



Commissioner for Children and Young People  
Western Australia

CONTENTS

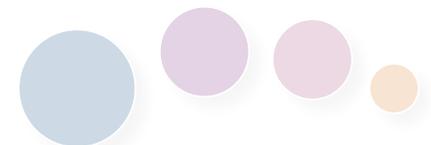


*Caring for the future growing up today*

# Improving legislation and policy for children and young people

Updated January 2013

**Guidelines for assessing the impact  
of proposed legislation and policy  
on children and young people**



## Message from the Commissioner



As users of services, goods and facilities, children and young people are affected by many of the State's laws and policies implemented by government and non-government agencies. Some laws and policies affect children and young people directly, while others affect children and young people indirectly by having an impact on the ability of families and communities to provide safe and nurturing environments that support children and young people to reach their full potential.

These guidelines - *Improving legislation and policy for children and young people* - were initially developed in partnership with government agencies to ensure that the interests of children and young people are taken into account in the development of legislation and, hopefully, to ensure that any proposed new legislation better meets their needs and interests. More recently, these guidelines have been updated and improved and now, explicitly, also apply to policy initiatives.

I am pleased to release edition two of my guidelines – *Improving legislation and policy for children and young people*. Edition two was developed to outline, in more detail and using more complex examples and case studies, a step-by-step process by which legislation

and policy can be assessed and, if required, amended based on the needs and interests of our youngest citizens.

While the guidelines have a clear role for those developing and commenting on legislation, they are also adaptable to policy development in the government, non-government and private sector. The templates and resources contained within the guidelines allow organisations to undertake assessments for both simple and complex matters.

It is very important for these guidelines to be used early in the development of legislation and policy, and for both new proposals and amendments to existing content.

We all have a role to play in the wellbeing of our children and young people, and by assessing legislation and policy in the draft phase, we will ensure children and young people are not disadvantaged or harmed, but rather supported and respected as members of our community.

I encourage all organisations to use these guidelines to ensure their work actively supports children and young people and their families.

*Michelle Scott*  
*Commissioner for Children and Young People WA*

## Contents

<b>Message from the Commissioner .....</b>	<b>2</b>
<b>Introduction .....</b>	<b>5</b>
The role of the Commissioner for Children and Young People .....	5
What is the purpose of the guidelines? .....	6
Why are these guidelines important? .....	7
<b>Overview of the assessment process .....</b>	<b>8</b>
Initial screening stage .....	8
Assessment stage.....	9
Final recommendation stage .....	9
<b>The assessment process in detail .....</b>	<b>11</b>
Initial screening stage .....	11
Assessment stage.....	14
Phase One: Assess impacts .....	14
Phase Two: Address negative impacts .....	20
Final recommendation stage .....	20
<b>Conclusion.....</b>	<b>22</b>

## Contents (cont)

<b>Appendices .....</b>	<b>23</b>
Appendix A: Example of full assessment under these guidelines .....	23
Appendix B: Assessment form .....	27
Appendix C: Resources and further reading .....	35
Appendix D: United Nations Convention on the Rights of the Child .....	36
Appendix E: Acknowledgments .....	39

### Alternative formats

On request, large print or alternative format copies can be obtained from the office of the Commissioner for Children and Young People. For advice or further information regarding the use of this guide, contact:

#### **Commissioner for Children and Young People**

Ground Floor, 1 Alvan Street

Subiaco WA 6008

Telephone: (08) 6213 2297

Facsimile: (08) 6213 2220

Freecall: 1800 072 444

Email [info@ccyp.wa.gov.au](mailto:info@ccyp.wa.gov.au)

ISBN: 978-0-9872881-8-9

## Introduction

### The role of the Commissioner for Children and Young People

*The Commissioner for Children and Young People Act 2006 (WA)* (the Act) requires the Commissioner for Children and Young People to monitor laws and policies<sup>1</sup> and, in doing so, to apply the principle that the best interests of children and young people is the paramount consideration.

In addition, priority and special regard is to be given to the interests and needs of Aboriginal and Torres Strait Islander children and young people, and to children and young people who are vulnerable or disadvantaged for any reason.



The Commissioner is also required to observe the following principles:

- Children and young people are entitled to live in a caring and nurturing environment and to be protected from harm and exploitation.
- The contributions made by children and young people to the community should be recognised for their value and merit.
- The views of children and young people on all matters affecting them should be given serious consideration and taken into account.
- Parents, families and communities have the primary role in safeguarding and promoting the wellbeing of their children and young people and should be supported in carrying out their role.

Further, in performing her functions under the Act the Commissioner is required to consider the *United Nations Convention on the Rights of the Child* (the Convention).

Section 19 of the Act includes functions relating to monitoring and review of written laws, draft laws and policy affecting the wellbeing of children and young people.

The Commissioner fulfils these functions by inviting directors general to refer legislative proposals to her for comment; by monitoring bills introduced in Parliament; and by reviewing and commenting on bills referred to her by the Joint Standing Committee for the Commissioner for Children and Young People and other parliamentary committees. The Commissioner continues to consult and provide advice to government agencies in relation to the development of significant new policies affecting children and young people.

Under the Act, and likewise throughout these guidelines, *children and young people* means persons under the age of 18 years and *wellbeing* of children and young people includes the care, development, education, health and safety of children and young people.

<sup>1</sup> Under s19 of the Act, the Commissioner's functions include monitoring and reviewing, conducting inquiries in relation to, and considering and making recommendations about, written or draft laws and policies that affect the wellbeing of children and young people.

## What is the purpose of the guidelines?

These guidelines are designed to:

- help agencies to develop effective legislation and policy by ensuring that any impacts on children and young people are identified at the earliest possible stage
- ensure that the best interests of children and young people are always considered
- ensure that alternative options are generated to reduce any negative impacts on children and young people.

The guidelines will be most effective when used prior to the legislative drafting process or early on in the development of new policy initiatives. Early identification avoids the need for time-consuming revision of bills or modifications of policy at a later stage.

Agencies may wish to integrate the process outlined in these guidelines with existing processes for meeting other regulatory impact requirements, such as the Department of Treasury and Finance 'Regulatory Impact Assessment' and the Equal Opportunity Commission 'Needs and Impact Assessment Tool'.

Agencies are strongly encouraged to undertake the assessments described in these guidelines and to contact the Commissioner's office ([see page 4](#)) for assistance, further information or to provide feedback.

## When these guidelines should be used and who should use them

### WHEN TO USE GUIDELINES

- As early as possible in the development of a proposal
- For proposals for new legislation and to amend legislation (both primary and secondary legislation)
- For proposals for new policies or changes in policy

### WHO SHOULD USE GUIDELINES

- Government departments and agencies
- Local government
- Non-government agencies
- Schools, child care centres
- Youth organisations

## Why are these guidelines important?

Children and young people are sometimes invisible to policy makers and legislators, especially when proposals are not specifically directed to children and young people. Many policy and legislative proposals apply to both adults and children and there is always the potential for proposals that are solely directed towards adults to impact negatively upon children and young people.

It is important to consider the impact of any new proposal upon children and young people and ensure that their perspective is considered. Children and young people do not have the right to vote and are not always consulted by policy makers. Yet, children and young people are frequent users of state and local government services (for example, public transport, sport and recreation facilities, schools, hospitals, health facilities and justice services).

Policy and legislative proposals that have an impact on adults will also frequently affect children and young people because many adults are parents, grandparents or relatives of children and young people. Moreover, the actions and behaviour of adults can also have an impact on children and young people in the community (for example, a proposal to increase the age at which elderly adult drivers are required to be retested for a driver's licence may have an impact on the safety of children and young people who are drivers, passengers and pedestrians).



## Overview of the assessment process

An assessment undertaken in accordance with these guidelines should be recorded in writing. This enables the outcome of the assessment to be used in the future when monitoring the impact of new legislation or a new policy. A template, which may be useful for this purpose, has been included in Appendix B of these guidelines (see page 27).



### Initial screening stage

Prior to undertaking a full assessment of the impact of any proposed policy or legislation, an initial screening assessment should be undertaken to determine if a full assessment is required. This screening process requires consideration of whether the proposed legislation or policy has potential impact on any children and young people.

#### *Step 1* *Describe the purpose and nature of the proposed legislation/policy*

It is important to clearly articulate the purpose and nature of the proposed legislation or policy before considering its impact on children and young people. This will ensure that the person or agency undertaking the assessment understands the likely impact of the proposal in general before turning to a consideration of its impact on children and young people.

#### *Step 2* *Does the proposed legislation or policy have an impact (either directly or indirectly) on children or young people?*

Where proposed legislation or a proposed policy has no impact on children and young people, or where the identified impact on children and young people is trivial or inconsequential, nothing further is required.

For a full description of the initial screening stage see The assessment process in detail: Initial screening stage on [page 11](#).

## Assessment stage

A full assessment of a proposal is required if the outcome of the initial screening stage indicates that the proposal will have an impact on children and young people (other than where the only identified impact is trivial or inconsequential).

The assessment stage has two phases:

### Phase One: Assess impacts

#### Step 1

#### *Identify and assess all impacts on children and young people*

Under Step 1, all of the potential impacts on children and young people will need to be identified, including positive and negative impacts. When considering the potential impacts of a proposal, relevant research and evidence on the topic should be analysed. In addition, consultations with children, young people and other stakeholders should be considered.

#### Step 2

#### *Assess the significance of the identified impacts*

Step 2 requires consideration of the number of children and young people who are likely to be affected by the proposal; whether any specific groups of children and young people are likely to be more affected than others; and whether the identified impacts are likely to be short, medium or long term.

Further, the significance of each identified impact should be classified as minor, moderate or major in order to provide a framework for Step 3 and Phase Two.

#### Step 3

#### *Consider whether the proposal is in the best interests of children and young people*

If a legislative or policy proposal deals exclusively with the wellbeing of children and young people the proposal should only be developed if it is in the best interests of Western Australian children and young people. In cases where a proposal does not deal exclusively with the wellbeing of children and young people, the best interests of children and young people should be a primary (but not necessarily the overriding) consideration. There may be occasions when a decision is made to implement new legislation or new policies that have a negative impact on children and young people. If this occurs, the negative outcomes can be addressed in Phase Two.

### Phase Two: Address negative impacts

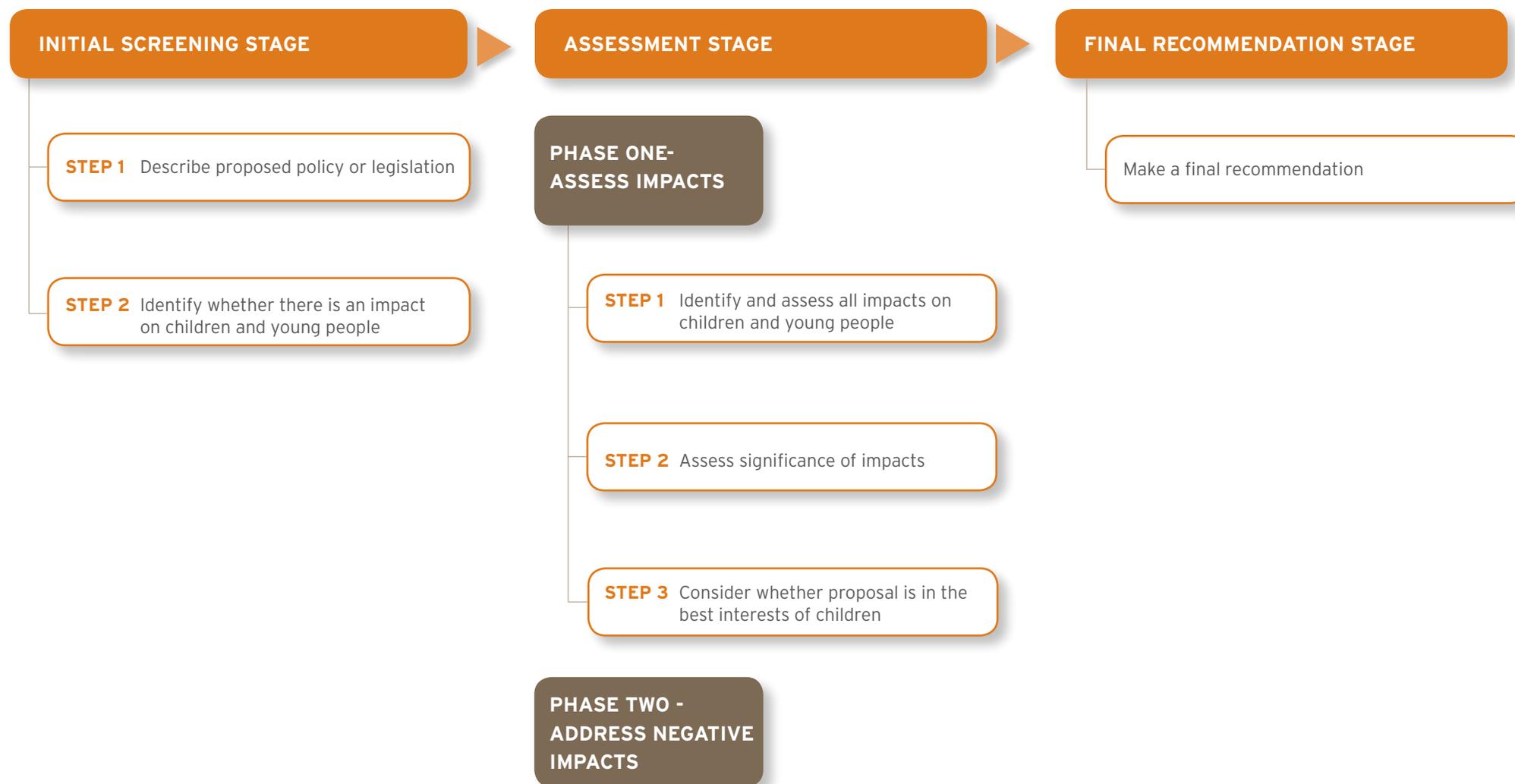
Even when a proposal is, overall, assessed as being in the best interests of children and young people in Western Australia, there may be specific groups of children and young people who will be affected negatively by the proposal. This phase requires consideration of remedial action to lessen any negative impacts on children and young people.

For a full description of the assessment stage see The assessment process in detail: Assessment stage on [page 14](#).

## Final recommendation stage

Based on the conclusions reached under Phase One and Phase Two, the person or agency undertaking the assessment should make a final recommendation about whether the proposal should or shouldn't be implemented; whether any changes to the proposal are required; and/or whether any other actions are required to address the potential negative impacts on the wellbeing of children and young people.

Overview of the assessment process



## The assessment process in detail

An assessment undertaken in accordance with these guidelines should be recorded in writing. This enables the outcome of the assessment to be used in the future when monitoring the impact of new legislation or new policy. An assessment undertaken under these guidelines might conclude that (despite some negative impacts being identified) the proposal is, overall, in the best interests of children and young people. If the proposal is subsequently reviewed it would be important to consider the reasoning adopted, and any conclusions made, during the assessment to determine if the identified positive impacts have, in fact, outweighed the negative impacts.

A template has been included in Appendix B of these guidelines to enable the assessment to be easily recorded in writing ([see page 27](#)).

An example of each phase of the assessment is provided in Appendix A ([see page 23](#)).

### Initial screening stage

Prior to undertaking a full assessment of the impact of any proposed policy or legislation, an initial screening assessment should be undertaken to determine if a full assessment is required. This screening process requires consideration of whether the proposed legislation or policy potentially impacts upon any children and young people. The purpose of the initial screening process is to ascertain which cases require a full assessment under these guidelines.

#### **Step 1:**

#### ***Describe the purpose and nature of the proposed legislation/policy***

It is important to clearly articulate the purpose and nature of the proposed legislation or policy before considering its impact on children and young people. This will enable the person or agency undertaking the assessment to consider the impact of the proposal in general, before turning to a consideration of its potential impact on children and young people. This step is particularly important if the individual or agency undertaking the assessment is not the same individual or agency that developed the proposal.

#### **Step 2:**

#### ***Does the proposed legislation or policy have an impact (either directly or indirectly) on children or young people?***

Children and young people can be affected *directly* or *indirectly* by policy and legislative changes. Some laws and policies are explicitly directed towards children

and young people (for example, *Young Offenders Act 1994* or a child protection policy) while others appear to be directed towards adults (for example, an adult education policy or an aged care policy). Even so, children and young people may be affected by legislative and policy changes that are directed to adults.

In addition, laws and policies that appear to apply equally to children and adults may, in practice, have a disproportionate impact on children and young people. For example, a local government proposal to prohibit the riding of bicycles on footpaths would appear, on its face, to equally affect adult and child cyclists. However, the impact on children and young people is likely to be greater because children and young people are more likely to ride their bicycles on footpaths than adults and therefore requiring children and young people to ride their bicycles on the road (especially young children) would result in a more serious risk to their safety.

## Direct and indirect impact of legislation on children and young people

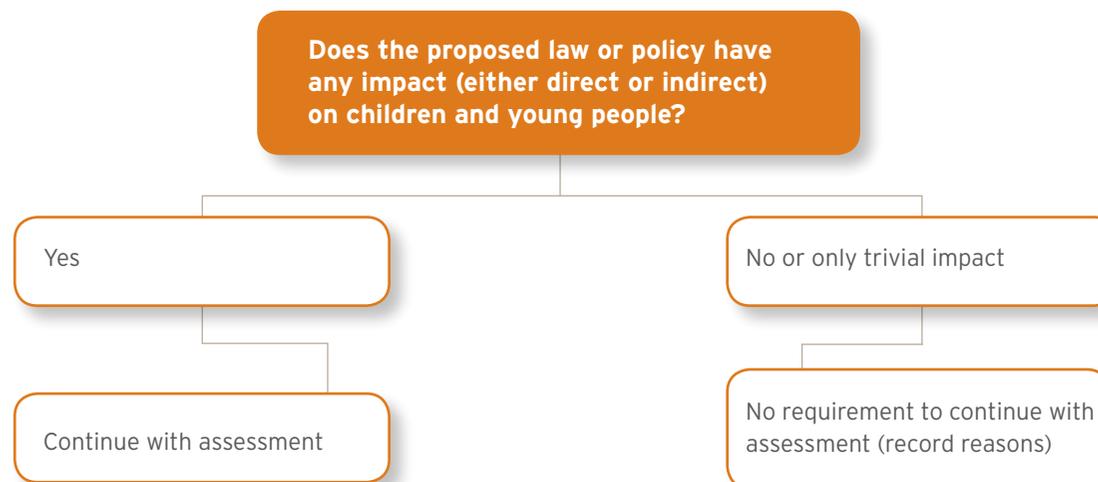


Where it is clear that a proposed policy or proposed legislation has no impact on children and young people, no further action is required. It is noted, however, that this will be uncommon because most laws and policies can potentially indirectly have an impact on children and young people. In assessing the impact on children and young people it is unrealistic to require agencies to undertake a full assessment where the potential identified impact is trivial. For example, a decision to increase the registration fees payable by builders by \$100 could potentially have an impact on the children of builders but this impact is so inconsequential that it does not warrant a further assessment.

For this reason, in cases where **a trivial or inconsequential impact is identified (as well as where no impact is identified) a full assessment is not required.** It is important that the process of undertaking an assessment is reserved for those matters that are most likely to significantly affect children and young people rather than matters where a potential inconsequential or trivial impact is identified. Because there will be a degree of subjective judgment in determining if an impact is trivial, it is vital that decision makers record their reasons for reaching this view so that future evaluations and monitoring of the policy or legislation can consider whether a fuller assessment of the impact on children and young people has now become necessary.



## Initial screening stage

*Example A: Initial screening stage*

This example is for illustrative purposes only. It is not intended to demonstrate the Commissioner's view on the particular issue.

**The proposal being assessed is legislation to enable retail shops to open on Sundays**

*Step 1**What is the nature and purpose of the legislation?*

- To enable, but not require, all retail shops to open on Sundays
- To provide greater flexibility for consumers and retail traders.

*Step 2**Identify whether there is an impact on children and young people?*

On its face, legislation enabling retail shops to trade on Sundays is not specifically addressed to children and young people. It is directed to the owners, operators, employees and users of retail shops (irrespective of whether they are adults or children). However, the ability for retail shops to open on Sundays might have an impact on children and young people in a number of ways, including:

- parents who are required to work in the retail shop on Sundays may have less time to spend

with their children on weekends (for example, unable to attend Sunday sporting events and unable to participate with their children in leisure activities) (**indirect negative impact**).

- Sunday trading hours may provide young people with greater opportunities for casual employment (**direct positive impact**).

*Outcome: Full assessment required*

As two potential impacts on children and young people have been identified; and because these impacts are not inconsequential or trivial, it is necessary to undertake a full assessment.

## Assessment stage

### Phase One: Assess impacts

Having completed the initial screening stage and identified that the proposal may have an impact on children and young people, it is necessary to consider and fully assess all of the potential impacts (both positive and negative) on children and young people. This full assessment is required in order to determine whether the proposal is overall in the best interests of children and young people.

#### Step 1: Identify and assess all impacts on children and young people

During the initial screening stage, only one or two impacts may have been identified. However, further impacts may be revealed by conducting a more comprehensive assessment of the proposal.

In Example A ([page 13](#)), two impacts were identified during the initial screening stage. Other potential impacts of the proposal for extended trading hours might include:

- greater part-time work opportunities for parents and this in turn may benefit children by increasing the family's income and by enabling one parent to work while the other parent cares for the children (indirect positive)

- a situation where children and young people employed by retail shops have less time for exercise, homework and other positive activities (direct negative)
- greater flexibility and convenience for families (for example, shopping can be done on Sundays instead of after school; for two-parent families, shopping can be done by one parent while the other parent looks after children) (indirect positive)
- financial advantages for some families involved in the retail industry (indirect positive)
- financial hardship for some families operating or working in retail shops that cannot compete commercially with larger outlets (indirect negative).

In order to determine all of the potential impacts it will be important to:

- consider relevant [research and evidence](#)
- [consult with children and young people](#)
- [consult with stakeholders](#).

Considering relevant evidence and undertaking consultations are particularly important when both negative and positive outcomes have been identified. For example, as noted above, a proposal for extended retail shopping hours may benefit children and young

people by providing greater casual work opportunities but at the same time disadvantage children and young people by lessening their available time for exercise and other leisure activities.

When identifying all the potential impacts on children and young people it is also necessary to consider whether the proposed policy or legislation disproportionately has an impact on particular groups of children and young people (for example, Aboriginal, culturally and linguistically diverse or children with disabilities).

### Research and evidence

One way to assess the impact of new policies or proposed legislation on children and young people is to draw on available evidence and research about the problem or issue to be addressed. Current research, studies or surveys in the relevant field can provide additional information on the issue and its impact, particularly if it relates to similar actions taken or experienced elsewhere. In relation to Example A ([page 13](#)), it might be useful to consider the impact of deregulated retail shopping hours in other jurisdictions.

Relevant data and general research is available from a variety of sources. For example:

Telethon Institute for Child Health Research  
<http://www.childhealthresearch.org.au>

Edith Cowan University, Child Health Promotion Research Centre  
<http://www.chprc.ecu.edu.au>

Australian Institute of Family Studies  
<http://www.aifs.gov.au>

Australian Institute of Criminology  
<http://www.aic.gov.au>

Australian Human Rights Commission  
<http://www.humanrights.gov.au>

Australian Bureau of Statistics  
<http://www.abs.gov.au>

Australian Clearinghouse of Youth Studies  
[http://www.acys.info/\\_nocache](http://www.acys.info/_nocache)

Australian Institute of Health and Welfare  
<http://www.aihw.gov.au>

Centre for Community Child Health  
<http://www.rch.org.au/ccch>

Commissioner for Children and Young People  
<http://www.cryp.wa.gov.au>

More specific sources should be considered depending on the nature of the relevant issue. It is also worth checking if commissioners or children's guardians have commented on similar proposals in other jurisdictions. Links to the websites

for Australian and overseas commissioners and guardians can be found at  
<http://www.cryp.wa.gov.au/content/Other-Children%27s-Commissioners.aspx>

Links to other useful agencies can be found at  
<http://www.cryp.wa.gov.au/content/Other-agencies.aspx>

Other useful sources might include law reform commissions, legal aid agencies and non-government agencies that advocate for children and young people.

### Consultation with children and young people

Another way of assessing the impact of a policy or legislative proposal on children and young people is to consult with children and young people and hear their views directly. Children and young people often have unique insights into issues, can offer creative solutions and their involvement can enrich decision-making processes and outcomes.

For instance, in relation to Example A ([page 13](#)), it would be useful to find out the views of children and young people about extended training hours to determine if, for example, children and young people are more concerned about the potential loss of weekend leisure time (including with their parents) or would appreciate the increased opportunity for casual employment.

It is recognised that it may not be always feasible to consult with children and young people in all

situations. However, there may be existing research that has collected the views of children and young people on the specific topic or a particular issue. Research may include findings from surveys or forums undertaken with children and young people.

The Commissioner's website includes various reports about the views of children and young people on issues such as reducing alcohol-related harm, wellbeing, mental health and the built environment. The websites of other commissioners or children's guardians may also include evidence of children and young people's views on particular topics. See for example:

<http://kids.nsw.gov.au/kids/resources/publications/askchildren.cfm>

<http://www.crypcg.qld.gov.au/resources/views/Views-of-children-and-young-people.html>

<http://www.hrc.act.gov.au/childrenyoungpeople/content.php/category.view/id/82>

The Commissioner has developed participation guidelines to help organisations actively involve children and young people in issues that affect their lives in ways.

The guidelines are available at  
<http://www.cryp.wa.gov.au/content/Participation%20Guidelines.aspx>

## Consultation with stakeholders

The person (or agency) assessing a policy or legislative proposal under these guidelines may have been closely involved in the development of the proposal. Therefore, consultation with relevant external agencies is important in order to obtain an objective perspective.

Consultation with agencies that advocate for children and young people (for example, Commissioner for Children and Young People, National Children's and Youth Law Centre, Youth Legal Service of Western Australia, Youth Affairs Council of Western Australia) or agencies that represent specific groups of children and young people (for example, Aboriginal Legal Service of Western Australia, Mental Health Law Centre, headspace, Disability Services Commission) may be extremely useful for considering the different outcomes of a policy or legislative proposal; for assessing the significance of the identified impacts on children and young people (see Step 2 below); and for assessing whether the proposal is in the best interests of children and young people (see Step 3 below).

Further, individuals or agencies with special expertise in relation to the initiative that is being assessed should be consulted whenever possible. For instance, an assessment of a proposal which aims to reduce the level of underage drinking would benefit from consultation with the McCusker Centre for Action on Alcohol and Youth. Likewise, if a proposal in relation

to access to the internet at school is being considered, consultation with cyber safety experts should be undertaken.

### **Step 2:** **Assess the significance of the identified impacts**

Having identified the different ways in which the proposed policy or legislation has an impact on children and young people, the next step is to consider the significance of those impacts. This will guide the process for considering whether the proposal is in the best interests of children and young people (see Step 3 on page 17) and whether any remedial action is required to address negative impacts (see Phase Two on page 20).

As discussed earlier in relation to the initial screening stage, if the *only* identified impact on children and young people is considered trivial or inconsequential you will not have reached this stage of the assessment. However, where there are a number of potential impacts there may be some which are properly categorised as trivial but others which are clearly more significant.

In assessing the significance of identified impacts (both positive and negative), consider the following questions:

- What proportion of children and young people will be affected?

- To what degree will they be affected? Proposals can impact differently on different groups of children and young people so it is important to consider:
  - degrees of disadvantage – family income, available family and community supports including services, special needs
  - cultural background – Aboriginal children and young people, children from culturally and linguistically diverse backgrounds
  - developmental needs – early years, primary school age, adolescence and young adulthood
  - geographical location.
- How long will the impacts last (for example, short term, long term, permanent)?

Finally, informed by the above information, decide the significance of each of the identified impacts.



The following are criteria for making a judgement about the significance of the impacts on children and young people<sup>2</sup>. They are intended as a guide and are not definitive.

An impact with **minor significance** for children and young people would include where:

- only a few children or young people would be likely to be affected for a short term only
- children or young people would cope well with the impacts.

An impact with **moderate significance** for children and young people would include where:

- more than a small group would be affected
- a smaller group of disadvantaged or vulnerable children and young people would be affected
- the impact would be for a medium term
- children or young people may have some difficulty coping with the impacts.

An impact with **major significance** for children and young people would include where:

- many children or young people would be affected
- a smaller group of disadvantaged or vulnerable children and young people would be significantly affected
- the impact would be long term or permanent

- children and young people would be likely to find it difficult to cope with the impacts.

**Step 3:**  
**Consider whether the proposal is in the best interests of children and young people**

After completing Steps 1 and 2 you will have identified, as far as possible, all potential negative and positive impacts on children and young people and will have assessed whether each of these impacts is minor, moderate or major.

For more complex proposals there may be a number of different impacts with varying degrees of significance. In order to assess whether the proposed policy or legislation is in the best interests of children and young people it may be necessary to balance competing impacts and interests and consider the overall effect of the proposal on children and young people.

**Why is it important to assess whether the proposal is in the best interests of children and young people?**

Article 3(1) of the *Convention on the Rights of the Child* provides that:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Australia ratified the Convention in December 1990. The Parliament of Western Australia considered the Convention important enough to legislatively require the Commissioner to have regard to it in performing his or her functions under the Act (and by specifying that the best interests of the child is the paramount consideration under the Act).

**What is meant by ‘the best interests’ of children and young people?**

The Convention does not explicitly define what is meant by the term ‘the best interests’ of children and there is no simple criterion for determining what is in the ‘best interests’ of children and young people generally (or an individual child). For this reason, there will be a degree of subjective judgment used when evaluating whether a particular policy or legislative proposal is in the best interests of children and young people.

Nonetheless, the Convention sets out the various rights of children and young people and, therefore, it provides a useful blueprint for assessing the best interests of children and young people.

For more information on the *Convention on the Rights of the Child*, see Appendix D on [page 36](#).

<sup>2</sup> Adapted from Department of the Prime Minister and Cabinet 2009, Family Impact Statement Guidelines, version 1, June 2009. <http://www.dpmc.gov.au/guidelines/familyimpactstatements/index.cfm>

### Should the 'best interests principle' be a primary consideration or the paramount consideration?

The Act requires the Commissioner to regard the best interests of children and young people as the paramount consideration. Only one article (Article 21) of the Convention uses the phrase 'shall be the paramount consideration' and this article deals with the adoption of children. In addition, Article 9 provides that children must not be separated from their parents against their will unless separation is necessary for the best interests of the child. In all other areas, the best interests of the child are a primary consideration (Article 3.1).

The Australian Human Rights Commission has commented that Article 3.1 of the Convention provides:

For a child's interests to be among the first considerations rather than requiring them to be the first considered or favoured. There are circumstances in which the community or other parties might have equal or even superior interests so that a child's interests may not prevail<sup>3</sup>.

When assessing proposals which deal exclusively with the welfare and interests of children and young people, it is appropriate that the best interests of the child should be considered the paramount consideration (for example, child protection laws, adoption laws). If, after assessing a proposal under these guidelines, it is concluded that the proposal is not in the best interests of children and young people, the further development or implementation of the proposal should not be pursued.

However, when assessing policies and legislation that deal with the rights and interests of other members of the community, it is not always appropriate to require that the best interests of children and young people always take precedence over every other relevant matter. For example, when assessing juvenile justice legislation and policies, the need to protect other members of the community from criminal behaviour may outweigh the individual interests of children and young people being dealt with by the justice system.

For that reason, there may be instances where the development of a policy or new legislation should proceed even though it is not in the best interests of children and young people. This would be appropriate where equally important considerations outweigh the best interests of children and young people. Even so, all efforts should be made to minimise the negative impacts on children and young people and consideration should be given as to whether the objectives of the proposal can be achieved by a different method in order to avoid any negative outcomes for children and young people (see Phase Two below).

In addition, a policy or legislative proposal may, overall, be in the best interests of children and young people but nevertheless impact negatively on some children and young people. Again, measures to reduce these negative impacts should be considered (see Phase Two on page 20).

#### *Example B – Applying the best interests of children and young people as a primary consideration*

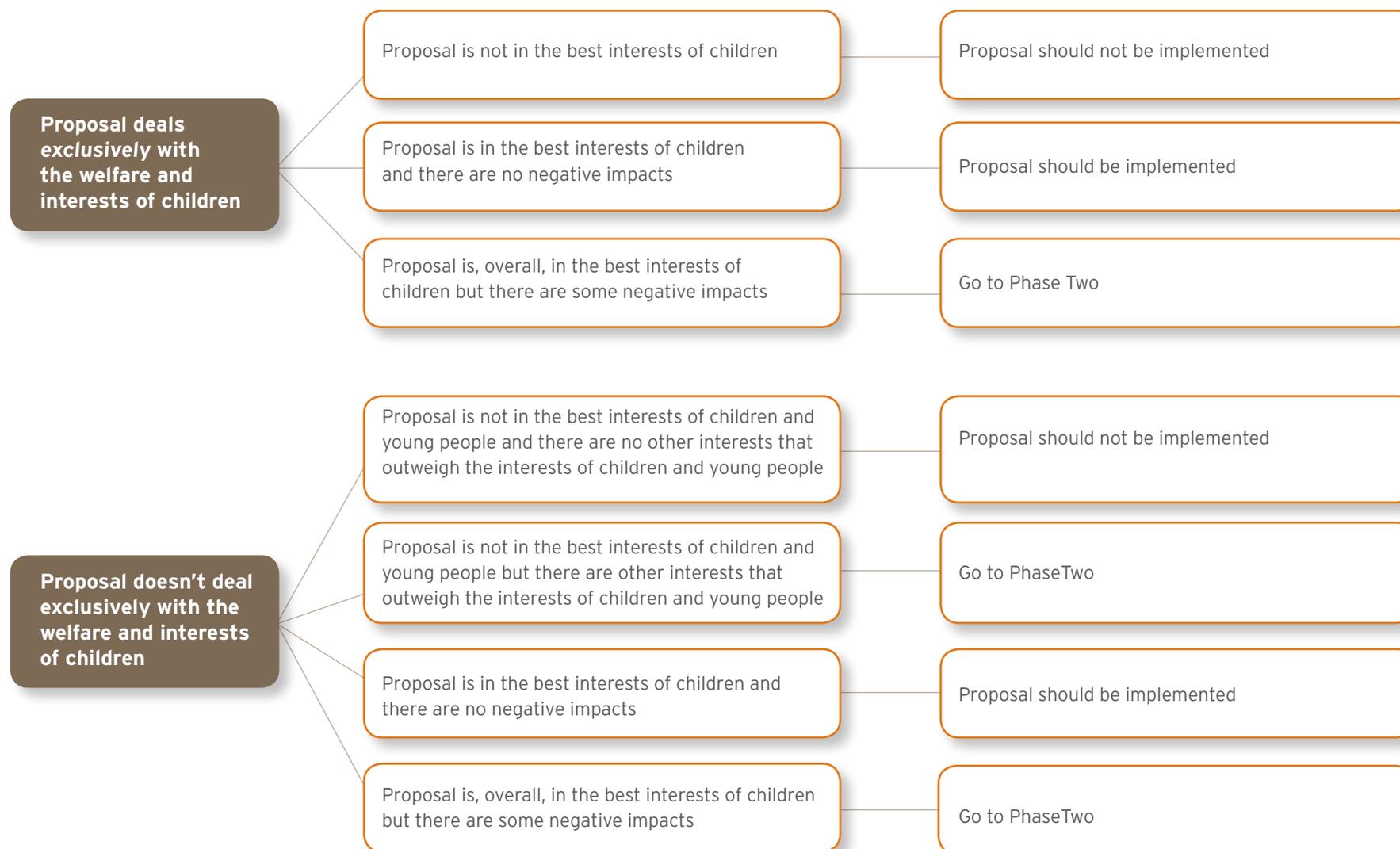
*This example is for illustrative purposes only. It is not intended to demonstrate the Commissioner's view on the particular issue.*

#### **The proposal being assessed is the development of mental health legislation that provides for the involuntary detention of children and young people.**

The involuntary detention of a child or young person who is mentally unwell may or may not be in their best interests. However, the safety of other members of the community (including other children and young people) must also be considered and, therefore, if a person poses a significant danger, he or she should be detained. This significant risk outweighs the individual best interests of a particular child or young person.

<sup>3</sup> Australian Human Rights Commission nd, *Human Rights Brief No 1: The best interests of the child*,

Possible outcomes of Step 3



## Phase Two: Address negative impacts

Phase One helped you to identify:

- how children and young people may be affected by the proposed policy or legislation
- the significance of those impacts (both positive and negative)
- whether, overall, the proposed policy or legislation would be in the best interests of Western Australian children and young people
- whether the proposed policy or legislation would have a disproportionate impact on certain children and young people.

Phase Two requires that you consider legislative and non-legislative measures to address any negative impacts on children and young people identified during the previous phase.

Any measure to address the negative impacts of a proposal should be proportional to the significance of the impact (that is, whether the impact is minor, moderate or major) and take into consideration the need to balance the significance and likelihood of a negative impact with the practicality of remedial action. For example, where the negative impact is moderate and the measures for addressing the issue are not onerous, some changes would be appropriate. In contrast, where the negative impact is minor and remedial action would be extremely resource intensive, changes to the proposal may not be warranted.

## Final recommendation stage

Options for legislative and non-legislative responses to address the negative impacts of a proposal on the best interests of children and young people include:

- amending the proposal
- introducing administrative arrangements or policy/program options to ameliorate or offset negative impacts (such as a public education campaign)
- working with other agencies to address the issue through agreement for joint positions and processes
- consulting with relevant agencies that have experience working with children and young people requiring special consideration for potential solutions.



### Example C – Addressing negative impacts

*This example is for illustrative purposes only. It is not intended to demonstrate the Commissioner's view on the particular issue*

**The proposal being assessed is a Department of Education policy to prohibit the use of mobile phones and other mobile electronic devices (for example, iPods, iPads) by all students during school hours. The policy requires students to hand in their device to their teacher at the start of the day and the device is returned at the end of the school day.**

During Phase One of the assessment process the following impacts on children and young people have been identified:

- Improved educational outcomes because students are not distracted during school hours (positive).
- Greater opportunity for physical activity during recess and lunch hours because students are not using mobile devices (positive).
- Reduced incidence of inappropriate behaviour such as cyber bullying and sexting (positive).
- Loss of educational benefits from the use of mobile devices, for example educational applications (apps); ability to photograph or record classroom activities; the use of utilities such calculators and timers; and the ability to effectively teach students about cyber safety (negative).
- Students disgruntled by policy and disengage from institution (negative).

Assume that the conclusion reached during Phase One is that prohibiting the use of mobile phones and other mobile devices during school hours is in the best interests of children and young people because it will improve educational outcomes, increase physical activity and reduce inappropriate online behaviour. However, the potential negative impact has been assessed as moderate.

**Question:** What could be done to modify the proposal to ensure that the positive benefits are obtained but also minimise the potential negative impact?

**Solution:** The proposal is modified by providing that mobile phones and other electronic devices are prohibited unless express permission is granted by a teacher. This enables a classroom teacher to allow students to use mobile devices during school lessons at certain controlled times where an educational benefit is clear (for example, to instruct students about how to set up their privacy settings on social networking sites or to enable students to post their opinions on Twitter about a particular social issue).

## Conclusion

The United Nations Committee on the Rights of the Child has stressed the importance of undertaking child impact assessments in relation to legislation and policy development at all levels of government and the need to evaluate proposals after implementation<sup>4</sup>. The Commissioner echoes this sentiment and emphasises that, despite best efforts, some unintended consequences may only become apparent once legislation or a policy is operational. Therefore, agencies should consider establishing mechanisms for reviewing or evaluating the impacts on children and young people following enactment of the legislation or the implementation of a new policy. The results of the impact assessment undertaken in accordance with these guidelines and the proposals to address negative impacts should be recorded and fed into your agency's processes for further consideration.



<sup>4</sup> United Nations Committee on the Rights of the Child 2003, *General Measures of Implementation of the Convention on the Rights of the Child*, General Comment No 5, <http://tb.ohchr.org/default.aspx?Symbol=CRC/GC/2003/5>

## Appendix A: Example of full assessment under these guidelines

*This example is for illustrative purposes only. It is not intended to demonstrate the Commissioner's view on the issue. The issues raised below reflect, in part, the views expressed in a recent review of the Working with Children (Criminal Record Checking) Act 2004*

**The proposal being assessed concerns an amendment to the Working with Children (Criminal Record Checking) Act 2004 (WA) and the Working with Children (Criminal Record Checking) Regulations 2005 (WA) so that all parent volunteers are required to obtain a working with children card (WWC card) before they will be permitted to undertake any voluntary work in schools (for example, canteen duty, classroom assistance, attendance at excursions).**

### Initial screening stage

#### Step 1:

*Describe the purpose and nature of the proposed legislation/policy*

Currently, parent volunteers are exempt from obtaining a WWC card for voluntary work in schools if their child is enrolled in the school (except for overnight camps).

A parent is defined under the *Working with Children (Criminal Record Checking) Act 2004 (WA)* as a person who is the father, mother, stepfather, stepmother of the child; a person who is in a defacto relationship with the child's father, mother, stepfather or stepmother; a person who at law has responsibility for the long-term or the day-to-day care, welfare and development of the child; or a person who is a child's prospective adoptive parent under the *Adoption Act 1994*.

If the proposed amendments are enacted, parents will be required to obtain a WWC card before undertaking any voluntary work in their child's school. If a parent

undertakes voluntary work without a WWC card he or she will be liable to prosecution for an offence under s24 of the *Working with Children (Criminal Record Checking) Act 2004* (which has a maximum penalty of a fine of \$60,000 or five years' imprisonment).

In order to obtain a WWC card a parent will need to complete an application form and this form will need to be completed by the parent and the school. The forms are available from any Australia Post outlet. Appropriate identification must be presented when the application form is submitted (which must be done in person) and volunteers are required to pay an application fee (currently \$10.30). A WWC card is valid for three years (unless cancelled) and, therefore, a new application will be required on a number of occasions throughout the school-life of a child.

The objective of the policy is to protect children and young people by ensuring that voluntary work

in schools cannot be undertaken by persons who have a criminal history for sexual and other offending against children.

#### Step 2:

*Does the proposed legislation or policy impact (either directly or indirectly) upon children or young people?*

The proposed legislative amendment clearly impacts on children and young people because it is designed to protect children and young people from sexual abuse and other harms. However, it is conceivable that if implemented, this proposal will deter parents from engaging in voluntary work at schools and this in turn will impact negatively on children and young people's education.

*Outcome of Initial Screening Process → Undertake full assessment under guidelines*

## Assessment stage

### Phase One: Assessment of impacts

#### Step 1:

#### *Identify and assess all impacts on children and young people*

#### Summary

In addition to the potential for the proposal to protect children from sexual offending and other harm (positive impact), there is also the potential for the proposal to reduce the amount of voluntary work undertaken in schools by parents. This is because the requirement to obtain a WWC card may be deter some parents from undertaking voluntary work and deter schools from engaging volunteers (negative impact).

Furthermore, a requirement for parent volunteers to obtain a WWC card may result in less vigilance by schools and families because of a false sense of security that all parents who volunteer do not pose a risk to the safety of children (negative impact).

#### Further discussion

It is possible that the requirement for all parent volunteers to obtain WWC card will increase the safety of children and young people because those parents with relevant convictions will be excluded from voluntary work. However, this potential positive impact must be carefully assessed to determine the likelihood of a parent volunteer abusing or harming children and

in what circumstances this could realistically occur. Further, the potential benefits must be viewed in the overall context of child safety – parents who pose a risk to the safety of other people’s children are more likely to have access to those children out-of-school hours (for example, social interactions outside of school, transporting children to and from school).

While some parents may not apply for a WWC card because they have a relevant criminal record, others may not apply because of lack of time, lack of money, difficulty in understanding the process due to language or cultural barriers or the additional effort required. Some schools may discourage or prohibit voluntary work by parents because they do not have the administrative capacity to help parents obtain a WWC card. In this regard, as noted above, a representative from the school is required to sign each application form. In addition, schools are required to keep adequate records to show that they have complied with the requirements under the legislation and regularly check the validity of current WWC cards. It will also be very difficult to determine what constitutes voluntary work. For example, will voluntary work cover parents who attend sports carnivals and assist in handing out ribbons or timing races? Will a WWC card be required for parents who cut up fruit for younger children outside of the classroom?

If the proposal deters parents from engaging in voluntary work and/or deters schools from using parent volunteers, there may be negative impacts on children and young people’s education resulting from:

- fewer activities and excursions undertaken
- less understanding of children’s educational needs and interests by parents
- poorer communication between parents and schools
- less assistance for important activities such as listening to young children read aloud.

Finally there is a real risk that the proposal will create a false sense of security among school communities and result in less vigilance to ensure practices are safe for children.

#### Research

In order to accurately identify all potential impacts on children and young people, research should be undertaken in relation to the effectiveness of WWC card in preventing sexual offending against children by parent volunteers and research into the benefits of parent volunteering work in schools.

### Consultation with children and young people

Consultation with children and young people might include discussions about the views of children and young people in relation to parental involvement in their education.

### Consultation with stakeholders

Relevant consultation might include consultations with parents to determine whether the proposal would deter their involvement in voluntary work and, if so, what would make the process of obtaining a WWC card easier. In addition, consultation with school administrators would be useful to determine the impact of the proposal on schools and how they would respond to the proposal. Finally, consultation with Department of Education experts in relation to the benefits, or otherwise, of parent volunteers would be important.

#### Step 2:

#### *Assess the significance of the identified impacts*

In assessing the significance of the identified impacts it would be important to note, for example, that:

- all school-aged children and young people in Western Australia would be affected (major impact)
- school-aged children and young people from remote areas may be disproportionately affected because of the practical difficulties for parents in those areas to obtain a WWC card (moderate/major impact)<sup>5</sup>

- school-aged children and young people from economically-disadvantaged families may be disproportionately affected because of the cost of the applications (moderate/major impact)
- school-aged children and young people from culturally and linguistically diverse backgrounds may be disproportionately impacted because of the lack of available information about the WWC card application process in different languages (moderate/major impact)
- the impact on children and young people is long-term/permanent (major impact).

#### Step 3:

#### *Consider whether the proposal is in the best interests of children and young people*

As noted above, this example is for illustrative purposes only. Research and consultations have not been undertaken and therefore a determination about whether the proposal is in the best interests of children and young people is beyond the scope of this exercise.

Having said that, some principles under the Convention that would be relevant for assessing whether the proposal is in the best interests of children include that children and young people have the right:

- to be cared for and supported by parents, family and community (Article 5)

- to be protected from all forms of physical and mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation (including sexual abuse) while in the care of parents, legal guardians or any other person who has the care of the child (Article 19)
- to education (Article 28)
- to be protected from all forms of sexual exploitation and sexual abuse (Article 34).

Furthermore, this proposal does not deal exclusively with the welfare and interests of children and young people because it also impacts on schools and parents.

If it is determined that the proposal is in the best interests of children and young people, it will be necessary to proceed to Phase Two in order to consider ways to lessen the negative impacts of the proposal on children and young people.

### Phase Two: Address negative impacts

The potential for the proposal to deter some parents from volunteering and/or deter some schools from using parent volunteers has been identified. This negative impact could be lessened by:

- providing a simpler application process for parent volunteers
- waiving the application fee for parent volunteers

<sup>5</sup> It is noted that the WWC website states that if persons seeking a WWC card live in a remote location and cannot attend an authorised Australia post outlet or do not have sufficient identification they should contact the WWC Screening Unit. Contact can be made via phone, email or post.

- providing assistance to schools in relation to record keeping
- providing alternative places to lodge an application in remote areas
- providing information and application forms in different languages
- amending the proposal so that people who have received a negative assessment when applying for a WWC card or who are included on the register established under the *Community Protection (Offender Reporting) Act 2004* (WA) are precluded from undertaking voluntary work in schools.<sup>6</sup>

In addition, it was noted above, that the provision of WWC card for parent volunteers may provide a false sense of security with teachers and other parents believing that parent volunteers are safe because they have been officially checked. This may result in less stringent child-safety practices.

In order to reduce this risk, the proposal could be accompanied by a training module for all schools and information for parents in relation to child-safe practices. For instance, child safety could be promoted by establishing clear policies for parental involvement in schools (for example, parent volunteers must not be allowed to be present in change rooms in the absence of a teacher; parent volunteers must not be allowed in a classroom without a teacher also present; and strategies to empower children to understand appropriate and inappropriate behaviour).

### Final recommendation stage

The assessment under these guidelines should be concluded with a recommendation. For example, the conclusion in this instance could be that the proposal should be amended so that parents with negative assessments, or who are registered on the sex offender register, are not permitted to undertake voluntary work (and if they undertake volunteer work, they will be liable to prosecution for a serious offence). In addition, improved education about child-safe practices should accompany the amended proposal. Alternatively, if it was determined that the proposal should be implemented, various changes to the application process as well as education strategies should be recommended.



<sup>6</sup> This is what is currently being considered. Following the review of the *Working with Children (Criminal Record Checking) Act 2004*, the Minister for Child Protection stated in Parliament that she had decided to 'strengthen the legislation' so that a person who has been issued with a negative notice is unable to obtain a parent volunteer exemption. It was also mentioned that consideration will be given to determining how registered sex offenders can be prevented from obtaining the parent volunteer exemption and setting substantial penalties for non-compliance. Hon R McSweeney, Minister for Child Protection Parliament of Western Australia. Legislative Council 13 September 2012 *Hansard – Daily Transcripts* 5761 .

## Appendix B: Assessment Form

### Initial Screening Phase

*Step 1: Describe the purpose and nature of the proposed legislation/policy*

**Q1.** What is the proposed legislation/policy?

**Q2.** Which department, agency or individual is responsible for implementing proposal?

*Step 2: Identify if the proposal may have an impact on children and young people*

**Q3.** Does the proposed legislation or policy have an impact (either directly or indirectly) on children or young people?

No  No need to proceed any further

Yes  Go to Q4.



**Q4.** If 'Yes' to question 3, explain how the proposal may have an impact on children and young people.

**Q5.** Is the impact trivial or inconsequential?

Yes  No need to proceed further

No  If 'No' proceed to full assessment below

### **Phase One: Assessment of impacts**

*Step 1: Identify and assess all impacts on children and young people*

**Q6.** List research considered when undertaking Step 1.



**Q7.** Have children and young people been consulted?

Yes  Indicate how

No  Explain why consultation with children and young people has not been undertaken

**Q8.** Have other stakeholders been consulted?

Yes  Indicate who has been consulted

No  Explain why consultation with other stakeholders has not been undertaken

**Q9.** Describe all of the potential impacts on children and young people (both positive and negative) that have been identified during this step

*Step 2: Assess the significance of the identified impacts*

**Q10.** What proportion of children and young people in the State will be affected?

**Q11.** Would the proposal have a disproportionate impact on specific groups of children and young people (for example, Aboriginal children and young people, disadvantaged or vulnerable children and young people)?

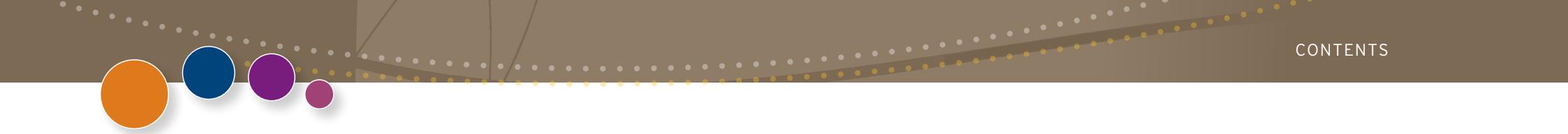
Yes  Indicate which groups and explain why

No

**Q12.** Does the proposal have an impact on particular ages (for example, early years, primary school age, adolescence, young adulthood)?

Yes  Indicate which age group

No



**Q13.** Does the proposal have a different impact on children and young people from regional and remote locations?

Yes  Indicate how

No

**Q14.** List each of the impacts identified above and indicate if it is likely to last (that is, short term, medium term, long term or permanent)

**Q15.** List each of the impacts identified above and indicate if its significance is minor, moderate or major

*Step 3: Consider whether the proposal is in the best interests of children and young people*

**Q16.** Does the proposal deal exclusively with the welfare and interests of children?

Yes  Go to Q17.

No  Go to Q19.

**Proposal that deals exclusively with the welfare and interests of children (best interests principle is the paramount consideration)**

**Q17.** Is the proposal in the best interests of children and young people?

No  Go to Q23. → Recommend that proposal should not be implemented

Yes  Go to Q18.

**Q18.** Even though the proposal is overall in the best interests of children and young people are there any negative impacts on children and young people?

No  Go to Q23. → Recommend that proposal should be implemented

Yes  Proceed to Phase Two

**Proposal that does not deal exclusively with the welfare and interests of children (best interests principle is a primary consideration)**

**Q19.** Is the proposal in the best interests of children and young people?

No  Go to Q20.

Yes  Go to Q21.

**Q20.** Are there any other interests that outweigh the interests of children and young people (for example, need to protect the community from illegal behaviour)?

No  Go to Q23. → Recommend that proposal should not be implemented

Yes  Proceed to Phase Two

**Q21.** Are there any negative impacts on children and young people?

No  Go to Q23. → Recommend that proposal should not be implemented

Yes  Proceed to Phase Two

### **Phase Two: Address negative impacts**

#### *Consideration of remedial action*

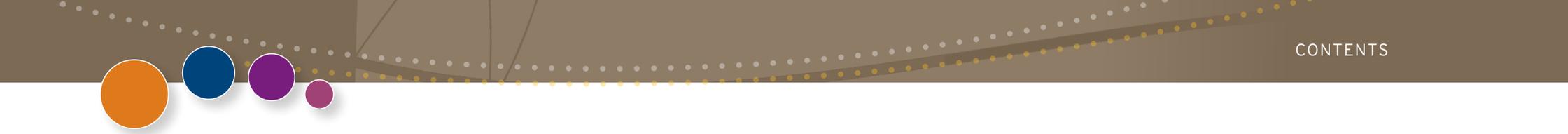
**Q22.** What measures have you identified that could reduce or eliminate the negative impacts on children and young people?

#### *Final recommendation*

**Q23.** Should the proposal be implemented?

Yes  Go to Q24

No



Q24. If any negative impacts on children and young people have been identified, what measures identified in Q22 should be put into place?

*Additional comments (optional)*

Assessment undertaken by \_\_\_\_\_

Organisation \_\_\_\_\_

Date \_\_\_\_\_

## Appendix C: Resources and further reading

Australian Human Rights Commission, *Human Rights Brief No 1: The best interests of the child*, viewed 6 November 2012, available at [http://www.humanrights.gov.au/human\\_rights/briefs/brief\\_1.html](http://www.humanrights.gov.au/human_rights/briefs/brief_1.html)

Department of the Prime Minister and Cabinet 2009, *Family Impact Statement Guidelines*, version 1, June 2009, viewed 6 November 2012, available at <http://www.dpmc.gov.au/guidelines/familyimpactstatements/index.cfm>

United Nations Committee on the Rights of the Child 2003, *General Measures of Implementation of the Convention on the Rights of the Child*, General Comment No 5, viewed 6 November 2012, available at <http://tb.ohchr.org/default.aspx?Symbol=CRC/GC/2003/5>

United Nations Committee on the Rights of the Child 2006, *The rights of children with disabilities*, General Comment 11, viewed 6 November 2012, available at <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/GeneralComment7Rev1.pdf>

United Nations Committee on the Rights of the Child 2009, *Indigenous children and their rights under the Convention*, General Comment 11, viewed 6 November 2012, available at <http://www2.ohchr.org/english/bodies/crc/docs/CRC.GC.C.11.pdf>

### Child impact assessments

Every Child Counts 2010, *Assessing the Impact of New Legislation on Children*, Briefing Sheet for MPs No 1, 2010, available at [http://www.everychildcounts.org.nz/\\_w/wp-content/uploads/2010/07/ECC-Child-Impact-Assessments-Briefing-Sheet-15.pdf](http://www.everychildcounts.org.nz/_w/wp-content/uploads/2010/07/ECC-Child-Impact-Assessments-Briefing-Sheet-15.pdf)

Mason N & Hanna K 2009, *Undertaking Child Impact Assessments in Aotearoa New Zealand Local Authorities: Evidence, practice, ideas*, Office of the Children's Commissioner and UNICEF, Auckland, 2009, available at [http://www.occ.org.nz/\\_data/assets/pdf\\_file/0013/6061/OCC\\_CIA\\_180309.pdf](http://www.occ.org.nz/_data/assets/pdf_file/0013/6061/OCC_CIA_180309.pdf)

This research project tested the feasibility and effectiveness of pilot child impact assessments in New Zealand at the local government level.

Ministry of Health and Social Affairs & Ministry of Foreign Affairs 2001, *Child Impact Assessments: Swedish experience of child impact analyses as a tool for implementing the UN Convention on the Rights of the Child*, Sweden, 2001, available at

[http://www.manskligarattigheter.se/dm3/file\\_archive/020523/d18c33283b29d7cbb15d9bb65d1db726/barn%20Child%20Impact%20Assessments.pdf](http://www.manskligarattigheter.se/dm3/file_archive/020523/d18c33283b29d7cbb15d9bb65d1db726/barn%20Child%20Impact%20Assessments.pdf)

Northern Ireland Commissioner for Children and Young People nd, *Children's Rights Impact Assessment*, available at [http://www.niccy.org/uploaded\\_docs/NICCY%20CRIA%20-%20web%20version%20May%2008.pdf](http://www.niccy.org/uploaded_docs/NICCY%20CRIA%20-%20web%20version%20May%2008.pdf)

A step by step guide on how to conduct a children's impact assessment published by the Northern Ireland Commissioner for Children and Young People.

Scotland's Commissioner for Children and Young People 2006, *Children's Rights Impact Assessment: The SCCYP model*, (2006) available at [http://www.sccyp.org.uk/uploaded\\_docs/children's%20rights%20impact%20assessment.pdf](http://www.sccyp.org.uk/uploaded_docs/children's%20rights%20impact%20assessment.pdf)

## Appendix D: Convention on the Rights of the Child

As the Australian Human Rights Commission has explained 'it is in a child's best interests to enjoy the rights and freedoms set out in the [convention]'.<sup>7</sup> Therefore, assessing whether a particular proposal is in the best interests of children and young people requires consideration of the various rights promoted under the Convention and whether the proposal advances or, alternatively, dissipates those rights.

At the forefront of any consideration of whether a proposal is in the best interests of children and young people is a key principle under the Convention that 'a child who is capable of forming his or her own views' should have 'the right to express those views freely in all matters affecting the child' (Article 12).

Therefore, as noted above, where it is clear that a proposal is likely to have a significant impact on children and young people their views should be sought.

Further, the rights set out in the Convention apply irrespective of race, colour, sex, language, religion, political or other opinion, national ethnic or social origin, property, disability, birth or other status (Article 2).

From the perspective of law making and policy development in Western Australia, some of the more important rights contained in the Convention include the right:

- to be cared for and supported by parents, family and community (Article 5 & Article 7)
- to survival and development (Article 6)
- to preserve his or her identity (Article 8)
- not to be separated from his or her parents against their will (Article 9)
- to freedom of expression (Article 13)
- to freedom of thought, conscience and religion (Article 14)
- to freedom of association and to freedom of peaceful assembly (Article 15)
- not be subjected to arbitrary or unlawful interference with privacy (Article 16)
- to be protected from all forms of physical and mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation (including sexual abuse) (Article 19)
- for a child with a mental or physical disability, to enjoy a full and decent life in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community (Article 23)
- to the highest attainable standard of health (Article 24)
- to a standard of living adequate for the child's physical, mental, spiritual, moral and social development (Article 27)
- to education (Article 28)
- for a child belonging to an ethnic, religious or linguistic minority, or an Aboriginal child, to enjoy his or her own culture, to profess and practise his or her own religion or to use his or her own language (Article 30)
- to rest and leisure, and to engage in play and recreational activities (Article 31)
- to participate freely in cultural life and the arts (Article 31)
- to be protected from economic exploitation and from work that is hazardous or likely to interfere with the child's education or be harmful to the child's health or physical, mental, spiritual, moral or social development (Article 32)
- to be protected from illicit use of drugs (Article 33)
- to be protected from all forms of sexual exploitation and sexual abuse (Article 34)
- not to be deprived of his or her liberty unlawfully or arbitrarily and when deprived of his or her liberty to be afforded certain fundamental legal protections (Articles 37 & 40)

<sup>7</sup> Australian Human Rights Commission 2003, *Human Rights Brief No 1: The best interests of the child*, [http://www.humanrights.gov.au/human\\_rights/briefs/brief\\_1.html](http://www.humanrights.gov.au/human_rights/briefs/brief_1.html) >

The United Nations Committee on the Rights of the Child has also reminded states that the ‘specific references to indigenous children in the Convention are indicative of the recognition that they require special measures in order to fully enjoy their rights’.<sup>8</sup> In regards to children with disabilities, the committee ‘recommends that state parties undertake a comprehensive review of all domestic laws and related regulations in order to ensure that all provisions of the Convention are applicable to all children, including children with disabilities’.<sup>9</sup>

The diagram (right) is based on the rights under the Convention (and the guiding principles under the *Commissioner of Children and Young People Act 2006*) and provides cues to help determine if the proposed legislation is in the best interests of children and young people. It is important to recognise that the guiding principles of the Act and the articles of the Convention are interrelated. For example, a child’s health is potentially affected by all of the elements identified in the diagram.

The United Nations Committee on the Rights of the Child has issued a number of general comments about particular aspects of the Convention (for example, General Comment No 9 (2006) on the *Rights of Children with Disabilities*; General Comment No 10 on *Children’s Rights in Juvenile Justice*; and General Comment No 11 (2009) on *Indigenous Children and their rights under the Convention*).

These general comments may be useful if they cover the subject matter of the proposal; they can be accessed at <http://www2.ohchr.org/english/bodies/crc/comments.htm>

### The United Nations Committee on the Rights of the Child



<sup>8</sup> United Nations Committee on the Rights of the Child 2009, *Indigenous children and their rights under the Convention*, General Comment 11, <<http://www2.ohchr.org/english/bodies/crc/docs/CRC.GC.C.11.pdf>>

<sup>9</sup> United Nations Committee on the Rights of the Child 2006, *The rights of children with disabilities*, General Comment 11, <<http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/GeneralComment7Rev1.pdf>>

## Further information

The Convention on the Rights of the Child available at <http://www2.ohchr.org/english/law/crc.htm>

United Nations Committee on the Rights of the Child, *General Comments No 1 to 13*, available at <http://www2.ohchr.org/english/bodies/crc/comments.htm>

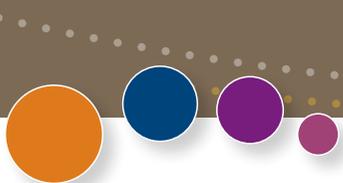
The Committee on the Rights of the Child publishes its interpretation of the content of human rights provisions, in the form of General Comments on thematic issues. The Committee has issued general comments on the following issues:

- Education
- The role of independent human rights institutions
- HIV/AIDS and the rights of the child
- Adolescent health
- General measures of implementation for the Convention on the Rights of the Child
- Treatment of unaccompanied and separated children outside their country of origin
- Implementing child rights in early childhood
- Protection from corporal punishment and other cruel or degrading forms of punishment
- The rights of children with disabilities
- Children's rights in juvenile justice
- Aboriginal children and their rights under the Convention
- The right of the child to be heard
- The right of the child to freedom from all forms of violence.

United Nations Children's Fund (UNICEF), *Factsheet: A summary of rights under the Convention on the Rights of the Child*, available at [http://www.unicef.org/crc/files/Rights\\_overview.pdf](http://www.unicef.org/crc/files/Rights_overview.pdf)

United Nations Children's Fund (UNICEF), *Implementation on the Rights of the Child (2007)*, available at [http://www.unicef.org/publications/files/Implementation\\_Handbook\\_for\\_the\\_Convention\\_on\\_the\\_Rights\\_of\\_the\\_Child\\_Part\\_1\\_of\\_3.pdf](http://www.unicef.org/publications/files/Implementation_Handbook_for_the_Convention_on_the_Rights_of_the_Child_Part_1_of_3.pdf)

United Nations Refugee Agency (UNHCR), *Guidelines on Determining the Best Interests of the Child (2008)*, available at <http://www.unhcr.org/4566b16b2.pdf>



## Appendix E: Acknowledgments

The Commissioner for Children and Young People WA would like to thank the following agencies that assisted in the initial development of these guidelines by providing valuable feedback on the early drafts:

- Department of the Attorney General
- Department for Child Protection
- Department for Communities
- Department of Corrective Services
- Department of Health
- Disability Services Commission
- Western Australia Police.

