

# Twelve-month activity report

NSW Working With Children Check

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# 1. Aims of this report

On 15 June 2013 a new model for the Working With Children Check (WWCC/the Check) in New South Wales came into effect under the *Child Protection (Working with Children) Act 2012* (the WWC Act). It significantly reformed the previous WWCC established under the *Commission for Children and Young People Act 1998*. The Check provided greater protection for children by providing a time limited, portable clearance for child-related workers and volunteers to work with children generally, instead of at a nominated workplace. It made a number of key improvements designed to make the Check fairer, more robust, and efficient. It should be noted that, the definition of child-related work under the new Act remained consistent with the categories of child-related work that had been in place when the WWCC commenced in July 2000.

The Check was complemented by enhanced compliance programs and child safe training and education programs which reiterate the importance of using the Check as one approach within a broader child protection and child safe framework.

This report provides a breakdown of the WWCC volumes and related activities to support the Check in the first 12 months of the operation of the new model. These figures are compared to the predicted numbers, to report back to Government. The report allows the breakdown of these activities to be used to consider costs, risks and effectiveness of the new WWCC model following its introduction in June 2013.

# 2. Organisational profile

The Office of the Children's Guardian (the OCG) is established under the *Children and Young Persons (Care and Protection) Act 1998* as a statutory appointment that reports to the Minister for Family and Community Services and to Parliament.

On 15 June 2013, responsibility for administering the new WWCC, encouraging organisations to be safe for children, and administering the Child Sex Offender Counsellor Accreditation Scheme were transferred from the Commission for Children and Young People (CCYP) to the OCG.

The principal functions of the Children's Guardian are found under s181 of the *Children and Young Persons (Care and Protection) Act 1998*.

# 3. Overview of the Working With Children Check

NSW was the first state in Australia to introduce a WWCC. A new model for the Check was implemented by the OCG 13 years after it was first introduced. It has significant improvements and brings the Check more closely in line with other jurisdictions. It is now one of the most comprehensive in the country and affords greater protection for children.

A WWCC is a prerequisite for anyone engaged in child-related work. Under Part 2, section 6 of the *Child Protection (Working with Children) Act 2012* (the WWC Act), child-related work is defined as work in a specific, child-related role or work that involves direct contact with children in a child-related sector.

Additional roles are identified in the Child Protection (Working with Children) Regulation 2013 (the WWCC Regulation).

An outline of the former Check and the key improvements introduced under the new Check are outlined below.

### 3.1 The former WWCC framework

NSW introduced Australia's first WWCC scheme in 2000. The CCYP had overall responsibility for the WWCC scheme; however the checking processes were shared between a number of screening agencies (NSW Department of School Education, NSW Department of Health, Catholic Commission for Employment Relations and the Department of Arts, Sport and Recreation). The Commission developed guidelines and tools to assist screening agencies, as well as monitoring the practices of the screening agencies.

The immediate aim of the WWCC was to provide employers with information regarding the risk in employing an individual in a specific workplace setting. Employers were responsible for collecting details on behalf of an individual prior to their employment and submitting this information to one of four approved screening agencies.

The Check excluded certain individuals (referred to as prohibited persons) from working with children. Where there were convictions for a sex offence against a child or adult, the murder or kidnapping of a child or a serious child-related personal violence offence (excluding an offence committed by an adult who is less than three years older than the child concerned), the *Commission for Children and Young People Act 1998* prohibited an individual from undertaking child-related work.

The WWCC also identified and advised employers of individuals who, although not prohibited, may potentially pose a risk to children because of their past conduct based on actuarial estimates. The estimate of risk to children posed by a particular individual took into consideration the nature of any past conduct by the applicant as well as the risks that may arise in the individual's particular workplace.

Where an individual was assessed as potentially posing some level of risk to children but was not prohibited, it was the responsibility of the employer to determine whether the individual was suitable to work with children. The NSW scheme differed from schemes introduced in other jurisdictions, as the onus was on the employer to arrange for an employee to be checked.

### 3.2 Background to changes to the former WWCC

There were two key drivers for a new WWCC system in NSW. The first was a report by the NSW Auditor General published in February 2010, which identified a number of gaps in the old WWCC system. The second was a statutory review of the *NSW Commission for Children and Young People Act 1998* published in April 2010 and conducted by Michael Eyres, AM. This review identified a number of weaknesses with the former WWCC including that:

- the Check was excessively complex and definitions associated with the Check needed to be simplified
- the different requirements for paid employees and volunteers were unjustified
- the Check did not effectively manage potential risks posed by volunteers
- employer responsibilities were onerous and unclear.

The Eyres Review recommended that a new style of person-based, rather than position-based WWCC be implemented and that the WWCC should apply equally to child-related volunteers and paid employees. The Review also recommended that a user fee should be introduced to fund the new Check.

### 3.3 The new WWCC model

In June 2013 NSW introduced a new model for the WWCC that reflected many of the recommendations of the statutory review and brought about a number of key improvements to the Check (outlined at 3.5 Key Improvements), including a move away from a paper based system to a new streamlined online facility.

Under the new Check the Children's Guardian grants either a WWCC clearance or a bar that is valid for 5 years. As with the previous WWCC scheme, there are certain offences which automatically exclude a person from child-related work. The Children's Guardian is prohibited from granting a WWCC clearance to a person convicted of an offence specified in Schedule 2 to the WWC Act if the offence was committed as an adult, or if there have been proceedings commenced for any of the offences in Schedule 2 pending the determination of the proceedings.

Schedule 2 offences include certain violent offences, offences against children, sexual offences, child pornography and kidnapping.

While some people have records that do not automatically disqualify them from child-related work they may still pose a risk to children. Schedule 1 of the WWC Act sets out the types of offences which give rise to the requirement for a further risk assessment to be undertaken by the OCG. This is in order to determine whether an individual should be cleared or barred. These are referred to as assessment requirement triggers and are reproduced in **Appendix 1**.

The OCG considers a wide range of records in the risk assessment process and now has access to a broader range of records than under the previous system. The Children's Guardian is also able to place an interim bar on individuals who are under risk assessment to minimise the opportunity for risk of harm to children while the assessment process is being completed.

### 3.4 Scope of the WWCC

Child-related work in defined child-related services is outlined in section 6 of the WWC Act as work that requires direct contact with children as an essential element of the role, whether or not that work is supervised. Direct contact is physical or face to face contact, as it was in the former WWCC framework.

The legislative intent of the Check was to reserve the WWCC for people whose work is focused on children and whose work requires ongoing role-oriented contact with children. It was recognised that most people in our community have direct contact with children in their daily lives however they do not all need a WWCC. The WWCC has never been intended for people who, as a normal part of their working day, may see a child or be in a place with a child but who do not work with children. It should be noted that the scope of the WWCC i.e. the roles and industries have not substantially changed. However government departments and Ministers have requested changes since the implementation of the WWCC (see page 23 for further detail). In this same vein, the WWCC does not apply to services and roles where a child is a co-worker or a co-member of an organisation.<sup>1</sup> The scope of the Check

<sup>1</sup> Extract from the NSW Legislative Assembly, 2nd Reading Speech by Minister Dominello, 13 June 2012



has remained unchanged for almost 15 years to ensure that its focus remains on people whose work required ongoing role oriented contact with children.

Section 7 of the WWCC Act further provides an opportunity to protect children by allowing the Children's Guardian to determine that certain paid roles may be considered to be a child-related role. These are roles in a child-related service where the worker does not have direct contact with children but has access to confidential records or information about children.

However the WWCC was never designed to be relied on solely to mitigate the risk that children face in a range of settings. Research shows that the WWCC can only be one part of a child safe solution. The Check exists within the context of a broader legislative framework for protecting the safety of children in NSW, and needs to be supplemented by appropriate governance and other operational safeguards within individual organisations.

## 3.5 Key Improvements

### 3.5.1 The same Check for all categories of worker

Under the new system, all child-related workers are subject to the same Check, including volunteers and self-employed people. This is a significant departure from the old system. Under the previous system, people in child-related employment were subject to different levels of checking. There were also inconsistencies about who needed to be checked, with foster carers requiring a check but not relative kinship carers, who have been brought within the scope of the new Check. Under the old system employers applied for a WWCC clearance for their employees, while self-employed people applied for a Certificate for Self Employed People (CSEP), and volunteers signed a statutory declaration rather than being subject to the Check.

### 3.5.2 More comprehensive checking

The new Check accesses full criminal histories and a database of workplace records, rather than a defined subset of records as with the previous model. This enables patterns of behaviour that represent a risk to children to be identified and assessed appropriately. Under the new Check a person's clearance status is continuously monitored for any new NSW based charges to manage risks that may occur after a person has received a clearance to work with children.

### 3.5.3 Simpler outcomes

There are only two outcomes of the new WWCC: a clearance or a bar – so employers can no longer engage a person assessed as posing a risk to the safety of children.

Previously, employers were provided with an assessment of a worker's risk to children, and were granted discretion as to whether or not they employed the worker.

The new Check removed employer discretion, ensuring 'high risk' individuals are not employed for child-related work. They are either cleared or barred, and it is against the law to hire a barred person for child-related work. It makes no difference whether the work is paid or unpaid. The new Check places the obligation on the employee/volunteer/self-employed person to apply for a WWCC.

The employer now has an obligation to verify that an eligible person has a WWCC or has applied for one.

### 3.5.4 Applicant-based portable clearance

Under the previous system, employers were required to submit Check applications on behalf of employees. The Check was issued for a particular role with a specified employer and if the employee changed jobs, a new application had to be submitted. For the casual workforce and new graduates this meant multiple applications and checks, which have been eliminated by replacing it with a portable clearance that relates to the individual rather than a position. It means the worker can use it for any child-related work in NSW for the five year life of the clearance, and it is renewable.

### 3.5.5 Easier to operate, streamlined on-line systems

The new Check replaced a complex and time consuming paper based system with a quick and efficient on-line paperless system, saving an estimated one million pieces of paper by minimising the need for multiple applications.

It also delivers a number of benefits to employers. By registering their business with the new, online system, employers can log on to:

- update their registration information
- verify the Working With Children Check status of child-related workers (results appear immediately on-screen)
- report findings of certain misconduct involving children (reporting bodies only).

Proofs of identity (POI) standards have also been improved by using the NSW Roads and Maritime Service (RMS) for POI verification.

### 3.5.6 Greater protection for children through regular review and immediate notification if a worker becomes barred

All cleared applicants under the new model are subject to ongoing monitoring for relevant new criminal offences and disciplinary records in NSW.

If a worker becomes barred, his or her online status is immediately updated. This prevents barred workers from finding new child-related employment because prospective employers are immediately alerted to the barred worker's status during the compulsory online verification process.

The details provided by employers during online verification enables the OCG to notify the employer if a worker becomes barred.

### 3.5.7 Eliminating card fraud

The new WWCC has the distinct advantage of being the first Check in Australia to operate without a card. This was designed to reduce the cost of the WWCC; remove the opportunity for fraud associated with card use, a problem reported by other state and territory Check operators; and help restrict demand for a generic badge of suitability for workers not in child-related roles.

### 3.5.8 Fairer for applicants

Barred applicants are granted better access to an appeals process through the NSW Civil and Administrative Tribunal. An appeal is possible in all but three cases:

- if they are subject to an interim bar which has been in force for less than six months
- if they have a bar due to ongoing proceedings relating to a disqualifying offence under Schedule 2
- if they have been barred because they have a conviction for child murder. A flowchart of the new WWCC process is at **Appendix 2**.



## 4. The framework for protecting children in NSW

NSW has a comprehensive framework in place to protect children and young people from harm of sexual abuse by known offenders, as well as those suspected of posing a potential risk to children. It is underpinned, by an obligation on employers to have a multifaceted approach to keeping children safe; this includes giving attention to:

- administrative functions (including screening tools such as the WWCC and national criminal records checks)
- physical environments and
- organisational culture.

The WWCC is one tool available to employers within the broader protection framework however it cannot replace the crucial role played by NSW Police, the Department of Family and Community Services, employers and individuals in protecting children. The framework consists of the following legislative platforms for identifying and monitoring known and suspected offenders:

### Capturing known sexual offenders

The Child Protection (Offenders Registration) Act 2000: provides a framework for the registration and reporting requirements of certain offenders who have already committed sexual and other serious offences against children (referred to as registrable persons). This Act aims to protect children from serious harm caused by physical and sexual assault through monitoring by NSW Police of these registrable persons in the community.

NSW Child Protection Register: Registrable persons are required to report particular personal details to police while they are living in the community, which is recorded on the NSW Child Protection Register, as well as any affiliation with clubs, or organisations that has child membership or child participation in its activities, this includes through schools.

The head of the Sex Crimes Squad of NSW Police has powers of disclosure to schools in relation to registrable persons who are on the Child Protection Register and involved in activities with their children.

National criminal records check: is an Australia-wide check of a person's criminal history. A 'National Police Certificate' or 'Police Certificate' is a NCRC provided by the Australian Federal Police, a State or Territory police service or a CrimTrac accredited agency.

The Working With Children Check: Workers in 'child-related work' must have a valid WWCC (renewed every five years) in accordance with the requirements of the *NSW Child Protection (Working With Children) Act 2012* and *Child Protection (Working with Children) Regulation 2013*.

### Capturing suspected sexual or violent offenders

The Child Protection (Offenders Prohibited Orders) Act 2004: allows the Police Commissioner to apply to a NSW Local Court for orders restricting the activities and movements of any person facing court proceedings for relevant offences but *not yet convicted*, for example they may be on bail awaiting a trial date.

Registration orders in respect of non-registrable offences: Recent amendments to the *Child Protection (Offenders Registration) Act 2000* in September 2014 expanded the category of relevant offences making it more consistent with the *Child Protection (Working with Children) Act 2012* as well as allowing NSW

Police to apply for a registration order for an offence which is not registrable, if the person is considered to pose a risk to the life or sexual safety of a child.

Statutory child protection system: The *Children and Young Persons (Care and Protection) Act 1998* NSW establishes the broader underlying framework for child wellbeing and protection in NSW. It creates a mandatory reporting system which places reporting requirements about suspected child abuse or physical harm on a range of professionals working with or providing services to children and young people, as well as creating other obligations and safe guards to protect children.

## 5. WWCC activities and throughput

In August 2010 the OCG commissioned Optyma Consultants to conduct a cost analysis and estimate of the annual application volume of the new WWCC. Optyma's report estimated a total of 180,000 checks to 240,000 checks per annum. The OCG used Optyma's report to further estimate demand and prepare costing assumptions for resourcing the new WWCC operations prior to its introduction, based on:

- the volume of applications completed by the CCYP and the three other Approved Screening Agencies (Department of Education and Communities, NSW Health and the Catholic Commission for Employment Relations)
- the actual volumes of WWCC numbers in WA, Queensland and Victoria
- Australian Bureau of Statistics reported data.

There were some accepted limitations with the best estimates arising from key differences between the WWCC models in NSW and other jurisdictions, and these differences were taken into consideration when extrapolating predicted volume. This includes differences in fees, coverage and exemptions between the WWCC across jurisdictions.

For example like NSW, Victoria and Queensland do not charge a fee to volunteers for their WWCC whereas WA does. WA also has the capacity to reject applications that do not fall within their statutory scheme, unlike NSW. These differences have led to different outcomes in the volume of volunteers and other applicants who are not required to have a Check. A State comparison of WWCC numbers in Vic, WA and Qld undertaken in 2011 by the Victoria Department of Justice is at **Appendix 3**, which indicates that where there is no charge or other disincentive, volunteer applications outnumber those of paid workers.

The following section provides a breakdown and explanation of the actual WWCC throughput in 2013–14 at each stage of the system compared to predicted volumes and proportions. A summary of the data is provided at **Appendix 4**.

### 5.1 Online WWCC applications received

A total of 571,185 WWCC applications were submitted in the 2013–14 financial year, comprised of 311,745 applications by paid employees and 259,440 volunteer applications.

Unless an application is verified by an individual it cannot progress to be checked. The verification process requires the applicant to attend at a motor registry or Service NSW Centre and provide acceptable proof of identity as outlined in cl 18 of the Child Protection (Working with Children) Regulation 2013. Statistics in relation to verified applications is discussed at 5.2.

This report uses verified application numbers as the basis for comparison against predicted demand which means that duplicate applications and applications which did not proceed to be checked for other reasons have been excluded.

## 5.2 Verified applications

Of the 571,185 WWCC applications submitted online, 420,499 applications (402,295 unique applicants) were verified by applicants with the required proof of identity. This equates to 1,617 applications per work day or 8,086 applications each working week.

The number of verified applications represents more than a 230% increase on the predicted number of 180,000. It is almost twice the number of applications that was submitted in the previous year across the four Approved Screening Agencies in NSW that were responsible for conducting the Check under the former model. A breakdown of applications received from each sector is provided in **Table 1**, indicating that the education sector has submitted the highest proportion of applications.

**Table 1 WWCC applications submitted by each sector in 2013–14**

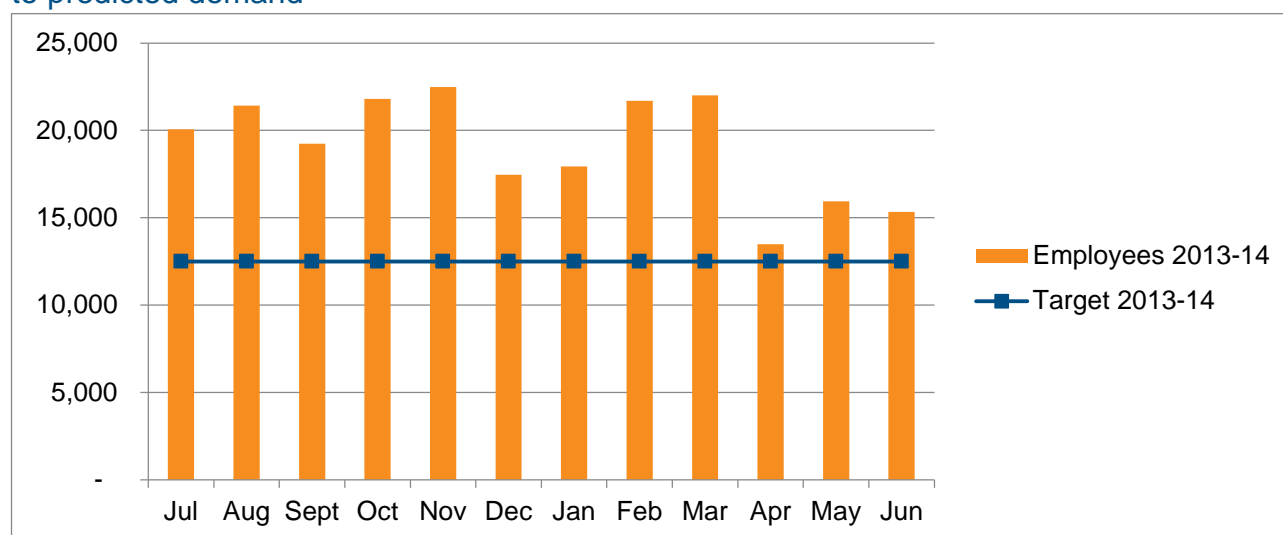
Child-related sector	Application count
Adult household member	16710
Authorised carer	26040
Child development	4828
Child protection services	12814
Children's health services	42851
Clubs or other bodies providing services to children	39309
Disability services	24480
Early education and child care	49168
Education	99419
Entertainment for children	6317
Justice centres	2830
Parent Volunteer - Disability	677
Parent Volunteer - Mentoring	1614
Parent Volunteer - Other	15277
Religious services	46732
Residential services	6769
School Cleaner	2636
Transport services for children	9533
Youth workers	12495

## 5.3 Volunteer vs paid worker applications

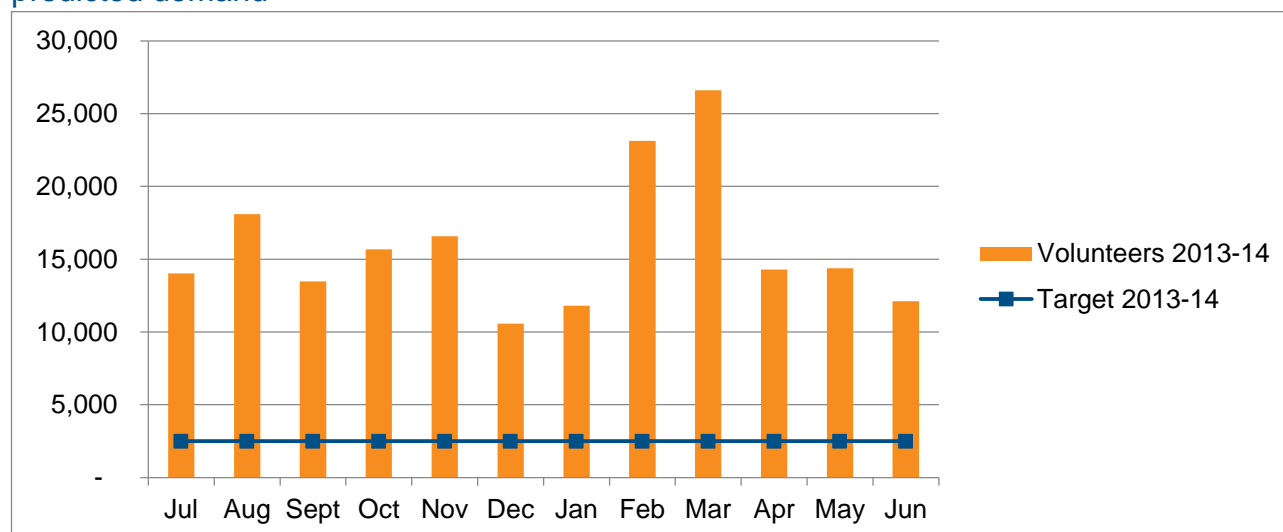
In 2013–14, 191,368 of all applications were from volunteers, while 229,131 applications were submitted by paid workers. There were also 8,993 volunteer applications received that were subsequently upgraded to a paid employee clearance.

The number of volunteer applications significantly exceeded the predicted demand for volunteer applications by 6 times the predicted number, of 30,000, in the first year of operation. While the number of paid worker applications also exceeded the prediction by more than 150%, the scale of the variance was not as great. **Figures 1 and 2** provide a monthly breakdown of paid employee and volunteer applications, against predicted demand, in 2013–14.

**Figure 1: Monthly breakdown of WWCC applications in 2013–14 by paid employees compared to predicted demand**



**Figure 2: Monthly breakdown of WWCC applications in 2013–14 by volunteers compared to predicted demand**



## 5.4 Records review

Where there is a match between an applicant's name and a name on the CrimTrac<sup>2</sup> database, state and territory police agencies must investigate more closely. Most suspected matches are dismissed but the investigation can take several days. Where records are identified, they are reviewed by the OCG to determine whether the applicant, assessed in accordance with the Act, presents a risk to children. This process of review is referred to as 'Records Review'.

The number of applications referred to records review in 2013–14 was 50,051, against a prediction of 27,600 (or 15% of the total number of applications). This is an increase of over 180% of the predicted number. However, the proportion of matters referred to records review was slightly less than predicted, representing just fewer than 12% of the total number of verified applications rather than 15%.

## 5.5 Risk assessment

'Risk assessments' are undertaken where an applicant has a relevant criminal or misconduct record, or notification of concern that is considered to be an assessment requirement trigger. The purpose of the assessment is to identify people whose past conduct indicates possible future conduct that may harm a child in their care.

This is a resource and time intensive activity. The timeframe for completing risk assessments is dependent on the complexity of an applicant's records and subject to external timeframes for the collection of supporting data. Assessment requirement triggers are found in Schedule 1 to the WWC Act and the assessment is conducted in accordance with Section 15 of the WWC Act.

2,353 matters were referred for risk assessment in 2013–14. This represents 4.7% of the total number of applications that were record reviewed, and only 0.05% of all WWCC applications. While this is significantly less than the predicted percentage of all applications that was expected to require a full risk assessment i.e. 1.4% or 2,600, based on WA and Victorian figures, it is comparable to the proportion of matters under the old Check.

## 5.6 Finalised checks compared to predicted numbers

In 2013–14 the OCG processed 420,499 WWCC applications, and finalised 419,709 of those applications, against a predicted 180,000. This is almost twice the number of applications completed across the four Approved Screening Agencies in the previous year, and an increase of more than 230% on the predicted number.

All matters referred to Records Review were finalised in the financial year.

34% of matters that were referred for risk assessment were finalised in 2013–14, totalling 790 matters. The reasons for this are discussed below at 5.7.

## 5.7 Processing time of applications

The median processing time for all applications was less than half a day (0.32 days), while the average was 2.97 days. The average is not representative of the processing times for the majority of applications

<sup>2</sup> CrimTrac is the national provider of criminal history information

as it is skewed by a small proportion of matters which took longer to finalise based on the complexity of the records, or the need to locate and obtain evidence from external agencies.

Despite the high volume of applications, approximately 85% of applications where there were no records were processed within 24 hours.<sup>3</sup> Figure 3 provides a breakdown of processing times for verified applications from commencement of the Check to 1 July 2014, with only a relatively small proportion of applications taking over 10 days to finalise. The bulk of the matters that took over 5 days to finalise, required records to be reviewed.

Applications that were verified at RMS in the 2013–14 year and automatically cleared in that year were processed as follows<sup>4</sup>:

- 18.96% were cleared in under 2 hours
- 19.91% were cleared between 2-5 hours
- 48.99% were cleared between 5 hours and 2 days
- 11.38% were cleared between 2-60 days
- 0.05% cleared between 60-360 days

Applications that are sent to Records Review may include serious criminal matters or other relevant records that require more detailed analysis and decision making. Of the applications that were verified at RMS by individuals in the 2013–14 year, sent to Records Review and finalised within the year<sup>5</sup>:

- 1.34% were finalised within 2 days
- 33.4% were finalised between 2-10 days
- 62.57% were finalised between 10-60 days
- 0.4%% were finalised in 180-360 days

When assessing the risk associated with a person's criminal history, the new WWCC considers a range of information provided by external agencies including within NSW Police, Family and Community Services, Department of Justice and the Department of Health. Time frames for assessments are affected by the volume of information required and the ability of external agencies to provide that information in a timely manner.

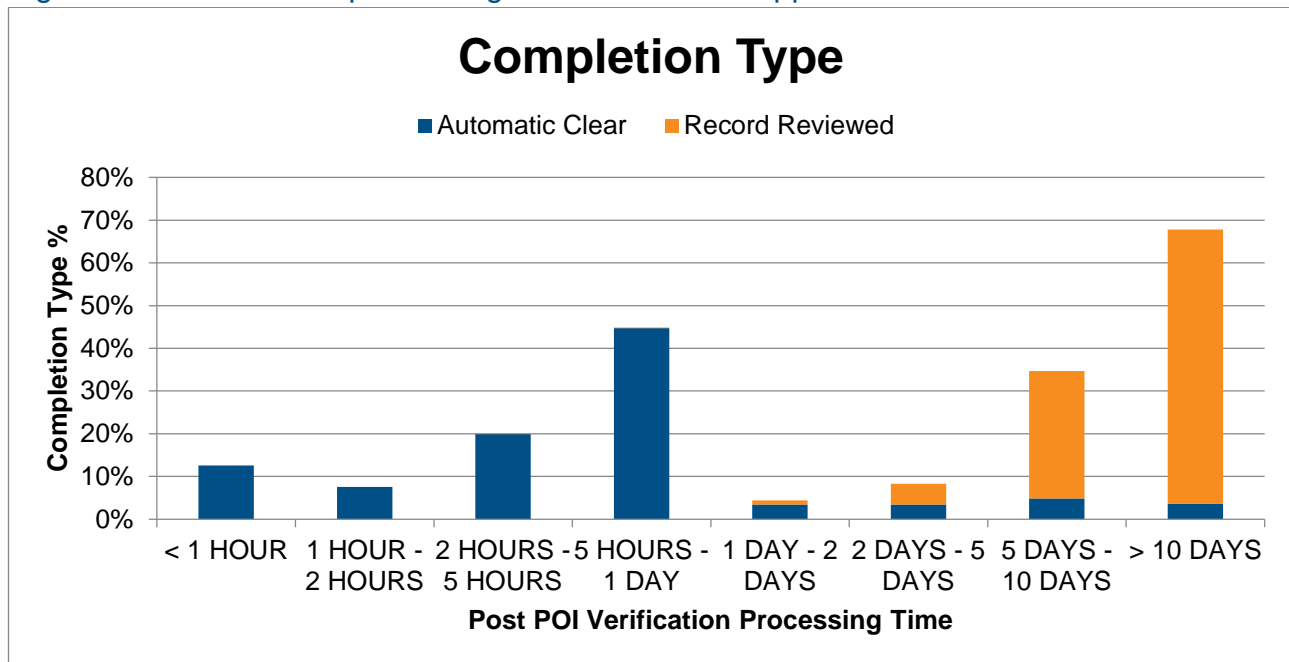
<sup>3</sup> Processing applications within 24 hours, where there are no relevant records is able to be achieved because CrimTrac, the national criminal records repository, can immediately determine there is no criminal record for the applicant. Where CrimTrac indicates that a record they hold may relate to an applicant, state and territory police agencies must investigate more closely. Most suspected matches are dismissed but the investigation can take several days.

<sup>4</sup> The figures only include applications where verification and closure fell within the same year. It does not include applications that were verified in 2013–14, but not finalised in that year.

<sup>5</sup> *ibid*



Figure 3: Breakdown of processing times for verified applications



## 5.8 Number of applicants barred and interim barred

**Autobars:** In 2013–14, 143 applicants were identified as having a disqualifying offence specified in Schedule 2 of the WWCC Act which results in an automatic bar.

When an applicant is identified as having records that are captured within Schedule 2 of the Act, the OCG informs them that they are disqualified persons and cannot engage in child-related employment. If an employer has verified the applicant online and is considering the applicant for child-related employment (or has already engaged the applicant in child-related employment) they are also contacted to advise that the applicant cannot engage in child-related employment and it is an offence to allow the applicant to work in child-related employment.

**Decision Bars:** In the financial year 2013–14, 32 applicants were refused a WWCC following a risk assessment.

When an applicant is identified as having records that are captured within Schedule 1 of the Act they are subject to a risk assessment process. Where applicants have been assessed as a risk to children they are refused a WWCC clearance. The applicant is informed of the outcome and advised that they are not to engage in child-related employment. If an employer has verified the applicant online and is considering the applicant for child-related employment (or has already engaged the applicant in child-related employment) they are also contacted to advise that the applicant cannot engage in child-related employment.

**Interim Bars:** During the risk assessment process, if an applicant is identified as posing a risk to children an Interim Bar can be issued. In 2013–14, 189 applicants were issued an Interim Bar.

## 5.9 Continuous checking events

A significant improvement to the WWCC system is the ability for the OCG to continually monitor an applicant's clearance. If the outcome of a WWCC is a clearance, the cleared individual will be subject to ongoing monitoring for relevant new records in NSW for the 5 year life of the clearance.

Some continuous check events will trigger a risk assessment by the OCG, which may lead to the clearance being revoked as a result of the risk assessment.

There were 343 continuous check events in 2013–14, representing 0.1% of all applications. It was predicted that over the life of a clearance (i.e. 5 years) 2% of applicants will receive a new record from continuous check events. The actual number of continuous check events was significantly lower than the predicted numbers of continuous check events, which for year 1 and 2 of the WWCC were 3,600 per year.

As a result of the continuous check events 38 applicants were barred and 6 refused a clearance. A summary of the barring decisions is provided in **Table 2**.

**Table 2- Summary of barring decisions in 2013–14**

Type of bar	Number
Auto bar	143
Decision bar (not resulting from a cont. check)	32
Interim bar	189
Bar resulting from a Continuous Check event	44

## 5.10 Online verification by employers

Employer verification is a very important aspect of the new WWCC. Employers should verify their employees online after the employee has provided them with their WWCC application or clearance number. By verifying the applicant online the employer is confirming that the applicant is engaged in child-related work with them and is able to confirm that they have a valid WWCC application or clearance.

In the 2013–14 year, employers verified 247,267 applicants. This represents only 61% of all applicants, and means that for a significant proportion of applications, any information that is subsequently obtained by the OCG about the applicant's criminal or misconduct related history is unable to be conveyed to the employer.

## 5.11 Appeals to the NSW Civil and Administrative Tribunal (NCAT)

A total of 83 applications were made to NCAT to appeal a WWCC decision. 8 of the applications were made pursuant to s27 of the WWC Act, which relates to appeals from a decision bar imposed by the OCG after the completion of a risk assessment.

83 appeals were made pursuant to s28 of the Act. Section 28 relates to appeals by persons who are disqualified due to a conviction for a schedule 2 offence.

There was also one appeal to the Supreme Court in a matter where the tribunal refused the disqualified applicant an enabling order. This matter was ongoing at 30 June 2014.

Of the 83 WWCC matters before the NCAT in 2013–14, 44 matters were complete as at 30 June 2014, with an additional 4 matters awaiting a determination by the Tribunal. There were 16 Orders granted by the tribunal, while 8 Orders were not granted, and 20 applications were dismissed. All of the decided matters were in relation to s28 appeals. There were no decided matters in relation to s27 appeals by 30 June 2014.

In total, 40 applications remained open as at 30 June 2014.

The OCG is monitoring and analysing the decisions of the NCAT in the first 12 months to inform risk assessment processes. In particular consideration is being given to the emphasis that members of the Tribunal have placed on relevant factors for assessing risk.

## 6. Information technology systems and interface issues

The OCG developed a new purpose built WWCC information technology system in time for the commencement of the new WWCC system. It is characterised by direct data interchange between various interfaces and presents a unique approach to information exchange and interaction between government agencies.

The system relies heavily on the information and data quality which is exchanged between the following agencies: Roads and Maritime Services (RMS); CrimTrac; NSW Police; Department of Health; DEC.

During the start-up phase of the new system, a number of key issues were identified which highlighted the importance of the quality of data being exchanged between agencies. These issues, some of which are outlined below were quickly responded to through cross-agency collaboration, and done without interrupting continuity of service to the public.

### 6.1 RMS interface

RMS provides proof of identity services under the new WWCC system. Information provided to the RMS by applicants is matched and verified against RMS data by their operators. The RMS data is then automatically transmitted through to the WWCC system, and then forwarded to CrimTrac for background checking.

Issues were encountered in relation to the recording of personal information on the system including name, dates of birth and the gender of applicants. Applicants became aware of the errors in the information that was held by RMS and were required to rectify the information in order to progress their check. This resulted in better quality data for RMS.

### 6.2 NSW Police

One of the key improvements of the new Check is the continuous checking functions for all holders of a WWCC clearance. NSW Police interface is used to provide this function. The system works by matching an applicant's details against the internal NSW Policing systems. Issues were encountered whereby the

name matching algorithms that were developed to match applicants to their correct records were too stringent. This resulted in 2 applicants going unmatched.

Once this issue was identified, these applicants' records were found and the name matching algorithms rectified by providing an additional algorithm which is now giving operators the ability to more securely confirm potential matches. NSW Police rechecked all applications through their database using this new algorithm to ensure that no matters had failed to identify as a continuous check event. Once again the rectification of this issue has improved the NSW Police matching systems.

## 6.3 Other interfaces

The other interfaces with CrimTrac, Department of Health and the DEC, have operated efficiently to date.

Working With Children Check verifications performed by the Departments of Health and DEC has the added benefit of providing these organisations with the "No Probity Flag". This indicator lets the receiving agency know:

- if an applicant has no records and
- if the applicant has agreed to allow this information to be passed on to other government agencies.

Only when these two conditions are true does the record receive the flag. This flag tells agencies whether they need to run a background check or not.

To date more than 85% of the verifications made by the Departments of Health and DEC have returned the no probity flag, which is a significant cost saving to government.

The continued operation of the WWCC system is monitored and checked with the assistance of the integrated agencies. Routine reconciliation of data occurs between NSW Police and RMS agencies in order to maintain a check on the quality, accuracy and amount of information exchanged.

## 6.4 System volumes

The system was designed to accommodate a maximum number of 750,000 checks per year which equates to approximately 2000 applications per day, although it was estimated that the number of daily applications would be significantly less. The system regularly exceeded 2000 applications per day in the first year, with the maximum in any one day exceeding 3000. The infrastructure operated efficiently with a 99.72 % uptime.

# 7. Community education

The OCG developed a comprehensive suite of new material for the Office's website in 2013–14 to reflect the details of the revised and strengthened WWCC. This included new fact sheets and tutorials, the engagement of peak groups and other key stakeholders, and establishing a call centre and a community engagement team to provide scheduled and on-request information sessions.

The community engagement team supported relevant sector groups to better understand their WWCC requirements and obligations. The team also delivered presentations about the new WWCC legislation and provided additional support by attending community stalls, conferences and meetings, and by contributing articles and other information to industry newsletters.

## 7.1 General enquiries

During the reporting period, the OCG received more than 75,000 telephone calls and e-mails about the new WWCC, averaging approximately 1,440 per working week. **Table 3** provides a breakdown of telephone enquiries by type, between 1 July 2013 and 30 June 14, with over 68% of all telephone enquiries related to new or existing WWCCs. A monthly breakdown of the enquiries received is provided at **Appendix 5**.

**Table 3 - Telephone enquiries 2013–14**

Call type	Total
Application - new	16352
App. Existing - application in progress	9298
App. Existing - Change details	2013
App. Existing - Re issue letter	2835
App. Existing - Advise WWC number	17469
Complaint	91
Cost	484
Employer - Login/Verification	3586
Employer - Record keeping	84
Employer - Registration	1192
How do I apply?	3540
Information session	495
Interstate	843
New Check overview - unaware of all the changes	2247
Old check	1619
Overseas	487
Proof of identity	624
Phase-in schedule	844
RMS Issues - D.O.B	278
RMS Issues - Duplicate	197
RMS Issues - Name change	67
RMS Issues - Discrepancies	292
Who needs the Check	2658
Other	2274

A breakdown of telephone enquiries by sector, handled by the OCG between November 2013 and July 2014 is provided in **Appendix 6**. The breakdown of enquiries indicates that the highest volume of enquiries was from the education sector.

Projections based on the estimated number of calls received from commencement of the new Check to 31 October 2013 indicated that the annual volume of calls would be 500-600% over the original estimates that were used to predict staffing needs. As a result an additional 6 FTE staff were brought on to meet the demand.

## 7.2 Web information

Website information was continually updated to provide responses to emerging issues. New fact sheets were developed, where required. The OCG designed a suite of, 'How to' online video tutorials which provided stakeholders with step-by-step screen recordings of how to apply for a check; how to register as an employer; how to verify a check. These resources have been collectively viewed by almost 28,000 stakeholders and have allowed end users to be more confident in carrying out the online administration tasks associated with the new Check.

## 7.3 Information sessions

In conjunction with the call centre and website material, the OCG's community engagement team ran information sessions on the new Check. **Table 4** shows the number of sessions provided either face-to-face or as webinars, as well as views of our online video tutorials.

Other forms of information provision and support were provided, such as writing articles for relevant e-newsletters and periodicals published by stakeholder groups.

**Table 4 - Working With Children Check sessions 1 July 2013 to 30 June 2014**

	Number of sessions	Number of participants
<b>Information sessions</b>	85 (in 31 locations across NSW )	3,449
<b>Webinars</b>	27	547
<b>Online tutorials</b>	N.A.	27,852 views
<b>Total</b>	112	31,848

## 7.4 Targeted engagement programs

During 2013–14, targeted engagement programs were launched for the first year phase-in period. The OCG conducted sector-specific presentations to groups including Juvenile Justice and religious services (including religious specific sessions for ministers of religion).

Juvenile Justice specific sessions were well attended with 185 participants from six Juvenile Justice Centres across NSW. Sessions provided to the religious groups were equally well attended with participants from a range of different faiths including Christianity, Buddhism, Islam and Jewish communities.



In addition a Compliance Forum was held in Sydney in relation to verification of WWCCs, with more than 80 people representing 60 organisations attending.

## 7.5 Stakeholder briefings for second phase-in period

To prepare for the second year phase-in period, the OCG ran stakeholder briefings for those work sectors required by the legislation to be compliant by 31 March 2015.

Sectors which attended included religious, transport, religious education, volunteer bodies, migrant organisations working in child development and family welfare services and a number of other NSW government agencies.

## 8. Child Safe activities

A principal function of the Children's Guardian is to encourage organisations to develop their capacity to be safe for children. The OCG does this by facilitating comprehensive full-day Child Safe workshops and half-day seminars, to help organisations develop and maintain a child safe organisation. Topics covered in the sessions include effective risk management and situational prevention; creating and nurturing a positive, child-centred culture; recruitment, training and professional development for staff; managing complaints and allegations and compliance with the WWCC and all other legislative requirements and industry standards.

The workshops and seminars have undergone major redevelopment to achieve a greater impact on behaviour change in the workplace. Cooperative learning strategies with group-based discussions and case studies have been employed to make the sessions more interactive and open up further opportunities for participants to network and share their knowledge and achievements.

### 8.1 Targeted education programs

In 2013–14 the OCG ran a targeted, child safe education program for the dance sector and the peak body for outside school and vacation child care providers, called Network of Community Activities. These activities are outlined in **Table 5**.

**Table 5 - Targeted education programs 1 July 2013 to 30 June 2014**

Target group	Specialised seminars	Locations	Attendees	Organisations
Dance sector	14	13	270	100
Peak body for outside school and vacation hours	5	4	121	50

### 8.2 Annual education program

A summary of the OCG's education program across NSW including both Sydney metropolitan and rural areas is provided in **Table 6**.

Table 6 - Child Safe Organisations training 1 July 2013 to 30 June 2014

	Sessions	Participants
CSO seminar (half day)	39	953
CSO workshop (full day)	26	533
<b>Total</b>	<b>65</b>	<b>1,486</b>

## 9. HR and staffing

HR and staffing of the new WWCC program is categorised under two broad functions:

- Operations – managing the new WWCC process
- Compliance and Education – to carry out community education and regulate and monitor compliance with the new arrangements.

The staffing arrangements for each of the functional areas were based around the predicted demand for the new WWCC and the anticipated work volumes associated with this demand. A breakdown of the predicted volume and staffing is provided in **Table 7**.

Table 7- Predicted volumes and associated staffing for functional areas

	Year 1	Year 2	Year 3	Year 4
Paid Workers	150,000	150,000	150,000	50,000
Volunteers	30,000	50,000	90,000	90,000
Continuous Checks	3,600	4,000	4,800	4,800
<b>Total caseload</b>	<b>183,600</b>	<b>204,000</b>	<b>244,800</b>	<b>244,800</b>
FTE Operations	38	41	47	47
FTE Compliance and Education	20	20	20	20
<b>Total FTE</b>	<b>58</b>	<b>61</b>	<b>67</b>	<b>67</b>

Due to the higher than predicted take-up of the new WWCC in its first year of operation additional temporary staff were employed to manage demand. **Table 8** provides a comparison between the predicted and actual FTE roles required to meet demand for the Check.

Table 8 - Comparison of predicted and actual staffing based on caseload

	Predicted	Year 1 Actual
Paid Workers	150,000	229,131
Volunteers	30,000	191,368
Continuous Checks	3,600	343
<b>Total Caseload</b>	<b>183,600</b>	<b>420,499</b>
<b>Total FTE</b>	<b>58</b>	<b>80</b>

For 2013–14 the additional employee related costs were funded from a combination of additional staff not being engaged until late 2013, and from additional revenue received from the higher than projected paid worker numbers.

An analysis of the current trends for 2014-15 indicates that paid Check numbers are likely to reduce to 185,000 against a projection of 150,000; however volunteer Check numbers continue to exceed budget projections and are likely to reach 145,000 against a projection of 50,000 in 2014-15. This is predicted to result in a budget shortfall for the OCG and a continuing need for additional staffing above the levels originally funded.

## 10. Legislative and regulatory changes in 2013–14

Prior to the commencement of the new WWCC in June 2013, responsibility for administering the WWCC and child safe functions was transferred from the CCYP to the OCG, effectively reducing the Check from three systems operated by Approved Screening Agencies (a separate system for volunteers, self-employed, and other workers) into one streamlined system. This and other changes were made by the Child Protection (Working with Children) Amendment Regulation 2013 and the *Child Protection Legislation Amendment (Children's Guardian) Act 2013*.

During the first full year of operation of the new WWCC, the OCG received a number of requests from other government agencies and Ministers who held portfolio's relevant to or impacted on by the WWCC, to expand the Check to include categories outside the current scope. The categories of child-related work under the new Check were reflective of the categories that already existed under the previous Check and there was no expansion to these when the new Check was developed. In response to requests for expansion, the Office made several recommendations to government to improve the operations of the Check.

The recommendations were reflected in the amendments contained in the Child Protection (Working with Children) Amendment (Miscellaneous) Regulation 2013 and included the following:

- Amendments to Schedule 2 to the WWC Act to include convictions for former offences relating to carnal knowledge (the relevant provisions were repealed in 1986) as mandatory grounds on which working with children check clearances must be refused (*requested by Minister Dominello*)
- Prescribed school cleaners as persons who are engaged in child-related work and who are required to have clearances, and provided for the staged application of clearance requirements to school cleaners (*requested by Minister Piccoli*)
- Enabled authorised carers, and persons residing with them, who reside in another state or a territory, and authorised carers, and persons residing with them or at homes where home based education and child care services or family day care services are provided, who have physical difficulties, to provide proof of identity for the purposes of a clearance application in the manner approved by the Children's Guardian rather than in person at a motor vehicle registry or Government (*requested by FACS and Health*)
- Clarified that persons who reside with authorised carers who provide out-of-home care are exempt from the requirement to have a clearance if the authorised carers only provide the care at a place other than the home
- Exempted birth parents who reside with authorised carers of their children from the requirement to have a clearance (*requested by FACS*)
- Exempted authorised carers who reside outside Australia, and adults who reside with them, from the *Child Protection (Working with Children) Act 2012*, unless they return to Australia for a period of more than 7 days (*requested by FACS*)
- Adjusted the periods for compliance by volunteers, existing workers and others with the requirements of the *Child Protection (Working with Children) Act 2012* so that the relevant periods end on 31 March rather than 31 December (*initiated by the Children's Guardian*)
- Enabled the Children's Guardian to require any person who is subject to the staged implementation of clearance requirements to comply with those requirements within an earlier specified period (*initiated by the Children's Guardian*)
- Required adult household members of authorised carers to have a clearance (*requested by Minister Goward*)

# 11. Performance indicators

## 11.1 Consistency in decision-making

Indicator 1A	Percentage of records processed by Records Review Officers that are endorsed by Records Review Coordinators
Target	95% of recommendations made by Records Review Officers are endorsed by Records Review Coordinators
Result	98.42% of recommendations were endorsed

Indicator 1B	Percentage of recommendations for risk assessment that are endorsed by Risk Assessment Team Leader
Target	95% of the recommendations for risk assessment made by a Records Review Coordinator are endorsed by the Risk Assessment Team Leader
Result	98.96% of recommendations were endorsed by the Panel

Indicator 1C	Percentage of Risk Assessments that are endorsed by the Panel
Target	80% of the recommendations for risk assessment are endorsed by the Panel
Result	87% of recommendations were endorsed by the Panel

Indicator 1D	WWCC Panel decisions are upheld by NCAT
Target	75% of s27 decisions made by the WW CC Panel are upheld by NCAT
Result	No decisions were handed down in the first year of operation in response to an appeal under s27 of the WWC Act

## 11.2 Efficiency of managing throughput

Indicator 2A	Number of matters processed at Records Review
Target	45 matters are processed, each week by each Records Review Officer
Result	Each Records Review Officer processed 64 matters per week

Indicator 2C	Time to commence applications once they are referred from Records Review
Target	Initial Assessments are commenced within 5 business days of referral from RR
Result	Not met – due to a large volume of referral for risk assessment experienced in the first full year. The Triage unit was not operating for the first 3 months.

Indicator 2D	Time to commence review of initial applications once it is referred from Records Review
Target	Review of initial applications are commenced within 5 business days of referral from Records review
Result	Review of initial applications occurs within 5 business days

Indicator 2E	Average number of Initial Assessments completed by triage officers each week
Target	On average each Triage officer completes 5 Initial Assessments each week
Result	25 matters completed on average by each Triage officer each week

## 11.3 Cost

Indicator 3A	The difference between the number of verified applications made by employees and volunteers, compared to the predicted numbers
Target	X % difference between the actual and predicted number of employee applications Y% difference between the actual and predicted number of volunteer applications
Result	There were 28.9% less paid applications than predicted, as a proportion of all applications. Accordingly there were 28.9% more volunteer applications than predicted, as a proportion of all applications

Indicator 3B	Percentage of verified applications that are automatically cleared
Target	85% of applications do not have a record relevant to the WWCC, as predicted
Result	88% of applications had no relevant record for the WWCC



## 12. Risks and key issues

### 12.1 Oversubscription

In the first year of operation of the new WWCC, the OCG received over 230% more verified applications than the predicted. The significant oversubscription of the check delayed the finalisation of matters referred to risk assessment, with only 34% of all referred matters able to be finalised in the year. The performance indicator (Indicator 2C) in relation to efficiency in commencing reviews of applications referred from Records Review to Risk Assessment was unable to be met.

The online application system does not distinguish applications that are out of scope of the legislation, or submitted earlier than required under phase-in arrangements. This means that there is no way of prioritising the applications that are within the legitimate scope of the Check. WA and Tasmania both have the capacity to reject these applications. A triage system within the WWCC operations was established to assist in prioritising matters.

The higher than expected volume is attributed to a number of key factors:

- a) *The Royal Commission into Institutional Responses to Child Sexual Abuse*: which has increased awareness among employers about the seriousness of child sexual abuse and the extent of risk to children in a range of environments
- b) Adjustment to the implementation of the new Check: resulting in authorised carers, adult household members and the child protection sector (amounting to approx. 52,000 employees) requiring a Check within the first 9 months of operation
- c) Early phase-in of employees: who were in child-related employment prior to the commencement of the new check and were only required to undertake the Check in specified time periods
- d) Over reliance on WWCCs as an organisational risk response.

The factors noted at b), c) and d) are discussed below.

#### 12.1.1 Volunteer applications

Predictions made using the best available data at the time of developing the new WWCC model put the ratio of volunteer checks at around 33% of all expected applications, with the total number predicted at 30,000 in the first year.

As at 30 June there were 191,368 volunteer applications, a ratio of almost 46% of all applications, and a 6 fold increase from the total predicted number.

The number of volunteer applications has significant cost implications for the OCG given that volunteers are not charged a fee to apply for a Check. Early cost analyses of the new Check were based on a proportion of costs being offset by paid worker applications. However the fact that volunteer applications significantly exceeded expected numbers means that alternative cost recovery methods need to be considered.

Reasons for the significant difference between the predicted and actual number of volunteer applications include:

- The fact that volunteer applications are free
- There is no other disincentive for volunteers to apply for a Check
- Organisations insisting that employees undertake the Check even where there is no statutory requirement to do so (discussed further at 12.1.3)
- Over reliance by employers on the WWCC as the sole strategy to mitigate risk to children in volunteer activities.

A fee for volunteer applications based on the Western Australian model, was mooted in the development of the new NSW model. The proposed fee aimed to balance the need to discourage demand from agencies that are not offering child-related roles, while ensuring that genuine volunteers are not discouraged. The WA experience suggests that a small fee together with exemptions for parent volunteers achieves the desired aims. Not imposing a fee for volunteers was also flagged as likely to increase the cost of the system significantly.

However this proposal was not agreed to by government in an effort not to discourage the community from volunteering.

### 12.1.2 Early phase-in

New workers are required to apply for a clearance prior to starting child-related work. Volunteers and paid workers in sectors who were not previously subject to the WWCC will be phased in over the first five years of the new check. A phase-in schedule was developed to ensure that by the end of the first five years of the new Check, all existing child-related employees and relevant volunteers will be included in the Check. The phased roll out was also designed to allow government to manage implementation costs from commencement of the new Check.

The first phase-in period captured workers in the following sectors, and required them to apply for a check by 31 March 2014: child protection; disability services; justice services; religious services; youth workers; authorised carers and adult household members who reside in the home of an authorised carer, family day carer or home based education service.

Despite the staged approach in the transitional provisions of the new legislation, the OCG's experience is that many people that are not legally required to undergo the Check until the start of the phase-in period for their employment sector are choosing to apply earlier than required.<sup>6</sup>

The OCG has analysed the WWCC database and found that this has particularly been the case in the education sector. Large numbers of paid employees and volunteers have been verified by schools, despite the applicable phase-in period for their sector only commencing in 2016. This is discussed further below in 12.1.3, and indicates that individual schools are obviating government policy in an effort to mitigate their responsibility to create safe environments.

The early phase-in of workers suggests that there will be a decline later in the five year period.

<sup>6</sup> The OCG is not able to quantify the number of applications submitted in each industry or sector, in advance of the scheduled industry phase-in period as there is currently no way of distinguishing between applications by new employees (therefore phase in not applicable) as opposed to those by existing employees (who are subject to phase-in periods).

### 12.1.3 Use of WWCCs as an organisational risk approach response

Evidence obtained by the OCG from employees and stakeholder groups in the first full year of operation of the new WWCC, indicates that some employers are insisting that workers apply for a Check, even where there is no statutory obligation to do so. This suggests an over reliance on the WWCC by employers as a risk management strategy to discharge their responsibilities in relation to child protection in the workplace.

The unreliability of child sex offender profiles, the fact that not all people who harm children have a record, and that some cleared applicants have gone on to offend means that the Check alone is insufficient as an organisation's response to mitigating risk. Additionally evidence does not support relying solely on the WWCC as the majority of perpetrators that are charged do not have prior convictions for any form of child maltreatment. While the WWCC plays an important role in preventing *known* perpetrators from having access to children in child-focused organisations, it cannot identify those who are *yet* to offend. Anecdotal evidence brought to the attention of the OCG indicates that there is an over reliance on the WWCC for this purpose by the education and sporting sectors in particular. This is reflected in an analysis undertaken by the OCG of WWCC data. An interrogation of the database on 13 November 2014 for applications submitted since commencement of the Check identified the 13 public schools in NSW<sup>7</sup> with the highest rates of verified volunteers compared to the number of verified paid employees.

**Table 9** provides the number of verified applications in each of these 13 schools, with volunteer applications totalling 881 and paid worker applications totalling 241.

**Table 9** indicates that the number of verified volunteer applications at the school were disproportionate to numbers of verified volunteers applying for the WWCC. For example, Public School 3 is a primary school with 527 enrolments.<sup>8</sup> The school had 6 paid worker applications compared to 26 volunteer applications that were verified by the school. Discussions with the Department of Education and local schools about the number of applications suggests that the school may be overriding government policy in an effort to mitigate their responsibility to create safe environments for the children, either by mandating or encouraging a WWCC clearance for volunteers who are not required to hold a WWCC clearance or by requiring paid workers to hold a clearance before their applicable phase-in period.

Similarly, Public school 12 is a primary school which had 589 enrolments in 2013. It has 29 paid teaching staff and 11 non-teaching staff, a total of 41 paid employees. However there were only 42 paid workers who had verified applications on the WWCC database as at 13 November 2014 compared to 165 volunteer applications verified by the school.

The cost to the OCG of volunteer applications in the 13 schools that were analysed, is estimated to be \$70,480 (or \$5421 per school). There are approximately 2,221 public schools in NSW<sup>9</sup>, which indicates that the scale of the overall cost to government of volunteers in schools being checked where there is no statutory requirement to do so is significant.

Similarly, sporting communities rely heavily on the volunteer sector. The majority of volunteers are subject to a parent volunteer exemption; however clubs are failing to apply this exemption. It is estimated that there are over 9,000 registered sporting associations across NSW, with the majority of clubs supported through volunteers within the local community. Whilst the sport sector does not phase in until 1 April 2015 the OCG recognises that early phase-in is occurring.

<sup>7</sup> Non-randomly selected schools

<sup>8</sup> School enrolment numbers were obtained from the myschool.edu.au website

<sup>9</sup> cf www.schools.nsw.edu.au list current to 19 May 2014

The OCG's response to this has included increased training about the need to promote Child Safe environments, the use of WWCCs as one of a number of strategies to reduce risk and practical assistance provided to employers in developing alternate strategies to mitigate risk.

It is noted that where employers require exempted volunteers from holding a WWCC clearance, the employer cannot rely on the protection granted for termination.

**Table 9 Comparison of verified WWCC applications in 13 schools in NSW between 15 June 2013 and 13 November 2014**

Public school	School enrolment numbers	Number of paid employees verified	Number of volunteers verified
School 1	1,350	30	125
School 2	239	10	24
School 3	527	6	26
School 4	669	15	45
School 5	1,058	23	23
School 6	831	24	81
School 7	420	21	107
School 8	634	13	68
School 9	317	20	45
School 10	573	10	60
School 11	502	11	48
School 12	589	42	165
School 13	626	16	64
<b>TOTAL</b>	<b>4,492</b>	<b>241</b>	<b>881</b>

## 12.2 Continuing requests for expansion

The OCG has received ongoing requests to consider expanding the scope of the new Check particularly from the education, religious and aged care sectors. This includes to parents who volunteer with their children on overnight camps, board members of religious organisations who have access to confidential information; and some workers in aged care services.

Despite these requests, there was only one extension made to the scope of the new Check by 30 June 2014, extending the Check to all school cleaners.<sup>10</sup>

Limiting requests for expansion is consistent with the original aim of limiting the categories of volunteers included in the WWCC, in order to avoid interventions where:

- there was no clear risk that could be managed by the WWCC
- it would add no value

or

- it would impose an unacceptable burden on the community.

The Check is targeted at people who work directly with children or for those in a role designated as being in 'child-related work' under the WWC Act, with exemptions provided to certain groups where there is no clear risk that can be managed by the Check or where other existing processes provide better protections. These exemptions were modelled on interstate Checks and reflect relatively low risk scenarios and situations where evidence does not provide a strong justification to impose an additional regulatory and cost burden on the community and government.

DEC has argued for the need to bring parents who volunteer on overnight camps with their child, within the scope of the WWCC, both in the development of the new Check and following its commencement. Two jurisdictions include this group of parents in their WWCC. However in NSW it was determined that including this category of volunteers was not consistent with the policy underpinnings of the Check. This included recognition of the fact that there barriers to parents participating in activities with their children, should be minimised.

The OCG is aware that some organisations are choosing to require their employees to obtain a WWCC clearance despite falling outside the scope of the Check (*see discussion at 12.1.3 about the education and sporting sectors*) to overcome this issue. In future years this is likely to result in an additional cost burden on government and a continuing strain on the ability of the system to identify and finalise assessments of high risk individuals through the risk assessment process.

## 12.3 Budget implications

The oversubscription of the Check posed significant challenges for organisational planning in the first year, and forward estimates. An additional 22 FTE staff were employed on a temporary basis to meet the immediate demand in the first year. These additional temporary staff were funded from revenue of approximately \$6M raised by the OCG from a higher than expected number of paid worker applications in 2013–14.

However, early predictions are that this additional revenue stream is unlikely to be matched in the second year of operation (as outlined in section 9 HR and Staffing), while volunteer applications, which do not incur a fee, will continue to outstrip predicted numbers. This is likely to leave a budget gap impacting on the ability to meet the direct staffing costs of the WWCC, as well as the non-staffing costs of administering the Check.<sup>11</sup>

<sup>10</sup> It is noted that the Children's Guardian does have authority under s7 of the WWC Act to deem a role child-related if the holder has access to confidential records about children. In the 2013–14, there were 7 submissions received from various organisations for a role to be deemed as child-related and of these, 6 were approved.

<sup>11</sup> This includes fees charged on a per check basis by the RTA and NSW Police, as well as the recurrent costs of IT system maintenance, hosting and licensing fees.

The early phase-in by individuals in sectors prior to their required dates means that there will almost certainly be a decline in volumes for existing workers over a 5 year period. Early analysis of the WWCC demand in the first 4 months of its operation and comparison with other Australian states with similar schemes, has led to the suggestion that demand will not be sustained to the same extent as it was in the first year. The predicted variable demand pattern indicates the need for a flexible workforce particularly in the early years of the new Check.

Amortising the budget over a 5 year period is one possible response to this issue, rather than adhering to yearly budget cycles. The OCG is in discussion with Treasury about appropriate solutions to this issue.

## 12.4 Low rates of employer verification

The online verification system was designed to eliminate the opportunities for fraud. The benefit of the online verification process is that it links an employee with an employer and allows employers to confirm that the WWCC clearance number / APP (application) number of a child-related worker is valid and that the class of clearance is suitable for the work undertaken (paid versus volunteer checks).

Employers must not employ a worker in child-related work if they do not hold a WWCC clearance or have a current application for a clearance. It is also an offence to employ a worker who is subject to a bar or an interim bar.

Online verification is the only way for employers to receive the most up to date information about an applicant. Viewing a clearance letter does not provide up to date information. Where the employer fails to verify the applicant online, the OCG cannot share information about the applicant if information comes to light from NSW Police through the continuous checking process that would bar the person from working with children. Updating the status of a WWCC clearance for the life of the clearance is one of the key improvements of the new Check.

Current data (at 5.2) indicates that 39% of applications are not being verified by employers despite the OCG's compliance/education campaign. This means that information that comes to light through criminal records and misconduct proceedings cannot be passed on to the employer in a timely way to minimise the risk to children posed by these employees who are already working with children. In 2013–14 there were 343 continuous check events resulting in 44 bars where people had previously held a clearance.

The OCG has undertaken significant work to identify areas where verification rates are low and as part of the compliance audit program is continuing to improve verification rates. Analysis has identified that unverified workers have come in to the phase-in period early and as a result are not yet in child-related work; others have applied for a check in anticipation of employment in child-related work that has not yet commenced; and some workers have registered as employers by mistake and our compliance program is addressing these errors.



## 13. Conclusion

The demand for the Check in the first year of its operation significantly exceeded predictions used to cost the WWCC system, despite the range of data sources that were relied on.

However the demand suggests that the OCG's coordinated training and education efforts about the new Check have been highly successful.

Overall the key performance indicators available for the first 12 months of the WWCC demonstrate that despite the unpredicted demand for the Check, the OCG has met or exceeded most of its key performance indicators for consistency in decision-making and efficiency of throughput. The small proportion of matters that have been appealed to NCAT under s27 of the WWC Act indicates that there is a rigorous and consistent decision making process in place and this is being further fine-tuned in line with decisions of the NCAT

There are a number of trends highlighted in this Activity Report, including the oversubscription of the Check and its adverse impact on organisational planning and budgeting. The independent evaluation of the first 24 months of the WWCC will consider costs and resourcing in greater detail.<sup>12</sup> However the Activity report points to the predicted budget shortfall in coming years and an urgent need for renewed discussion about cost recovery in relation to volunteer applications, disincentives for those who fall outside of the scope of the Check and the need for flexibility in developing forward budgets.

There were delays in reviewing applications that were referred from Records Review to Risk Assessment, with only 34% of all matters referred to risk assessment being finalised in 2013–14. These figures highlight the strains on the system and the complexity and time intensive nature of reviewing comprehensive records that are considered in risk assessing applications under the new WWCC system. Although it is important to note that the OCG's timeframes are dependent on external agencies providing the required records in a timely manner. While the matters referred to risk assessment represent only a small percentage of overall applications, they represent the highest risk applications, after those that are automatically barred.

The WWCC data also indicates that only 61% of employers were verifying applicants online. This means that despite the comprehensive records available to the OCG, relevant information that comes to light as part of the new continuous checking process is unable to be shared with many employers.

In addition, there were continuing requests for expansion to the scope of the Check, particularly driven by the education and sporting sectors. The number of employer verified applications in schools prior to their phase in period and for volunteers within schools, points to an alarming trend towards overriding government policy and requiring that individuals have a WWCC clearance despite there being no statutory requirement to do so.

The OCG is countering this through targeted and broader sector wide training reiterating the original intention of the WWCC as being one strategy in a broader approach to promoting child safe environments, rather than relying on it solely to promote safety. While the WWCC is a prerequisite for people in child-related work in NSW, it can only evaluate a person's suitability to work with children and young people based on previous, known records. There are other systems which form integral parts of the broader framework to identify people who pose a potential risk to children and to monitor and prevent known offenders, or potential offenders, from undertaking child-related work.

<sup>12</sup> Expected to be finalised in June 2015

## 14. Appendices

### APPENDIX 1 – Schedule 1 Assessment requirement trigger

#### 1 Offences

- (1) Proceedings have been commenced against a person:
  - (a) for an offence specified in clause 1 of Schedule 2, if the offence was committed as a child (whatever the outcome of the proceedings), or
  - (b) for an offence specified in clause 1 of Schedule 2, if the offence was committed as an adult, and the person is not because of those proceedings a disqualified person.
- (2) Proceedings have been commenced against a person for any of the following offences (whatever the outcome of those proceedings):
  - (a) an offence involving intentional wounding of or causing bodily harm to a child by an adult (other than an offence specified in clause 1 of Schedule 2),
  - (b) any sexual offence committed against, with or in the presence of a child, other than an offence specified in clause 1 of Schedule 2,
  - (c) an offence under section 38 or 38A of the *Crimes Act 1900* committed against a child,
  - (d) an offence under section 45 or 45A of the *Crimes Act 1900* committed against a child,
  - (e) an offence under section 60E of the *Crimes Act 1900*,
  - (f) an offence under section 13 of the *Crimes (Domestic and Personal Violence) Act 2007* committed against a child,
  - (g) an offence under section 6 of the *Prevention of Cruelty to Animals Act 1979*.
- (3) Proceedings have been commenced against a person for any of the following offences (other than where a person has been found not guilty of the offence concerned):
  - (a) an offence under section 43A of the *Crimes Act 1900*,
  - (b) an offence under section 44 of the *Crimes Act 1900* committed against a child,
  - (c) an offence under section 227, 228 or 231 of the *Children and Young Persons (Care and Protection) Act 1998*,
  - (d) an offence under section 530 of the *Crimes Act 1900*,
  - (e) an offence under section 23A, 24 (1A) or (2A) or 25 (1A) of the *Drug Misuse and Trafficking Act 1985*,
  - (4) any other offence, whether under the law of New South Wales or elsewhere, prescribed by the regulations for the purposes of this subclause.
- (5) A person has been convicted of an offence under section 61 of the *Crimes Act 1900*

committed against a child.

(6) Subclauses (1), (2), (3) and (4) apply to:

- (a) an offence an element of which is an intention to commit an offence of a kind listed in those subclauses, and
- (b) an offence under a law other than a law of New South Wales that is an offence similar to an offence listed in those subclauses, and
- (c) an offence of attempting, or of conspiracy or incitement, to commit an offence listed in those subclauses, in the same way that they apply to the offences listed in those subclauses.

(7) A person has been convicted of, or proceedings have been commenced against a person for, offences involving violence or sexual misconduct (whether or not listed in this Schedule or Schedule 2) sufficient to indicate a pattern of behaviour that warrants investigation as to whether it may cause a risk to the safety of children.

(8) An offence is not specified for the purposes of this clause if it was an offence specified in this clause at the time of its commission and the conduct has ceased to be an offence in New South Wales.

## 2 Offences

A person has been the subject of a finding by a reporting body that the person engaged in the following conduct:

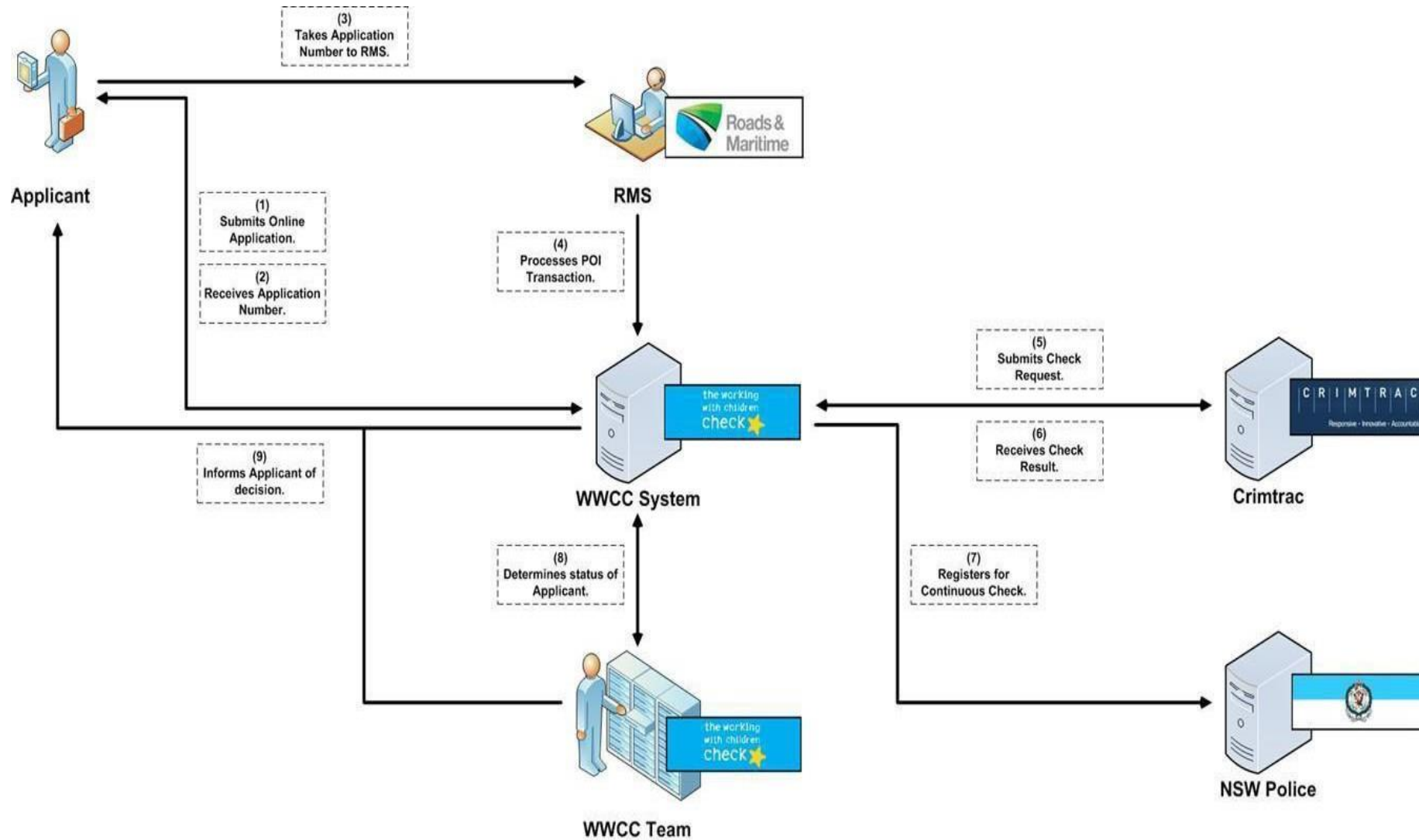
- (a) sexual misconduct committed against, with or in the presence of a child, including grooming of a child,
- (b) any serious physical assault of a child.

### 2A Notification by Ombudsman

(1) A person has been the subject of a notification of concern to the Children's Guardian by the Ombudsman that, on a risk assessment by the Children's Guardian, the Children's Guardian may be satisfied that the person poses a risk to the safety of children.

(2) A notification of concern is a notification made by the Ombudsman as a result of concerns arising from the receipt of information by the Ombudsman in the course of exercising the Ombudsman's functions.

## APPENDIX 2 – Process diagram



## APPENDIX 3 – State comparison of Working With Children Checks, 2011

State Check	Employee	Volunteer Check	Total Check	State Population	NSW Population	Hypothetical Employees Checks	Hypothetical Volunteers Checks	Hypothetical Total Checks	Industry Based Dissimilarity	Occupation Based Dissimilarity
VIC	64,313	79,064	143,377	5,621,210	7,302,174	83,545.1	102,707.3	186,252.4	12.4	14.0
W A	56,185	31,704	87,889	2,349,325	7,302,174	174,634.3	98,542.4	273,176.7	20.0	20.6
QLD	76,714	124,607	244,782	4,580,282	7,302,174	122,302.3	198,656.3	390,246.9	14.4	15.6

*Source: Victoria Department of Justice, 2012, W A Department of Child Protection, 2012, Queensland Commission for Children and Young People, 2012, ABS Australian Demographic Statistics Cat No. 3101.0.*

**Notes:** Annual Population is based on June. This data is used as the Western Australia, Victoria and Queensland and Working with Child Check is similar to the system the new working with children check. The number of checks in Victoria maybe inflated due to individual who don't work with children directly being asked by employers to be checked or getting a check of their own violation. Victoria Department of Justice warns that data maybe inflated.

## APPENDIX 4 – Summary of WWCC throughput 2013–14 against predicted demand

Output	Predicted	Actual	Variance from total predicted number	Variance from predicted proportion of total applications
Verified applications	180,000	420,499	+230%	n/a
Volunteer applications	30,000 (16.6% of all apps)	191,368 (45.5% of all apps)		+28.9%
Paid worker applications	150,000 (83.3% of all apps)	229,131 (54.4% of all apps)	+153%	-28.9%
Applications referred to Records Review	27,600 (15% of all apps)	50,051 (12% of all apps)	+180%	-3%
Applications referred for Risk Assessment	2,700 (1.5% of all apps)	2,353 (0.05% of all apps)	-13%	-1.45%
Finalised Applications	180,000 (100% of all apps)	418,936 (98.1%)	+233%	-1.9%
Barred Applications*	3,600 (0.02% of all apps)	175 (0.0004%)	-.95%	+.196%
Online verifications by employers	180,000	78,788	n/a	n/a
Continuous check events	3,600 (2% of all apps)	343 (0.1% of all apps)	-90%	-1.9%
Applications to NCAT	100 (0.06% of all apps)	83 (0.000)	-17%	-8%

(Includes both auto barred and decision barred applications)

## APPENDIX 5 – WWCC Call Types Financial Year Statistics 2013–14

Call Types Total	July	August	September	October	November	December	January	February	March	April	May	June	Total
Application - new	630	2663	2047	1872	1954	965	1291	1376	1022	1010	849	673	16352
App. Existing - application in progress	308	821	746	450	1010	730	1109	877	931	958	696	662	9298
App. Existing - Change details					246	197	356	270	242	281	233	188	2013
App. Existing - Re issue letter		109	621	194	242	354	281	457	310	143	84	40	2835
App. Existing - Advise WWC number				225	1281	1144	1882	2401	2479	2845	2739	2473	17469
Complain					16	18	10	11	8	8	10	10	91
Cost	70	35	20	14	24	49	37	53	43	51	61	27	484
Employer - Login/Verification	191	183	149	52	291	307	329	550	455	400	389	290	3586
Employer - Record keeping					0	81	0	3	0	0	0	0	84
Employer - Registration	222	220	189	85	60	182	49	37	33	42	56	17	1192
How do I apply?	507	459	385	200	254	82	250	315	297	344	252	195	3540
Information session	17	16	20	16	25	51	89	61	51	84	18	47	495
Interstate	65	84	62	54	37	138	79	64	55	59	73	73	843
New Check overview - unaware of all the changes	360	454	289	303	90	99	149	142	107	101	78	75	2247
Old check	85	91	42	51	119	26	145	240	142	227	266	185	1619
Overseas	64	84	62	53	17	33	34	31	28	25	18	38	487
Proof of identity	78	82	74	44	31	60	34	73	75	42	24	7	624
Phase-in schedule	146	140	129	67	77	48	53	75	36	41	20	12	844
RMS Issues - D.O.B					2	253	6	9	3	0	4	1	278
RMS Issues - Duplicate					0	197	0	0	0	0	0	0	197
RMS Issues - Name change					17	12	9	8	2	4	7	8	67
RMS Issues - Discrepancies					27	29	67	50	22	70	10	17	292
Who needs the Check	169	205	210	175	257	233	213	231	211	243	275	236	2658
Other					231	265	54	311	587	367	265	194	2274



## APPENDIX 6 – WWCC Telephone Enquiries by Sector Financial Year Statistics 2013–14

	July	August	September	October	November	December	January	February	March	April	May	June	Total
Adoptive Parents					1	1	0	0	10	4	5	5	26
Adult household member					244	188	182	193	189	190	206	172	1564
Authorised carer					1084	595	607	571	515	327	309	222	4230
Child development					54	102	115	79	112	90	83	55	690
Child protection Services					236	254	246	236	193	192	163	134	1654
Children Health services					456	446	755	688	524	709	598	562	4738
Clubs or other bodies providing services to children					456	367	567	567	587	587	548	440	4119
Disability services					258	286	278	257	200	296	310	219	2104
Early education and child care					657	496	946	777	816	946	974	844	6456
Education					813	624	1095	1424	1286	1544	1481	1320	9587
Entertainment for children					114	96	84	106	39	97	57	78	671
Justice Centres					41	66	10	22	35	37	24	31	266
Parent volunteers-Disability					2	35	4	4	3	2	9	12	71
Parent volunteers-Mentoring					9	36	4	3	2	0	22	8	84
Religious Services					286	347	385	486	360	387	369	332	2952
Parent volunteers-Other					6	47	6	12	18	97	117	84	387
Residential Services					68	106	57	71	57	76	108	111	654
School Cleaners					0	0	0	0	55	82	78	66	281
Transport services for children					38	64	34	47	43	50	69	63	408
Youth workers					95	118	134	124	97	183	190	187	1128
Unknown					1106	1140	868	1656	1956	1371	530	466	9093