

**Submission on the Discussion Draft  
For  
Proposals for Screening of Individuals Who Work With  
Children in Tasmania**

<b>Name</b>	Mr. Nick Richardson, Dr. Daryl Higgins, and Ms. Leah Bromfield.
<b>Organisation</b>	National Child Protection Clearinghouse, Australian Institute of Family Studies
<b>Preferred telephone no.</b>	(03) 9214 7890
<b>Email address</b>	nick.richardson@aifs.gov.au daryl.higgins@aifs.gov.au leah.bromfield@aifs.gov.au

In the table below, we have evaluated the proposed legislation for screening for child related employment against what we consider to be elements of best practice in this area. These best practice standards were developed from a review of employment screening legislation currently in effect or being proposed in Australian state and territories.

	Best Practice		Comment
Legislation	Existing legislation	Y	The proposed legislation is needed, as there is currently no law in Tasmania that requires the screening of <i>all</i> people who seek paid or unpaid work with children. However, there are current legislative requirements for criminal history checks for some government positions. For instance, under of the <i>State Service Act 2000</i> a function of the State Service Commissioner is to determine requirements, including satisfactory criminal history, for employment of employees in the State Service (e.g., Department of Health and Human Services and Department of Education). In addition, some non-government employers currently require job applicants to provide them with personal information obtained under Freedom of Information (FOI) legislation for screening.
	Proposed changes	Y	Screening for Child-related Work
Applicants	Criteria of contact with children over given period	N	Queensland legislation specifies the amount of contact with children a person has in their employment, for screening to be required (that is, contact at least once a week over the course of one month). We consider that similar specification in the proposed Tasmanian legislation of the amount of contact time before which screening is required would be very beneficial. This could be an additional provision to cover any other types of employment not covered in the definition of child-related employment.

Applicants cont.	Professionals with registration bodies	Y	The proposed legislation stipulates screening requirements for any person employed in educational institutions for children or in the provision of child health services. This in effect covers teachers and the health practitioners whom are required to be registered with a professional body.
	Self-employed	Y	
	Children	N	It is proposed that the legislation apply to adults who work with children in either a paid or unpaid capacity (i.e., persons aged 18 years and over) and that the implementation of the legislation could be staged with regard to older children working/volunteering with other children at a later time. The Clearinghouse strongly advocates the requirement for children over the age of 14 years to seek clearance. We submit that the legislation should contain an explicit timeline for the phasing in of requirements for individuals under 18 years of age be screened.
	Related to child	Y	In some jurisdictions, individuals who are volunteering or working with their own children are exempt from screening requirements. This is not addressed in the proposed Tasmanian legislation, however we consider that such individuals should be required to seek screening.
	Volunteers	Y	
Applicant information considered	Verification of ID	Y	We support provisions in legislation to verify the applicant's identity.
	Includes charges and convictions	Y	The Clearinghouse supports the proposal for both charges and convictions to be considered as relevant in the screening of a person.
	National Criminal Record Check	Y	
	Crimes against adults	Y	
	Restraining orders	Assumed	The issue of whether restraining orders should be considered in a background check was discussed in the consultation paper (in Section 3.5), however restraining orders are not explicitly included among the categories of offences that prohibit employment. From reading Section 3.5, we understand that breaches of restraining orders are considered offences. We therefore assume that breaches of restraining orders will be considered within the categories of prohibited employment. The Clearinghouse recommends that both the <i>receipt</i> and breach of a restraining order be considered as relevant in the screening of a person, particularly orders implicating actions in the presence or against a child.

Applicant information considered cont.	Professional body disciplinary proceedings	Assumed	Professional body disciplinary proceedings are not explicitly included among the categories of prohibited employment, however it is proposed that the Screening Agency perform the function of receiving notifications from professional registration bodies regarding child-related complaints against an individual. Therefore, we assume that such information will be considered in the screening process. We submit that the legislation contain an explicit timeline for the phasing in of inclusion of such information in the screening process. The Clearinghouse suggests the outlining in legislation of criteria for the inclusion of professional body disciplinary proceedings (e.g., the disciplinary process is formal, with satisfactory standards of proof).
	Other child-related complaints while in employment	Assumed	Child-related complaints while in employment are not explicitly included among the categories of prohibited employment, however it is stipulated in a later section of the proposed legislation that the Screening Agency perform the function of receiving notification from employers regarding child-related complaints against an individual and outcomes of any investigation or disciplinary proceeding.
	Actions that have been investigated but not resulting in a charge	N	The Clearinghouse submits that information from police investigations into allegations of serious child-related offences be taken into account, even if no charges were laid because the child was unwilling or unable to proceed. If any relevant record is identified, additional information about that record may be sought from agencies such as courts, police, prosecuting authorities and other government departments to enable a full and informed assessment.
	Incident of child sexual or physical abuse substantiated by Child Protection services	N	We understand that the data collected and maintained by the Department of Health and Human Services (Children and Families Division) are under the name of the client and not under the name of the any perpetrator, alleged or otherwise. This means that such data will be of limited use in ascertaining whether a screening applicant is a perpetrator. The Clearinghouse recommends that if data systems are changed so that information is linked to the perpetrator, such information should be considered in the screening process.
	Can request additional info from Police	N	The Clearinghouse suggests that the legislation provide the Screening Agency with capacity to make any enquiries to, or seek advice or information on applications from, the Director of Public Prosecutions or the Police Commissioner.

Info cont.	Screening Agency discretion in considering information	Y	It is proposed that in considering Category 2 applications, the Screening Agency must have regard to information relating to the nature of the offence or proceedings against the applicant. We support the Screening Agency having some discretion in the decision to grant a suitability notice for such categories provided that this information is applied to a valid and reliable risk assessment model.
Outcome	Product		The applicant will either receive an approval to work with children (this will be known as a 'Tascard') or a 'negative notice' in instances where the applicant is not approved to work with children.
	Set length of time clearance notice is valid	Y	(3 years)
	Provided to	Employee	
	Employer discretion in decision to employ	Limited	The Clearinghouse supports the stipulation in the proposed legislation whereby an individual who receives a negative notice is not permitted to work with children or to apply for child-related work. This eliminates employer discretion in instances of a negative notice. However under the proposed legislation, information that emanates from the screening process regarding disciplinary proceedings and complaints (whether resolved or unresolved) against an individual in his/her previous employment will be forwarded to the individual's prospective (new) employer. In this instance, the legislation provides the prospective employer discretion in deciding whether to employ the individual. Where a person had adverse disciplinary findings in previous employment, we submit that the Screening Agency provide to the employer information regarding how the person can be supported should that person be employed (e.g., supervision when in contact with children).
Applicant rights and responsibility	Notification of applicant of adverse decision	Y	
	Appeal / Complaints	Y	We support the provisions whereby an individual may appeal a decision of the Screening Agency to the Tasmanian Industrial Commission.
	Penalty for false disclosures	Y	

Applicant rights cont.	Requirement for employee to disclose changes in criminal history	Y	
Administration	Centralised Body	Y	The Clearinghouse suggests that the proposed Child Safety Commissioner would be the more suitable body to perform screening functions.
	Other screening agencies	Y	Government and specified non-government agencies.
	Central body has oversight of other screening bodies	Y	The Central Screening Agency will have oversight of the implementation of screening legislation with regard to paid and unpaid employees in government and non-government organisations and self employed people; monitor and audit screening practices used by government departments and approved NGOs; and ensure consistency in screening processes used by government departments and approved NGOs.
	Cost	Y	We submit that the cost of obtaining screening be minimised, preferably at a level consistent with that charged for a National Police Record check (\$45). We advocate significantly reduced costs or no cost for volunteers.
Additional Strategies	Guidelines and mandated requirements for providing child safe environments	Y	We strongly commend the proposal to imbue the Central Screening Agency with the functions to have oversight the development and implementation of child-safe environments by government and non-government organisations and self employed people; monitor, audit and keep record of child-safe environments in Government Departments, NGOs and self employed people (including the management and investigation of child-related complaints); and provide information and assistance to employers, organisations and members of the public on creating child-safe environments.
	Investigation of allegations in organisations	Y	
	Community education of creating child safe environments	Y	

### *General Comments*

The consultation paper regarding the proposals for Tasmanian screening for child-related work appropriately highlighted that it is important for organisations, employers, employees and volunteers to be aware of the definition of child-related employment to ensure screening is only undertaken where necessary and appropriate. The Clearinghouse stresses that there may be particular confusion or lack of awareness in the community about screening requirements for less formal child-related employment arrangements, such as where parents themselves directly employ an individual to engage in services for their children (e.g., parents employing a nanny who is not associated with an agency). As such, there is a need for the Screening Agency to engage in extensive community education about screening processes.

The consultation paper also discussed a number of national initiatives in the area of creating child-safe environments. Among those discussed was the Choose with Care prevention program developed by Childwise Australia, which aims to minimise the risk of child abuse occurring within organisations working with children ([www.ecpat.org/projects/choose\\_with\\_care.html](http://www.ecpat.org/projects/choose_with_care.html)). The program assists organisations to improve screening, recruitment and management practices for staff and volunteers. As highlighted by the consultation paper, the Choose with Care prevention program has been incorporated into a pilot accreditation project by the Australian Council for Children and Youth Organisations (ACCYO) that was designed to maintain service standards among organisations to ensure the safety and well being of children while in the care of organisations ([www.accyo.org.au/index\\_flash.htm](http://www.accyo.org.au/index_flash.htm)).

The Clearinghouse would like to draw attention to the success of the accreditation project of the Australian Council for Children and Youth Organisations (ACCYO). We reiterate our recommendation that the proposed Screening Agency perform a role of educating the community in creating child safe environments. Accordingly, we recommend that the Screening Agency in performing this role should encourage organisations to link in with the ACCYO initiative to establish a transparent, voluntary accreditation process to ensure that standards are met and maintained in the implementation of child safety policies by organisations. This would involve two fundamental standards: the Working with Children Check and, the implementation of child safety policies by organisations.

The Screening Agency should engage in extensive consultation with Childwise, ACCYO, affected organisations and the wider community in order to create a workable, voluntary accreditation process.

Overall, the Clearinghouse commends the proposals regarding the screening of child-related work. We consider that the discussion of the rationale and issues relating to the design of legislation in this area to be very helpful for those seeking to provide comment. The Clearinghouse also considers the proposed screening model to be commendable,

particularly in terms of the types of information to be considered and the functions of the Screening Agency.