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Submission to Issues Paper 1 – Working With Children Check

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The St Vincent de Paul Society (the Society) is a respected lay Catholic charitable organisation, operating in 149 countries around the world. In Australia, we operate in every state and territory, with more than 50,000 members, volunteers, and employees. Our people are deeply committed to our work of social assistance and social justice, and we run a wide variety of programs around Australia. Our work seeks to provide help for those who are marginalised by structures of exclusion and injustice, and our programs target (among other groups) people who are homeless and insecurely housed, migrants and refugees, people living with mental illness, and people experiencing poverty.

The Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) has invited submissions on its Issues Paper 1 – Working with Children Check. The Society has consulted, and now welcomes the opportunity to contribute this submission. We have responded to 9 of the 14 questions posed in the Issues Paper.

Background

The Society strongly supports the Royal Commission's work inquiring into how institutions with a responsibility for children have managed and responded to allegations and instances of child sexual abuse.

The Society has a deep commitment to protecting children, who we recognise as being particularly vulnerable. This includes both children we seek to help through our services to the community (homework centres, home visits to parents, in-centre care), and children who want to join in the work of the Society (young members of St Vincent de Paul). Many of the Society's offices will have child protection policies, and the Society is currently drafting a National Framework on Child Protection, which covers all types of child abuse and neglect.

The Society believes that, as a nation, our government, our institutions, and our attitudes have let down children for decades. Cultural blindness, negligence, and cover-ups have left space for a shocking number of sexual abuse offences against children in the past. We must now do better for our children, and the children to come.

1. Should there be a national WWCC?

The Society supports a national Working With Children Check (WWCC).

In our view, a national scheme would increase the safety of children, by applying a consistently high bar across the whole country. It would also be simpler for employers, by providing a high-quality, Australia-wide check. A national WWCC is one part of the wide cultural and legal changes that need to be made in order to reduce child sexual abuse in Australia.

2. What features should be included in any national scheme?

In our view, any national scheme should be characterised first and foremost by its broadness and inclusiveness. As outlined in our responses to questions below, "child-related work" should be construed as widely as possible, to include any formally organised activity in which a person may come into contact with children. This must include not only children who are clients of the service, but also children who are themselves employees/volunteers of the service. "Employee" needs to include not only paid employees but also volunteers. Volunteers should include not only formal, recurrent volunteers but also people who participate on an ad hoc or one-off basis, and should include people regardless of their gender, age, or relationship of trust (for example, including parents of other children on a school excursion, and including grandparents who will visit an adoptive child's home, etc). Moreover, ideally the scheme would target not only people at risk of committing child

sexual abuse, but also of committing all other acts that cause harm to children, including emotional abuse of children, neglect, physical abuse, and exposure to domestic violence. (We are aware that this last point may be outside the remit of the Commission.)

Any national scheme should take most rigorous and most effective measures from each State and Territory. The national scheme should go further than a simple police check, and include among other things employment discipline checks. See below for examples of what we believe should be included in the check.

Given the broad range of information we suggest be collected, once the records on a person have been gathered, a “blanket ban” if anything shows up may not be appropriate. Instead, there may need to be a discretion involved for officers of the WWCC in deciding how much evidence is required to determine that someone poses a future risk of committing child sexual abuse. This may also be contingent on the degree of vulnerability of the children that the employee is to work with. For example, the considerations taken into account by an officer conducting a WWCC may vary between an employee who is a supervised volunteer working in charity shop which unaccompanied children occasionally visit after school, compared with a physiotherapist offering in-home care to a disabled child.

In preparing the national scheme, consideration may also be given to a future extension of the scheme to incorporate checks for people working with *any* vulnerable person. This may include working in aged care or disability care, but also homeless people, victims of crime, people experiencing severe financial hardship, migrants and refugees, and others who may be vulnerable to exploitation. While such a development is outside the remit of the current inquiry, as it would not be restricted to children, or to sexual abuse, we note that a “vulnerability”-based approach to employment/volunteering checks would be in line with the current ACT scheme.¹

3. If there is no national scheme, should there be minimum requirements for each state and territory scheme?

Any minimum requirements for each state and territory should be as broad and stringent as possible.

¹ http://www.ors.act.gov.au/community/working_with_vulnerable_people#bill.

4. How long should any clearance be granted for?

A clearance that is granted for a certain period of time into the future seems to assure an employer/the public that an employee is safe to work with children, when in fact during that period the employee may be convicted of an offence, pay a civil court judgment, or have disciplinary action taken against them by another workplace.

We suggest that a better option is a “registration” process, whereby individuals who apply for a WWCC, and are approved, go onto a register of approved people (somewhat like the ASIC scheme for businesses). Registration could be limited jurisdictionally, temporally, or to a particular workplace, although it wouldn’t have to be so limited. As soon as a new criminal conviction is entered, or as soon as a workplace takes action against someone for a child-related matter, or as soon as any evidence comes to light that might affect someone’s WWCC, that should be reported to the Registrar of the database. Similarly, changes of name/address or other identity changes should be reported. The employee, employer, criminal justice system, and anyone else involved may be responsible for informing the Registrar, who can determine whether the person’s WWCC should be revoked, or downgraded. If the WWCC needs to change for that person, then the Registrar would tell the person’s employer (if they have one). We would support the register being open to the public as well: that way, carers of children can check on the WWCC status of people who are working with their child, whether or not those people are formally employed by an organisation. We believe that parents and children have a right to ensure, in all cases, that people working with these children have a WWCC, including sole traders or sole volunteers not subject to any organisation’s child protection policy.

Additionally, workplaces/organisations could be required to report on the WWCC status of their employees at fixed intervals (say as part of their governance reporting to ASIC), to ensure that employees’ statuses are up to date.

5. Should a person be able to commence work before the check is completed?

If a register is established as above, then WWCCs should be able to be completed very quickly, in the case of people who are already registered. For people who are unregistered, whoever, the check would probably take more time than a simple police check, as it is more complicated.

In either case, we do not believe that a person should be able to commence working with children until the check is completed. A WWCC should be part of every workplace’s child protection policy, and workplaces should ensure that they leave adequate time to check the database/for a WWCC to be performed before someone begins to work with children.

6. How should child-related work be defined?

In line with our general view, we believe that child-related work should be defined broadly. We have learnt from the past that child sexual abuse occurs not just in close or long-term relationships of trust, but can also be sporadic and opportunistic.

The following are examples that highlight the need for a broad definition of child-related work. In each of these cases, we believe, a WWCC should take place.

- a high school bus driver;
- an administrative worker in a child-care facility;
- a psychologist in private practice who occasionally sees children;
- a volunteer who assists homeless families;
- any employee who works alongside other employees who are children;
- any volunteer who works alongside other volunteers who are children;
- a cleaner at a shopping mall visited by children;
- a paid tutor who comes to someone's home to help a child with their studies;
- a sports coach;
- an administrator at a swimming pool where there are likely to be unaccompanied children;
- a member of a community group who is offering free childcare;
- the grandparent of a prospective adopted child, who is expected to have unsupervised contact with the child;
- a minister of a church;
- a family member of any of the above who sometimes comes to their workplace when there are children present;
- a parent accompanying a group of children on a school trip;
- a telephone/internet coach/counsellor for teenagers.

With such a broad definition of "child-related work", some may argue that the cost is too great, or the process of obtaining the WWCC too lengthy. However, if a register were set up as above, it would be quite a simple matter to update the WWCC for an individual who is already registered. While getting the initial WWCC may be more lengthy or time-consuming, the cost of not checking employees who have only tangential interactions with children has already been proven to be too great. It may be the case that some people are deterred from volunteering because of this process, but again, we believe that this is a small price to pay for the protection of children.

In defining child-related work broadly, we also note that this will encompass many different levels of risk of future child sexual abuse. The risk of child sexual abuse will be a complex assessment, including considerations of the vulnerability of the children involved (eg homeless children will be at higher risk), the closeness of the contact with the employee

(eg direct or indirect, supervised vs unsupervised, group setting or one-on-one), and the employee's own risk profile (eg historic charges of child sexual abuse, etc). Given the wide range of factors that we would like to see considered in a WWCC, it may be that several categories of child-related work are created, depending on the risk that those positions entail. It may also be that for some cases of child-related work, the WWCC is not compulsory but optional, for example where demanding checks may really be too cumbersome. Examples of this case might be a hairdresser who occasionally cuts children's hair, a family friend who occasionally visits an adopted child's home, or a supervised volunteer working in a clothes shop sometimes visited by teenagers.

7. Are current exemptions for a WWCC adequate or appropriate – in particular, should a WWCC apply to those:

Living in the homes of children in out-of-home care?

In line with our approach supporting a broad WWCC, people living in the homes of children in out-of-home care should be checked. This should include all people living in the house, not just the immediate carers of the child. Children in out-of-home care are particularly vulnerable, and need special protection. We would also support checks on people who do not live in the home, but who the child is likely to have frequent contact with, for example family friends or extended family. The cost of not performing thorough checks is too high.

Parent volunteers?

A broad WWCC should check all parent volunteers. This may be cumbersome, and may deter some from volunteering, but again we believe that the potential harm caused by not performing a WWCC on parent volunteers, or any volunteers likely to come into contact with children, is too great.

8. What records should be included in the check? For example, should the check include juvenile records?

The checks required to obtain a WWCC should extend not only to criminal checks, but also any employment disciplinary action, if they have previously worked with children inquiries as to why they left that role, and also inquiries into any *civil* legal actions against them or against their previous employer regarding child sexual abuse. There could also be investigation into whether any complaints to police had been made against the person, whether or not charges were ultimately laid, and ideally the scheme would also check for overseas convictions of child sexual abuse. Interviews or provision of character references may also be desirable.

It is clear that people under the age of 18 also commit child sexual abuse. This may be for a range of reasons, including their own sexual abuse, ignorance of culturally or socially acceptable behaviour, or mental illness, including paedophilia. Therefore, we see no reason not to include juvenile records in the check. The natural consequence of this is that all of the points mentioned in this submission should apply to child employees and volunteers as well as to adult employees and volunteers. Employees/volunteers under the age of 18 may have access to vulnerable children in a range of situations, including babysitting them, looking after them at childcare, or leading them on youth camps. In all these cases, a WWCC should be required before the person is able to work with children.

9. To what degree should the WWCC minimise the need for institutions to establish clear processes for responding to inappropriate behaviour of staff in child-related positions?

The WWCC should not minimise the need for institutions, organisations, or even carers of children to continue to be vigilant and to respond to any inappropriate or illegal behaviour towards children.

Whatever shape it takes, the WWCC system will not be perfect. In any case, it will only ever be able to account for past behaviour, rather than say with absolute certainty that an employee poses no future risk to children. For these reasons, organisations will still need strong child protection policies and practices.



The Society fully supports the Royal Commission in its work. We share the commitment to protecting children, as particularly vulnerable members of our society, and we appreciate this chance to participate in this conversation.

Past crimes against children will never be forgotten. We must listen to the stories of the survivors of child sexual abuse, and learn from these experiences. Through every means possible, including the WWCC, we must do better for the next generation.