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Legislative Framework for the Protection of Children in Early Childhood Education and Care in Queensland

Research report for the Child Death Review Board *Review into System Responses to Child Sexual Abuse*

Maha Melhem and **Dominic Beckett**
Marrawah Law and Advisory

July 2025

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1. Introduction

The Queensland Family & Child Commission (**QFCC**) is assisting the Child Death Review Board to conduct a *Review into System Responses to Child Sexual Abuse* (**review**). The terms of reference for the review requires that the Board must:

> *2. Examine how the legislative framework, policies and practices of the early childhood education and care, police (State and Federal) and blue card systems operated during the time of [Ashley Paul] Griffith's offending, to identify necessary systems improvements to better protect children from sexual abuse and other harm.*
>
> *3. Identify the context of child sexual offending in Queensland, including changes in the legislative and policy framework…*

To help with these terms of reference, QFCC asked Marrawah Law and Advisory to prepare a research report, including a timeline, into changes to the legislative framework relevant to the Griffith matter from January 2000 to January 2025 (the **study period**).

QFCC clarified that it wanted the timeline to include not only a description of the legislative changes, but also some brief indication of what the change was trying to achieve.

We set out, below, our research report in two parts:

- **Part A** of this report describes our methodology and research products and provides some brief observations about relevant legislative change through the period.
- **Part B** of this report reviews the legislative evolution of the safeguarding landscape in early childhood education and care (**ECEC**) through the study period.

Our timeline of significant legislative changes in the study period is set out in **Appendix 3.**

Part A: Our research and findings – an overview

2. Methodology and research products

2.1. Legislative framework

QFCC provided us with a table of legislative provisions (**Appendix 1: Legislative Framework**) and asked us to regard this as the relevant legislative framework. QFCC also noted that we may, in the course of our research, form the view that additional provisions should be included in the scope of our research. The list provided included various provisions of the *Family Law Act 1975* (Cth). However, QFCC later agreed — for the sake of narrowing the research to facilitate its more timely completion — that we should not include the *Family Law Act* within our study. When we refer in this document to the *legislative framework*, we are generally referring to the list provided by QFCC minus the *Family Law Act 1975* provisions.

2.2. Methodology

We approached the research task by:

- first, researching all amendments to the provisions comprising the legislative framework (including, in this case, the *Family Law Act* provisions) during the study period, and
- then, using that initial research, and conducting further research as necessary, compiling a timeline of all significant changes made to the legislative framework over the course of the study period.

We relied upon the official Queensland Legislation and Federal Register of Legislation websites as well as the Parliament of Australia website and, in relation to the Education and Care Services National Law, the Victorian Legislation and New South Wales Legislation websites.

Results from our research are contained in:

- **Appendix 2**: **Initial research – table of amendments**, and
- **Appendix 3: Timeline of significant legislative changes**.

2.3. Appendix 2: Initial research – table of amendments

Appendix 2 is a hyperlinked list of all amendments made to the legislative framework during the study period. It is built on Appendix 1, in which QFCC set out the legislative framework.

For each provision or cluster of provisions forming part of the legislative framework (including the *Family Law Act 1975* (Cth) provisions) it gives a link to:

- the provision as it was at the beginning of the study period, or as it was upon commencement if that was a later date,
- if the provision was inserted during the study period, the amending Act that inserted the provision, and
- each amending Act that changed the provision in any way during the study period.

All links are to the official State or Commonwealth legislation websites.

It is important to note that Appendix 2 does not capture all relevant legislative changes made during the study period. This is because it represents our initial research based on the legislative framework as provided, and that framework consists only of provisions that are current now together with a small selection of earlier laws repealed during the study period. However, some of the Acts or parts of Acts forming part of the legislative framework were enacted during the study period and replaced earlier Acts or provisions which were not themselves listed in the legislative framework.

For example, the legislative framework included the *Child Care Act 2002*. However, the child care sector was regulated before the commencement of that Act by the *Child Care Act 1991*, which was itself amended several times in the study period before it was finally repealed by the 2002 Act. Neither the *Child Care Act 1991* nor the amendments to it were listed in the legislative framework and so were not picked up in the initial research and are not captured in Appendix 2.

This means that while we are confident that Appendix 2 is a comprehensive list of all legislation that has amended the provisions that comprise the legislative framework, it cannot be regarded as a complete list of all relevant legislation during the study period.

2.4. Appendix 3: Timeline of significant legislative changes

Appendix 3 is a timeline, arranged in table format, of changes to the laws making up the legislative framework that occurred during the study period.

For each relevant principal or amending Act or regulation made during the study period, Appendix 3 includes:

- a link to the Act or regulation
- information about its commencement
- a brief explanation and comment
- where deemed relevant, a link to the relevant Explanatory Note or Explanatory Memorandum, and
- in the case of amending Acts, a link to the principal Act as amended.

All links are to the official State or Commonwealth websites.

We decided it was necessary to restrict the amendments we referred to in the timeline to those we considered to be *significant* for the purposes of our research. We took this view because of the sheer volume of amendments to the legislative framework. If we had not done so, the timeline would have been far longer and would have taken far longer to prepare and, we thought, ultimately it would have been less readable and less useful.

However, we acknowledge that including only significant changes involved us making subjective judgements about significance based on our own understandings of things such as:

- the use QFCC wishes to make of the timeline
- why the changes in question were made
- the impact the changes were likely to have had on the operation of the relevant provision
- the need to keep the timeline document to a useable length
- the need to complete the research within a reasonable timeframe.

3. Some broad observations

In sections 3.1 – 3.3 below, we offer some broad observations that emerge from the work we have done.

Part B of this report provides more detailed observations about legislative changes for regulatory and oversight schemes and other laws supporting safeguarding in the ECEC sector.

3.1. Scope – a comment on the *legislative framework* adopted for the project

Defining and delimiting the relevant legislative framework is a very difficult task. The broad task of keeping children safe from sexual abuse, particularly within early childhood education, takes place within multiple contexts and is involves by many regulated areas of life. Deciding what laws will be included and what will be excluded is necessarily a matter of subjective judgment and there will inevitably be some choices that appear somewhat arbitrary. We understand that in coming up with its list of provisions, QFCC wanted to capture enough of the laws that are clearly relevant to make the task of reviewing the legislative framework meaningful, while at the same time keeping the exercise manageable. We think that, by and large, the way in which QFCC defined the legislative framework was both useful and appropriate.

We note information sharing as one area which was omitted from the legislative framework and which we consider may warrant future consideration. For present purposes, information sharing is considered (though not comprehensively) in Part B of this report.

3.2. The amount of legislative activity

A striking feature of the legislative framework over the course of the study period is the sheer amount of relevant legislative activity that has occurred.

Wholly new principal Acts comprising or relevant to the legislative framework during the study period included:

- *Police Powers and Responsibilities Act 2000*
- *Commission for Children and Young People Act 2000* (which became the *Working with Children (Risk Management and Screening) Act 2000*)
- *Dangerous Prisoners (Sexual Offenders) Act 2003*
- *Child Care Act 2002*
- *Child Protection (Offender Reporting) Act 2004* (which became the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*
- *Public Health Act 2005*
- *Education (General Provisions) Act 2006*
- *Child Protection (Offender Prohibition Order) Act 2008*
- *Education and Care Services National Law (Queensland) Act 2011*
- *Education and Care Services Act 2013*
- *Family and Child Commission Act 2014*
- *Child Safe Organisations Act 2024*

More striking perhaps is the number of amending Acts. For example, during the study period:

- Chapter 22 of Queensland's Criminal Code (which contains the most relevant State offence provisions) was amended 32 times,
- the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* (originally the *Child Protection (Offender Reporting) Act 2004*) was amended 33 times, and
- the *Working with Children (Risk Management and Screening) Act 2000* (originally the *Commission for Children and Young People Act 2000*) was amended 83 times.

Certainly, not all amendments have been substantial, but a large number were, as is evident from Appendix 3.

Some reforms have been driven by formal inquiry processes. For example:

- the *Child Protection Amendment Act 2000* and the *Commission for Children and Young People Act 2000* were both direct responses to the recommendations in the final report of the 1999 *Commission of Inquiry into Abuse of Children in Queensland Institutions* (Forde Inquiry),
- the *Child Safety Legislation Amendment Act (No 2) 2004* and *Child Safety Legislation Amendment Act 2005* sought to implement recommendations made by the Crime and Misconduct Commission in its January 2004 report *Protecting Children: An Inquiry into Abuse of Children in Foster Care*,
- the *Child Protection Reform Amendment Act 2014* responded to recommendations in the 2013 report of the *Queensland Child Protection Commission of Inquiry* (Carmody Inquiry), and
- the *Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Act 2020* was intended to implement recommendations of the Criminal Justice Report of the *Royal Commission into Institutional Responses to Child Sexual Abuse* (Royal Commission).

For some others, it is less obvious what the particular impetus for change was.

3.3. Proliferation and increasing complexity of laws

Another observation is not just that the law changed a lot, but that there are many more relevant laws now than there were in 2000. We note the following examples.

3.3.1 Criminal offences

The number and specificity of relevant criminal offences has increased considerably. In January 2000, Chapter 22 (Offences against morality) of Queensland's Criminal Code consisted of 18 offence provisions, 9 of which were directly concerned with child safety. Today, Chapter 22 contains 35 offence provisions, of which 27 are directly concerned with protecting children.

In the Commonwealth criminal law there has been greater change. For example, in January 2000, the laws concerned with so-called child sex tourism were contained in Part IIIA of the *Crimes Act 1914* (Cth). There were 6 offence provisions with the rest being concerned with defences, the giving of video link evidence and other rules about trial conduct. In 2010[1], the Part IIIA regime was moved, with amendment, into Division 272 (Child sex offences outside Australia) of the Commonwealth Criminal Code, which today

[1] *Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010* (Cth).

includes 14 offence provisions. In addition, 2010 also saw the insertion into the Criminal Code of a new Division 273 (Offences involving child pornography material or child abuse material outside Australia) as well as:

- new offences in Division 471 (Postal offences), contained in Subdivision B (Offences relating to use of postal or similar service for child abuse material) and Subdivision C (Offences relating to use of postal or similar service involving sexual activity with person under 16), and
- new offences in Division 474 (Telecommunications offences), contained in Subdivision D (Offences relating to use of carriage service for child pornography or child abuse material) and Subdivision F (Offences relating to use of carriage service involving sexual activity with person under 16).

3.3.2 Indefinite detention and post-release supervision of dangerous offenders and ongoing monitoring of child sex offenders

At the beginning of the study period, Part 10 of the *Penalties and Sentences Act 1992* and s 18 of the *Criminal Law Amendment Act 1945* gave the courts some powers to order the indefinite detention of dangerous offenders. The *Penalties and Sentences Act* regime applied at the time of sentencing to certain *violent offences* where the court was satisfied that the offender was a serious danger to the community. Section 18 of the *Criminal Law Amendment Act* allowed the Attorney-General to apply for indefinite detention post sentencing for certain sex offenders found to be 'incapable of exercising proper control of their sexual instincts'.

Further, s 19 of the *Criminal Law Amendment Act* allowed a court to order that certain child sex offenders report their address to police within 48 hours of release and to report each change of address within 48 hours.

Over the course of the study period, the amount of legislation in relation to these subject matters significantly increased including:

- the *Dangerous Prisoners (Sexual Offenders) Act 2003*
- the *Child Protection (Offender Reporting) Act 2004* (which imposed a regime of mandatory reporting on all persons found guilty of a *reportable offence*), and
- the *Child Protection (Offender Prohibition Order) Act 2008*.

The latter two were combined in 2017 as the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*. The reach of all these regimes has progressively expanded since their enactment and accordingly the legislation has become significantly more complicated, including through significant amendments in 2007, 2011, 2014, 2017, 2018 and 2023. To some extent this reflects an apparent increased reliance on legislation rather than judicial discretion to impose reporting and supervision obligations. For example, s 19 of the *Criminal Law Amendment Act* gave the courts a broad discretion whether to order a person convicted of an offence of a sexual nature against a person under 16 years of age to report to police, and if so, for how long. Now, however, Part 4 of the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* requires a very broad category of *reportable offenders* to report to police as a matter of course and it spells out in detail what is to be reported, when it is to be reported and for how long the reporting obligations continue.

Part B: Legislative change: evolution of the safeguarding landscape in ECEC

4. From jurisdictional licensing to a National Quality Framework

At the commencement of the study period, early childhood education and care (ECEC) services were regulated as child care services with licensing and operational standards under the *Child Care Act 1991* (Qld).

From 1 September 2003, the *Child Care Act 2002*, replaced the 1991 Act to 'increase the level of regulation of the child care industry to maintain high standards of care while ensuring that services are positioned to provide flexible service delivery.'[2] A new licensing framework was introduced, with monitoring and enforcement powers. The *Commission for Children and Young People Act 2000* was also amended to bring the child care industry within the scope of the blue card system (discussed below in Section 8).

In this period, child care services across Australia were subject to some duplication in requirements under state/territory licencing and Australian Government quality assurance processes and 'a complex system of requirements and minimum standards for different service types in different jurisdictions.'[3] However, in December 2009 the Council of Australian Governments' endorsement of the *National Partnership Agreement on the National Quality Agenda for Early Childhood Education and Care* paved the way for a more consistent national approach to regulation.[4]

When the National Quality Framework for ECEC (NQF) was subsequently established in 2011–2012, it was underpinned by a model national law which was applied through jurisdiction-specific legislation in Queensland and other states and territories with commencement from 1 January 2012.[5] This enabled the NQF to operate as a jointly

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[2] Nicolee Dixon, *Child Care Bill 2002 (Qld) - Research Brief No 2002/28*, Queensland Parliamentary Library 2002; Hon JC Spence MP, Minister for Families, Child Care Bill 2002 (Qld), Second Reading Speech, Queensland Parliamentary Debates, 22 August 2002, pp 3131-3133, p 3132.

[3] Australian Children's Education & Care Quality Authority, *Occasional Paper 8: The first decade of the NQF* 2022.

[4] The Council of Australian Governments (COAG) endorsed the *National Partnership Agreement on the National Quality Agenda for Early Childhood Education and Care* (National Partnership Agreement) in December 2009 as an agreement to work together to implement the National Quality Agenda for early childhood education and care. See notes below for more on the history of the NQF's establishment.

[5] The *Education and Care Services National Law* (the National Law), was set out in the Schedule to the *Education and Care Services National Law Act 2010* (Victoria) with subsequent legislation in other jurisdictions to apply it locally, including in: Queensland — by the *Education and Care Services National Law (Queensland) Act 2011*; New South Wales — by the *Children (Education and Care Services National Law Application) Act 2010*; in the ACT — by the *Education and Care Services National Law (ACT) Act 2011*; in the Northern Territory — by the *Education and Care Services (National Uniform Legislation) Act 2011*; in South Australia — by the *Education and Early Childhood Services (Registration and Standards) Act 2011*; in Tasmania — by the *Education and Care Services National Law (Application) Act 2011*. The *Education and Care Services National Regulations* were also made in 2011 to operate as part of the National Law scheme in each jurisdiction. Legislation in each jurisdiction commenced in 2012. However, Western Australia's legislation to apply the National Law, the *Education and Care Services National Law (WA) Act 2012* commenced later, in 2013.

governed, uniform regulatory framework,[6] with 'a single system to replace existing separate licensing and quality assurance processes in each jurisdiction for pre-school (kindergartens in Queensland), long day care, family day care and outside school hours care'.[7] Following NQF commencement in 2012, key NQF requirements for regulated services were phased in over time,[8] with new requirements introduced following periodic reviews and changes to the NQF's governing legislation.[9]

From the outset, one of the key objectives of the NQF was 'to ensure the safety, health and wellbeing of children attending education and care services'.[10] However, more than a decade on from its establishment, a major national review has confirmed a critical need to strengthen NQF arrangements for keeping children safe in ECEC.

In its 2023 Review of Child Safety Arrangements under the NQF (the CSA Review), the Australian Children's Education and Care Quality Authority (ACECQA) noted the 'increasing numbers of reported incidents of harm to children' and made 16 recommendations for physical and online safety, child supervision, and staffing requirements under the NQF.[11] While the CSA Review did not address the facts of any particular alleged incident, it was clearly informed by reports of incidents and allegations – including those emerging from Operation Tenterfield[12] – at the time.[13]

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[6] The NQF is jointly governed by the Australian Government and state and territory governments. ECEC Regulatory Authorities in each jurisdiction (in Queensland, the Queensland Early Childhood Regulatory Authority) administer the framework locally, including monitoring and enforcing compliance. The jurisdictional Regulatory Authorities are supported by the Australian Children's Education and Care Quality Authority (ACECQA), which was established to was established to oversee the NQF nationally. For a brief history of the NQF's establishment, see Australian Children's Education & Care Quality Authority, *Occasional Paper 8: The first decade of the NQF* 2022.

[7] *Report No. 4, 53rd Parliament - Education and Care Services National Law (Queensland) Bill 2011*. The framework was established to encompass education and care services provided on a regular basis to children under 13 years of age, including most long day care, family day care, outside school hours care, pre-schools and kindergartens. A small number of services in Queensland and in other jurisdictions have remained outside the scope of the NQF. Queensland passed legislation in 2013 to regulate some Queensland education and care services, which were not covered by the NQF, under separate Queensland arrangements. These included occasional care, ECEC services that are also disability services, stand-alone and other services — see *Education and Care Services Act 2013* (Qld), which repealed and replaced the *Child Care Act 2002* (Qld), commencing 1 January 2014.

[8] See, for example ACECQA's guidance in 2017, noting the phasing in of requirements such as qualifications, educator-to-child ratios, and other key staffing arrangements, over the period between 2012 and 2020: Australian Children's Education and Care Quality Authority, *Guide to the National Quality Standard*, 2017.

[9] These include changes to the NFQ following reviews in 2014, 2019 and 2023.

[10] See s 3 of the *Education and Care Services National Law*, as set out in the Schedule to the *Education and Care Services National Law Act 2010* (Victoria).

[11] While the CSA Review did not address the facts of any particular alleged incident, it was clearly informed by reported critical incidents and allegations, including those emerging from Operation Tenterfield, as the CSA Review was being undertaken. See Australian Children's Education & Care Authority, *Review of child safety arrangements under the National Quality Framework – Final Report*, December 2023.

[12] Australian Federal Police, *Media Release: Man charged with rape and sexual assaults at childcare centres*, 1 August 2023. https://www.afp.gov.au/news-centre/media-release/man-charged-rape-and-sexual-assaults-childcare-centres

[13] On Operation Tenterfield, see Australian Federal Police, *Media Release: Man charged with rape and sexual assaults at childcare centres*, 1 August 2023. https://www.afp.gov.au/news-centre/media-release/man-charged-rape-and-sexual-assaults-childcare-centres. See also reference to reported incidents and allegations in Australian Children's Education & Care Authority, *Review of child safety arrangements under the National Quality Framework – Final Report*, December 2023.

Australian governments have responded to the CSA Review with agreed NQF reforms, including changes to the *Education and Care Services National Regulations* and the NQF's *National Quality Standard* to:

- require services to implement policy and procedures for the safe use of digital technologies and online environments[14]
- reduce timeframes for notifying jurisdictional Regulatory Authorities of allegations or incidents of physical or sexual abuse from 7 days to 24 hours[15]
- emphasise requirements for services to be child safe with explicit references to child safety in the National Quality Standard.[16]

These reforms will commence 1 September 2025 and 1 January 2026. Following the conclusion of a national public consultation process in June 2025, further changes to the NQF will now be considered by all Australian governments.[17]

5. The broader context of regulatory schemes for safeguarding

As the ACECQA CSA Review noted, '[t]he NQF sits in a broader context of child protection mechanisms such as WWCC, reportable conduct and mandatory reporting schemes.'[18] The Child Safe Standards Scheme should also be noted here as an additional significant element in regulation and oversight to protect children in ECEC.

Significant legislative changes to introduce and expand regulation and oversight for safeguarding in Queensland's ECEC sector in the study period include the following.

5.1. Extension of the WWCC Scheme to the child care / ECEC sector

The Working with Children Check Scheme (WWCC Scheme) was extended to the child care sector commencing in 2003, with subsequent application to the ECEC sector and numerous other changes to strengthen, clarify and streamline the operation of the Scheme throughout the study period.[19] Alongside this, NQF requirements for assessment of whether a person is a fit and proper person to provide education and care also apply to

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[14] See *Education and Care Services National Amendment Regulations 2025* (made on 12 June 2025), amending reg 168 of the *Education and Care Services National Regulations*, to commence 1 September 2025.
[15] See *Education and Care Services National Amendment Regulations 2025* (made on 12 June 2025), amending reg 175 of the *Education and Care Services National Regulations*, to commence 1 September 2025. See also ss 173, 174, 174A of the *Education and Care National Law* and regs 12, 176 of the *Education and Care Services National Regulations* for other notification requirements.
[16] See *Education and Care Services National Amendment Regulations 2025* (made on 12 June 2025) amending the *National Quality Standard*, to commence 1 January 2026.
[17] A Decision Regulation Impact Statement, outlining the outcome of the national consultation process will be released after Education Ministers have made their determination: ACECQA, *Information sheet: NQF child safety changes from 1 September 2025 and 1 January 2026*, June 2025. Reforms flagged by the Federal Government in March 2025 include measures responding to providers who repeatedly breach the *Education and Care National Law* and strengthening powers to deal with ECEC providers that pose an integrity risk: https://ministers.education.gov.au/aly/strengthening-safety-and-quality-early-childhood-education-and-care.
[18] Australian Children's Education & Care Authority, *Review of child safety arrangements under the National Quality Framework – Final Report*, December 2023, p12.
[19] Relevant amendments by the *Child Care Act 2002* commenced 1 September 2003. See more detailed discussion of the WWCC Scheme in Section 8 of this report, below.

Approved Providers and persons in positions of management and control.[20] However, unlike these point-in-time fit and proper assessments, WWCC clearances are continuously monitored. The evolution of Queensland's WWCC Scheme is discussed in more detail in Section 8 below.

5.2. Extension of mandatory reporting under the *Child Protection Act* in 2016 (commencing 2017)

Following recommendations by the Queensland Law Reform Commission in 2015,[21] mandatory reporting provisions under the *Child Protection Act 1999* were extended to the ECEC sector in 2016.[22] As a result, from commencement of the amended legislation in 2017, ECEC professionals have been required to report to Child Safety if they have a reasonable suspicion that a child has suffered, is suffering, or is at unacceptable risk of suffering, significant harm caused by physical or sexual abuse.

The limitation of this reporting obligation — to circumstances where it is also reasonably suspected that the child may not have a parent willing and able to protect them — reflects its primary purpose in supporting the exercise of Child Safety's statutory care and protection functions. Requirements to notify the Early Childhood Regulatory Authority (ECRA) of allegations or incidents of physical or sexual abuse (see above) and the reporting obligation created by the failure to report offence (below) do not depend on suspected absence of a protective parent.

5.3. Establishment of the Child Safe Standards Scheme

Queensland's recently enacted *Child Safe Organisations Act 2024* is a key safeguarding reform implementing recommendations from the Royal Commission to establish Child Safe Standards for organisations working with children.[23] Commencement of compliance with the Child Safe Standards Scheme is staggered for different sectors from October 2025 – April 2026, with commencement for the ECEC sector on 1 January 2026.[24]

While this reform has lagged several years since the Royal Commission made its recommendations, Queensland and other Australian jurisdictions had previously (in 2019) endorsed the *National Principles for Child Safe Organisations*[25] which were based on the Royal Commission's recommended 10 standards,[26] with the expectation that organisations working with children, including in ECEC, would adhere to these. However,

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[20] See *Education and Care Services National Law (Queensland)* ss 12, 21, 31.
[21] See Queensland Law Reform Commission, *Review of Child Protection Mandatory Reporting Laws for the Early Childhood Education and Care Sector,* State of Queensland (Queensland Law Reform Commission) 2015, recommendations 8-1, 9-1, and 9-2.
[22] The *Child Protection (Mandatory Reporting—Mason's Law) Amendment Act 2016* amended s 13E of the *Child Protection Act 1999* for this purpose, with effect from 1 July 2017.
[23] See Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report*, Vol 6, 2017, recommendation 6.8.
[24] See the Queensland and Family Child Commission's setting out of the commencement timeline at https://www.qfcc.qld.gov.au/childsafe/timeline.
[25] As of 1 February 2019, the Queensland Government and all other Australian governments confirmed their commitment to the *National Principles for Child Safe Organisations*. See Australian Human Rights Commission, *National Principles for Child Safe Organisations*, 2018.
[26] As of 1 February 2019, the Queensland Government and all other Australian governments confirmed their commitment to the *National Principles for Child Safe Organisations*. See Australian Human Rights Commission, *National Principles for Child Safe Organisations*, 2018.

the introduction of a *legislated* Child Safe Standards Scheme is a critical step to mandate compliance.

That said, in an increasingly crowded regulatory landscape it is also important to consider the risk of regulatory duplication which may create unnecessary burden for regulated entities without actually improving protections for children. The Explanatory Note for the *Child Safe Organisations Bill 2024* appears to recognise this in its reference to 'ensuring existing protections in Queensland are considered and leveraged where appropriate.' By way of example, the Explanatory Note goes on to refer to requirements for risk management strategies under the *Working with Children (Risk Management and Screening) Act 2000* (WWC Act),[27] which are to be repealed and replaced by *Child Safe Standards in the Child Safe Organisations Act*.[28]

This makes sense given the overlap in the range of organisations currently required to develop risk management strategies under the WWC Act[29] and the 'child safe entities' which will now be required to implement risk management measures in accordance with the Child Safe Standards.[30]

5.4. Establishment of the Reportable Conduct Scheme

In addition to the Child Safe Standards Scheme, the *Child Safe Organisations Act 2024* has legislated a Reportable Conduct Scheme. This provides for the reporting, investigation and independent oversight of complaints or allegations of child abuse, neglect or misconduct toward a child, made against persons who work in a range of organisations with responsibility for children, include ing in ECEC services.[31]

With legislation enacted in September 2024, Queensland has been slower than other jurisdictions to respond to Royal Commission recommendations for jurisdictional reportable conduct schemes.[32] The Scheme is scheduled for staggered commencement, with the ECEC sector previously scheduled for commencement on 1 July 2027. However, following further recent reports of critical failures in safeguarding children in Victorian ECEC services,[33] the Queensland Government has announced that the ECEC sector's inclusion in the Reportable Conduct Scheme will be brought forward to the first phase of commencement on 1 July 2026.[34]

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[27] These are currently set out in the WWC Act, Chapter 7, Part 3 (Risk management strategies).
[28] The Child Safe Standards will come into effect on 1 October 2025.
[29] See *Working with Children (Risk Management and Screening) Act 2000*, Chapter 7, Part 3 (Risk management strategies).
[30] See the *Child Safe Organisations Act 2024*, ss 10 and 11.
[31] The *Child Safe Organisations Act 2024*. Under Queensland's Reportable Conduct Scheme, reportable conduct includes a child sexual offence, sexual misconduct in relation to or in the presence of a child, physical violence in relation to or in the presence of a child; behaviour that causes significant emotional or psychological harm to a child; ill-treatment of a child; significant neglect of a child: *Child Safe Organisations Act 2024*, s 26.
[32] Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report*, Vol 7, 2017, recommendations 7.9 – 7.12.
[33] See Victorian Government reporting on investigation of alleged incidents in childcare centres at https://www.vic.gov.au/childcare-centres-investigation
[34] Attorney-General and Minister for Justice and Minister for Integrity, Minister for Education and the Arts, Minister for Families, Seniors and Disability Services and Minister for Child Safety and the Prevention of Domestic and Family Violence, *Joint Statement: Crisafulli Government prioritises early childhood under protection scheme*, 10 July 2025.

Limitations of Queensland's Reportable Conduct Scheme are considered briefly below in in Section 7 and the use of Reportable Conduct information in WWCCs is discussed in Section 8.

6. Key civil liability and criminal law reforms supporting safeguarding

The regulatory reforms noted above have been augmented, in the study period, by significant reforms to civil liability and criminal laws, including the following.

6.1. Creation of a statutory duty of care

In 2019 Queensland amended the *Civil Liability Act 2003* to create a statutory duty of care for organisations to take all reasonable steps to prevent the abuse of a child by a person associated with the institution while the child is under the institution's care, supervision, control or authority of the institution.[35] Commencement of this reform in March 2020 was followed soon after by the passage of legislation for personal criminal liability for failure to protect a child from sexual abuse.

6.2. Creation of failure to protect offence

Queensland's Criminal Code was amended in September 2020, in line with the Royal Commission's recommendation, to create an offence where an 'accountable person' (associated with an institution) has the power or responsibility, but wilfully or negligently fails, to reduce or remove a significant risk of child sexual abuse by another adult associated with the institution.[36]

Commencing several months later in May 2021, this provision augmented the duty imposed on approved providers, nominated supervisors and family day care educators, under the NQF, to ensure that every reasonable precaution is taken to protect a child from harm and making failure to do so an offence.[37]

6.3. Creation of failure to report offence

Amendment of Queensland's Criminal Code in September 2020 has also created an offence, in line with the Royal Commission's recommendation, where any adult fails (without 'reasonable excuse') to report sexual offending against a child by another adult to police.[38]

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[35] The *Civil Liability and Other Legislation Amendment Act 2019* amended the *Civil Liability Act 2003*, with new s 33D, commencing 2 March 2020.

[36] The *Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Act 2020* (Qld), assented to on 14 September 2020, inserted new s 229BB (Failure to protect child from child sexual offence) in the *Criminal Code Act 1899.* See Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report*, 2017 recommendation 36.

[37] See *Education and Care Services National Law (Queensland)*, s 167 (Offence relating to protection of children from harm and hazards).

[38] The *Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Act 2020* (Qld) inserted new s 229BC (Failure to report belief of child sexual offence committed in relation to child) in the *Criminal Code Act 1899.* See also Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report*, 2017 recommendations 33 and 34.

This new criminal reporting obligation now serves to augment NQF regulatory reporting obligations, which require notification of physical or sexual abuse allegations or incidents to ECRA.

It is also notable that, as recommended by the Royal Commission, the failure to report offence recognises reporting to Child Safety in accordance with the *Child Protection Act* as a reasonable excuse for not reporting to police.[39] This is useful in so far it assists to minimise duplication in reporting. However, depending on Child Safety's subsequent (and one step removed) judgement as to whether reporting to police is warranted, this may also mean that relevant information may not come, or may be delayed in coming, to police attention.

7. The Reportable Conduct Scheme – regulatory promise and limits for safeguarding

The establishment of the Reportable Conduct Scheme is a critical step forward in strengthening Queensland's regulatory framework for safeguarding. However, to some extent, some of the potential benefits of the Scheme may be limited by provisions including those defining the range of matters that fall within the Scheme and the threshold for reporting.

7.1. Identifying alleged failure to protect and failure to report as reportable conduct matters

Reportable conduct legislation in New South Wales expressly includes criminal offences of failure to protect[40] and failure to report child abuse[41] in the definition of reportable conduct.[42] This means that in cases where the available evidence is not sufficient to meet the threshold for criminal prosecution or conviction but valid concerns remain, these alleged offences can be still be investigated as reportable conduct matters and a finding of reportable conduct potentially made on a lower standard of proof than that required in criminal matters.[43]

[39] See the reference to reporting, under the *Child Protection Act 1999*, in the *Criminal Code Act 1899*, s 229BC(4)(b)(i). Again, this is consistent with the Royal Commission's recommendation – see Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report*, 2017 recommendation 34.
[40] In New South Wales, failure to protect is an offence under the *Crimes Act 1900* (NSW), s 43B (Failure to reduce or remove risk of child becoming victim of child abuse). The NSW failure to report offence is not limited to child sexual abuse, but extends to child abuse more broadly — see *Crimes Act 1900* (NSW),
[41] In New South Wales, failure to report child abuse is an offence under the *Crimes Act 1900* (NSW), s 316A (Concealing child abuse offence). This failure to report offence is not limited to child sexual abuse, but extends to child abuse more broadly — see *Crimes Act 1900* (NSW), s 316A(9).
[42] See *Children's Guardian Act 2019* (NSW), s 20 for the definition of reportable conduct under NSW law.
[43] The *Children's Guardian Act 2019* (NSW),s 40(1) states that findings of reportable conduct are to be made on the balance of probabilities. This is a lower standard than the standard of proof (beyond reasonable doubt) in criminal matters.

Queensland's definition of reportable conduct does not provide for any such express inclusion of the failure to protect[44] and failure to report offences[45] — nor can inclusion of these offences be readily inferred from the reportable conduct definition set out in the *Child Safe Organisations Act 2024*.[46]

It is worth noting here that this definition of reportable conduct includes child sexual offences under s 207A of the Queensland *Criminal Code Act 1999*. That provision defines a *child sexual offence* as 'an offence of a sexual nature committed in relation to a child, including, for example, an offence against a provision of chapter 22 or chapter 32' of the *Criminal Code Act*. The failure to protect and failure to report offences are set out, along with numerous others, in Chapter 22 of the *Criminal Code Act*. However, the clear and specific reference in s 207A to offences of *a 'sexual nature'* points to *sexual offending against children* and so casts doubt on the inclusion of failure to report and failure to protect in the s 207A definition of child sexual offence.

It is also worth noting that failure in a duty to protect or report could potentially be captured as reportable conduct in other formulations. For example, the ACT's Reportable Conduct Scheme expressly includes offences relating to protection of children from harm under the *Education and Care Service National Law* (*ACT*) in the definition of reportable conduct.[47] The reportable conduct category of neglect might, arguably, capture failure to protect — but this is not clear.

In any case, if the intention was to include failure to protect and failure to report offences as reportable conduct, it would be useful to expressly state this as the New South Wales legislation does. As discussed further below (Section 8) this would, amongst other things, provide a conduit for such allegations to be considered as reportable conduct information in WWCC assessments in cases where they may not otherwise be picked up.

7.2. Threshold for reporting

A significant benefit of reportable conduct schemes lies in their capture of important, but unsubstantiated, risk-related information. However, this benefit may be lost or limited if the reporting threshold is too high or unclear.

In New South Wales, the legislation and regulator guidance make it clear that the Reportable Conduct Scheme is an allegations-based scheme. The legislated definition for *reportable allegation* refers to an 'allegation that the employee has engaged in conduct that may be reportable conduct'.[48]

The definition of *reportable allegation* in the *Child Safe Organisations Act 2024* seems less clear in this respect, referring as it does to 'reasonable belief':

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[44] This offence requires a person in a position of power or responsibility within a relevant institution to reduce or remove a known risk of sexual offending against a child by an adult associated with that institution.
[45] Section 229BC of the *Criminal Code Act 1899* provides that it is a criminal offence for any adult in Queensland to fail to report to the Queensland Police Service a reasonable belief that a child sexual offence is being, or has been, committed against a child by another adult.
[46] See the definition of 'reportable conduct' in the *Child Safe Organisations Act 2024*, s 26.
[47] The offence under the *Education and Care Service National Law* is s 167 (Offence relating to protection of children from harm and hazards). See the ACT's *Ombudsman Act 1989*, s17E(1)(iv), which includes offences under this provision, as well as offences under the *Education and Care Service National Law,* s 166 (Offence to use inappropriate discipline), as reportable conduct.
[48] *Children's Guardian Act 2019* (NSW), s 18.

*an allegation or other information that **leads a person to form a reasonable belief** that a worker of a reporting entity has committed —*

(a) reportable conduct; or

(b) misconduct that may involve reportable conduct.[49]

While the Explanatory Note for the *Child Safe Organisations Bill* acknowledged that '[t]he allegation does not need to be investigated or substantiated for it to form an allegation', it also rightly noted that a *reasonable belief* is a 'higher threshold than a reasonable suspicion.' Without further clarification, a threshold described in these terms may create some confusion and serve to unduly limit reporting.

The Reportable Conduct Scheme is discussed further below in relation to the WWCC Scheme.

8. The Working with Children Check Scheme: a case study in legislative change

8.1. Background

The history of Queensland's Working with Children Check Scheme (WWCC Scheme) through the period January 2000 to January 2025 (the study period) is one of constant legislative change. Numerous changes of a substantive nature, largely to implement government policy commitments based on inquiry and review recommendations, have been accompanied by a plethora of related consequential, transitional and machinery changes.

This history has been punctuated by changes to the name of the WWCC legislation itself – from the Commission for Children and Young People Act 2000, when the legislation was first enacted, to the Commission for Children and Young People and Child Guardian Act 2000 in 2004[50], to the Working with Children (Risk Management and Screening) Act 2000 in 2014 (WWC Act).[51] These legislation title changes reflect changes in the regulatory environment in which the WWCC Scheme is administered.

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[49] *Child Safe Organisations Act 2024*, s 27(1). Emphasis added. Guidance from the Office of the Children's Guardian states: 'The Reportable Conduct Scheme is an allegation-based scheme. The threshold for making a notification to the Office of the Children's Guardian is that a reportable allegation has been made – that is, there is an allegation that an employee has engaged in conduct that may be reportable conduct or that they are the subject of a conviction that is considered a reportable conviction': Office of the Children's Guardian, *Identifying reportable allegations – The NSW Reportable Conduct Scheme – Fact sheet 1*, August 2022.

[50] The name of the legislation was changed from the *Commission for Children and Young People Act 2000* to the *Commission for Children and Young People and Child Guardian Act* by the *Child Safety Legislation Amendment Act 2004*, s 31, with effect 1 August 2004.

[51] The *Child Protection Reform Amendment Act 2014*, ss 49, and 52, renamed the *Commission for Children and Young People and Child Guardian Act 2000* to the *Working with Children (Risk Management and Screening) Act 2000*, amended the Act's object and principles, and transferred the administration the Act and the WWCC Scheme to the then new Public Safety Business Agency. Commencing 1 October 2016, Part 3 Div 8 of the *Public Safety Business Agency and Other Legislation Amendment Act 2016* (PBSA) repealed s 7 of the WWC Act and made transitional arrangements to support administrative transfer of responsibility for the WWCC Scheme from the PBSA to the Department of Justice and Attorney-General. The WWCC Scheme is currently administered by Blue Card Services, as part of the Department of Justice.

Over the almost 25 years since the establishment of the WWCC Scheme, key terminology used in the legislation has also undergone numerous changes.[52] Following amendments in 2019,[53] statutory terminology changed to its present form, referring to working with children check applications, or working with children check (exemption) applications for police officers and registered teachers. An application approval was described as a 'working with children clearance,' or as a 'working with children exemption' for police officers and teachers, with the collective term 'working with children authority' used in reference to WWC clearances and WWC exemptions.[54]

Outside the legislation, the term 'blue card' has continued to be used (and the Scheme is commonly referred to as the blue card system). In this report, the term 'blue card' is sometimes used interchangeably with the applicable statutory terms, for ease of reference.

The introduction of the WWCC Scheme was, itself, the result of recommendations from the 1999 Briton Report and the Forde Inquiry.[55] Throughout the study period, the Queensland legislature continued to enact amendments in response to findings and recommendations from numerous other inquiries and reports, including from the Queensland Family and Child Commission, the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) and others.

The discussion below notes some of the significant changes which occurred in the study period.

8.2. Overall effect of changes through the study period

When Queensland's WWCC Scheme was first enacted in 2000, and when the Scheme commenced shortly after, it was significantly narrower in scope than it is today. Amongst other things, notable legislative changes through the study period served to:

- widen the range of regulated employment/business covered by the Scheme — including extension first to childcare and later to ECEC services more broadly
- strengthen and clarify obligations, under the Scheme, for employees, employers, and businesses engaged in regulated work

[52] 'Suitability notices', as they were referred to on commencement of the scheme and for some years after, were later referred to as prescribed notices (positive notices and negative notices). The term 'positive notice blue card' was included in the legislation in 2005. See *Commission for Children and Young People and Child Guardian Amendment Act 2004*, which commenced 17 January 2005. In 2010, the term 'exemption notice' was included in the legislation with respect to teachers and police officers who were covered by the exemption notice regime — see the *Criminal History Screening Legislation Amendment Act 2010*, which commenced 1 April 2010.

[53] See the *Working with Children (Risk Management and Screening) and Other Legislation Amendment Act 2019*.

[54] These changes in terminology came into effect over the period 1 July 2019 – 31 August 2020, as different provisions of the *Working with Children (Risk Management and Screening) and Other Legislation Amendment Act 2019* commenced.

[55] *Review of the Queensland Children's Commissioner and Children's Services Appeals Tribunals Act 1996: Report and Recommendations*, April 1999 (the Briton Report) and the June 1999 *Commission of Inquiry into Abuse of Children in Queensland Institutions* (the Forde Inquiry). On this, see Cathy Green, *The Commission for Children and Young People Bill 2000: A New Framework for Children's Advocacy in Queensland*, Legislation Bulletin no 11/00, Queensland Parliamentary Library, August 2000.

- widen the range of relevant circumstances and information, beyond that which was related to known criminal history, for consideration in decision-making under the Scheme
- establish a framework for automatic exclusion from regulated work, and identify and expand the range of criminal offences and other relevant information for automatic exclusion
- provide greater statutory guidance and direction for the WWCC assessment and decision-making, including in the exercise of discretion.

A further significant legislative change, enacted within the study period (September 2024) but not yet commenced, shifts the basis for discretionary decision-making under the Scheme from determinations in accordance with the best interests of children to determinations in accordance with a new risk-based decision-making framework defined in the legislation.

Many of the significant legislative changes through the study period were informed by and directed at concerns about risks to children in institutional settings more broadly than in ECEC settings. Certain changes were, however, specifically directed at the ECEC sector — most notably, legislative amendments extended the scope of the WWCC Scheme to include the child care sector from 1 September 2003, with transitional arrangements allowing a grace period for compliance.[56] Prior to this, the Department of Families undertook criminal history checks on child care workers under the provisions of the Child Care Act 1991.

The specific inclusion of child care disciplinary information in 2005 — and later, ECEC disciplinary information — for consideration in WWCC assessments was also significant for the identification of risk posed by those who worked in this sector, and who might transfer to work in other child-related sectors.

The inclusion of disciplinary information from this and other sectors is discussed further below, along with other changes which applied more broadly but would have likely had significant impact in the ECEC sector.

8.3. Streamlining and simplifying complexity

One of the discernible rationales for legislative change throughout the study period was the intention to create operational and administrative efficiencies for the regulator, and to streamline and simplify requirements for employees, employers and business in regulated sectors.

Efforts to simplify and streamline are important — legislative complexity can heighten the risk of non-compliance and regulatory failure. However, constant legislative 'tinkering' for simplification and streamlining can also be counterproductive, for at least two reasons:

- Firstly, frequent legislative change can create confusion in administration and compliance, thereby heightening the risk of regulatory failure.
- Secondly, there is also significant risk in oversimplifying regulatory responses to complex social challenges — like that of providing effective protection for children

[56] The *Child Care Act 2002*, amended Schedule 1 of the *Commission for Children and Young People Act 2000* to add child care as regulated employment and regulated business from 1 September 2003.

without disproportionately curtailing the legitimate interest and capacity of persons to engage in child-related work.

In reality, the incremental effect of numerous legislative amendments through the study period served to increase the complexity of the WWCC Scheme.

8.4. Executive liability reform

The imperative to simplify was a key driver for legislative change in relation to a number of issues through the study period, including, notably, executive liability.

Following amendments enacted in 2004 and commencing in 2005, the *Commission for Children and Young People and Child Guardian Act* provided that, in cases where a corporation was convicted of an offence against the Act, each executive officer of the corporation would be taken to have committed the offence of failing to ensure that the corporation complied with the Act.[57] In effect, this reversed the usual onus of proof, with the executive officer having to establish, as a defence, either that they had exercised reasonable diligence to ensure compliance, or that they were not in a position to influence the conduct of the corporation in relation to the offence.

Introduction of this executive liability provision coincided with amendments creating positive obligations for persons carrying on regulated businesses and employers to implement appropriate risk management strategies for child-safe work environments along with a new function for the Commissioner to audit or monitor compliance with obligations under the Act.[58]

Several years later, in 2013, this executive liability provision was removed as part of wider executive liability reform to reduce the number of executive liability provisions across Queensland's statute book. On introduction of *the Directors' Liability Reform Amendment Bill 2012* (the 2012 Bill), the Attorney-General and Minister for Justice noted that the Bill responded to 'concerns expressed by the business community and the legal profession about the number and complexity of provisions that impose personal liability on directors for corporate fault.'[59]

Concerns about executive liability in this period were not confined to Queensland, and included 'confusion and complexity for corporations operating across State boundaries in understanding their legal obligations and responsibilities'.[60] Queensland's reforms in this area followed a 2008 Council of Australian Government's (COAG) agreement that Australian jurisdictions would audit and, where appropriate, amend their legislation consistently with COAG Principles and Guidelines for directors' liability for corporate fault.[61] Accordingly, Queensland's 2012 Bill was intended to reduce red tape and

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[57] The *Commission for Children and Young People and Child Guardian Amendment Act 2004*, commencing 17 January 2005, inserted this provision as s 151A (Executive officers must ensure corporation complies with Act). The provision was later renumbered s 383 by the *Criminal History Screening Legislation Amendment Act 2010*, which commenced 1 April 2010.

[58] See new ss 99G and 15(1)(ra) as they were then, inserted by the *Commission for Children and Young People and Child Guardian Amendment Act 2004*, commencing 17 January 2005. As discussed above, the WWC Act's requirements for risk management strategies are to be repealed and replaced by new requirements under the legislated Child Safe Standards Scheme.

[59] Queensland Parliament. 2012. *Record of Proceedings (Hansard)*. 28 November 2012, page 2864.

[60] Explanatory Notes, *Directors' Liability Reform Amendment Bill* 2012.

[61] Reform of directors' liability was progressed by Australian jurisdictions, at the time, under COAG's 2008 *National Partnership Agreement to deliver a Seamless National Economy*. See Legal Affairs and Community

regulatory burden for Queensland business and to achieve greater consistency, with other Australian jurisdictions, in provisions for executive liability for corporate fault only where there was adequate justification.[62]

When it was introduced, the 2012 Bill sought to temper the *Commission for Children and Young People and Child Guardian Act's* executive liability provision by shifting the onus of proof so that the onus was, instead, on the prosecution to prove that an executive officer failed to take reasonable steps to prevent the commission of an offence under the Act.[63] However, the change which was ultimately made when the Bill was presented, on the third reading, as the Directors' Liability Reform Amendment Bill 2013 (the 2013 Bill), was to simply omit the provision, with no replacement provisions for executive officer liability as previously proposed by the 2012 Bill.[64]

It appears that, in 2013, it was generally considered that executive liability reform was necessary to address unnecessary complexity and compliance burden. However, the work of the Royal Commission, commencing that same year, went on to highlight an urgent need for law reform to address organisational leaders' failures to prevent abuse of children under their care, supervision or authority. Subsequently, Queensland responded to the Royal Commission's findings and recommendations with significant legislative changes including:

- the *Civil Liability and Other Legislation Amendment Act 2019*, which amended the *Civil Liability Act 2003* to create a statutory duty of care for organisations to take all reasonable steps to prevent the abuse of a child by a person associated with the institution while the child is under the institution's care, supervision, control or authority of the institution.[65]
- the *Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Act 2020* created a criminal offence where an 'accountable person' (associated with an institution) has the power or responsibility, but wilfully or negligently fails, to reduce or remove a significant risk of child sexual abuse by another adult associated with the institution.[66]

8.5. Developments in discretionary and non-discretionary decision-making

When the WWCC Scheme commenced, the considerations for decision-making, as identified in the legislation, were largely focussed on known criminal history — that is, identified charges and convictions.

The legislation was clear in stating that, in the absence of any convictions or charges for any offence, an application for a blue card had to be granted — the Commissioner was

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Safety Committee (Queensland), Report No 25 - *Directors' Liability Reform Amendment Bill 2012*, March 2013 and Explanatory Note, *Directors' Liability Reform Amendment Bill 2012*

[62] Explanatory Note, *Directors' Liability Reform Amendment Bill* 2012.

[63] This was identified as Type 1 liability, the default category for directors' liability provisions, as set out by the Bill. Type 2 and Type 3 liability, as set out by the Bill, were significantly more onerous and their imposition required justification on a case-by-case basis.

[64] The approach taken in the 2013 Bill differed from the 2012 Bill following 'amendments agreed in consideration'.

[65] See, as amended, *Civil Liability Act 2003*, s 33D, commencing 2 March 2020.

[66] *Criminal Code 1899*, s 229BB.

required to issue, a *positive notice* (allowing the grant of a blue card) if the Commissioner was not aware of any conviction or charge for any offence.[67]

In circumstances where there were convictions and charges**,** the Commissioner was able to exercise discretion in decision-making. For example, the Commissioner was required to issue a *positive notice* if aware of a charge, but no convictions, unless it was an exceptional case where issuing a positive notice would not be in the best interests of children.[68]

The Commissioner also had discretionary power in cases where the Commissioner was aware of a conviction for any *serious offence*.[69] A *negative notice* (preventing the person working with children) was to be given in these cases unless the Commissioner was satisfied that it was an exceptional case where issuing a positive notice would not harm the best interests of children.[70]

These directions set out what were, in effect, rebuttable presumptions — in certain cases that a positive notice was to be issued, and in other cases, that a negative notice was to be issued. In particular cases, the relevant presumption could be rebutted with a determination by the Commissioner (with submissions from the applicant) finding that it was an *exceptional case*. This applied not just for decisions on initial blue card applications, but also other decisions, including for cancellation of a negative notice.[71]

By the end of the study period, legislated presumptions that could be rebutted in exceptional cases were still in operation for decision-making under the WWC Act. [72] However, with growing understanding that risks to children's safety were posed not simply by those with a known criminal history, the presumptions were amended and progressively broadened, to encompass a wider range of circumstances than known criminal history. [73]

As noted further below, while discretionary *exceptional case* determinations remained a central plank in WWCC decision-making, legislative amendments through the study

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[67] *Commission for Children and Young People Act 2000*, s 102 (2) — as it was then.
[68] *Commission for Children and Young People Act 2000*, s 102 (3) — as it was then.
[69] *Serious offence* was defined, at this time, as an offence listed in the *Penalties and Sentences Act 1992*, schedule (serious violent offences) or Criminal Code offence listed in Schedule 2 of the *Commission for Children and Young People Act*. Serious offences also included counselling or procuring the commission of, or attempting or conspiring to commit, these offences, or an offence in another jurisdiction that substantially corresponded with a serious offence under the *Commission for Children and Young People Act* (see the *Commission for Children and Young People Act* (as it was then), Schedule 4 Dictionary and Schedule 2 (Other serious offence provisions of the Criminal Code).
[70] *Commission for Children and Young People Act 2000*, s 102 (4), as it was then.
[71] See *Commission for Children and Young People Act*, s 118, as it was then.
[72] Provisions setting out relevant considerations for decision-making continue to apply with respect to cancelling a blue card, cancelling a negative notice and subsequent issue of blue card as they do to issuing a blue card or a negative notice in the first instance (WWC Act, s 294 and Part 4 Div 9, ss 220- 231A). If the person is a police officer or registered teacher, the equivalent provisions in Part 5, Div 8 similarly apply).
[73] See relevant provisions applying at the end of the study period and at the time of writing, including sections: 221 (Deciding application—no relevant information or conviction etc. for non-serious offence); 222 (Deciding application—previous holder of working with children exemption); 223 (Deciding application—negative notice cancelled or holder of eligibility declaration); 225 (Deciding application—person no longer relevant disqualified person or convicted of serious offence); 226 (Deciding exceptional case if conviction or charge); 227 (Deciding exceptional case if investigative information exists), 228 (Deciding exceptional case if other relevant information exists).

period have resulted in significant changes to fetter the exercise of discretion in decision-making. For example:

- An exclusionary framework, introduced in 2005 and continuing to evolve since then, to identify and automatically exclude persons with a clearly concerning criminal history from child-related work.
- Retention of discretion in other circumstances, with an expanding list of relevant circumstances — beyond known criminal history — that must be considered in exceptional case determinations, along with specified considerations which must be taken into account in relation to those circumstances.

8.5.1 Decision-making: evolution of the disqualification framework

The 2005 introduction of an exclusionary framework[74] removed the Commissioner's discretion in cases where there was a conviction for an 'excluding offence'[75] together with either imprisonment or a court-issued disqualification order.[76] In these cases, the Commissioner had to issue a negative notice (and cancel a positive notice where one was held).[77] The absence of any right of review or appeal meant the person would be banned for life from holding or applying for a blue card.[78]

Alongside the new provisions for automatic exclusion in certain cases involving criminal history, provisions continued to apply for automatic issue of a blue card where there were no convictions or charges — as long as the Commissioner was also not aware of any *investigative information* or *disciplinary information* with respect to the person (introduction of the new categories of investigative information and disciplinary information is discussed further below).[79]

In all other cases, statutory directions for positive or negative decisions were qualified by the Commissioner's retention of the *exceptional case* discretionary power.[80]

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[74] See *Commission for Children and Young People and Child Guardian Amendment Act 2004*, which commenced 17 January 2005.
[75] This was defined in new s 99E at the time as (a) a serious child-related sexual offence; or (b) an offence, listed in Schedule 2 of the Act, against the *Classification of Computer Games and Images Act 1995, Classification of Films Act 1991 or Classification of Publications Act 1991*.
[76] New s 126C (Disqualification order), as it was then, provided for the making of such an order where a person was convicted, but not imprisoned, for an excluding offence.
[77] New s 102(6)) and new s 119A. In cases of conviction for a non-serious offence, the Commissioner had to issue a blue card and could not cancel a blue card unless it was an exceptional case. Also strengthened with new provisions for automatic suspension for a blue card holder charged with an excluding offence, preventing them from beginning or continue to work in regulated employment or carry on a regulated business unless and until they were re-issued with a blue card following decision on charge and favourable re-assessment with re-issued with a blue card (that is, following favourable reassessment after determination of the criminal matter.)
[78] Applicants issued with a negative notice for any other kind of offence retained the right to have the decision reviewed by the Children Services Tribunal (later the Queensland Civil and Administrative Tribunal).
[79] See new s 103(a), as it was then.
[80] See for example, new ss 102(3)(b), (c) and 102(4), as they were then. For example, the Commissioner was required to cancel blue card and replace with negative notice where conviction for an excluding offence without imprisonment or disqualification order - unless it was an exceptional case where non-cancellation would not be contrary to children's best interests (new s 119B). In cases of conviction for a non-serious offence, the Commissioner could not cancel unless it was an exceptional case.

Amendments in 2008[81] expanded the exclusionary framework into a disqualification framework based on the concepts of *disqualifying offence*[82], *disqualified person*[83] and *relevant disqualified person*.[84]

Amendments enacted in 2004 and commencing in 2005 had enabled courts to make a disqualification order, as a lifetime ban on applying for or holding a blue card, where a person was convicted of an excluding offence and no imprisonment order was made.[85] To align disqualification orders with the new exclusionary framework, the 2008 amendments expanded the circumstances in which a court could make a disqualification order. Courts could now make a disqualification order where a person was convicted of either (a) a disqualifying offence and no imprisonment order was made or (b) another serious offence (other than a disqualifying offence), committed in relation to, or otherwise involving, a child. The court could also now make such a disqualification order for either as a lifetime ban, or as ban for a stated period. Additionally, provision was made for the person to appeal against the court's decision to make a disqualification order in the same way that they could appeal against the conviction.[86]

These 2008 amendments created a two-tier disqualification framework for *disqualified persons* and *relevant disqualified persons*. While this two-tier disqualification framework imposed a general prohibition on all disqualified persons applying for / holding a blue card, it allowed a disqualified person to apply for an *eligibility declaration* (that is, a declaration, by the Commissioner, that they were eligible for a blue card, issued on the basis of an exceptional case determination).[87] However, a relevant disqualified person 'was subject to a higher bar of disqualification and was prevented from seeking such an eligibility declaration.[88] This has effectively meant:

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[81] *Commission for Children and Young People and Child Guardian and Another Amendment Act 2008*.
[82] *Disqualifying offence* was defined in new s 120B by reference to the offences listed in the new Schedule 2B (Current disqualifying) offences and Schedule 2C (Repealed or expired disqualifying offences),
[83] *Disqualified person*, was defined in new s 120C as a person who has a conviction for a disqualifying offence (essentially, child-related sex offences, at that time), is the subject of a disqualification order by a court, or is a the subject of an offender prohibition order under the *Child Protection (Offender Prohibition Order) Act 2008* or a reportable offender under the *Child Protection (Offender Reporting) Act 2004*. Note: In 2010, the *Criminal History Screening Legislation Amendment Act 2020* expanded the definition of disqualified person to include a person who is the subject of a sexual offender order under the *Dangerous Prisoners (Sexual Offenders) Act 2003*. In 2017, the *Child Protection (Offender Prohibition Order) Act 2008* and the *Child Protection (Offender Reporting) Act 2004* were combined as the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*.
[84] Relevant disqualified person was defined in new s 120D as a person who was convicted of a disqualifying offence and received an order of imprisonment (including a suspended imprisonment order), is the subject of a disqualification order by a court, or is the subject of an offender prohibition order or a reportable offender. In 2010, the *Criminal History Screening Legislation Amendment Act 2010* expanded the definition of *relevant disqualified person* to include a person who is the subject of a sexual offender order under the *Dangerous Prisoners (Sexual Offenders) Act 2003*.
[85] See amendment by the *Commission for Children and Young People and Child Guardian Amendment Act 2004* for a new s 126C (Disqualification order).
[86] See amendments to s126C made by the *Commission for Children and Young People and Child Guardian and Another Amendment Act 2008*. However, the court could only make the disqualification order if it considered that it would not be in the best interests of children to issue a blue card.
[87] Provisions for an eligibility declaration process were set out in then new Part 6 (Screening for regulated employment and regulated businesses) Division 4A (Disqualified persons), ss 120F – 120L of the Act.
[88] The eligibility declaration provisions, introduced by the *Commission for Children and Young People and Child Guardian and Another Amendment Act 2008*, provided that an eligibility declaration may only be sought and issued if the person:

- there is no discretionary decision-making to allow a relevant disqualified person to be issued with a blue card (or blue card exemption)
- a person may not be permanently excluded from working with children unless they are or have been subject to an imprisonment order for a disqualifying offence.[89]

The two-tier disqualification framework remained largely in place for the remainder of the study period, with the range of persons subject to disqualification on the basis of prescribed disqualifying offences changing as new prescribed offences were added through the study period.[90]

Amendments passed in September 2024 (not yet commenced) implement the QFCC's 2017 recommendation to address the complexity of the current disqualification framework.[91] The distinction between a 'relevant disqualified person' and a 'disqualified person' is removed, along with the eligibility process currently available for the latter group. As a result, there will be one category of disqualified persons, with all disqualified persons similarly barred from obtaining or holding a blue card.[92]

8.5.2 Decision-making: exceptional case determinations

With changes for an exclusionary framework enacted in 2004 and commencing in 2005, the *exceptional case* discretion to make decisions in favour of applicants with a criminal history was retained where that criminal history did not involve a conviction for an excluding offence *together with* an imprisonment order or a disqualification order. [93]

- was convicted of a disqualifying offence, but did not receive an order of imprisonment for that offence, and
- is not currently subject to: reporting obligations under the *Child Protection (Offender Reporting) Act 2004*; a child protection offender prohibition order under the *Child Protection (Offender Prohibition Order) Act 2008*; or a disqualification order made by a court (s 126C); or a sexual offender order, and
- it is determined that it is an exceptional case in which it would not harm the best interests of children for the person to be issued with an eligibility declaration.

Following amendments by the *Criminal History Screening Legislation Amendment Act 2010*, it was also required that eligibility declaration applicants not be the subject of a sexual offender order under the *Dangerous Prisoners (Sexual Offenders) Act 2003*.

[89] On this point, it is important to note that, while a court has the power to impose a disqualification order for permanent exclusion, it is possible for such a disqualification order to be overturned on appeal — see WWC Act, ss357(2)(b) and (4) (previously s 126(2)(b) and (4)).

[90] See the prescribed disqualifying offences as listed in schedules to the WWC Act: Schedule 4, Schedule 5

[91] See *Working with Children (Risk Management and Screening) and Other Legislation Amendment Act 2024* and QFCC Blue Card Report, recommendation 29.

[92] As discussed by the Explanatory Note for the *Working with Children (Risk Management and Screening) and Other Legislation Amendment Act 2024* – amendments will allow for discretion to be retained, as part of the general decision-making framework, for the two major cohorts for which it is currently exercised in the eligibility declaration process. This is achieved by changes including:

- an age qualifier providing that an offender must be18 years or older at the time of committing the offence for it to be treated as a 'serious' or 'disqualifying' offence (according to the Explanatory Note, this recognises the potential for youth offender rehabilitation and that childhood offences do not necessarily reflect an applicant's current risk profile).
- an offence, as an adult, of engaging in penile intercourse with a child under 16 will only be treated as a disqualifying offence if imprisonment order is or was imposed.

Noting the absence of a similar age defence under Queensland's Criminal Code, discretion for blue card purposes might, for example, be exercised in cases of intercourse with a child under 16 if the applicant and the child were close in age.

[93] See new Part 6 Div 2, and Div 4. For example, if the Commissioner was not aware of any conviction for an excluding offence, but was aware of a conviction for a non-serious offence, or a charge for an excluding

While exceptional case determinations have remained central to WWCC decision-making more broadly through the study period, the power to determine an 'exceptional case' has not been subject to any statutory definition of that term.

As the QCAT Appeal Tribunal has noted:

> *It is settled law that the determination of whether there is an 'exceptional case' involves the exercise of a broad discretion that should be 'unhampered by any general rule and is to be construed in the particular context of the legislation'.* [94]

That legislative context has included, from the outset, the broadly stated principle of children's best interests as the basis for decision-making, alongside directions on particular relevant considerations that must guide exceptional case determinations.

On commencement of the WWCC Scheme, those mandatory considerations related only to known criminal history — that is, an (alleged) commission of an offence(s), and included whether there was a conviction or a charge, whether it was for a 'serious offence' (as defined by the legislation), when it was allegedly committed, and its nature and relevance to child-related employment.[95]

The Commissioner was also both empowered and obliged to take into account 'anything else the Commissioner reasonably considered relevant to the assessment of the person' — broadly described as this was, this did not impose an obligation to consider anything in particular.

However, with growing community understanding and concern about risk to children, legislative amendments through the study period continued to identify and elevate relevant offences for WWCC purposes at the same time as extending mandatory considerations for discretionary decision-making to include a broader range of risk-related information other than criminal history information.[96]

8.6. Expanding the range of risk-related information for consideration

The Royal Commission's examination of working with children check schemes across Australia highlighted the importance of sufficient relevant information being available for

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offence dealt with other than by conviction, the Commissioner had to issue a positive notice — unless it was an exceptional case, when the Commissioner was obliged to issue a negative notice (then new ss 102(3)(b) and (c)). Also, for example, the Commissioner was required to cancel a blue card and replace it with a negative notice in cases of conviction for an excluding offence without imprisonment or disqualification order — unless it was an exceptional case where non-cancellation was not contrary to children's best interests (new s119B). In cases of conviction for a non-serious offence, the Commissioner could not cancel a blue card unless it was an exceptional case (s 119 as it was then).

[94] *Director-General, Department of Justice and Attorney-General v MAP [2022]* QCATA 39, [19]. (See also *REC v Director-General, Department of Justice and Attorney-General [2024]* QCAT 508).

[95] *Commission for Children and Young People Act 2000*, s 102 (5)(a)-(d), as it was then.

[96] See relevant provisions applying at the end of the study period and at the time of writing, including sections: 221 (Deciding application—no relevant information or conviction etc. for non-serious offence); 222 (Deciding application—previous holder of working with children exemption); 223 (Deciding application—negative notice cancelled or holder of eligibility declaration); 225 (Deciding application—person no longer relevant disqualified person or convicted of serious offence); 226 (Deciding exceptional case if conviction or charge); 227 (Deciding exceptional case if investigative information exists), 228 (Deciding exceptional case if other relevant information exists).

screening persons working with children.[97] The Royal Commission's broader work on information sharing further demonstrated the critical need to piece together risk-related information from different sources and points in time. As the Royal Commission noted:

> *information about seemingly isolated or insignificant incidents can, when considered cumulatively, paint a more complete and concerning picture.*[98]

Limited provisions for collection and consideration of relevant risk-related information can undermine the efficacy of any regulatory scheme for the protection of children. While provisions for this purpose were quite limited when the WWCC Scheme commenced, numerous amendments were made throughout the study period, to improve the capture and consideration of relevant information in WWCC decision-making.

8.6.1 Criminal history information

As noted above, when the WWCC Scheme commenced, decision-making was largely informed by a review of convictions and charges, with relevant *serious offences* identified in the legislation.[99] Over the study period, legislative amendments made significant additions and other changes in the legislative schedules of offences prescribed as serious or disqualifying (excluding) offences.

By way of example, up until amendments made in 2019, the offences prescribed as disqualifying offences could generally be categorised into three groups: (i) serious child-related sex offences; (ii) offences related to child exploitation material, and (iii) murder of a child.[100] By the end of the study period, disqualifying offences encompassed sexual conduct with a child, grooming, child exploitation material offences, and other child-related sex offences, as well as murder and other serious sexual or violent offences against an adult or child.

Over the years, amendments to the prescribed offence schedules were driven by the outcomes of major police investigations and rising community concern as well as by inquiries and reviews. For example, legislation introducing child sexual exploitation material offences and designating these as excluding offences in 2005 appeared to be informed by a 'recent national crackdown on an internet child pornography ring resulting

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[97] Royal Commission into Institutional Responses to Child Sexual Abuse, *Working with Children Checks Report* , Sydney, 2015.

[98] Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Volume 8, Recordkeeping and information sharing*, Sydney, 2017. See also Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 2: YMCA NSW's response to the conduct of Jonathan Lord*, Sydney, 2014; Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 1: The response of institutions to the conduct of Steven Larkins*, Sydney, 2014.

[99] These included serious violent offences listed in the Penalties and Sentences Act 1992, Criminal Code offences listed in the *Commission for Children and Young People Act 2000*, Schedule 2 (Other serious offences), offences of counselling or procuring the commission of, or attempting to commit any of the aforementioned, or equivalent offences in other jurisdictions. See *Commission for Children and Young People Act 2000*, Schedule 4, definition of 'serious offence', as it was then. Relevant serious offences are currently prescribed in Schedule 2 (Current serious offences) and Schedule 3 (Repealed or expired serious offences) of the WWC Act 2000.

[100] As noted by the Explanatory Note for the *Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2018*.

in hundreds of arrests across Australia' which 'raised the profile of current Queensland and interstate child pornography offences'.[101]

Community expectations were cited as the rationale for elevating the offences for murder and rape of an adult from the serious offences category to the disqualifying offences category in 2019. Inclusion of bestiality and kidnapping offences at this time responded to recommendations from both the Royal Commission's 2015 Working with Children Check Report and the QFCC's 2017 Blue Card Review Report.[102] Reflecting growing awareness of coercive control as a serious form of abuse, legislative amendments commencing May 2025 introduce coercive control offences and prescribe coercive control of a child as a disqualifying offence, with coercive control of an adult prescribed as a serious offence for WWCC purposes.[103]

More broadly, criminal history information has remained a key factor for consideration in discretionary decision-making to issue, suspend or cancel blue cards, negative notices and eligibility declarations.

8.6.2 A wider range of risk-related information

Amendments enacted in 2004 and commencing in 2005 imposed new obligations to consider an even broader range of information related to standard criminal history in discretionary decision-making.[104] This encompassed *investigative information* about an alleged serious child-related sexual offence, where the police investigation did not lead to a charge for that offence and *disciplinary information* related to certain professions.

Investigative information was captured as a subset of the then new category of *police information*, which also included criminal history information (charges and convictions).[105] *Disciplinary information* encompassed information received by the Commissioner under the *Child Care Act 2002*, *Child Protection Act 1999*, *Education (Teacher Registration) Act 1988, Health Practitioners (Professional Standards) Act 1999* and the *Nursing Act 1992*.[106]

As for cases of known criminal history, the legislation now set out rebuttable presumptions for decision-making along with directions for exceptional case

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[101] See *Criminal Code (Child Pornography and Abuse) Amendment Act 2005* and Explanatory Note to the *Criminal Code (Child Pornography and Abuse) Amendment Bill 2004*.
[102] See recommendation 29, Queensland Family and Child Commission, *Keeping Queensland's children more than safe: Review of the blue card system*, 2017 Queensland Government (hereafter referred to as the QFCC Blue Card Review Report). For legislative amendments, see *Working with Children (Risk Management and Screening) and Other Legislation Amendment Act 2019*.
[103] *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024* (commencement 26 May 2025).
[104] Amendments by the *Commission for Children and Young People and Child Guardian Amendment Act 2004* inserted new ss 102 (including subsections 102(3), 102(4), 102(5)) and 102A in the *Commission for Children and Young People and Child Guardian Act 2000*. New s 102A (Decision-making under s 102 in relation to discretionary matters) applied not just for decisions on initial applications, but also other decisions, including on application for cancellation of a negative notice
[105] See then new ss 102 and 121A, inserted by the *Commission for Children and Young People and Child Guardian Amendment Act 2004*. See also WWC Act 2000, s 305 and Schedule 6 (Offences that may form basis of investigative information) inserted by the *Criminal History Screening Legislation Amendment Act 2010* and Schedule 6A (Repealed or expired offences that may form basis of investigative information) inserted by the *Criminal Law (Child Exploitation and Dangerous Drugs) Amendment Act 2013*.
[106] This captured disciplinary information under: *Child Care Act 2002*, s 50A or 107A; *Child Protection Act 1999*, s 140A; *Education (Teacher Registration) Act 1988*, s 71B; *Health Practitioners (Professional Standards) Act 1999*, s 384A; *Nursing Act 1992*, s 139A.

determinations where the Commissioner was aware of investigative information or disciplinary information.[107]

In the years following these changes, legislative amendments progressively added other categories of relevant information, along with directions as to the required considerations in relation to those categories of information. This, incrementally but significantly, broadened the range of relevant information which, if known, had to be taken into account when making an exceptional case determination. By the end of the study period, this additional relevant information included:

- disciplinary information — added in 2005[108]
- investigative information — added in 2005[109]
- domestic violence information — added in 2022[110]
- adverse interstate WWC information — added in 2022[111]
- other information about the person that the Chief Executive[112] reasonably believes is relevant.

By the end of the study period, the relevant information to be considered, in cases where there was a conviction or charge, included anything relating to the (alleged) commission of the offence and:

- any information about the person provided by the Director of Public Prosecutions or Chief Executive, Corrective Services — added in 2010[113]
- any report about the person's mental health provided by a registered health practitioner — added in 2010[114]

[107]For example, if the Commissioner was not aware of any conviction for an excluding offence, but was aware of investigative information, disciplinary information, conviction for non-serious offence, or a charge for an excluding offence dealt with other than by conviction, the Commissioner had to issue positive notice — unless it was an exceptional case, when the Commissioner was obliged to issue a negative notice (ss 102(3)(b) and (c), 102(4), 102(5)). See new s 102A (Decision-making under s 102 in relation to discretionary matters), which applied not just for decisions on initial applications, but also other decisions, including on application for cancellation of a negative notice.

[108] Added by *Commission for Children and Young People and Child Guardian Amendment Act 2004,* commenced 17 January 2005.

[109] Added by *Commission for Children and Young People and Child Guardian Amendment Act 2004,* with commencement 17 January 2005.

[110] Added by *Child Protection Reform and Other Legislation Amendment Act 2022*, s 80 (amendment commenced on assent 20 May 2022]

[111] Added by *Child Protection Reform and Other Legislation Amendment Act 2022*, s 106 (amendment commenced on proclamation 2 December 2022

[112] With transfer of administration of the WWCC Scheme from the Commission for Children and Young People and Child Guardian to the Public Safety Business Agency (PBSA), the legislation changed (from 1 July 2014) to refer to the Chief Executive instead of the Commissioner (for children and young people) as the WWCC decision maker from. In 2016, administration of the WWCC Scheme transferred from the PBSA to the Department of Justice and Attorney General (see *Public Safety Business Agency and Other Legislation Amendment Act 2016*), and the WWC Act then referred to the Chief Executive of that agency as the WWCC decision maker.

[113] Added by the *Criminal History Screening Legislation Amendment 2010* — see then new ss 226 (Deciding exceptional case if conviction or charge) and 318 (Obtaining information from director of public prosecutions), 319 (Obtaining information from chief executive (corrective services).

[114] Added by the *Criminal History Screening Legislation Amendment 2010* — see then new ss 226 and 335 (Commissioner may obtain report about person's mental health from registered health practitioner)

- any information about the person provided by the Mental Health Court or Mental Health Review Tribunal — added in 2010.[115]
- any of the following information about the person, provided by the Chief Executive, Disability Services: information about a disability worker screening application; information about a clearance, interstate NDIS clearance, exclusion or interstate NDIS exclusion; police information (including investigative information and other information related to police information); disciplinary information or NDIS disciplinary or misconduct information — added in 2020 and 2022.[116]

8.6.3 Limits on investigative information

The amendments enabled the Police Commissioner to identify and provide the Commissioner with investigative information, regardless of when the investigation took place, or when the act/omission investigated (allegedly) occurred. This meant that matters pre-dating the commencement of the provision would be captured. However, there were otherwise significant limits on the information that could be identified and provided by the Police Commissioner under this provision. The information could only be identified and shared as investigative information if it was evidence capable of establishing a serious child-related sexual offence, and it did not lead to a charge only because

- the complainant had died or was unwilling to proceed, or
- because their parent / guardian had decided that, in the complainant's best interests, the matter should not proceed.[117]

The current provision for investigative information retains these limitations.[118]

8.6.4 Limits on disciplinary information

Since introduction, the obligation to consider disciplinary matters has been tied to disciplinary information from specified sectors. While the legislation has included the childcare / ECEC sector for this purpose, in some cases disciplinary information which is relevant to working in this sector may come from a different sector, including from sectors not specified in the legislation.

However, with the legislative provisions for disciplinary information as they were introduced, and as they currently are, such relevant information may not be picked up and considered. September 2024 legislative amendments for self-disclosure and other legislative provisions for the Reportable Conduct Scheme (discussed below) may, when they come into effect, go some way to addressing this.

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[115] Added by the *Criminal History Screening Legislation Amendment 2010* — see then new ss 226 and 337 (Commissioner may obtain particular information from Mental Health Court), and 338 (Commissioner may obtain particular information from Mental Health Review Tribunal).
[116] This is information that may be provided by the Chief Executive, Disability Services under the *Disability Services Act 2006*, s 138ZG, if the Chief Executive believes it is relevant to WWC functions. This category of information was added to the WWC Act following amendment by the *Disability Services and Other Legislation (Worker Screening) Amendment Act 2020*, s 11. The additional information related to police information was included following amendment by the *Evidence and Other Legislation Amendment Act 2022*, s 27.
[117] See s 121A as inserted by the *Commission for Children and Young People and Child Guardian Amendment Act 2004*.
[118] See WWC Act 2000, s 305.

8.6.5 Self-disclosure of risk-related information

Amendments enacted in September 2024 include new requirements for blue card applicants, blue card holders and applicants for cancellation of a negative notice to notify the Chief Executive of changes in relation to a 'disclosable matter' concerning them.[119] This is in addition to the existing requirement to self-disclose a change in police information.[120]

'Disclosable matters' include matters relating to domestic violence orders or police protection notices,[121] adverse interstate WWCC decisions, or allegations of harm substantiated by an interstate child protection authority.[122] Disclosable matters also include disciplinary action that is prescribed by regulation as well as any other matters, prescribed by regulation, relevant to whether the person poses a risk to the safety of children.[123]

The capacity to capture disciplinary information from sources in addition to those currently listed in the Act may help to counter the risk of relevant information not being considered. Providing flexibility for disciplinary information and additional disclosable matters to be prescribed by regulation is also important. As the Explanatory Note to the *Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2024* observes:

> *[this will] enable the chief executive to respond more quickly if, and when, further matters are identified as being relevant to disclose for the purpose of risk assessments, rather than through amending the WWC Act every time further matters may be identified.*[124]

8.6.6 Use of Reportable Conduct information in WWCCs

The soon to commence *Child Safe Organisations Act 2024* will require that the QFCC (as the oversight body for the Reportable Conduct Scheme) share findings of reportable conduct, which may be considered as part of a WWCC application or re-assessment, with

[119] Failure to disclose as required will be an offence – see forthcoming new s 328B, as set out in the *Working with Children (Risk Management and Screening) and Other Legislation Amendment Act 2024*, s 89. See also forthcoming new s 188, set out in the *Working with Children (Risk Management and Screening) and Other Legislation Amendment Act 2024*, s 44.
[120] See current s 323 of the *WWC Act 2000*, as amended by the Working with *Children (Risk Management and Screening) and Other Legislation Amendment Act 2019*. Prior to amendment in 2019, this was set out as an obligation of employees to notify their employer (s 323), and an obligation of persons or carrying on business to notify the Commissioner / Chief Executive of change in police information (s 324). The relevant obligations were originally set out, in ss 112 and 113 of the *Commission for Children and Young People Act 2000*, as obligations with respect to a change in criminal history information.
[121] These are orders or notices made issued against the person under the *Domestic and Family Violence Protection Act 2012*.
[122] This refers to a department of another State administering a child welfare law of that State. Relevant child welfare laws are listed in the *Child Protection Act 1999*, Schedule 3.
[123] See definition of disclosable matter in forthcoming new s 186, as set out in the *Working with Children (Risk Management and Screening) and Other Legislation Amendment Act 2024*, s 42.
[124] *Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2024*, Explanatory Note.

the Chief Executive.[125] This aligns with Royal Commission recommendations and the views of the QFCC as stated in its 2017 Blue Card Review Report. [126]

Potentially, this will provide an important conduit for risk-related information that might not otherwise be available to supplement the disciplinary information currently obtainable for WWCC purposes.[127] As the QFCC's Blue Card Review Report noted, sharing a greater range of disciplinary information and information under a Reportable Conduct Scheme will strengthen the blue card system.

Conversely, the Chief Executive will be required to notify the QFCC if a negative notice is issued to a person, or a person's negative notice is cancelled, and the Chief Executive is aware the person is the subject of a reportable conduct finding.[128]

However, as noted above, the definition of *reportable allegation* in the Child Safe Organisations Act refers to an allegation or other information that *leads a person to form a reasonable belief* that a worker of a reporting entity has committed reportable conduct or misconduct that may involve reportable conduct. As discussed above, a threshold described in these terms may serve to unduly limit reporting of relevant allegations. This would, as a consequence, limit the sharing of reportable conduct findings for WWCC purposes.

8.7. Shifting from best interests of children to risk to children's safety

Throughout the study period, children's best interests continued to be the core principle underpinning WWCC decision-making — particularly in relation to the discretionary exceptional case determinations. By the end of the study period however, legislative amendments (passed in September 2024 but not yet commenced) have resulted in a significant shift towards a clearer focus on risk to children's safety.

The *Working with Children (Risk Management and Screening) and Other Legislation Amendment Act 2024* (WWC Amendment Act 2024) provides for a new decision-making framework[129] to replace the children's best interest measure with a new statutory threshold of *risk to the safety of children* — defined as *real and appreciable risk to the safety of children*.[130] This shift to a risk-based threshold brings the WWC Act into broad alignment with other Australian jurisdictions, the National Standards for WWCC, and Royal Commission recommendations.[131]

In addition, a new 'reasonable person' test will mean that, when assessing whether a person poses risk to children's safety, the Chief Executive must consider whether a

[125] *Child Safe Organisations Act 2024*, s 51 (Disclosure of findings of reportable conduct to chief executive (working with children)).
[126] QFCC, *Keeping Queensland's children more than safe: Review of the blue card system* (Blue Card Review Report).2017
[127] *Child Safe Organisations Act 2024*, s 27.
[128] See forthcoming new s 343A (Requirement to notify Family and Child Commission of negative notice) of *WWC Act 2000*, as set out in the *Child Safe Organisations Act 2024*, s 128.
[129] New Division 9 (Dealing with and deciding applications) and new Division 10 (Steps after application decided) will replace the current Divisions 9 and 10 in Chapter 8, Part 4. New Subdivision 2, in new Division 9, deals with WWCC exemption applications by police officers and registered teachers (Chapter 8 Part 5 (Working with children exemptions) is omitted).
[130] Forthcoming new s18D, as set out in the *Working with Children (Risk Management and Screening) and Other Legislation Amendment Act 2024*, s 37.
[131] As noted in the Explanatory Note accompanying the *Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2024*.

reasonable person would allow their child to have direct contact with the applicant in child-related work, whether supervised or unsupervised.[132]

8.7.1 Greater direction for discretionary decision-making

With specific requirements for assessment of real and appreciable risk to children's safety, the latest round of amendments take a more directive approach to address the tension between discretion and prescription in WWCC decision-making.

The 'assessable information' to be considered in deciding applications[133] remains consistent with the current range of 'relevant information' that the Chief Executive must consider under existing provisions for assessment and decision-making. However, risk assessment and decision-making will be guided and supported by statutory guidelines, made by the Chief Executive.[134] Guidelines set out in a statutory instrument are likely to provide more detailed instructions and guidance than that contained in existing legislative provisions, with publication of the guidelines promoting transparency and accountability for the exercise of discretion.

In its 2017 recommendation for contemporary risk assessment guidelines to be made as a statutory instrument, the QFCC also recommended the guidelines be subject to annual review.[135] With the statutory guidelines now to be made by the Chief Executive, there is capacity for regular operational review to more readily identify and address systemic risks — in relation to the ECEC sector and other sectors — as they emerge and evolve.

How effectively all of the latest WWCC amendments will work in practice remains to be seen. On the whole, this more comprehensive regulatory response centred on identifying *real and appreciable risk* seems likely to strengthen the capacity of the WWCC Scheme to promote children's safety in ECEC. However, as recent experience in Queensland and Victoria has demonstrated, a strong WWCC Scheme — alone — is not enough to keep children safe.

9. Information sharing reform: still waiting

Limited provisions for collection and consideration of relevant risk-related information can be a significant systemic issue in any legislative scheme for the safeguarding of children.

While provisions for this purpose were quite limited when Queensland's WWCC Scheme commenced, numerous amendments have been made through the study period, to improve the capture and consideration of relevant risk-related information in WWC decision-making. Capacity to consider interstate criminal history and WWCC information

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[132] See forthcoming new s 233, as set out in the *Working with Children (Risk Management and Screening) and Other Legislation Amendment Act 2024*, s 56.
[133] See forthcoming new s 220 (Assessable information in relation to applications), as set out in the *Working with Children (Risk Management and Screening) and Other Legislation Amendment Act 2024*, s 56. This includes police information; domestic violence information; disciplinary information; adverse interstate WWC information; and other information about the person that the Chief Executive reasonably believes is relevant to deciding whether the person poses a risk to the safety of children.
[134] Forthcoming new s 246E of the WWC Act 2000, as set out in *Working with Children (Risk Management and Screening) and Other Legislation Amendment Act 2024*, s 56.
[135] See QFCC Blue Card Review Report.

has improved significantly since 2009,[136] and especially in more recent years.[137] This has been facilitated by administrative and legislative provisions for exchange of expanded criminal history information across jurisdictions, and for Queensland and other jurisdictions to participate in the WWCC National Reference System.[138]

With growing recognition through the study period of the critical need to improve the sharing of risk-related information for children's safety, Queensland and other jurisdictions have included information sharing provisions in reforms for safeguarding beyond the WWCC. Queensland's *Child Safe Organisations Act 2024* includes information sharing provisions for the purposes of the Child Safe Standards Scheme and the Reportable Conduct Scheme.[139] It should also be noted that Queensland's *Child Protection Act 1999* includes an information sharing scheme, though these provisions are both complex and limited in scope.[140]

Reforms introduced by the *Child Safe Organisations Act 2024* should significantly improve information sharing in the ECEC and other child-related sectors. However, these reforms and other existing laws in Queensland are not sufficient to provide a clear statutory framework for information sharing as recommended by the Royal Commission.

In its *Final Report*, the Royal Commission made recommendations for a national information exchange scheme with nationally consistent legislative and administrative arrangements in each jurisdiction. The recommended scheme would permit and, in some circumstances, require not only regulators, law enforcement authorities, and other statutory authorities, but also ECEC and other service providers to exchange information relevant to their responsibilities for children's safety. Importantly, the Royal Commission's recommendations were for information exchange across organisations and within and across jurisdictions — including, where appropriate and relevant, information about untested allegations of child sexual abuse.[141]

A closer examination of current laws, including provisions yet to commence, could more fully consider the need for further legislative changes to improve information sharing, taking note of Royal Commission recommendations and critical incidents in Queensland, Victoria and elsewhere.

However, it should be noted that information sharing reforms as recommended by the Royal Commission would need to be implemented in collaboration and alignment with

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[136] See *Memorandum of Understanding for the National Exchange of Criminal History Information for People Working with Children*, 2009, followed by the *Intergovernmental Agreement for a National Exchange of Criminal History Information for People Working with Children* (ECHIPWC): https://federation.gov.au/about/agreements/intergovernmental-agreement-national-exchange-criminal-history-information-people

[137] See, for example, *Child Protection Reform and Other Legislation Amendment Act 2022* amendments to the WWC Act to facilitate Queensland's participation in the Working with Children Checks National Reference System (national database enabling jurisdictions to identify persons deemed ineligible to work with children in another state or territory).

[138] See, for example, *Memorandum of Understanding for the National Exchange of Criminal History Information for People Working with Children*, 2009, followed by *Intergovernmental Agreement for a National Exchange of Criminal History Information for People Working with Children* (ECHIPWC).

[139] See the *Child Safe Organisations Act 2024*, Chapter 4 (Disclosure of information and confidentiality) for information sharing under the Child Safe Standards Scheme and under the Reportable Conduct Scheme (s 49)

[140] See information sharing provisions in *Child Protection Act 1999*, Part 4 of Chapter 5A.

[141] See Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Volume 8, Recordkeeping and information sharing*, Sydney, 2017, recommendations 8.6 – 8.8).

other jurisdictions. In 2023, all jurisdictions agreed to explore possible legislative and administrative options to implement the Royal Commission's recommended information sharing scheme.[142] With inter-jurisdictional work on this currently underway, there is a significant opportunity to pursue nationally harmonised reform in this area.[143]

10. Looking back to move forward: reforms to strengthen safeguarding

This review of legislative change through the study period suggests a trajectory paralleling the evolution of broader societal awareness and understanding of children's vulnerability to harm in institutional settings — including young children in ECEC. This is reflected, for example, in community expectations and support for changes to capture a broader range of relevant offences and other risk-related information in WWCC assessments and decision-making.

Legislative changes to achieve various objectives related to children's safety over the study period have been numerous and frequent. In some cases, the frequency and volume of legislative change has added to the complexity of legislation. Again, Queensland's WWCC legislation provides examples of this, with the latest round of amendments enacted in September 2024 seeking to simplify some of these complexities.

On the whole, the cumulative effect of legislative changes over the study period, including in legislation enacted but not yet commenced, has been to progressively and significantly strengthen laws for safeguarding children in ECEC and other organisational contexts.

However, as the Royal Commission's work and recent ECEC experience in Queensland and Victoria demonstrate, in some cases relevant risk-related information may not be adequately captured or reflected in reportable conduct, WWCC, or criminal justice processes and outcomes. More needs to be done to improve law, policy and practice, particularly with respect to identifying and responding to perpetrators who move between organisations and jurisdictions undetected — information sharing remains a key area for reform in this respect.

While legislative change in the study period largely moved the regulatory framework for quality and safety of ECEC service provision to a nationally harmonised model, other key legislative developments for children's safety in organisational settings have been jurisdiction-based. However, it is important to note, in November 2023, Queensland and all other Australian jurisdictions agreed to prioritise WWCC harmonisation, and consider alignment of reportable conduct schemes as well as reforms for a national information sharing scheme as recommended by the Royal Commission.[144]

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[142] See the statement by the then Commonwealth Attorney-General, Mark Dreyfus: *Outcomes of the Ministerial Forum on Child Safety*, 24 November 2023. See also Joint Committee on Children and Young People, Parliament of New South Wales, *Government response to the Joint Committee on Children and Young People Report 1/58*, tabled 26 May 2025.

[143] The Information Sharing Sub-Working Group established for this purpose is currently undertaking work to progress development of models for an information sharing scheme as recommend by the Royal Commission. This work is being conducted under the *National Strategy to Prevent and Respond to Child Sexual Abuse 2021-2030*, with information currently being sourced from states and territories about their existing legislative and administrative information sharing arrangements to identify key issues: Joint Committee on Children and Young People, Parliament of New South Wales, *Government response to the Joint Committee on Children and Young People Report 1/58*, tabled 26 May 2025.

[144] See agreement as announced by the then Commonwealth Attorney-General, Mark Dreyfus: *Outcomes of the Ministerial Forum on Child Safety*, 24 November 2023.

Recent alarming cases of child sexual abuse in ECEC are a critical reminder: the capacity of any one safeguarding mechanism or scheme to protect children in high-risk child-related settings is, in isolation, limited.

Going forward, further consideration of the interaction of legislation across the whole of the safeguarding landscape, both in Queensland and nationally, may yield valuable insights to identify and inform any necessary further legislative and policy change for children's safety in ECEC and other high-risk settings. In doing this, a more holistic and integrated, rather than piecemeal, reform approach will assist to minimise unnecessary regulatory duplication. More importantly, such an approach will assist to maximise the interoperability of laws for more effective safeguarding.