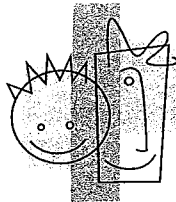


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nsw commission for  
children & young people

Ms Kerryn Boland  
Children's Guardian  
Level 13  
418A Elizabeth St  
SURRY HILLS NSW 2010

*Kerryn*  
Dear Ms Boland

I am writing regarding the proposals for regulatory and administrative changes you have made in the context of your report to the Minister on the review of out of home care accreditation and quality improvement systems and processes.

I have addressed your detailed proposals below, but I offer two comments on the overall package of proposals. I believe that in some cases you have suggested legislative or regulatory changes when non-legislative responses are possible and may be preferable. Also, I believe that the risk management strategies proposed often focus on background checking to the exclusion of other approaches which may be more appropriate and effective.

I support your suggestion that the *Children and Young Persons (Care and Protection) Regulation 2000* be amended so that meeting the legal obligations of the Working With Children Check is no longer an explicit criterion for authorising a carer. I agree that the 2005 amendments to the *Commission for Children and Young People Act 1998* make this requirement redundant.

In relation to your proposals for information exchange about designated agencies' performance in risk management, I would prefer to use our existing powers and administrative tools. It seems unnecessary to create a new legal mechanism, which I expect would be used too rarely to justify the resources needed to create it.

I note your suggestion that the Regulation clarify that your officers can inspect Working With Children Check records held by designated agencies. I agree with your view that you already have the power to do so, and I have no objection to it being clarified in this way. This means you already have the ability to inspect any letters to the agency from the Commission about compliance, any enforcement notices the Commission has issued and any audit or monitoring reports we have provided to the agency.

If the Commission had more serious concerns about an agency, we would report them to the Police, the Department of Community Services, the Ombudsman, or other investigative agencies. Those agencies in turn can provide you with information through their Memoranda of Understanding with you or through section 248 exchanges of information. If your officers believed a designated agency had committed an offence relating to the Working With

necessary for foster carers. The Working With Children Check risk estimate is designed to estimate situational and individual risk in child-related employment for authorised carers. It is unclear to me what records not considered in the Working With Children Check would be necessary to manage the risks of a foster carer. Regardless of the relevance issue, as outlined above the Commission would not be permitted by Crimtrac to provide NCHRC information to designated agencies. Should designated agencies wish to ask potential authorised carers to obtain a copy of their NCHRC, they are free to do so, but the Commission could not be involved.

Finally, regarding to foster carers authorised by one organisation but then employed by another. The *Commission for Children and Young People Act 1998* requires that they be subject to the Working With Children Check once, when they are in the process of being authorised. I note that an authorisation must be in writing, cannot be granted unless a Working With Children Check has been undertaken, and must be provided by DoCS, another government provider or an agency accredited by your Office.

Rather than regulating to require the original authoriser to share Working With Children Check information with the second agency, I suggest that the second agency ask to see the written authorisation. If the second agency cannot trust the original authoriser to have undertaken the Working With Children Check, they should not be accepting carers from them.

I am happy to discuss any of these suggestions further.

Yours sincerely



**Gillian Calvert**  
**Commissioner**  
28 June 2007