

Royal Commission into Institutional Responses to Child Sexual Abuse – QONs

Summary of Questions on Notice for the ACT

Working with Children Checks

1. Criminal history information – relates to recommendation 17

Michael De'Ath agreed to provide clarification about whether the matters raised in recommendation 17 will be included when the ACT puts recommendations to government. Mr De'Ath noted that the ACT has reviewed the Working with Vulnerable People background checking process and in that process has considered all recommendations of the Royal Commission, but has yet to put these to government.

Answer: The *Working with Vulnerable People (Background Checking) Act 2011* differentiates between criminal history (s 24) and non-conviction history (s 25). The ACT Working with Vulnerable People Scheme is broadly consistent with recommendation 17. An applicant's criminal and non-conviction history is considered as part of the risk assessment process.

2. Disciplinary or misconduct information – relates to recommendation 19(c)

Michael De'Ath agreed to clarify whether recommendation 19(c) would be put into place in the context of the ACT's Reportable Conduct Scheme, due to commence in July 2017.

Answer: Section 863C of the ACT's *Children and Young People Act 2008* sets out information sharing provisions in relation to the Reportable Conduct Scheme in the ACT. Section 17M of the *Ombudsman Act 1989* (commencing on 1 July 2017) allows the Ombudsman to disclose certain information to the Commissioner for Fair Trading.

However, these provisions do not satisfy the recommendation as written. For the purposes of the Reportable Conduct Scheme, a designated entity (administrative unit) does not include ACT statutory authorities or other contracted providers. This means that key organisations that may hold information relevant to the investigation of reportable conduct will be prevented from sharing it with those employers responsible for undertaking the investigations. This issue is currently under consideration and future amendments to the Scheme may be required.

Under the Working with Vulnerable People Scheme, information sharing provisions provide a positive environment that encourages proactive reporting between agencies, in addition to reporting requirements that satisfy recommendation 19(c).

3. Clearance types and conditional registration – relates to recommendation 28

Michael De'Ath agreed to check whether the ACT would further consider whether conditional registration shifts responsibility to the employer (rather than it resting with the body set up to make decisions about this).

Answer: Access Canberra is primarily responsible for the conditional registration of applicants. Responsibility does not shift to the employer.

Attachment A

Conditional registration is a limited registration that allows a person to perform certain regulated activities or to work for certain employers. It also allows for additional checks by Access Canberra within the three year period of registration.

This type of registration is particularly beneficial for kinship carers, especially Aboriginal and Torres Strait Islander kinship carers.

Conditional registration allows for greater flexibility in responding to the lived experience of potential carers. For example, an Aboriginal and Torres Strait Islander kinship carer may have committed violent behaviour in a domestic matter to protect a child. In such a case, conditional registration can allow for this person to be a kinship carer.

Mandatory reporting

4. Mandatory reporting – clergy

Michael De'Ath agreed to clarify whether clergy are excluded from mandatory reporting requirements in relation to their pastoral work (e.g. presbytery work; youth group).

Answer: The *Children and Young People Act 2008* does not identify clergy in relation to their pastoral work as mandated reporters. However, if clergy are employed for specific activities as described in Section 356(2)(j) and (p), they will be mandated reporters with respect to these duties:

- (j) a person employed to counsel children or young people at a school;
- (p) a person who, in the course of the person's employment, has contact with or provides services to children, young people and their families and is prescribed by regulation.

5. Mandatory reporting – psychologists / counsellors

Michael De'Ath agreed to provide further information about why the ACT deals with counsellors differently from psychologists, and whether this is due to the fact that one is registered and the other is not.

Answer: Mandatory reporting in the ACT is established under the *Children and Young People Act 2008*. This legislation provides for voluntary reporting, prenatal reporting and mandatory reporting of suspected physical or sexual abuse.

In 2015, the *Children and Young People Act 2008* was amended to include psychologists in the category of mandated reporter, placing the same requirements on them that exist for other health professionals. The ACT is among only three jurisdictions, including South Australia and Tasmania, to include psychologists as mandated reporters.

The *Children and Young People Act 2008* also includes 'a person employed to counsel children or young people at a school' in the list of mandated reporters at s 356(2)(j). This means that school counsellors are mandated reporters in the ACT.

Attachment A**Child safe standards**

- 6. Child safe standards – relates to discussion regarding the Commonwealth having commissioned the National Children’s Commissioner, Megan Mitchell, to develop a National Statement of Principles for Child Safe Organisations.**

Michael De’Ath agreed to clarify whether the ACT is part of this work.

Answer: The ACT supports the development of a proposed National Statement of Principles for Child Safe Organisations (National Statement of Principles), under Strategy 3 of the *Third Action Plan of the National Framework for Protecting Australia’s Children 2009-2020*.

The ACT will provide input during stage one consultation through CAFS, prior to providing the draft National Statement of Principles to Community Services Ministers, which will occur in mid-2017.

The ACT will also provide input and support throughout stage two to enhance the progress the ACT has already made to implement child safe standards. Further work will be required to refine and adapt the ACT’s approach to embedding child safe standards under any agreed national approach.