Royal Commission into Institutional Responses to Child Sexual Abuse  
GPO Box 5283  
Sydney  NSW  2001

By email: solicitor@childabuseroyalcommission.gov.au

Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse  
Issues Paper 1: Working with Children Check

To the Commissioners,

Thank you for the opportunity to comment on the first of the Royal Commission’s Issues Papers on the Working with Children Check.

MacKillop Family Services (MacKillop) is a leading provider of services for children, young people and their families in Victoria and New South Wales (NSW) and we have recently expanded into Western Australia (WA).

The programs we deliver include disability services, home based and residential care, refugee services, youth support, education and training, family support and support to women and men who, as children, were in the care of our founding agencies.

Formed in 1997 by the Sisters of Mercy, the Christian Brothers and the Sisters of St Joseph, MacKillop exists to support, to foster hope and to promote justice for children, young people and their families, particularly those who experience distress, disadvantage and abuse.

MacKillop provides services to communities in three Australian states and we are of the view that a national working with children check (WWCC) scheme is preferable to the range of current state-based systems. However, we are of the view that progress towards a single scheme or better harmonisation of existing schemes should not occur in isolation. Any expansion or harmonisation of current systems needs to be accompanied by the promotion of the suite of initiatives that will help create child-safe organisations. MacKillop is of the view that there is little evidence to suggest that working with children checks are, as a stand-alone system, effective in reducing the abuse of children. For that reason, we are supportive of a scheme that places WWCCs within a suite of activities for organisations to undertake to ensure the safety of the children with whom they work.

Thank you for the opportunity to provide comment on Issues Paper 1: Working with Children Check. If you wish to discuss this submission further, please contact me or Dr Nick Halfpenny, General Manager, Policy and Innovation on 03 9381 6999.

Yours sincerely,

Micaela Cronin  
CEO, MacKillop Family Services
1. Should there be a national WWCC?

MacKillop provides services to children, young people and their families in three Australian states. To improve the efficiency of the system and reduce administrative burden, MacKillop is supportive of either a national WWCC scheme or better harmonisation of current state-based systems. MacKillop notes the work currently being undertaken by the Council of Australian Governments to achieve better consistency between state and territory schemes. As one of many employers of staff who, at times, work away from their home state, national consistency would be useful.

**Evidence of the efficacy of pre-employment screening schemes**

MacKillop is concerned that there is a lack of evidence about the efficacy of WWCC systems. In the absence of thorough evaluations or reviews from each state or territory with a WWCC scheme, it is difficult to determine what elements of a national scheme should be adopted. MacKillop believes it is important to thoroughly review the current schemes to inform the development of a national scheme. This should provide evidence as to whether WWCCs are an appropriate policy response to issues of child safety, or whether there are other responses that could ensure the safety of children and young people.

As noted in FaHCSIA’s position paper “Toward a Nationally Consistent Approach to Working with Children Checks” WWCCs are a growing area of practice but there is limited evidence that pre-employment screening is effective as a stand-alone risk management response.²

**Pre-employment screening – only one in a suite of elements to ensure the safety of children**

MacKillop is firmly of the view that WWCCs are only one possible component of a suite of responses that should be in place in organisations that work with children to create child-safe organisations. Pre-employment screening has the potential to have a negative impact on the safety of children if organisations rely on that alone to minimise risk within their organisation. The limited evaluation of WA’s WWCC scheme noted the danger that the existence of a WWCC clearance may be viewed as a sign of good character in itself.³

MacKillop supports the view of the Australian Institute of Family Studies that pre-employment screening of potential employees may prevent people with a known history of violent or abusive behaviour gaining employment but screening should be viewed as but one element of a thorough recruiting process that also ideally includes interviews, reference and police checks. Good employment practices should sit alongside a range of policies and procedures to develop child-safe organisations including robust and transparent frameworks for responding to allegations of improper conduct or abuse.⁴

MacKillop’s view is that there is a need for a consistent and holistic approach to risk management when it comes to ensuring child safety. This includes, but is not limited to, a national WWCC scheme.

**Vulnerable people**

As is planned in the Australian Capital Territory, MacKillop is supportive of a vulnerable person’s check that would also apply to those working in the disability and aged care sectors. MacKillop notes that this is outside of the Royal Commission’s Terms of Reference, but wish to put forward this view for the record.

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¹ Annual Report to the Council of Australian Governments 2011-12 Protecting Children is Everyone’s Business National Framework for Protecting Australia’s Children 2009-2020
² FaHCSIA Position Paper
2. What features should be included in any national scheme?

A national WWCC scheme should include:
- National police check
- International police check (for applicants who have spent time overseas or were not born in Australia)
- A card that includes a photo of the card holder
- Ongoing automated database screening of card holders, as in NSW
- A requirement that card holders reapply every four years
- Consistent national application point, for example, Australia Post
- Prompt notification to employers of any change in an employee’s WWCC status.

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

MacKillop is of the view that if there is no national scheme, there should be harmonisation of state and territory based schemes and a coordinated effort to ensure all states have a scheme in place.

4. How long should any clearance be granted for?

Individuals should be required to renew their card at least every four years. Additionally, automated screening of police databases of card holders would also ensure the card holder was still an appropriate person to work with children and would alert authorities to any issues of concern.

Penalties (for example a fine) should be imposed for those who fail to update their WWCC if their name, address or employer changes, within a three month period.

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

MacKillop understands that applications for WWCCs in some states can take many months to process. In NSW a check can take up to four months to be processed (Office of the Children’s Guardian) and in Western Australia (WA), up to seven months (according to the Alliance for Children at Risk).

Improvements to current schemes or the introduction of a national scheme should include efficient processing times. For example, in Victoria, a WWCC takes around four weeks. Efficient processing times would, ideally, mean that a person would start work on receipt of their WWCC clearance.

However, given the time that some WWCCs currently take, on occasion people can commence work before they have clearance. In an organisation that has a range of risk management strategies in place, this is appropriate. Provided that a new employee has been through a thorough recruitment process, including a police check, is properly supervised, is not alone with children or young people, and undertaking induction processes, MacKillop is of the view that new employees should be able to commence work before their WWCC is complete.

6. How should child-related work be defined?

MacKillop is of the view that child-related work should be defined to include work that involves unsupervised contact with children. Child related work should also include work within a child-related work place or sector, even if contact with children is not usually part of the role. At MacKillop, all staff members hold a WWCC, including those with little or no contact with children as part of their work.
7. How should child-related sectors and roles be defined?

MacKillop is of the view that child-related sectors should be defined as those organisations that work or interact with children. This should include organisations, agencies or bodies providing care, education, leisure, recreation or support services to children and young people.

MacKillop is of the view that religious organisations should be included as members of the child-related sector, placing them within the scope of the WWCC.

8. 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?

WWCCs should apply to adults living in out-of-home care. MacKillop notes that in NSW, young people aged between 14 and 18 can be subject of WWCCs. MacKillop is of the view that in a national scheme the minimum age for a WWCC should be 18. MacKillop is not aware of evidence that would support the lower age threshold that currently exists in NSW.

MacKillop is of the view that good assessment processes with potential foster families should reveal any issues of concern in relation to other children and young people residing in the home. There is a risk that setting the WWCC age limit below 18 could have the unintended consequence of discouraging people from becoming foster carers.

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

**Juvenile Offences**

As a matter of fairness and justice, MacKillop is generally of the view that juvenile offences should be sealed. We view the issue of juvenile offending as complex and the issue of juvenile “records” as very sensitive. This view is informed by our extensive experience working with vulnerable and disadvantaged young people.

In light of that, MacKillop believes that juvenile records should be dealt with extremely cautiously by those undertaking WWCCs. In accordance with principles of natural justice and procedural fairness we are of the view that a range of safeguards must be in place to protect the person who may have a juvenile, but otherwise clear, criminal record.

As well as holding the information contained in a juvenile record in strict confidence, MacKillop believes that these records should be viewed in light of the:

- Length of time since the offence
- Age and vulnerability of the victim
- Age difference between the victim and the applicant
- Relationship between victim and applicant
- Seriousness of offending and whether there is a pattern of offending
- Applicants behaviour since the offence
- Likelihood of applicant posing a threat, in future, to a child
- Likelihood of offence being repeated and impact on children if offences repeated.

MacKillop is concerned that the WWCC system may be used to overcome weaknesses within other systems. For example, there may be situations where police have determined not to proceed with an investigation into an allegation of abuse. The WWCC system should not be seen as a safeguard against limitations in the criminal justice system.
10. How should an appeal process operate?

MacKillop is of the view that an appeal process should accord with the principles of administrative law, through a federal appeals body. Adjudication of appeals should be undertaken by a board or panel with a range of experience and knowledge, including those from the community sector, with relevant experience working with children.

Appeals processes should be easily accessible by individuals who have been barred from working with children, including those from vulnerable or disadvantaged backgrounds.

The appeals body should be able to make an order that a person be granted a probationary WWCC.

11. What issues arise from the current regime of records that result in automatic barring of a person from working with children?

No comment

12. The adequacy of the risk assessment process.

The risk assessment undertaken as part of the Victorian WWCC scheme is, in MacKillop’s view, appropriate. MacKillop is supportive of Victoria’s subjective test that:
- Takes into account a range of information from many sources
- Asks whether a reasonable person would allow their child to have direct and unsupervised contact with the applicant, and
- Examines whether the applicant is suitable to undertake any kind of child-related work without posing an unjustifiable risk to the safety of children.

Although the NSW scheme also takes into account a broad range of information and factors, MacKillop favours the Victorian scheme. In addition to the points outlined above, the Victorian scheme has the benefit of a nuanced approach to the assessment is risk. It allocates applicants into categories, with Category 1 deemed not fit to work with children and Categories 2 and 3 requiring the subjective test along with risk assessment.

MacKillop is of the view that the risk assessment should be undertaken by appropriately skilled and qualified professionals.

13. 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?

As noted above, WWCCs do not minimise the need for organisations to ensure they have clear processes for dealing with inappropriate behaviour. WWCCs should not be viewed as a stand-alone risk management response. WWCC processes should be accompanied by a suite of other risk management and response strategies.

14. How should the effectiveness of any existing or proposed WWCC be evaluated and / or monitored?

Evaluation methodology dictates that key performance indicators need to be identified at the commencement of any project, and it is the achievement (or otherwise) of those targets that the evaluation reviews. Such a methodology has been a critical omission in the implementation of the various state-based WWCC schemes to date.

WWCC schemes are a resource intensive public policy interventions to implement and maintain. It is not unreasonable to expect such a scheme have a demonstrable impact on the safety of children and young people. A national scheme would need to identify what its targets are, which we would suggest could include:
- Reduction in abuse of children by volunteers or employees in child focussed organisations
• Reduction in abuse of children by volunteers or employees in organisations that have contact with children
• Accelerated implementation of other policies and procedures to ensure the safety of children coming into contact with adults in institutions.

As is the case with evaluations of this type, there can be an increase in offences, simply because the new process has resulted in an increase in reporting of offences, rather than an increase in offences, as such.

MacKillop notes the WA government’s “Review of the Working with Children (Criminal Record Checking) Act 2004”, completed in 2012. The Review records that a number of negative notices have been issued, thus preventing individuals engaging in work with children. However the review did not consider whether implementation and administration of WWCCs increased the safety and protection or reduced harm of children and young people.

Conclusion
MacKillop would like to thank the Commission for the opportunity to provide feedback on issues related to a national WWCC scheme.