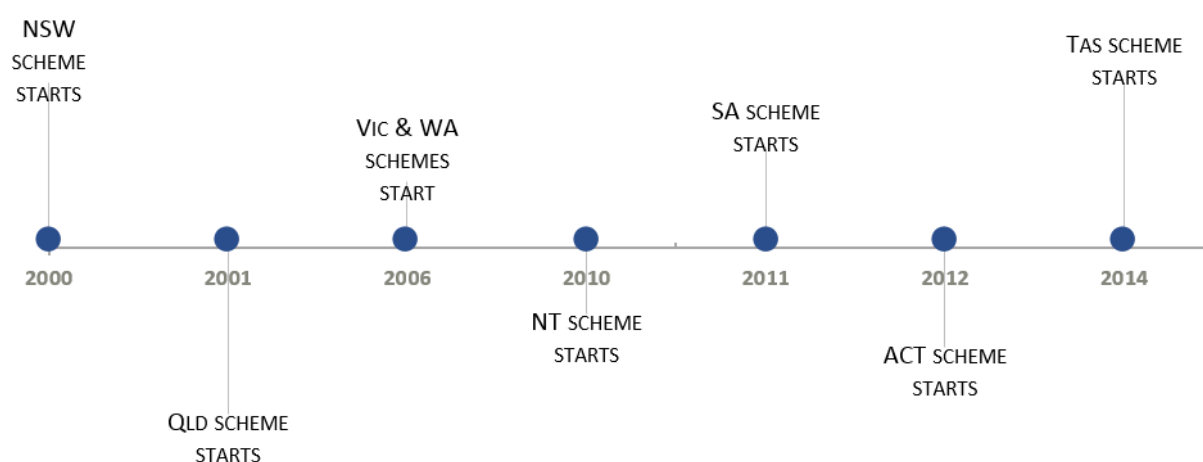


State and territory WWCC schemes

WWCCs are a relatively new child protection tool, with Australia's first WWCC scheme commencing in New South Wales in 2000. All other jurisdictions have since introduced schemes to screen people for child-related work. Tasmania was the last jurisdiction to do so, with its scheme commencing in 2014.

Table 1 – WWCC scheme commencement dates



The core elements of each WWCC scheme are broadly similar. Even so, each scheme has distinct requirements and operates in a particular way. An example is the varied requirements throughout Australia regarding who does and does not need to be screened.

A person wishing to engage in child-related work and/or an organisation where child-related work is undertaken must comply with the WWCC law in the state or territory in which they operate. For example, although there is no Commonwealth WWCC scheme, relevant personnel of Commonwealth Government departments, such as the Department of Immigration, must comply with the WWCC laws of the particular state or territory in which they work. Likewise, organisations like The Salvation Army that operate in multiple states and/or territories must comply with the WWCC laws in each of those jurisdictions.

This section provides an overview of each WWCC scheme, highlighting their key features, how they operate and some of the implications for protecting children against abuse.

New South Wales

New South Wales' WWCC scheme commenced in 2000 and was revised considerably in 2012 following several reviews.³² The changes took effect in June 2013, and the revised scheme should be implemented fully by March 2018.

Law	<i>Child Protection (Working with Children) Act 2012 (NSW)</i>
Screening agency	Office of the Children's Guardian
Applicant	The person wanting to engage in child-related work
Age exemption	People under 18 years of age
Portability	WWCCs are portable across roles and employers
Duration	Five years
Continuous monitoring	Criminal history and disciplinary information from New South Wales
Ability to work before application decision	Most applicants can begin child-related work before the outcome of their application is known

To engage in child-related work in New South Wales, a person must apply to the Office of the Children's Guardian for a WWCC. It accepts online applications, and employers can register their organisations – and verify WWCC applications and outcomes – online.

Applicants can begin child-related work while their application is pending.³³ However, the Children's Guardian can impose an 'interim bar' if they believe there is a likely risk to child safety if the applicant engages in child-related work during this time.

In New South Wales, authorities check national criminal history and disciplinary information. If an assessment trigger is identified (for example, certain offences against children), the Office of the Children's Guardian conducts a risk assessment to determine the applicant's suitability for child-related work.

Following a WWCC application, an applicant is granted a clearance or a bar.

- A clearance means the person can engage in any child-related work in New South Wales for a five-year period. A non-volunteer clearance authorises the holder to engage in paid and unpaid child-related work, while a volunteer clearance applies to unpaid child-related work only.³⁴
- A bar means that the person must not engage in child-related work for five years.

Most people who have been identified as a disqualified person or issued a bar can appeal to the NSW Civil and Administrative Tribunal.

The Children’s Guardian continuously monitors WWCC cardholders’ criminal history and disciplinary information from New South Wales. This includes information obtained under the reportable conduct scheme, which requires public authorities and other designated agencies to notify the NSW Ombudsman of certain allegations and convictions against employees that involve children.³⁵ Further risk assessments are carried out when certain records are identified through ongoing monitoring, which could lead to clearances being revoked.

Victoria

Victoria’s WWCC scheme commenced in 2006 and was fully operational by July 2011. It has been amended since, including in response to the 2013 parliamentary inquiry into the handling of child abuse by religious and other non-government organisations.³⁶

Law	<i>Working with Children Act 2005 (Vic)</i>
Screening agency	Working with Children Unit, Department of Justice and Regulation
Applicant	The person wanting to engage in child-related work
Age exemption	People under 18 years of age, unless they supervise children pursuant to the <i>Child Employment Act 2003 (Vic)</i> ³⁷
Portability	WWCCs are portable across roles and employers, but volunteer WWCCs are not transferrable to paid child-related work
Duration	Five years
Continuous monitoring	Criminal history and certain disciplinary information from Victoria
Ability to work before application decision	Most applicants can begin child-related work before the outcome of their application is known

People wanting to engage in child-related work in Victoria must first apply to the Working with Children Unit. Applicants fill in their applications online and must verify their identity at an Australia Post outlet. WWCC cards and applications can be verified online.

Although it is an offence to engage in child-related work in Victoria without a valid WWCC, a person will have a defence to the charge if they can establish that they applied for a check and met other conditions (for example, did not withdraw their application). Applicants subject to certain orders and obligations under the various sex offender laws or who have been charged with, or convicted or found guilty of, a serious sexual, violent or drug-related offence are not permitted to begin such work while their applications are pending.

All applicants undergo a national criminal history check. In addition, disciplinary information involving children is checked for applicants seeking to engage in child-related work in certain professions (for example, teaching and OOHHC).

WWCC applicants are granted an assessment notice or a negative notice.

- An assessment notice and a WWCC card are issued to people who pass a WWCC, authorising them for any child-related work for five years. Employee WWCC cards apply to paid or voluntary work, while volunteer cards can only be used for voluntary work.³⁸
- A negative notice is issued to Category A applications (for example, applications from a sex offender subject to certain reporting obligations) and to applicants refused an assessment notice. They are barred from child-related work, even if they are otherwise exempt (for example, parent volunteers).

Certain decisions can be appealed to the Victorian Civil and Administrative Tribunal.

The Working with Children Unit continually monitors the information of WWCC cardholders. Following notification of a relevant change, it reassesses the person’s eligibility to continue child-related work, which could result in their clearance being revoked.

Queensland

Queensland’s WWCC scheme commenced in 2001, making it the second Australian jurisdiction to introduce such checks.

Law	<i>Working with Children (Risk Management and Screening) Act 2000</i> (Qld)
Screening agency	Blue Card Services, Public Safety Business Agency
Applicant	The employer or volunteer coordinator (on behalf of the person wanting to engage in child-related work)
Age exemption	Volunteers under 18 years of age
Portability	WWCCs are portable across roles and employers for employees, but volunteer WWCCs are not transferrable to paid child-related work
Duration	Three years
Continuous monitoring	Criminal history from Queensland
Ability to work before application decision	Employees can begin child-related work before the outcome of their application is known, but volunteers must first have a valid check

People wanting to work with children in Queensland must first obtain a WWCC card, also known as a blue card. Registered teachers and police officers do not need a WWCC card, but must apply for an exemption card. Applications must be submitted by employers or volunteer coordinators on behalf of applicants and then lodged with Blue Card Services. This means that applicants cannot apply for WWCCs before being employed in child-related work. Blue cards and exemption cards can be validated online.

In Queensland, employees are allowed to start child-related work before a final decision is made on their application, but volunteers are required to have a valid check before starting such work. It is the only jurisdiction to distinguish between employers and volunteers in this way.

WWCCs include a check of applicants' national criminal history. They also include a check of disciplinary information that certain professional registration bodies (such as those for health professionals and foster carers) hold about those applicants.

Applicants receive either a positive or negative notice.

- Applicants who pass a WWCC are issued a positive notice and blue card, which authorise them to engage in regulated child-related work for three years. Like some other jurisdictions, different clearances are issued to paid workers and volunteers.
- Applicants who do not pass a check receive a negative notice and are not authorised to engage in regulated child-related work.

Most applicants can appeal to the Queensland Civil and Administrative Tribunal against decisions to refuse or cancel a WWCC.

Cardholders' criminal history information is monitored on a daily basis. If records of concern are returned, a further risk assessment is undertaken, which may result in the cancellation of a WWCC.

Western Australia

Western Australia's WWCC scheme began in 2006. It has been amended several times since, including following a 2011 review of the scheme.³⁹

Law	<i>Working with Children (Criminal Record Checking) Act 2004 (WA)</i>
Screening agency	Working with Children Screening Unit, Department for Child Protection and Family Support
Applicant	The person wanting to engage in child-related work
Age exemption	Volunteers under 18 years of age
Portability	WWCCs are portable across roles and employers
Duration	Three years
Continuous monitoring	Criminal history from Western Australia
Ability to work before application decision	Most applicants can begin child-related work before the outcome of their application is known

People wishing to engage in child-related work in Western Australia must apply to the Working with Children Screening Unit by submitting a paper application for a WWCC. Before they can lodge the application at an Australian Post outlet, their employer, volunteer organisation or education provider must complete certain parts of the form, confirming that they are engaged in child-related work.

Like in Victoria, although it is an offence in Western Australia to engage in child-related work without a WWCC, it is a defence to the charge if the person can prove they applied for a check and did not withdraw their application. This defence does not apply to persons convicted of a Class 1 offence as an adult (for example, sexual offences against a child).

In most cases, only the person’s criminal history is checked. Disciplinary or misconduct information is considered only if a positive criminal history result is returned.

Applicants either receive an assessment notice or a negative notice.

- An assessment notice and a WWCC card are given to applicants who pass the check successfully. The notice and card authorise the holder to engage in child-related work for three years and is portable across roles and employers.
- A negative notice prohibits a person from engaging in child-related work.

Applicants can appeal to the Western Australian State Administrative Tribunal against decisions to issue a negative notice, not to cancel a negative notice, and not to cancel a negative notice and substitute the correct notice.

WWCC cardholders’ criminal history information is monitored continuously.

South Australia

South Australia’s scheme commenced in 2011 and was fully operational by December 2013. It requires people to undergo criminal history assessments before they can engage in child-related work. The scheme has been under review since late 2013.

Law	<i>Children’s Protection Act 1993 (SA)</i>
Screening agency	DCSI Screening Unit, Department for Communities and Social Inclusion
Applicant	The person wanting to engage in child-related work applies to work with an organisation, which must ensure that a criminal history assessment is conducted before the person is engaged in a ‘prescribed position’
Age exemption	Volunteers under 18 years of age

Portability	Clearances are not portable; a new criminal history assessment must be undertaken each time a person begins new child-related work
Duration	Employers must ensure that criminal history assessments are conducted on staff members and volunteers who work with children at least once every three years ⁴⁰
Continuous monitoring	No ongoing monitoring
Ability to work before application decision	People must have passed a criminal history assessment before they can be engaged in a prescribed position ⁴¹

South Australia’s scheme is employer-driven: certain employers must ensure criminal history assessments are conducted before engaging people to work in prescribed positions. The onus is on the employer, rather than the individual, to ensure assessments are undertaken. Employers can conduct assessments themselves⁴² or request the screening agency to conduct them on their behalf. Employers are responsible for making a final decision about whether to employ someone, irrespective of who does the assessment.

People must pass their assessment before they can work in prescribed positions. While people can start work if there is an urgent need for them to do so, they cannot undertake prescribed functions until an assessment is completed satisfactorily.

South Australia’s scheme involves an assessment of people’s criminal history information and, in some cases, other relevant evidence (for example, child protection records). Where a person does have a criminal history of concern, the employer or screening agency conducts an assessment of the potential harm the person poses to children. People who pass an assessment receive a clearance to work with children in prescribed positions. A clearance can either be general in nature, allowing the person to work in any role or capacity, or role-specific, meaning the person may only work in a nominated role.

Applicants who dispute their assessment can seek to have it reviewed. The screening agency will reassess the same information collected for the initial assessment as well as any new or additional information provided to it by the applicant. Decisions may also be reviewed by the Australian Human Rights Commission or the South Australian Ombudsman, and applicants can apply to the Supreme Court of South Australia for a judicial review.

South Australia’s scheme provides a point-in-time assessment of risk; people’s records are not monitored continuously like in other jurisdictions. Employers must nevertheless ensure that assessments are conducted at least once every three years.

Australian Capital Territory

Australia's first WWVP scheme commenced in the Australian Capital Territory in 2012. The phase-in period for the scheme ends in late 2018, by which time all relevant people must have a valid WWVP.

Law	<i>Working with Vulnerable People (Background Checking) Act 2011 (ACT)</i>
Screening agency	Office of Regulatory Services, Justice and Community Safety Directorate
Applicant	The person wanting to engage in child-related work
Age exemption	People under 16 years of age
Portability	WWVPs are usually portable across roles and employers for employees, but some may be role-based or subject to certain conditions
Duration	Three years
Continuous monitoring	Criminal history from the Australian Capital Territory
Ability to work before application decision	Most applicants can begin child-related work before the outcome of their application is known

People must apply to the Office of Regulatory Services for a WWVP to work with vulnerable people. Applicants must complete an online or paper application and lodge it at a Canberra Connect Shopfront or by posting it to the Office.

Most applicants can begin working with vulnerable people while their application is pending, but a person with a valid WWVP must always be present while the applicant engages in that work. Most kinship carers can begin working before the outcome of their application is known, without supervision.

The Office of Regulatory Services checks applicants' criminal history for relevant offences. It can also consider other information relevant to deciding whether applicants pose a risk of harm to vulnerable people. This includes information regarding disciplinary proceedings against applicants.

Applicants receive a positive or negative risk assessment.

- Applicants assessed as posing no, or an acceptable risk, of harm to vulnerable people are issued a positive risk assessment. They are then registered to work with vulnerable people in regulated activities and receive a registration card (which can be general, conditional or role-based).⁴³ Registration lasts for a maximum of three years.
- Applicants assessed as posing an unacceptable risk of harm to vulnerable people receive a negative risk assessment and are issued with a negative notice. This means they are not registered to work with vulnerable people.

Most people can appeal a 'reviewable decision' to the ACT Civil and Administrative Tribunal, including decisions to issue negative notices or impose conditions on their registration.

Registered people’s criminal history information is monitored continuously. Certain records will trigger a further assessment.

Tasmania

In 2014, Tasmania became the second Australian state to introduce a WWVP scheme, which it modelled on the Australian Capital Territory scheme. The scheme is expected to be fully operational by 2017, following a three-year phase-in period. So far, it applies to the childcare sector.

Law	<i>Registration to Work with Vulnerable People Act 2013 (Tas)</i>
Screening agency	Working with Children Unit, Department of Justice
Applicant	The person wanting to engage in child-related work
Age exemption	People under 16 years of age
Portability	WWVPs are usually portable across roles and employers for employees, but some may be role-based or subject to certain conditions
Duration	Three years
Continuous monitoring	Criminal history from Tasmania
Ability to work before application decision	People must have a valid check before beginning child-related work

The Tasmanian WWVP scheme requires people wanting to work with children to apply to the Working with Children Unit for a check. Applicants must complete an online application, and print and lodge it at a Service Tasmania shop. Employers and volunteer bodies must verify people’s WWVP status online.

Valid checks are required before a person can commence child-related work in Tasmania. Thus, applicants cannot begin work while their application is pending, unlike in some other jurisdictions. Applications are usually processed within six weeks.

A national criminal history check is conducted for all applicants. Disciplinary and misconduct records held by the Tasmanian Child Care Regulator are also checked. The types of disciplinary information checked will expand as the scheme is phased in.

Risk assessments determine whether applicants pose a risk of harm to vulnerable persons.

- Applicants assessed as posing no risk, or an acceptable risk, receive a positive assessment. They are then registered to work with vulnerable people for three years and receive a registration card. Registration can be general, conditional or role-based.
- Applicants who are considered to pose an unacceptable risk receive a negative risk assessment. Those applicants are not registered and are given a negative notice.

Most applicants can appeal a ‘reviewable decision’ to the Magistrates Court (Administrative Appeals Division). This includes decisions not to register an applicant and decisions to suspend or cancel a person’s registration.

WWVP cardholders’ criminal history information is monitored continuously. Certain records will trigger a further risk assessment, which could lead to the cancellation of a person’s registration.

Northern Territory

The Northern Territory’s WWCC scheme commenced in September 2010.

Law	<i>Care and Protection of Children Act 2007 (NT)</i>
Screening agency	Screening Assessment for Employment – Northern Territory (SAFE NT), Northern Territory Police
Applicant	The person wanting to engage in child-related work
Age exemption	People under 15 years of age
Portability	WWCCs are portable across roles and employers
Duration	Two years
Continuous monitoring	Criminal history from the Northern Territory
Ability to work before application decision	Most applicants can begin child-related work before the outcome of their application is known

People wanting to work with children in the Northern Territory must apply to SAFE NT for a WWCC clearance notice, also known as an Ochre Card. Applicants must complete an online or paper application, and WWCC cards and applications can be verified online.

The Department of Children and Families can grant exemptions that allow applicants to work for 90 days while their WWCC applications are processed. Employers must certify that child-safe strategies will be in place during that period.

National criminal history records and a range of other records, including disciplinary information, are checked as part of the WWCC assessment.

Applicants are assessed to determine whether they pose an unacceptable risk of harm or exploitation to children.

- Applicants assessed as not posing an unacceptable risk receive a clearance notice and an Ochre Card, and are authorised to engage in child-related work for two years.
- Applicants assessed as posing an unacceptable risk do not receive a clearance notice and, therefore, are not authorised to work with children.

Applicants can appeal to the Local Court of the Northern Territory against decisions not to issue, to revoke, or to place conditions on a clearance notice.

Cardholders' criminal history information is monitored continuously.

2.3 National developments

There has been longstanding recognition among the jurisdictions that a more nationally consistent approach to WWCCs is needed. Reasons for this include the recognition that:

- children receive different levels of protection vis-à-vis people in child-related work
- the variation between schemes makes it difficult to recognise checks when people move across borders
- the lack of cross-jurisdictional infrastructure means that changes to a person's suitability status cannot be communicated effectively and actioned across borders.⁴⁴

The jurisdictions have made some progress in developing a more nationally consistent approach to WWCCs; however, it has been inadequate. Progress has included identifying actions and governance arrangements needed to facilitate consistency, agreeing to exchange an expanded range of criminal history information across jurisdictions, and trying to bring consistency to exemptions for interstate visitors.

We are concerned that, despite these efforts, action to improve consistency has been insufficient. We recognise that this is in part due to a lack of evidence upon which to base a best-practice approach to WWCCs, which has made it difficult for the jurisdictions to agree. It is also partly because it is only recently that some form of WWCC or criminal history checking has been implemented in *all* states and territories.

Part II will explore in more detail the progress by governments to achieve consistency, the issues arising from the inconsistencies across the schemes, and the actions we consider to be necessary to address the problems.