

AUDITOR-GENERAL'S REPORT PERFORMANCE AUDIT

Working With Children Check

NSW Commission for Children and Young People



The Legislative Assembly
Parliament House
SYDNEY NSW 2000

The Legislative Council
Parliament House
SYDNEY NSW 2000

In accordance with section 38E of the *Public Finance and Audit Act 1983*, I present a report titled **Working With Children Check: NSW Commission for Children and Young People**.

A handwritten signature in black ink that reads 'Peter Achterstraat'.

Peter Achterstraat
Auditor-General

Sydney
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Foreword

The NSW Commission for Children and Young People (the Commission) commenced operations in July 2000 following the Royal Commission into the Police Service - paedophile inquiry in 1997.

The Commission has a role in ensuring the safety, wellbeing and welfare of children and young people. It achieves this through being an advocate for children and young people and screening people who wish to be involved in child-related services.

New South Wales was the first state to introduce employment screening to identify people who may pose a risk to children and that should be prevented from working in areas where they could have unsupervised contact with a child.

This process is called a Working With Children Check.

Today, over 21,000 employers are registered as providing child-related services that must have employees screened and over 200,000 checks are completed each year.

This audit looks at the role of the Commission in screening prospective employees, the self-employed and volunteers. It also looks at how effective current screening practices are in identifying people who may pose a risk to children.

It has been nearly a decade since employment screening commenced in NSW. Other states have adopted a different approach to screening than we have here. Now is probably a good time to examine how the Commission is performing.

Peter Achterstraat
Auditor-General

February 2010

Audit conclusion and recommendations

The focus of our audit

The Working With Children Check (WWCC) is to protect children through reducing the risk of abuse in the work place. It excludes people from working with children because of convictions for serious sexual or child-related violence (referred to as prohibited people). It also identifies and advises employers of people who although not prohibited, may still pose a risk to children because of their past conduct.

For child-related employment, the WWCC requires:

- employers to request pre-employment checks of paid employees
- self-employed people to obtain a certificate to show they are not prohibited people
- volunteers to sign a declaration to state that they are not prohibited people.

Commencing in 2000, NSW was the first state in Australia to introduce a WWCC. Over 200,000 background checks are conducted annually.

The NSW Commission for Children and Young People (the Commission) has overall responsibility for the WWCC.

The checking process is shared amongst a number of screening agencies including the Commission.

The Commission develops and provides guidelines and tools to the screening agencies. It also monitors and audits screening agency practices.

In this audit we assessed whether the WWCC reliably identifies those people who may pose a risk to children. We examined whether the Commission:

- ensures that required employers are requesting checks and employers check everyone they should
- ensures that information on applicants is reliable and complete and that background checks by screening agencies are consistent
- monitors employees who may pose a significant risk and manages subsequent offences.

The approach in NSW differs to that of other States where anyone wishing to work with children is issued a certificate and people without a certificate should not be employed. In NSW, the onus is on the employer to arrange for a person to be checked.

There is much debate about which approach is best. This audit does not comment on the merits of the approach in NSW as we consider this is a matter of government policy.

Audit conclusion

To be effective the WWCC has to be thorough. Gaps in the checking process such as employers not checking everyone they should mean that people who may pose a risk to children are not identified. We found that the WWCC does not reliably identify all those who may pose a risk to children.

In addition, we found the Commission does not monitor the compliance of employers, the self-employed or volunteer organisations with their obligations or have a formal strategy to promote awareness of the WWCC.

It is estimated that in NSW over 1.3 million volunteers are working with children. We found the Commission does not know whether all volunteer organisations are requiring Prohibited Employment Declarations. Where they do, these are filed away and rarely checked by the Commission. Organisations rely on the applicant to be truthful.

There is also a likely risk around the recently introduced checking of self-employed people. The Commission anticipates it will issue around 10,000 self-employed certificates each year however over the first six months they only issued about 1,600.

Employers also need to identify which positions should be checked. For example, school cleaners who work outside school hours do not need to be checked whereas those who work during school hours should be checked. A 2005 review of applications for the WWCC found that up to 22 per cent of checks were for positions that did not need to be checked.

In addition, some individuals are over checked. Employers who recruit short term or seasonal staff such as casual teachers and swimming coaches are requesting WWCCs for each period of employment.

When a check is done and a record that is relevant is found, the screening agency works out how much risk that person may be to children in a workplace. They use a risk estimate model developed by the Commission called A Workplace and Applicant Risk Estimate (AWARE).

We found the outcomes of risk estimates are not always consistent. In 2009 a review on the use of the AWARE model found problems in 19 of 21 completed cases. For example there were errors in recording data and guidelines were not followed.

Finally, whatever the risk a person poses to children, as long as they are not prohibited, the Commission cannot stop employers from hiring them. Employers determine who to employ. For example, in 2008-09, 14 people assessed as significant risk were employed.

The type of relevant records that have triggered a significant risk rating includes:

- a dismissed charged for common assault on a 17 year old male
- evidence of accessing child pornography on a number of occasions.

The ongoing management of the employee and risks to children are a matter for the employer. The Commission advises employers on how to mitigate the risk a person may bring to a position and an organisation. But it does not have any ongoing role to make sure its advice is followed.

This is unique to NSW. In other jurisdictions, the agencies undertaking the check make the decision on whether a person is appropriate to work with children.

In addition, only the self-employed are checked to see if they have committed subsequent offences that pose a risk to children. There is no guarantee that new offences committed by paid employees or volunteers after employment will be picked up.

We also found the Commission has responsibility for multiple and sometimes conflicting roles. For example it is both the regulator of the WWCC and an operator, providing about 40 per cent of checking services to NSW employers while regulating activities of other screening agencies. The government may consider that the community may be better served if these roles were separated.

Recommendations

- 1. To reduce the risk of prohibited people working with children it is recommended that the Commission by December 2010:**
 - a. have all volunteer organisations register with the Commission (page 14)
 - b. move to direct electronic lodgement to the Commission of the Prohibited Employment Declaration by volunteers (page 14)
 - c. undertake regular audits to check that volunteers are completing Prohibited Employment Declarations and are not prohibited persons (page 14)
 - d. make sure that organisations and parents check that self-employed people have current certificates. (page 14)
- 2. To improve compliance with the WWCC it is recommended that the Commission by December 2010:**
 - a. undertake regular audits to ensure all employers who are required to request the check are in fact doing so (page 11)
 - b. implement provisions to only check certain short term employees once every 12 months (page 12)
 - c. screen applications and only process checks for child-related employment. (page 11)
- 3. To improve risk estimate outcomes we recommend the Commission:**
 - a. ensure consistent practices amongst screening agencies by December 2010 (page 18)
 - b. complete the evaluation of AWARE as planned. (page 18)
- 4. To manage risks following employment we recommend the Commission by June 2010:**
 - a. ensure employers of significant risk employees implement Child Safe Child Friendly strategies (page 20)
 - b. identify people that have committed a prohibited offence while in child-related employment and advise Police. (page 21)
- 5. To improve the reliability of checks we recommend that the Commission by December 2010 review its approach to collecting and analysing relevant employment information and review the usefulness of apprehended violence orders. (page 18)**

Response from the NSW Commission for Children and Young People

Thank you for the opportunity to respond to this Audit. Its recommendations will help to strengthen the Working With Children Check.

My response to each of the recommendations at the end of the preceding section is detailed below.

- **Registering volunteer organisations**

A register of volunteer organisations is one approach to help achieve greater compliance with the Working With Children Check. Statutory change would be needed to empower the Commission to establish such a register.

- **Direct electronic lodgement of Prohibited Employment Declarations**

This approach would change the way employers recruit volunteers, and would let them check on the Commission's database to see whether that volunteer has a current Declaration, instead of collecting their own forms. It is accordingly a form of volunteer accreditation. Options for accreditation of volunteers may be considered within the forthcoming review of the Commission's legislation.

- **Audit volunteer declarations**

We recognise that auditing will strengthen volunteer declarations. The Commission plans to commence its full program of volunteer declaration audits in mid 2010.

- **Make sure organisations and parents check for self employed certificates**

We have planned a major community information campaign for 2010.

- **Regular audits of employer compliance**

The Commission supports this proposal in principle. The size and scope of a compliance program will be determined by the funds available.

- **Implement provisions to check short term employees only once every 12 months**

Our current statutory provisions permitting short-term employees to avoid [some] multiple Checks cannot be fully implemented until our planned new ESS database comes into operation in late 2010 or 2011. Even so, we believe employers may find it hard to use these statutory provisions, given that they add complexity to an already complex environment. We propose to investigate further options during the 2010 review of the Commission's legislation.

- **Screen applications and only process checks for child-related employment**

There are limited options for further screening to remove non-valid applications without statutory change that makes the Check simpler to understand, implement and enforce.

Pending the review of our legislation, the Commission will undertake more training and education to help employers use the Working With Children Check appropriately.

- ***Ensure consistent risk estimate practices***

We agree that the “distributed” system of checks in NSW provides challenges in delivering consistent practice. All other States have developed centralised checks that avoid this challenge. We propose that the costs and benefits of the distributed system be further assessed through the 2010 review of the Commission for Children and Young People Act 1998.

Meanwhile, audit and education remain our tools to ensure consistent practice. The Commission will continue its regular audits and education sessions.

- ***Complete evaluation of AWARE as planned***

We expect to commence our evaluation of AWARE as planned in late 2011.

- ***Ensure employers of significant risk employees implement child safe child friendly strategies***

The Commission will need to investigate statutory options for achieving this outcome.

- ***Identify people who commit a prohibiting offence while in child-related employment and advise Police***

We support ways to identify people already working with children who present a danger to them. This recommendation is one way to do this, and it is an approach already used for interstate Working With Children Cards and our own Certificate for Self Employed People.

The way this system could work with our existing NSW Check is certain to require statutory change. The 2010 review of the Commission for Children and Young People Act 1998 gives an opportunity to explore ways to achieve this outcome.

- ***Review the collection and analysis of Relevant Employment Proceedings and the usefulness of AVOs***

The Commission supports this recommendation. The current arrangements are due for a full review.

(signed)

*Jan McClelland
A/Commissioner*

Dated: 29 January 2010

Key findings

1. What is the Working With Children Check?

The NSW Commission for Children and Young People Act 1998 (CCYP Act) requires employers to undertake pre-employment checks of paid employees in child-related work.

Since May 2009, self-employed people such as music and dance tutors, sports coaches and nannies, may obtain a certificate to show they are not prohibited from working with children.

Volunteers must sign a declaration to state that they are not prohibited from working with children.

This is called the Working With Children Check (WWCC). The NSW Commission for Children and Young People (the Commission) has responsibility for the completeness and accuracy of checks.

Implemented in 2000, the WWCC aims to reduce the risk to children by firstly excluding prohibited persons, and secondly advising employers of the risk certain employees may pose to children.

Exhibit 1: Prohibited person offences
<p>A prohibited person is a person who is convicted of the following:</p> <ul style="list-style-type: none">▪ serious sex offence▪ child-related personal violence offence▪ murder of a child▪ indecency offences punishable by imprisonment of 12 months or more▪ kidnapping (unless the offender is or has been the child's parent or carer)▪ offences connected with child prostitution▪ possession, distribution or publication of child pornography or▪ attempt, conspiracy or incitement to commit the above offences.

Source: Working with Children Operator Guidelines, CCYP, 2006

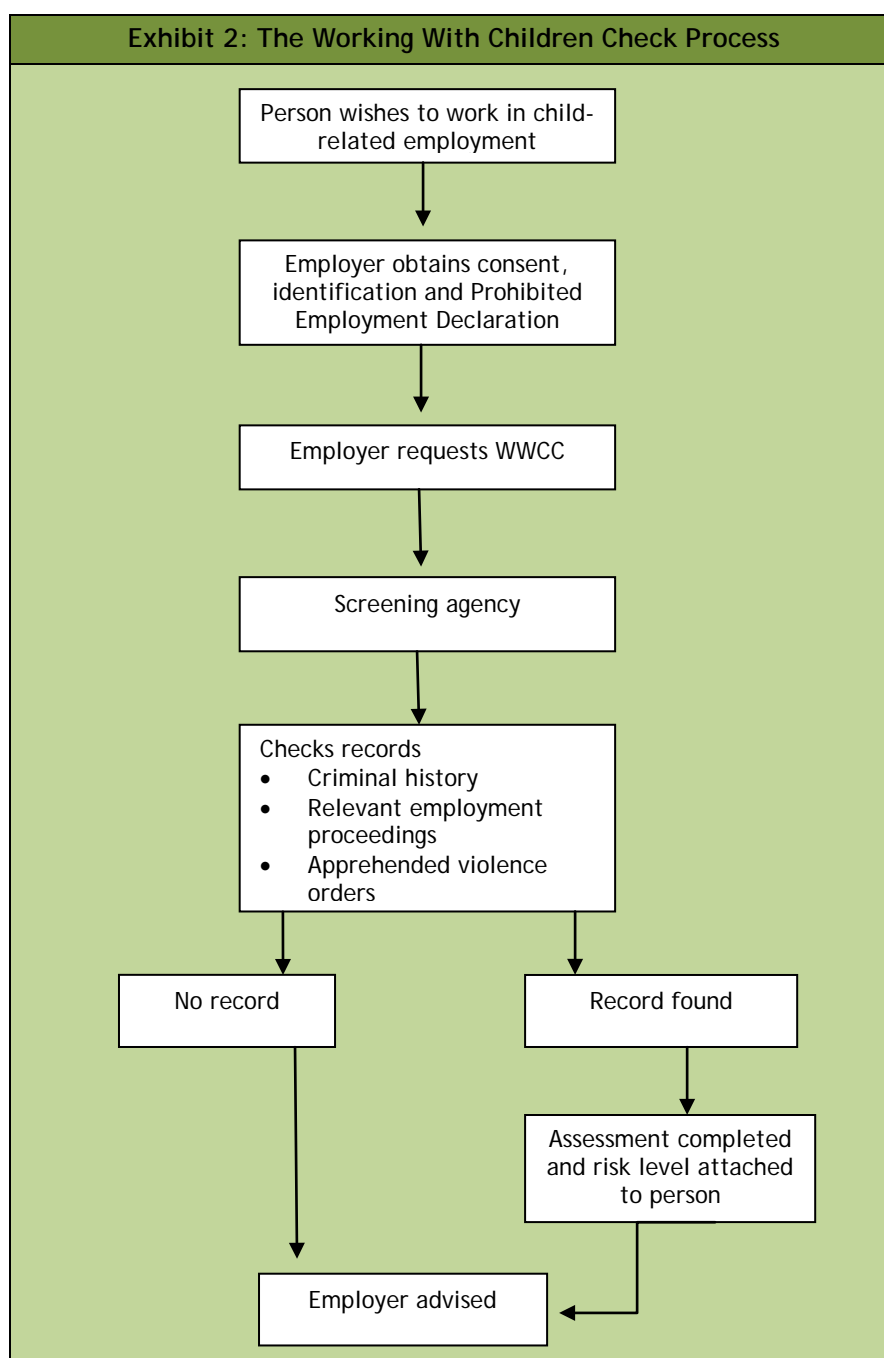
The checking process

To determine if a person seeking paid employment poses a risk to children, they are checked for:

- past criminal records, including charges and convictions
- relevant employment proceedings such as child-related incidents in the workplace that have been investigated by the employer
- apprehended violence orders (AVOs) involving a child.

If a record is found by a screening agency, a risk estimate is completed. The outcome determines the risk that person may pose to children in the position to be filled.

The employer is advised of the level of risk. They then make a decision on whether or not to employ that person.

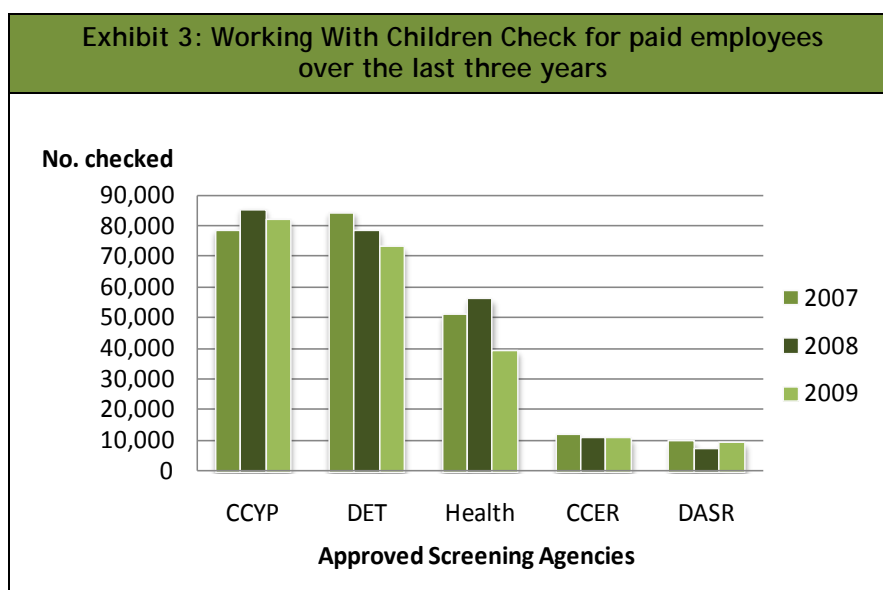


Source: Audit Office research, 2009

Screening agencies The checks are undertaken by five screening agencies including the Commission. Employers must be registered with one of these.

Screening agencies match sectors. For example, the screening agency with responsibility for the public education sector is the NSW Department of School Education (DET), for the health sector it is the NSW Department of Health (Health), the Catholic Commission for Employment Relations screens all Catholic system services (CCER) and the Department of Arts, Sport and Recreation has looked after sporting activities (DASR). The Commission screening unit looks after all other services.

Over 200,000 WWCCs are conducted by screening agencies each year.



Source: Audit Office research, 2009

Self-employed people

From 1 May 2009, self-employed people whose work with children is unsupervised, such as music and dance tutors, sports coaches and nannies, may apply for a Certificate for Self Employed People in Child Related Employment (WWC Certificate). The WWC Certificate costs \$80 and is valid for three years.

From 1 May 2010 it will be an offence for a person who is self-employed to engage in child-related employment without a current WWC Certificate. Compliance is to be monitored by the Commission.

Each certificate has a verification number, and parents are encouraged to check this number against the register of self-employed people on the Commission's website to ensure that it is valid.

Volunteers

Volunteer organisations must have all volunteers who work unsupervised with children complete a Prohibited Employment Declaration. This must be kept and provided to the Commission if requested.

2. Are all relevant people checked?

Adults who have direct, unsupervised contact with children either in a paid, self-employed or voluntary capacity should have a full WWCC, a self-employed certificate or have completed a Prohibited Employment Declaration.

We found that the Commission does not know whether all relevant people are checked. This is because the Commission does not promote or monitor employer compliance with the WWCC.

It is estimated that in NSW over 1.3 million volunteers are working with children. We found the Commission does not know whether all volunteer organisations are requiring Prohibited Employment Declarations. Where they do, these are filed away and rarely checked by the Commission.

<p>Are all relevant people in paid child-related positions checked?</p>	<p>The Commission anticipates it will issue around 10,000 self-employed certificates and is currently delivering an awareness campaign to parents in pre-schools.</p> <p>Currently there are 21,000 registered employers across the five screening agencies. The Commission does not know whether:</p> <ul style="list-style-type: none"> ▪ all required employers are registered ▪ all required employers are requesting WWCCs ▪ those who are requesting checks are doing so for all necessary positions. <p>Of a sample of 50 new employers registered for WWCC in 2009, we found that 60 per cent had been operating child-related services for four or more years apparently without registering for a WWCC.</p> <p>We found the Commission does not promote awareness or monitor compliance with the WWCC. Although some screening agencies have programs to promote compliance with the WWCC.</p>
<p>Exhibit 4: Monitoring employer requests for checks</p> <p>During the winter season many ski operators request checks for new employees. For those who do not, the Department of Arts, Sport and Recreation sends letters reminding them of their obligation to request a WWCC prior to employing staff.</p> <p>In the last winter season, after sending a reminder 38 further WWCC requests were received.</p>	
<p>Source: Department of Arts, Sport and Recreation, 2009</p>	
<p>Recommendation</p>	<p>To date the Commission has not fined an employer or volunteer organisation for non-compliance.</p> <p>To improve compliance with the WWCC it is recommended that the Commission by December 2010 undertake regular audits to ensure all employers who are required to request the check are in fact doing so.</p>
<p>Some employers are over checking</p>	<p>A 2005 review of a sample of WWCC applications showed that over 22 per cent were not required as the position was not child-related.</p> <p>Each check processed by a screening agency costs a minimum of \$20.60 for access to criminal records. Since the 2005 review identified 22 per cent of checks as unnecessary the Commission has taken some steps to try to reduce these. Despite these changes a number of unnecessary checks proceed.</p>
<p>Recommendation</p>	<p>Although this has been a problem for some time, the Commission has not yet developed a means of identifying when a check is not required.</p> <p>To improve compliance with the WWCC it is recommended that the Commission by December 2010 screen applications and only process checks for child-related employment.</p>
<p>Some individuals are over checked</p>	<p>In addition, some individuals are over checked. Employers who recruit short term or seasonal staff such as casual teachers and swimming coaches are requesting WWCCs for each period of employment.</p>

Exhibit 5: Over-checking of individuals	
Casual employees tend to move between employers. As a result we found that multiple checks are being done on these employees. For example:	
<i>Casual Employee 1:</i>	checked five times between February and July 2009
<i>Casual Employee 2:</i>	checked four times between February and April 2009
<i>Casual Employee 3:</i>	checked eight times between August 2007 and February 2008
<i>Casual Employee 4:</i>	checked seven times between August 2008 and November 2009.

Source: Catholic Commission for Employment Relations, 2009

An amendment to the CCYP Act was introduced in 2007 to allow casual staff to be checked only once every 12 months, but it has not as yet been fully implemented.

Recommendation To improve compliance with the WWCC it is recommended that the Commission by December 2010 implement provisions to only check certain short term employees once every 12 months.

Are all volunteers checked? Volunteer organisations are currently only required to have volunteers who are in direct, unsupervised contact with children complete a Prohibited Employment Declaration.

It is estimated that in NSW over 1.3 million volunteers are working with children in sport, welfare, education, religious and health services.

Some volunteer organisations have expressed concern that volunteers are their greatest area of exposure, and that perpetrators of child abuse may target their organisations to access children.

For the Prohibited Employment Declaration to be effective, volunteer organisations need to make sure they are completed and the volunteer is correctly identified.

We found the Commission does not know whether all volunteer organisations are requiring Prohibited Employment Declarations. Where they do, these are rarely checked by the Commission. Organisations rely on the applicant to be truthful.

The Commission commenced a three year project in 2009 to verify a sample of Prohibited Employment Declarations (PEDs) completed by volunteers.

Of the 144 volunteers checked in the pilot project one was found to be a prohibited person. However further investigation found that this person was not working with children and should not have completed a PED in any event.

However the project did identify problems with the PED forms, including that the form did not contain enough information to run a police check to see if applicants were prohibited people.

The Commission is currently revising the PED forms to require volunteer organisations to check identification documents such as a drivers licence to verify the information on the PED. The Commission will also continue with this project.

In the future, some volunteers will have to undergo a more thorough background check. The recent Special Commission of Inquiry into Child Protection Services in New South Wales (the Wood Inquiry) recommended that the WWCC should extend to some volunteers including those who:

- provide mentoring for disadvantaged children
- provide personal care for children with disabilities
- are adult household members of family day carers and foster carers.

The Commission anticipates that this will result in around 27,000 extra checks each year.

The type of check and who is checked varies between jurisdictions. For example, in Victoria all volunteers have a WWCC.

Exhibit 6: Interstate comparisons				
	Paid employees	Self-employed	Volunteers	Students on placement
Who is checked				
NSW	✓	have a separate certificate process	sign a Prohibited Employment Declaration	not required
Vic	✓	✓	✓	✓
Qld	✓	✓	✓	✓
WA	✓	✓	✓	✓
Cost				
NSW	free	\$80	free	not applicable
Vic	\$76.10	\$76.10	free	free
Qld	\$61.85	\$61.85	free	free
WA	\$50	\$50	\$10	\$10
Volume of checks for 2008-09				
NSW	214,599			
Vic	175,633			
Qld	284,398			
WA	83,862			

Source: Audit Office research, 2009

Self-employed need a certificate

From 1 May 2010, it will be compulsory for self-employed people whose work with children is unsupervised, such as music and dance tutors, sports coaches and nannies, to have a Certificate for Self Employed People in Child Related Employment (WWC Certificate).

Each certificate has a verification number. Organisations and parents are encouraged to check this number against the register of self-employed people on the Commission's website to ensure that it is current.

The Commission anticipates it will issue around 10,000 self-employed certificates each year however over the first six months they only issued about 1,600.

The Commission is currently delivering an awareness campaign to parents in pre-schools.

- Recommendation** To reduce the risk of prohibited people working with children it is recommended that the Commission by December 2010:
- have all volunteer organisations register with the Commission
 - move to direct electronic lodgement with the Commission of PEDs by volunteers
 - undertake regular audits to check that volunteers are completing PEDs and are not prohibited persons
 - make sure that organisations and parents check that self-employed people have current certificates.

3. Are outcomes of the checks for paid employees reliable?

The reliability of the checking process depends on three things; getting the name right, checking against accurate up to date records and consistent decision making. We found that not all outcomes of checks are reliable.

The records held by the Commission on relevant employment proceedings (REPs) and apprehended violence orders (AVOs) are not always reliable and complete.

Of particular concern are REPs. We found examples where these were not properly investigated by the employer, or where the conclusion was incorrect and a lower risk rating was given to the event. The problem with this is that these records are relied on to judge the level of risk a person presents to a child.

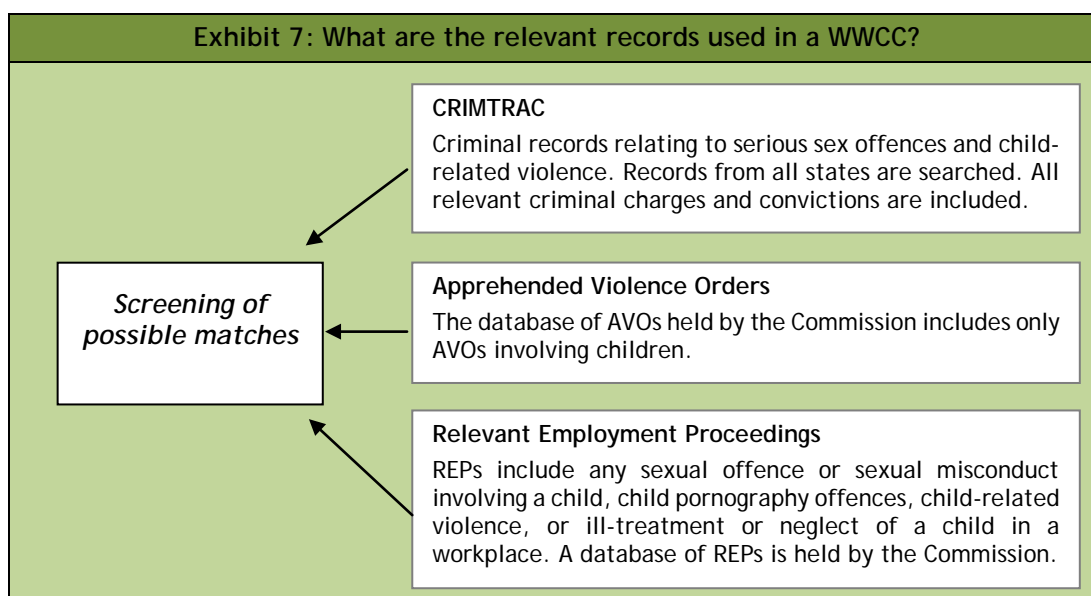
We also found that risk estimates differed between screening agencies suggesting that the AWARE model has implementation issues.

- Employers check identification** Before the WWCC is requested, the applicant must prove their identity to the employer through a '100 point' check. The applicant must show the employer original documents such as a birth certificate, drivers licence and land rates notices that add up to 100 points. Applicants must also disclose all former names or aliases. A check is run against all names provided.

The employer sends the completed WWCC application form to the screening agency they are registered with. The screening agency should check the application is properly completed, and verify that the request is for a child-related position. They then forward it to the Commission.

The Commission then runs three checking processes. These are with CrimTrac, the Commission's REP database and AVO database.

If an applicant has any relevant records, the screening agency must complete a risk estimate.



Source: Audit Office research, 2009

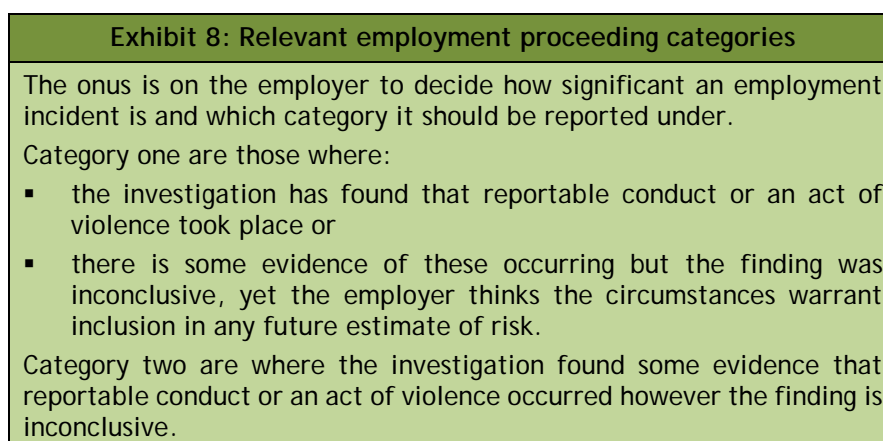
About 20 per cent or 40,000 of WWCCs return possible matches between an applicant and a record. An initial review of these identifies over 90 per cent or 37,000 as not accurate matches. About 1.5 per cent or 3,000 WWCCs annually reveal a relevant record.

Employers are obliged to report relevant employment proceedings

The CCYP Act requires employers to notify the Commission of the name and other identifying particulars of any employee or volunteer against whom relevant employment proceedings have been completed, whether or not that person is in child-related employment.

REP records are included in the WWCC as they have been found to be a useful tool in identifying people who may pose a risk to children. About seven per cent of the relevant records identified are REPs.

Employers must also judge the seriousness of the conduct and label the event a category one or a category two event.



Source: Audit Office research, 2009

Category one matters trigger a risk estimate in a WWCC. Category two matters will only be considered if the applicant has other relevant records.

The Commission receives about 500 REPs a year. More than half of these are category one.

REP records are not reliable

However, there are problems with the reliability of REPs. In 2006 the Commission reviewed 66 REPs to assess if:

- employers were reporting the right incidents
- risk categories were correct
- investigations were adequate.

The review found that:

- 10 incidents did not need to be reported
- 13 of the 37 incidents reported as category two should have been category one (more serious).
- 20 incidents were not properly investigated.

Also, if REP records are requested from an employer for a risk estimate but are incomplete, they cannot be used. This means that significant issues of past behaviour cannot be verified as accurate and therefore the risk cannot be properly estimated.

In 2008, the Commission engaged a consultant to provide options to improve problems identified in the REP process. The consultant proposed 11 options, most of which included a new approach to categorizing incidents. The Commission did not adopt any of these proposals. Instead the Commission intends to improve their forms and reissue the Employer Guidelines.

Some AVO records are not reliable

The Commission maintains a database of relevant AVOs. To be relevant, an AVO must be made by a police officer or other public official, and be for the protection of a child (that is anyone 18 years or younger), or a child and others. About 11 per cent of relevant records identified are AVOs.

Problems with AVOs include that children may be named but their age is not stated. Age is needed to determine that the record is child-related. It is also needed to determine the seriousness of the incident. In such situations the AVO cannot be relied upon.

If an applicant has a relevant record, the screening agency completes a risk estimate. Before this is done, the screening agency must verify that:

- the position is in paid child-related employment
- any criminal records are relevant
- the applicant is not a prohibited person
- any AVOs and REPs are relevant
- the records belong to the applicant.

Screening agencies will also try to remedy incomplete information by requesting further documents from police, employers or from courts. For example, if the victim's age in an assault is not clear it may or may not be a relevant record so further information is needed. This is time consuming. In 2008-09, only 56 per cent of risk estimates by the Commission were completed within the target time of 16 weeks.

Risk estimates must be consistent Each screening agency uses the risk estimate model developed by the Commission called AWARE to assess the possible risk a person may pose working with children. AWARE was introduced in 2007.

Screening agencies do about 580 risk estimates a year. About 0.3 per cent of all WWCCs end up with a risk estimate being completed.

Exhibit 9: The AWARE Model

AWARE is based on research about what constitutes risk to children in organisations and what are the best ways to manage these risks.

AWARE includes three tools. The Individual Risk Estimate (IRE) gives a score for the relevant records. The information used to decide the IRE score includes:

- the date of the incident
- the number of incidents
- type and location of the incident
- charges and convictions
- age of the victim and offender
- relationship between the victim and offender

The possible IRE scores are:

- IRE 3 - significant risk
- IRE 2 - some risk
- IRE 1 - no greater risk to children than any other employee.

If the applicant scores anything but IRE 1, the assessor must review factors that contributed to the incident, and what actions the applicant has taken to reduce risks of reoffending.

This supplementary assessment may lower the rating where the risk assessor considers that the applicant is unlikely to repeat the offence.

If the score remains at IRE 3 or 2, the assessor completes the Position Risk Estimate and an Organisational Risk Estimate. These are done in consultation with the employer. The assessor then advises the employer of the outcome and steps they could take to manage risks.

Source: Audit Office research, 2009

Of 246 risk estimates done by the Commission's screening unit in 2009 (the remaining 314 were done by other screening agencies) about 115 were initially IRE 3. After considering further information during the supplementary assessment only 38 remained as IRE 3 or posing a significant risk.

Outcomes from the WWCC risk estimates are not consistent The Commission ensures risk estimates by screening agencies are consistent by:

- providing guidelines and procedures
- hosting risk assessor forums
- providing feedback to questions.

And yet recent audits of two screening agencies on the use of the AWARE model found problems. Of a sample of 21 completed case files reviewed, 19 were not fully compliant. This means there is a risk that people who pose risk to children are not identified.

Exhibit 10: Examples of inconsistent practices
<ul style="list-style-type: none"> ▪ Failure to follow the AWARE guidelines. IRE 3 was reduced to IRE1 with no confirmation that the records belonged to the applicant and the reference requested from the employer did not comply with guidelines. ▪ Errors in recording data and the use of AWARE. Data was not correctly entered with a serious juvenile offence not being identified. The outcome was an IRE 1 when it should have been an IRE 2 or 3. ▪ Poor recording of decisions. IRE 3 was reduced to IRE 1 without any evidence to show a relevant AVO was considered. Also, no supplementary materials to demonstrate why the IRE was reduced.

Source: Audit Office research, 2009

Criminal records used to estimate risk

People may be of significant risk if they have been charged but not convicted of a prohibited offence or if they have a relevant criminal record.

Exhibit 11: Categories of relevant criminal records	
Criminal outcomes that prohibit child-related employment	Criminal outcomes that suggest significant risk
Being convicted of a prohibiting offence such as: <ul style="list-style-type: none"> ▪ an adult intentionally wounding or causing grievous bodily harm to a child e.g. attempted murder by choking ▪ an adult attempting, conspiring or inciting to commit such an offence ▪ an offence involving sexual activity or acts of indecency that is punishable by imprisonment of 12 months or more e.g. indecent assault ▪ causing a child to be in sexual servitude ▪ promoting or engaging in acts of child prostitution ▪ production, dissemination or possession of child pornography ▪ kidnapping or child abduction. 	<ul style="list-style-type: none"> ▪ being charged but not convicted of a prohibiting offence such as those listed in column 1 ▪ any offence involving sexual activity or acts of indecency that is punishable by imprisonment of less than 12 months ▪ convictions for some non-prohibiting offences like "common assault - victim under 18".

Source: Audit Office research, 2009

Recommendations

To improve the reliability of checks we recommend that the Commission by December 2010 review its approach to collecting and analysing relevant employment information and review the usefulness of AVOs.

To improve risk estimate outcomes we recommend the Commission:

- ensure consistent practices amongst screening agencies by December 2010
- complete the evaluation of AWARE as planned.

4. Are risks managed following employment?

The Commission cannot stop employers from hiring people who may pose a significant risk to children.

While the Commission does advise employers of how to mitigate the risk a person may bring to a position and an organisation, they do not monitor whether or not these actions were taken by the employer.

People who have committed 'prohibited offences' cannot be employed or perform volunteer work with children. And anyone who commits such an offence after they have started working with children should leave the position. But there is nothing in place to make sure this happens.

Only self-employed people are monitored for subsequent offences.

Prohibited people are not employed

It is against the law for a prohibited person to apply or engage in child-related work and it is also an offence to employ a prohibited person in such work. Anyone who commits such an offence after they have started working with children should leave the position.

However, each year about 70 prohibited people apply for child-related employment. Some people may not know they are a prohibited person. For example, a person convicted of carnal knowledge as a teenager many years ago may not know that this offence would stop them from working with children. Their prohibited person status is checked when a WWCC is done.

Prohibited people can request review of status

Some prohibited people can seek a review of their status by the Commission, the Industrial Relations Commission or the Administrative Decisions Tribunal. Each year about 70 do so, of which about 40 are able to demonstrate they are no longer a risk to children and the restriction is lifted.

Exhibit 12: Difference between significant risk and prohibited people

A 22 year old male was charged for sexually assaulting a 20 year old female in a public place in 2008. The male did not know the female. The case however got dismissed and the male was not convicted.

If this person applies for child-related employment and a WWCC is done, he will be assessed as a person of significant risk. This will be based on factors including:

- was the person charged? Yes
- where did the alleged incident happen? In a public place
- when did the alleged incident happen? Recently
- did the victim know the alleged offender? No.

If the male was convicted of the sexual assault, he would become a prohibited person and thus not allowed to work in child-related employment.

Source: Audit Office research, 2009

People estimated to be of significant risk are employed

Employees assessed to be of significant risk may still be employed in child-related employment. This is because the decision rests with employers. In fact of over 50 significant risk applicants assessed each year, on average seven are employed in child-related employment.

Exhibit 13: Significant risk people			
Year	Risk assessments done	Assessed as significant risk (ie IRE 3)	Significant risk people employed
2004-05	497	62	8
2005-06	608	67	1
2006-07	607	39	6
2007-08	581	43	7
2008-09	560	53	14

Source: Audit Office research, 2009

Screening agencies advise the employer of the risk and how to manage it for example by increasing supervision. However the Commission does not have a role to follow up whether this is actually done.

The Commission is also responsible for the Child Safe Child Friendly program which it developed as another means of mitigating the risk of child abuse in the work place. This program helps employers develop their own child protection responses such as restricting and supervising visitors. Yet, we found that this program is not offered to employers who hire people rated as significant risk.

Recommendation

To manage risks following employment we recommend the Commission ensure employers of significant risk employees implement Child Safe Child Friendly strategies by June 2010.

Significant risk employees are not monitored by the Commission

The only obligation on employers is that they advise the Commission if they refuse employment to an applicant on the basis of a WWCC. In 2008-09, 14 people identified as significant risk were employed.

The type of relevant records that have triggered a significant risk rating includes:

- a dismissed charged for common assault on a 17 year old male
- evidence of accessing child pornography on a number of occasions.

Monitoring subsequent offences

The WWCC does not have an expiry date and remains valid as long as the person remains with the same employer in the same position.

This means that if a person in child-related employment is charged with a prohibiting offence or one that may indicate the person poses a significant risk to children, for example a charge for common assault where the victim is under 18, the employer may not know unless the employee tells them or is convicted and imprisoned.

In contrast, self-employed people who are granted a Certificate for Self Employed People in Child Related Employment are monitored by NSW Police for subsequent convictions that would make them a prohibited person.

When this occurs, NSW Police advise the Commission, who revoke the Certificate.

Exhibit 14: Ongoing monitoring in other jurisdictions

Other jurisdictions like Queensland, Victoria, Western Australia have a card system. Those who are cleared through the working with children check are provided with cards which can be valid for a period between two and five years.

These cards remain with the cardholder and are valid for all child-related jobs. Cardholders are also monitored for criminal offences. Police provide updates on changes in criminal history to the checking agency.

In 2007-08, Queensland cancelled 185 cards and further suspended 65 cardholders after charges of serious child-related sex offences and child pornography offences were laid against them.

Source: Audit Office research, 2009

Recommendation To manage risks following employment we recommend the Commission by June 2010 identify people that have committed a prohibited offence while in child-related employment and advise Police.

Appendix

Appendix About the audit

Audit Objective This audit examined whether the Commission is effective in ensuring that the WWCC reliably identifies those people who may pose a risk to children.

Lines of Inquiry In reaching our opinion against the audit objective, we sought to answer the following questions:

1. Are all relevant people checked?
2. Are the outcomes of the checks reliable?
3. Are risks managed following employment?

Audit criteria In answering the lines of inquiry, we used the following audit criteria (the 'what should be') to judge performance. We based these standards on our research of current thinking and guidance on better practice. They have been discussed, and wherever possible, agreed with those we are auditing.

For line of inquiry 1, the audit criteria were:

- How does the Commission know that required employers are requesting WWCCs?
- How does the Commission know that employers check everyone they should?

For line of inquiry 2, the audit criteria were:

- How does the Commission know that information on applicants is reliable and complete?
- How does Commission ensure that background checks by screening agencies are consistent?

For line of inquiry 3, the audit criteria were:

- Are high risk employees monitored?
- How does the Commission manage subsequent offences?

Audit scope We limited this audit to the reliability of the WWCC.

For checks to be reliable, they must comprehensively cover all relevant employment groups that are subject to checking (as defined in the legislation to include the self-employed and volunteers), and be based upon proper, valid and complete information, and be performed in a consistent manner. Our assessment was based upon a review of the quality and consistency of WWCC outcomes.

The audit did not examine:

- Information integrity. Information required for the WWCC is collected by the courts, NSW Police, police from other jurisdictions, employers and professional organisations
- Persons listed as prohibited from working in child-related employment other than those identified by the screening agencies
- The types of checks done i.e. whether there are other categories of offences that should be added to the WWCC
- Whether all relevant types of employment are covered.

Audit Approach	<p>The audit team acquired subject matter expertise by:</p> <ul style="list-style-type: none"> ▪ interviewing and examining relevant documents including guidelines, reports, case files, strategies and reviews relating to the WWCC ▪ discussion with relevant staff at the Commission and staff of the four screening agencies ▪ discussion with representatives of key stakeholders including NSW Ombudsman, NSW Police Force and the Parliamentary Committee on Children and Young People whom the Commission reports to ▪ comparing where appropriate with other States and countries ▪ discussion with other audit offices, especially the Victorian Audit Office ▪ examining relevant government and better practice guidelines. <p>We also examined the WWCC in other jurisdictions to compare practices. These included Victoria, Queensland, Western Australia, South Australia and the Northern Territory.</p>
Audit selection	<p>We use a strategic approach to selecting performance audits which balances our performance audit program to reflect issues of interest to Parliament and the community. Details of our approach to selecting topics and our forward program are available on our website.</p>
Audit methodology	<p>Our performance audit methodology is designed to satisfy Australian Audit Standards AUS 806 and 808 on performance auditing, and to reflect current thinking on performance auditing practices. Performance audits commencing after 1 January 2009 comply with the Standard on Assurance Engagements ASAE3500 Performance Engagements.</p> <p>We produce our audits under a quality management system certified to International Standard ISO 9001. Our processes have also been designed to comply with the auditing requirements specified in the <i>Public Finance and Audit Act 1983</i>.</p>
Acknowledgement	<p>We gratefully acknowledge the co-operation and assistance provided by the Commission for Children and Young People. We also thank the staff of the other screening agencies, (NSW Department of Arts, Sport and Recreation, NSW Department of Health, NSW Department of Education and Training, and the Catholic Commission for Employment Relations) for their assistance. We would also like to thank the staff of the NSW Police Force and the NSW Ombudsman's Office.</p>
Audit team	<p>Our team leader for this performance audit was Penelope Josey, who was assisted by Angelina Pillay. Jane Tebbatt provided direction and quality assurance.</p>
Audit cost	<p>Including staff costs, printing costs and overheads the estimated cost of the audit is \$175,000.</p>

Performance Audits by the Audit Office of New South Wales

Performance Auditing

What are performance audits?

Performance audits determine whether an agency is carrying out its activities effectively, and doing so economically and efficiently and in compliance with all relevant laws.

Performance audits may review a government program, all or part of a government agency or consider particular issues which affect the whole public sector.

Where appropriate, performance audits make recommendations for improvements.

If you wish to find out what performance audits are currently in progress, visit our website at www.audit.nsw.gov.au.

Why do we conduct performance audits?

Performance audits provide independent assurance to Parliament and the public that government funds are being spent efficiently and effectively, and in accordance with the law.

Performance audits seek to improve the efficiency and effectiveness of government agencies so that the community receives value for money from government services.

Performance audits also assist the accountability process by holding managers to account for agency performance.

What are the phases in performance auditing?

Performance audits have three key phases: planning, fieldwork and report writing.

During the planning phase, the audit team will develop audit criteria and define the audit field work.

At the completion of field work we will meet with agency management to discuss all significant matters arising out of the audit. Following this, we will prepare a draft performance audit report.

We meet with agency management to check that facts presented in the report are accurate and that recommendations are practical and appropriate. Following this, a formal draft report is provided to the CEO for comment. The relevant Minister is also provided with a copy of the final

report. The final report, which is tabled in Parliament, includes any comment made by the CEO on the conclusion and the recommendations of the audit.

Depending on the scope, performance audits can take several months to complete.

Copies of our performance audit reports can be obtained from our website or by contacting our Office.

How do we measure an agency's performance?

During the planning phase, the team develops the audit criteria. These are standards of performance against which the agency or program is assessed. Criteria may be based on best practice, government targets, benchmarks, or published guidelines.

Do we check to see if recommendations have been implemented?

Agencies are requested to report actions taken against each recommendation in their annual report so that we can monitor progress.

The Public Accounts Committee (PAC) may conduct reviews or hold inquiries into matters raised in performance audit reports. These inquiries are usually held 12 months after the report is tabled.

Who audits the auditors?

Our performance audits are subject to internal and external quality reviews against relevant Australian and international standards. This includes ongoing independent certification of our ISO 9001 quality management system.

The PAC is also responsible for overseeing the activities of the Audit Office and conducts a review of our operations every three years.

Who pays for performance audits?

No fee is charged for performance audits. Our performance audit services are funded by the NSW Parliament and from internal sources.

Further information

Further information can be obtained from our website www.audit.nsw.gov.au or by contacting us on 9275 7277.

Performance Audit Reports

No	Agency or Issues Examined	Title of Performance Audit Report or Publication	Date Tabled in Parliament or Published
196	NSW Commission for Children and Young People	<i>Working with Children Check</i>	February 2010
195	NSW Police Force NSW Department of Health	<i>Managing Forensic Analysis - Fingerprints and DNA</i>	10 February 2010
194	Department of Premier and Cabinet Department of Services, Technology and Administration NSW Treasury	<i>Government Advertising</i>	10 December 2009
193	Roads and Traffic Authority of NSW	<i>Handback of the M4 Tollway</i>	27 October 2009
192	Department of Services, Technology and Administration	<i>Government Licensing Project</i>	7 October 2009
191	Land and Property Management Authority Maritime Authority of NSW	<i>Administering Domestic Waterfront Tenancies</i>	23 September 2009
190	Department of Environment, Climate Change and Water NSW Environmental Trust	<i>Environmental Grants Administration</i>	26 August 2009
189	NSW Attorney General's Department NSW Department of Health NSW Police Force	<i>Helping Aboriginal Defendants through MERIT</i>	5 August 2009
188	NSW Department of Health	<i>Tackling Cancer with Radiotherapy</i>	23 June 2009
187	Roads and Traffic Authority of NSW	<i>Improving Road Safety - Heavy Vehicles</i>	13 May 2009
186	Grants	<i>Grants Administration</i>	6 May 2009
185	Forests NSW	<i>Sustaining Native Forest Operations</i>	29 April 2009
184	NSW Police Force	<i>Managing Injured Police</i>	10 December 2008
183	Department of Education and Training	<i>Improving Literacy and Numeracy in NSW Public Schools</i>	22 October 2008
182	Department of Health	<i>Delivering Health Care out of Hospitals</i>	24 September 2008
181	Department of Environment and Climate Change	<i>Recycling and Reuse of Waste in the NSW Public Sector</i>	11 June 2008
180	Follow-up of 2003 Performance Audit	<i>Protecting Our Rivers</i>	21 May 2008
179	NSW Office of Liquor, Gaming and Racing; NSW Police Force	<i>Working with Hotels and Clubs to reduce alcohol-related crime</i>	23 April 2008
178	Greyhound and Harness Racing Regulatory Authority	<i>Managing the Amalgamation of the Greyhound and Harness Racing Regulatory Authority</i>	3 April 2008
177	Office of the Director of Public Prosecutions	<i>Efficiency of the Office of the Director of Public Prosecutions</i>	26 March 2008
176*	Better Practice Guide	<i>Implementing Successful Amalgamations</i>	5 March 2008

No	Agency or Issues Examined	Title of Performance Audit Report or Publication	Date Tabled in Parliament or Published
175	Department of Commerce Department of Primary Industries	<i>Managing Departmental Amalgamations</i>	5 March 2008
174	Department of Education and Training	<i>Ageing workforce - Teachers</i>	13 February 2008
173	NSW Police Force	<i>Police Rostering</i>	5 December 2007
172	Department of Primary Industries	<i>Improving Efficiency of Irrigation Water Use on Farms</i>	21 November 2007
171	Department of Premier and Cabinet Department of Commerce	<i>Government Advertising</i>	29 August 2007
170	RailCorp	<i>Signal Failures on the Metropolitan Rail Network</i>	15 August 2007
169	NSW Police Force	<i>Dealing with Household Burglaries</i>	27 June 2007
168	Ministry of Transport	<i>Connecting with Public Transport</i>	6 June 2007
167	Follow-up of 2001 Performance Audit: Ambulance Service of New South Wales	<i>Readiness to Respond</i>	6 June 2007
166	Follow-up of Performance Audit Department of Education and Training	<i>Using Computers in Schools for Teaching and Learning</i>	9 May 2007
165	Homelessness	<i>Responding to Homelessness</i>	2 May 2007
164	Department of Juvenile Justice NSW Police Force	<i>Addressing the Needs of Young Offenders</i>	28 March 2007
163	Legal Aid Commission of NSW	<i>Distributing Legal Aid in New South Wales</i>	13 December 2006
162	NSW Health	<i>Attracting, Retaining and Managing Nurses in Hospitals</i>	12 December 2006
161	Follow-up of 2003 Performance Audit	<i>The Police Assistance Line</i>	6 December 2006
160	NSW Health	<i>Helping Older People Access a Residential Aged Care Facility</i>	5 December 2006
159	NSW Health	<i>Major Infectious Disease Outbreaks: Readiness to Respond</i>	22 November 2006
158	Department of Education and Training	<i>Educating Primary School Students with Disabilities</i>	6 September 2006
157	Roads and Traffic Authority	<i>Condition of State Roads</i>	16 August 2006

* Better Practice Guides

Performance audits on our website

A list of performance audits tabled or published since March 1997, as well as those currently in progress, can be found on our website www.audit.nsw.gov.au.

If you have any problems accessing these reports, or are seeking older reports, please contact our Office Services Manager on (02) 9275 7116.