



# SA Child Protection – WWCC Update June 2019 Briefing Paper

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# 1. Executive Summary

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- ✓ In August 2016, South Australia’s Child Protection Systems Royal Commission released its final report titled “The Life They Deserve”. The report contained the Royal Commission’s recommendations for legislative reform relating to child protection in South Australia.
- ✓ The South Australian government’s response, titled “A Fresh Start”, and its June 2018 “A Fresh Start progress report”, set out South Australia’s plans for systemic and legislative reform to the child protection system in South Australia.
- ✓ As part of those reforms, the South Australian government is repealing the current Children’s Protection Act 1993 (SA) and is in the processing of implementing a new legislative framework, which includes the:
  - Children and Young People (Safety) Act 2017 (SA) (Safety Act)
  - Child Safety (Prohibited Persons) Act 2016 (SA) (Prohibited Persons Act).
- ✓ The following regulations support the above Acts:
  - Children and Young People (Safety Regulations) 2017 (SA)
  - Child Safety (Prohibited Persons) Regulations 2019 (SA) (Prohibited Persons Regulations).
- ✓ The Prohibited Persons Act and the Prohibited Persons Regulations implement a Working with Children Check (WWCC) scheme that will replace the current screening system under the Children’s Protection Act.
- ✓ The new WWCC scheme and the legislation bringing it into force aim to prevent individuals who pose a substantial risk to the safety of children from working or volunteering with children. Organisations who hire these individuals, as well as the individuals themselves, will be penalised for not complying with the Prohibited Persons Act.
- ✓ The new WWCC scheme will commence on 1 July 2019.

Refer to our previous School Governance [Briefing Paper](#) for further information on the new South Australian child protection regime in general.

# 2. Background to the new WWCC scheme

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- ✓ The Children’s Protection Act 1993 (SA) is, in its entirety, in the process of being repealed. It is being replaced by a legislative framework that aims to establish more effective and stringent protective measures in the interests of child safety.
- ✓ The screening system set up under the Children’s Protection Act 1993 (SA), which remains in place until 1 July 2019, required the “relevant history” of a person in a “prescribed position” (which in broad terms meant someone who had regular contact or worked with children) to be assessed before they were appointed to their position.
- ✓ The Prohibited Persons Act and the Prohibited Persons Regulations establish a more comprehensive WWCC scheme, based on nationally consistent standards, which replaces the system set up under the Children’s Protection Act 1993 (SA).
- ✓ The Prohibited Persons Act commences on 1 July 2019. It establishes the WWCC scheme and determines who is required to have, and who is excluded from the need to have, a WWCC.
- ✓ The Prohibited Persons Regulations also commence on 1 July 2019. They provide further detail on the requirements of the WWCC Scheme and definitions of individuals who may be required to have, or are excluded from the need to have, child-related employment screening.
- ✓ Together, these establish a new WWCC scheme that places responsibilities not only on individuals who work or volunteer with children, but also on the organisations that employ these individuals in child-related work.

This briefing paper will aim to explain the new WWCC scheme and its functions as part of the new overarching child protection legislative framework, and the new obligations that schools should be aware of in order to ensure compliance.

## 3. Key Matters

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### Overview

On 1 July 2019, the new WWCC scheme will come into effect in South Australia under the Prohibited Persons Act and the Prohibited Persons Regulations. The new legislative framework aims to ensure that child-related organisations are child safe environments, by having the safety of individuals working in these organisations assessed by the Department of Human Services (DHS) Screening Unit.

Individuals requiring a WWCC check in the course of their work or volunteering will be assessed as suitable or unsuitable to work with children. Under the Prohibited Persons Act, those who fail the WWCC will be prohibited from working or volunteering with children. Schools who fail to comply with WWCC obligations will face penalties under the Prohibited Persons Act.

### Key Definitions

Under the Prohibited Persons Act and the Prohibited Persons Regulations, the following terms are defined as follows.

#### ***Contact with Children***

“Contact with children” is when a person:

- ✓ has physical contact with the child;
- ✓ is in close physical proximity to the child; or
- ✓ communicates with the child (whether orally or by written, electronic or other means).

#### ***Prescribed Position***

A prescribed position is defined to include:

- ✓ a position in which a person is working or is likely to work with children
- ✓ a position in which a person is employed to provide preschool, primary or secondary education to a child (regardless of whether they are a registered teacher).

#### ***Prohibited Persons***

Prohibited persons are people who have been:

- ✓ issued with a prohibition notice;
- ✓ prohibited from working with children under a law of the Commonwealth or of another state or territory; or
- ✓ found guilty of a prescribed offence as identified in the Prohibited Persons Act or Prohibited Persons Regulations.

#### ***Unique Identifier***

A unique identifier is a number issued by the DHS Screening Unit to:

- ✓ each applicant for a WWCC
- ✓ each person issued with a prohibition notice.

The unique identifier can be used to search for records in the DHS Screening Unit's records managements system and to verify their WWCC or prohibited person status.

## Who is Required to Hold a WWCC at a School?

If an individual is to be appointed to, engage in or act in a prescribed position at a school, they will be required to obtain a WWCC. Once engaged in a prescribed position, a WWCC must be conducted for the individual once every five years.

Section 6(1) of the Prohibited Persons Act defines working with children, alternatively referred to as child-related work, by setting out a list of services or activities that are considered to fall under this ambit. The Prohibited Persons Regulations then further define these services and activities. The services and activities in effect cover most services for children and, of relevance to schools, include preschool, primary and secondary education (as well as coaching and tuition services), residential services and accommodation, services or activities provided by religious organisations, transport and health services. Broadly, "working with children" is defined as the offering of services in child-related work:

- ✓ in the course of the person's employment;
- ✓ in the carrying on of a business in the course of which an employee works with children (whether or not the person themselves works with children); or
- ✓ in providing another relevant service or activity.

Services provided under an arrangement for personal or domestic purposes are explicitly excluded.

Some individuals within schools will clearly fall within the scope of this definition and will be required to hold a WWCC e.g. teachers and board members (who, as members of the governing body of a school, "carry on a business in which an employee works with children").

However, there is some ambiguity as to whether or not this also encompasses support staff in schools, such as maintenance staff, or staff who work only in school administrative affairs, whose contact with children is only incidental or is not reasonably expected to occur. While these individuals work in a school that provides educational services to children, the individuals themselves could be deemed to not be involved in this process. Further, although the definition of child-related work specifically excludes services in which the contact with children occurs incidentally or is not reasonably expected to occur, the language of this section is not clear as to whether this applies if the service offered is within the list of child-related services or activities or not.

Given this ambiguity, CompliSpace has included, as a matter of policy, all administrative staff within the ambit of the requirement to hold a WWCC.

Volunteers and contractors who have direct contact with children at a school also fall within the scope of "working with children". However, in some cases, these people may be "excluded" from the need to hold a WWCC (see below).

Schools should note that the above definition of child-related work will mean that accommodation and activity providers for excursions and overnight camps will be subject to WWCC requirements.

## Who is Excluded from Having to Obtain a WWCC?

Section 9(1) of the Prohibited Persons Act and Regulation 8 of the Prohibited Persons Regulations set out who is "excluded" from having to have a WWCC in order to work with children. For schools, perhaps the most important exclusions are:

- ✓ children aged under 14
- ✓ persons who work with children seven days or less in a calendar year (unless the activity involves overnight excursions or stays, or close personal contact with a child with a disability)

- ✓ parents who are volunteering in an activity in which their child is involved (unless the activity involves accommodation or residential services for a child who is not theirs or close personal contact with a child who is not theirs).

However, under section 9(2) of the Prohibited Persons Act, if a person in the above categories:

- ✓ is or ever has been a prohibited person; or
- ✓ is providing education or early childhood services under the Education and Early Childhood Services (Registration and Standards) Act 2011 (SA) or the Education and Care Services National Law (South Australia))

then they are no longer excluded from having to apply for a WWCC in order to work with children.

There is some ambiguity as to whether the 'child under 14', the 'seven day rule' and the 'parent volunteer' exclusions apply in schools or whether, because a school provides "education services" within the meaning of the Education and Early Childhood Services (Registration and Standards) Act 2011 (SA), they are no longer excluded. For the same reason, there is also ambiguity as to whether volunteers and contractors who work at a school and have indirect contact with children are required to hold a WWCC.

Read narrowly, section 9(2) could be construed to require every person who works or volunteers in a school to hold a WWCC, regardless of their role, of how often they work or whether they are a child or a parent volunteer. CompliSpace sought advice from the Screening Unit on this point, who referred us to the Department of Education. No further advice was forthcoming.

CompliSpace has considered the Education and Early Childhood Services (Registration and Standards) Act 2011 (SA), which defines education services as "courses of instruction in primary or secondary education". We have also considered the Education and Early Childhood Services (Registration and Standards) Regulation 2011 (SA), which excludes, from the definition of education services, private tutoring and lessons or coaching – or providing for participation – in a linguistic, cultural, recreational, religious or sporting activity. In our view, these provisions restrict "education services" to the actual provision of the school's courses of instruction.

It is CompliSpace's view that these provisions, taken together with the apparent intent of the Prohibited Persons Act and Prohibited Persons Regulations to allow for casual, child and parent volunteers, enable a broader reading of section 9(2) with respect to its application in schools. For this reason, our policy excludes volunteers and contractors who have indirect contact with children, children aged under 14, parent volunteers and persons who meet the 'seven day rule' from the requirement to hold a WWCC. This will be revised if further advice is received at a later date.

## Applying for a WWCC

Individuals are responsible for applying for their own WWCCs, as well as for advising the DHS Screening Unit of changes to their information. However, employers can apply on behalf of an employee. Applications for WWCCs or updates to personal information can be made through the [DHS Screening Unit website](#).

When an application for a WWCC is made, a unique identifier will be issued to the person.

## Outcomes of the WWCC

The DHS Screening Unit will assess a variety of information about a person against prescribed risk assessment criteria to determine whether or not the person poses an unacceptable risk to children.

If the outcome of the assessment is that the person is not prohibited from working with children, no specific notice is given to the person or the school. However, the online records management system records the person's unique identifier and the date of the WWCC. If the person is not prohibited from working with children, the WWCC may be used in relation to any child-related work despite being conducted in relation to a particular position, service or activity or employer.

If the assessment is that the person is prohibited from working with children, the DHS Screening Unit issues a new unique identifier and a prohibition notice to the person. The prohibition notice remains in force unless and until it is revoked. It is an offence for a prohibited person to work with children, even if they would otherwise be excluded from the WWCC scheme (for example because they would meet the 'seven day rule' or are a parent proposing to volunteer in an activity involving their child).

## What are the Obligations on Schools?

The new legislative framework imposes penalties on schools that fail to meet their obligations as an employer of persons who work with children. Prior to employing or engaging an individual in a prescribed position, a school must:

- ✓ obtain the individual's full name, address, date of birth and unique identifier
- ✓ verify, through interrogating the online records management system, that a WWCC has been conducted for the individual within the preceding five years (a Certificate of Interrogation must be obtained)
- ✓ verify, through interrogating the online records management system, that the individual has not been prohibited from working with children (a Certificate of Interrogation must be obtained)
- ✓ provide all necessary details to the DHS Screening Unit.

Failure to comply with the above requirements is an offence with a maximum penalty of \$50,000.

The school must also check once every five years that the individual's WWCC is valid and that they are not a prohibited person. Failure to comply with this is an offence with a maximum penalty of \$50,000.

If the individual is excluded from the requirement to hold a WWCC, as described above, a school is not bound by these obligations.

The school is required to inform the DHS Screening Unit if:

- ✓ the school becomes aware of assessable information in relation to an individual in a prescribed position
- ✓ the school becomes aware that an individual in a prescribed position is a prohibited person under a law of Commonwealth or another state or territory
- ✓ the school becomes aware that an individual in a prescribed position is, or becomes, a registrable sex offender
- ✓ an individual in a prescribed position makes a disclosure to the school, as they are legally required to by section 66 of the Child Sex Offenders Registration Act 2006 (SA), that they have been arrested or reported for a class 1 or 2 offence.

Failure to comply with the above is an offence with a maximum penalty of \$25,000.

## Key Offences

The following are offences under the Prohibited Persons Act and Prohibited Persons Regulations in relation to the new WWCC scheme to which penalties apply:

- ✓ working with children without a current WWCC, unless excluded from the requirement to hold a WWCC
- ✓ working with children while a prohibited person
- ✓ failing to provide the parent of a child for whom you are performing child-related work with your full name and unique identifier when requested by that parent
- ✓ employing or continuing to employ a person in a prescribed position who does not hold a current WWCC
- ✓ employing or continuing to employ a prohibited person in a prescribed position
- ✓ falsely representing that a WWCC has been conducted in relation to a person in the preceding five years or that a person is not prohibited from working with children
- ✓ making false/misleading statements when providing information under the Prohibited Persons Act

- ✓ disclosing information obtained in the course of the WWCC scheme's operation except for the purposes specified in the Prohibited Persons Act
- ✓ victimising a person on the grounds that the person has or intends to provide information under the Prohibited Persons Act.

## Transitional Arrangements

The transitional arrangements for individuals who hold current accreditations under the former screening system under the Children's Protection Act 1993 (SA) are outlined by the Children's Protection Law Reform (Transitional Arrangements and Related Amendments) Act 2017 (SA). If an individual obtained clearance to work or volunteer with children from the DHS Screening Unit under the former screening system prior to 1 July 2019, their clearance will remain valid until its expiry, at which point they will have to apply for a WWCC.

In addition, certain people who were not required to be screened under the Child Protection Act 1993 (SA), such as registered teachers and registered health practitioners (e.g. nurses), may continue to work with children in their current employment without a WWCC being conducted unless or until:

- ✓ their registration expires, is cancelled or is revoked for any reason
- ✓ they become a prohibited person; or
- ✓ a WWCC is conducted in relation to the person.

Schools, and individuals in prescribed positions, should note that once a relevant registration, authority, clearance or licence has expired, or been cancelled or revoked, a WWCC must be obtained to continue volunteering or working with children.

## 4. Next Steps for Schools

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All schools in South Australia should familiarise themselves with the new WWCC scheme and child protection legislative framework. Schools should then commence updating their policies and procedures in relation to employee screening to ensure compliance, as outlined in this briefing paper.

Step 1: Ensure that all current employees in prescribed positions have current accreditation to work with children.

Step 2: Review and update all current policies and procedures in relation to employee screening to ensure that five-yearly checks will be made for employees' WWCCs and that required information will be communicated to the DHS Screening Unit.

Step 3: Ensure that regular reviews of WWCC requirements take place.



## 5. How CompliSpace can help

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At CompliSpace we combine governance, risk, compliance and policy management expertise with technology solutions to deliver sustainable governance solutions to non-government schools in every state and territory in Australia. Our team of lawyers and industry experts actively monitor changes to relevant laws and registration standards and deliver a full suite of online policies, procedures and governance programs that enable schools to continuously comply with their legal and regulatory obligations.

In response to the new South Australian child protection legislation, CompliSpace has developed a Child Protection Program that addresses each of these new obligations on schools and the requirements under the new legislative framework. The CompliSpace Child Protection Program also addresses child protection legislation and includes an online child protection training course. The Program is designed to be tailored to the particular circumstances of each school.

If you would like to know more about how CompliSpace can assist you with your governance, risk and compliance, including registration, contact us on:

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