

# **Commission for Children and Young People and Child Guardian**

## **Children Services Tribunal Professional Development Day**

**Elizabeth Fraser**

**Commissioner**

**15 March 2006**



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# Overview of this session

- The work of the Commission
- Details of employment screening, including 2005 amendments and assessment processes



# The Commission – key role

The Commission for Children and Young People and Child Guardian has been established to promote and protect the rights, interests and wellbeing of children in Queensland, particularly those most vulnerable



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# CCYPCG key outcomes sought

An effective child safety and juvenile justice system

A safe services environment for children and young people where risks are identified and managed (including employment screening)

Prevention and targeted early intervention strategies for vulnerable children and young people



# CCYPCG key functions

The Commission contributes to these outcomes through its three service areas:

- Child Guardian
- Policy, Research and Communication
- Employment Screening and Working with Children Training



# Child Guardian

The Child Guardian is responsible for implementing and monitoring relevant child safety reforms through:

- Systemic monitoring and auditing - including child death review functions (aimed at increasing the accountability of the child protection system in Qld)
- Community Visitor Program (monitoring and advocacy function)
- Complaints and investigations into serious and/or systemic issues (assesses and seeks to resolve)



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# Strategic Policy and Research

The Commission's research and policy functions:

- assess the impact of and provide advice on laws, policies and practices relevant to the safety and wellbeing of children and young people
- identify emerging issues such as the development of prevention and targeted early intervention strategies for vulnerable children and young people



# Employment Screening

The Commission contributes to creating a safe service environment for children and young people through:

- criminal history screening of people working in certain child-related areas
- educating the community about blue card requirements
- providing training to help employers develop a strategy to manage risks to children in the services environment
- responding to complaints about compliance matters



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# Strategic Plan 2005-09: priorities for 2006

- Identify and review key indicators for developing effective child safety and juvenile justice systems
- Develop strategic partnerships with stakeholders to build the capacity and effectiveness of the systems
- Build CCYPCG's capacity to promote and provide authoritative reports on the effectiveness of the systems



# Strategic Plan 2005-09: priorities for 2006

- Strengthen child safety-related risk management strategies through state-wide community education and capacity building programs
- Collaborate with relevant govt and community organisations to promote and assess compliance with screening and risk management requirements
- Provide and improve employment screening services for certain types of child-related employment
- Assess the effectiveness of prevention and targeted early intervention strategies for vulnerable children and young people



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# Risk factors affecting children

Factors contributing to notifications of abuse include:

- financial stress
- substance abuse
- domestic and family violence
- mental health issues
- family mobility and isolation
- at risk families



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# Factors influencing service access

Factors affecting the delivery of services include:

- demographic factors
- understanding of service requirements
- adequacy of service system



# Profile and trends in Queensland

- Around 26% of Qld population under 18
- Around 6% of population is Indigenous – around 46% are under 18
- Around 6% of population is from overseas
- Most Queenslanders in family units
- Increasing levels of disabilities



# Profile and trends in Queensland cont.

- Over 5,000 children and young people are in care
- Approximately 7,000 young people are homeless
- Notifications in Australia are increasing and numbers of substantiated notifications rising
- Indigenous children continue to be overrepresented in care (25%) and juvenile detention (over 50%)



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# Commission's reporting and advocacy work

- Child Guardian Report 2005
- Snapshot: Children and young people in Queensland 2005
- Annual Report: Deaths of children and young people Queensland 2004/05
- Child Death Case Review Committee Annual Report 2004/05
- Survey of children and young people in care in Queensland



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# Commission's reporting and advocacy work cont'd

- Review of child labour in Queensland
- Queensland Studies of Society and the Environment: Children's rights, Children's lives
- Review of operation of employment screening legislation, eg. foster care approvals



# Employment screening considerations

A detailed national check of a person's criminal history, including any charges or convictions. Also considered:

- disciplinary information held by certain professional organisations (teachers, child care service providers, foster carers, nurses, midwives and certain health practitioners)
- police investigation information in limited circumstances (s.121A of CCYPCG Act)



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# Employment screening cont.

## Positive notice

If an application for a blue card is approved, a person is issued with a positive notice (a letter) and blue card

## Negative notice

If the Commissioner plans to issue a negative notice, the applicant is invited to provide a submission on any police or disciplinary information about them.

All material, including any submissions, references or other relevant information is considered before a final decision is made



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# Employment screening cont.

## **A positive notice must be issued:**

- where there is no police information or disciplinary information

## **A positive notice must be issued unless satisfied it is an exceptional case, ie:**

- no convictions – but investigative information; disciplinary information; charge/s (other than for excluding offence/s); charge/s for excluding offence/s but no imprisonment or disqualification ordered; conviction for an offence other than a serious offence



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# Employment screening cont.

## A negative notice must be issued:

- where a conviction for an excluding offence and an imprisonment or disqualification order was made (no right of review)

## Negative notice must be issued unless satisfied it is exceptional case:

- where a conviction for a serious offence other than an excluding offence for which an imprisonment or disqualification order was made



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# Employment screening cont.

## Exceptional case

- not defined in the Act
- determined on a case-by-case basis having regard to:
  - the best interests of the child are paramount
  - the legislative intention
  - the circumstances of the individual case
- must be something which is unusual, rarely occurs, outside reasonable expectation or anticipation



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# Employment screening cont.

In deciding whether or not there is an “exceptional case”, the following factors are taken into consideration in assessing **convictions or charges**:

- whether it is a charge or conviction
- whether it is a serious offence or excluding offence
- when the offence was committed or allegedly committed
- the nature of the offence and its relevance to the employment/business involving children



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# Employment screening cont.

- where a conviction resulted – the penalty imposed and the reasons for the penalty
- anything else the Commissioner reasonably considers is relevant

The Act specifies other similar factors to be taken into consideration when assessing disciplinary or investigative information



# Employment Screening

## Assessing the potential risk to children

*Q. If you were able to quantify the increased risk a particular person posed to children:*

- above what % increased risk would you decide it would be unacceptable to provide that person with a blue card?
- would everyone identify the same percentage?
- what factors would contribute to people having different answers to this question?



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# Employment Screening

## Assessing the potential risk to children

- what do you think the range of answers in the Tribunal would be?
- what do you think the range of answers in the Commission would be?
- how far apart do you see the Tribunal and the Commission?
- does this difference indicate: a problem, a strength, or somewhere in between, or something else?



# Transferability of the blue card

- A blue card is unconditional and fully transferable across all areas of employment and business regulated by the Act
- A blue card is also required to comply with other legislation, eg. *Child Care Act 2002*



# Statistics as at 28 February 2006

- 546,043 blue cards issued
- 41,113 criminal histories – around 7.5% of all applications received
- 476 negative notices issued
- 913 applications withdrawn after criminal history challenged
- 18,582 applications withdrawn or lapsed after further information sought
- 71 blue cards suspended



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# Statistics as at 28 February 2006 cont.

- 74 decisions appealed:
  - 20 successful and the negative notice overturned
  - 18 unsuccessful and the Commission's decision confirmed
  - 23 appeals withdrawn
  - 13 either not heard yet or waiting for a decision



# Regulations – 16 Dec 2006

The following are not 'usual functions' of employment under the Act:

- providing a voluntary child accommodation service:
  - organised by a school or recognised body (charity, corporation or incorporated association)
  - for a period of 10 days or less
  - not more than twice in a year



# Regulations – 16 Dec 2006 cont.

- volunteering as a guest:
  - at a school or recognised body
  - for the purpose of observing, supplying information or entertainment to 10 or more people
  - for 10 days or less, no more than twice a year
  - in a situation where the person is unlikely to be physically present with a child without another adult being present



# Regulations – 16 December 2006 cont.

- volunteering at a national or state event:
  - organised by a school or recognised body for a sporting, cultural or skill based activity
  - attended by more than 100 people
  - for 10 days or less, no more than twice a year
  - in a situation where the person is unlikely to be physically present with a child without another adult being present



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# Screening of carers: proposed amendments

The *Child Safety (Carers) Amendment Bill* proposes to transfer criminal history screening of certain care service providers from the Department of Child Safety to the Commission



# Screening of carers: proposed amendments

Additional categories of employment and business:

- foster/kinship carers and adult household members
- employees of licensed care services who support placements with approved carers
- employees of licensed residential facilities
- people carrying on a business that includes providing services inside a licensed residential facility, and
- nominees and directors of licensed care services



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# Confidentiality and reporting: amendments

The Bill proposes to:

- amend the confidentiality provisions so the Minister (ie. Premier) can receive certain employment screening information, and
- enable the Commissioner to provide reports to the Minister about the administration of the Act



# Transitional provisions: amendments

Proposes to clarify and declare the law be applied to:

- applications for blue cards received before 17 Jan 2005
- applications for the cancellation of blue cards or negative notices where the assessment or application began before 17 Jan 2005, and
- reassessments based on wrong, incomplete or new information



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# Transitional provisions: amendments cont.

The proposed provisions also validate decisions made by the Commission, whether they were made under the pre-amended Act or post-amended Act



# Transitional provisions: amendments cont.

For applications received by the Commission before 17 Jan 2005 but not decided by that date, where **no** police disciplinary information was received on or after that date

→ Pre-amended Act applies to:

- assessment by the Commission, and
- any application for review or appeal



# Transitional provisions: amendments cont.

For applications received by the Commission before 17 Jan 2005 but not decided by that date, where police information or disciplinary information **was** received on or after that date

→ Post-amended Act applies to:

- assessment by the Commission, and
- any application for review or appeal



# Transitional provisions: amendments cont.

Where a decision was made by the Commission before 17 Jan 2005 and an application for review was made to the Tribunal before this amendment commenced, and the Tribunal has not made a final decision

→ Pre-amended Act applies to the application for review and any subsequent appeal



# Transitional provisions: amendments cont.

If, before the amendments come into effect, the Tribunal started hearing an application for review but had not made a final decision, it may issue directions about the application and the hearing



# Website: [www.bluecard.qld.gov.au](http://www.bluecard.qld.gov.au)

## Commission for Children and Young People and Child Guardian

Welcome to the Commission for Children and Young People and Child Guardian's new website! Most exciting of all is the KID'S ZONE - just for kids!

### What's New

[Child Labour Report](#)  
[New forum for kids](#)



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