

**TZEDEK SUBMISSION**  
**Royal Commission into Institutional Responses to Child Sexual Abuse**  
**ISSUES PAPER 1**  
**WORKING WITH CHILDREN CHECK**

**1. Should there be a national Working with Children Check (WWCC)?**

Tzedek adds its support in this submission to the introduction of a national WWCC, or alternatively, a nationally consistent approach to WWCCs.

It is noted that the *National Framework for Protecting Australia's Children 2009-2020*, lists a nationally consistent approach to WWCCs as an action for supporting Outcome 2 of the report.<sup>1</sup>

While Tzedek supports the position of Independent Education Union NSW ACT General Secretary John Quessy, who has stated that a national scheme should be established, it also recognises that a nationally consistent approach to WWCCs may be the appropriate course.<sup>2</sup>

Tzedek considers that there are a number of issues with the current state- and territory-based system, including (but not limited to):

- Each state and territory has different legislation and time periods for which the check is valid, and varied procedures for renewal of the WWCC.<sup>3</sup>
- Each state and territory has different exemptions to the requirement to hold a WWCC.<sup>4</sup>
- Each state and territory considers different information and draws upon different sources of information in determining whether to approve a check.<sup>5</sup>
- There are differences across the states and territories with regards to who is required to undergo screening, and how different occupations are identified.<sup>6</sup>
- There is no recognition of a WWCC issued in a particular Australian jurisdiction in any other Australian jurisdictions (including where the checks are ostensibly the same). This makes it difficult for those working with children in multiple jurisdictions.
- Jurisdictions which purport to monitor those who hold approvals only monitor offences within their own jurisdiction, with interstate and Commonwealth offences only checked at the point of renewal, every 2-5 years. This potentially means that a person could hold a valid check, commit an offence against a child in another state, and continue to hold a valid check for up to 5 more years.

Tzedek supports the position that the current system, which involves a variation between state and territory systems, makes it difficult to recognise and accept safety checks of

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<sup>1</sup> National Framework for Protecting Australia's Children 2009-2020, p18

<sup>2</sup> [http://www.fahcsia.gov.au/sites/default/files/documents/child\\_protection\\_framework.pdf](http://www.fahcsia.gov.au/sites/default/files/documents/child_protection_framework.pdf)

<sup>3</sup> <http://www.ieu.asn.au/news-publications/news/2013/06/ieu-submission-working-with-children-check-should-be-national/>

<sup>4</sup> Refer Table 1 - <http://www.aifs.gov.au/cfca/pubs/factsheets/a141887/index.html#table-1>

<sup>5</sup> See for example NSW Fact Sheet – Exemptions <http://www.kids.nsw.gov.au/Working-with-children/New-Working-With-Children-Check/Fact-sheets-and-resources/Publications-and-resources> and compare to the Northern Territory exemptions <http://www.workingwithchildren.nt.gov.au/clearance.html>

<sup>6</sup> Refer Table 2 - <http://www.aifs.gov.au/cfca/pubs/factsheets/a141887/index.html#table-2>

<sup>6</sup> Refer Table 3 - <http://www.aifs.gov.au/cfca/pubs/factsheets/a141887/#table-3>

volunteers and workers who move across borders. In addition, the lack of cross jurisdictional infrastructure affects reliance on any change to the suitability status of a person whose services are being used by an employer or institution.<sup>7</sup>

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

In addition to trying to overcome the issues identified in the above response to Question 1, by seeking to make legislation across jurisdictions as consistent as possible, Tzedek considers that the issues identified by Bravehearts<sup>8</sup> in relation to WWCCs should be considered as features of a national scheme. In particular:

- Are there mandatory WWCCs for all people who work with or volunteer with children?
- Does the WWCC include consideration of convictions, charges, internal reviews (e.g. teacher registration boards, etc)?
- Does the WWCC include checks with external jurisdictions?<sup>9</sup>

Tzedek supports the view that a national scheme should also give consideration to the matters raised in the Position Paper *A Nationally Consistent Approach to Working with Children Checks (2011)*; most notably the following matters:

- Consideration of actions which embed child safety practices at an operational level, given that it is at the operational level where children interact with organisations and where children are also at greatest risk of exposure to unsafe adults.
- Investment in infrastructure that ensure that screening and data systems are in place for cross jurisdictional exchanges of information on an ongoing basis.<sup>10</sup>

## 3. In the absence of a national scheme, should there be minimum requirements for each state and territory scheme?

If there is no national scheme for WWCCs, Tzedek submits that the states and territories should continue to work together towards achieving a nationally consistent approach to WWCCs.

In terms of minimum requirements for consistency Tzedek submits that all jurisdictions should adopt:

- A consistent and clear definition of child-related work.
- Consistent categories of information to be checked as part of the assessment process for a WWCC.

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<sup>7</sup> The Australian Government - Department of Families, Housing, Community Services & Indigenous Affairs, *A Nationally Consistent Approach to Working with Children Checks (2011)*, p3 [http://www.fahcsia.gov.au/sites/default/files/documents/position\\_paper.pdf](http://www.fahcsia.gov.au/sites/default/files/documents/position_paper.pdf)

<sup>8</sup> 'The 3 Piers' to Prevention: Educate, Empower, Protect - Solid Foundations to Making Australia the Safest Place in the World to Raise a Child, September 2012. [http://www.bravehearts.org.au/files/Final\\_The%203%20Piers%20Research%20Audit\\_Sept%202012.pdf](http://www.bravehearts.org.au/files/Final_The%203%20Piers%20Research%20Audit_Sept%202012.pdf)

<sup>9</sup> 'The 3 Piers' to Prevention: Educate, Empower, Protect - Solid Foundations to Making Australia the Safest Place in the World to Raise a Child, September 2012, p25. [http://www.bravehearts.org.au/files/Final\\_The%203%20Piers%20Research%20Audit\\_Sept%202012.pdf](http://www.bravehearts.org.au/files/Final_The%203%20Piers%20Research%20Audit_Sept%202012.pdf)

<sup>10</sup> The Australian Government - Department of Families, Housing, Community Services & Indigenous Affairs, *A Nationally Consistent Approach to Working with Children Checks (2011)*, p4 [http://www.fahcsia.gov.au/sites/default/files/documents/position\\_paper.pdf](http://www.fahcsia.gov.au/sites/default/files/documents/position_paper.pdf)

- Consistent exemptions, including a consistent age-related exemption.
- An agreed upon and consistent time frame for which a WWCC is valid.

The states and territories should also continue to work towards a system that will enable cross jurisdictional offences to be monitored in real time and on an ongoing basis.

States and territories must also ensure that its institutions have in place processes and procedures that make child safety practices their number one priority.

#### 4. For how long should any clearance be granted?

The current position on the length of time for which a clearance should be granted is not consistent with a national approach to WWCCs. The clearance is currently provided for two years in the Northern Territory, three years in Queensland and Western Australia (with a possible increase to five years)<sup>11</sup> and five years in both Victoria and NSW (a recent change).

The issue of clearance duration was considered by the Western Australian *Review of the Working with Children (Criminal Record Checking) Act 2004 – July 2012* (The Western Australian Review).

The Western Australian Review considered whether or not the renewal period could be increased to five years without increased risk to children. The Western Australian Review considered a balance of the following issues:

- **Possible resource savings** - A reduced administrative burden on those processing the WWCC applications and time and expense saving for child-related work employers and employees.
- **What is the increased risk to children?** – It was noted that “until continuous record checking is available at the national level, the extension of the renewal period would mean that there are two additional years where a card holder committing a relevant criminal offence in a State outside of Western Australia may not be brought to the attention of the WWC Screening Unit”.<sup>12</sup>

In the absence of continuous national criminal record checking, the Reviewer was not prepared to make a stand-alone recommendation that the renewal period be increased.<sup>13</sup>

Based on the information available, Tzedek supports both a consistent jurisdictional approach and a shorter renewal period until such time as continuous national criminal record checking is possible (at which point an increase in the renewal period could be considered).

<sup>11</sup> Western Australian Review of the Working with Children (Criminal Record Checking) Act 2004 – July 2012, Recommendation 10, p39.

<sup>12</sup> Western Australian Review of the Working with Children (Criminal Record Checking) Act 2004 – July 2012, Recommendation 10, p38.

<sup>13</sup> Western Australian Review of the Working with Children (Criminal Record Checking) Act 2004 – July 2012, Recommendation 10, p39.

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

The WWCC is one of a number of checks that ought to be undertaken by an institution before a person commences their employment. If an institution has appropriate processes in place and takes reasonable steps to check the suitability of a potential employee to work with children, then it would not be unreasonable for that person to commence work before the check is completed.

Tzedek notes that in Victoria, amendments to the *Working with Children Act 2005* came into effect on 31 December 2012. These amendments make it clear that a person cannot work with or care for children while their application is being processed if they have:

- been charged with or found guilty of a serious sexual, violent or drug-related offence which the Act describes as Category 1 and Category 2 offences.
- previously failed the check, been issued with a Negative Notice and not subsequently been given a WWCC Card.

The guidance provided on this point makes it clear that institutions that provide services or activities for children must take reasonable steps to ensure they do not allow anyone in child-related work who has been charged with or found guilty of a serious sexual, violent or drug-related offence (described as Category 1 or Category 2) to work with or care for children until they have successfully obtained a WWCC Card.<sup>14</sup>

A consistent national approach would support the introduction of a similar provision in all Australian jurisdictions and for offences to be consistently defined across those jurisdictions.

Tzedek has also considered, by way of example, the very small percentage of people who have failed the check in Victoria in comparison to the number of WWCC cards issued (between 2006 and March 2013)<sup>15</sup>. It would therefore appear that the risk of allowing a person to work with children prior to the check being completed is very small.

## 6. How should child-related work be defined?

The current State and Territory position is ambiguous and inconsistent in both wording and potential interpretation. For example:

- Section 9(1) of the Victorian *Working with Children Act 2005* includes in its definition that child-related work “usually involves, or is likely usually to involve, regular direct contact with a child”. Direct contact is defined as physical contact or face to face oral communication or physically being within eyeshot.<sup>16</sup>
- Section 6(1)(a) of the NSW *Child Protection (Working with Children) Act 2012* includes in its definition that child-related work “involves direct contact by the worker with children”. Direct contact is defined as face to face or physical contact.<sup>17</sup>

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<sup>14</sup> <http://www.workingwithchildren.vic.gov.au/home/about+the+check/purpose/changes+to+legislation+home/>

<sup>15</sup> <http://www.workingwithchildren.vic.gov.au/home/about+the+check/statistics/>

<sup>16</sup> Section 3(1) *Working with Children Act (Vic) 2005*

<sup>17</sup> Section 6(4) *Child Protection (Working with Children) Act (NSW) 2012*

- Section 185(2) the Northern Territory *Care and Protection of Children Act* states that “Child-related work is any work that involves or may potentially involve contact with children...”. However, the commentary issued by the Northern Territory Government states that a person is engaged in child-related work “if the usual duties of the work involve, or are likely to involve, contact with a child aged under 18 years”.<sup>18</sup>

Phrases such as “usually involves” and “regular” (in the context of the Victorian legislation), as well as “usual duties” (in the context of the Northern Territory legislation) leave room for potential institutional and judicial interpretation. This is also the case for slightly different definitions of “direct contact”.

This was identified as an issue by the Western Australian Review: Section 6 of the Western Australian Act determines that work is only considered child-related when the person’s usual duties involve, or are likely to involve, contact with a child in connection with one of the 19 categories of child-related work which are outlined in the legislation.

The complexity of interpreting and applying the definition of child-related work was raised in a number of submissions to the Review, which requires institutions to devote significant time and resources to interpreting the legislation; time that could be better spent focusing on broader child safe strategies<sup>19</sup>

Tzedek notes Recommendation 1 of the Review which proposes that amendments be drafted to reduce the ambiguity of the definition of child-related work and that the consideration of suitable amendments should ensure that, consistent with Parliament’s original intent, scope remains limited to targeting the WWCC to those persons whose work with children affords the opportunity for the development of relationships of trust and authority.<sup>20</sup>

In considering a nationally consistent approach to WWCCs, it is Tzedek’s submission that there ought to be a consistent definition of child-related work and that any potential for varied interpretation in the definitions ought to be removed. Tzedek submits that the phrase child-related work should be defined broadly, consistently and unambiguously.

## 7. How should child-related sectors and roles be defined?

N/A

<sup>18</sup> <http://www.workingwithchildren.nt.gov.au/categories.html> and [http://www.workingwithchildren.nt.gov.au/docs/wwc\\_booklet.pdf](http://www.workingwithchildren.nt.gov.au/docs/wwc_booklet.pdf), p4

<sup>19</sup> Review of the Working with Children (Criminal Record Checking) Act 2004 – July 2012, p16

[http://www.parliament.wa.gov.au/publications/tailedpapers.nsf/displaypaper/3815214a5baccea7d483ea2548257a78002cb897/\\$file/5214.pdf](http://www.parliament.wa.gov.au/publications/tailedpapers.nsf/displaypaper/3815214a5baccea7d483ea2548257a78002cb897/$file/5214.pdf)

<sup>20</sup> Review of the Working with Children (Criminal Record Checking) Act 2004 – July 2012, p3

[http://www.parliament.wa.gov.au/publications/tailedpapers.nsf/displaypaper/3815214a5baccea7d483ea2548257a78002cb897/\\$file/5214.pdf](http://www.parliament.wa.gov.au/publications/tailedpapers.nsf/displaypaper/3815214a5baccea7d483ea2548257a78002cb897/$file/5214.pdf)

8. **Are current exemptions for a WWCC adequate or appropriate? In particular, should a WWCC apply to:**
- a. **those living in the homes of children in out-of-home care?**
  - b. **parent volunteers?**

### **General**

Tzedek submits that a nationally consistent approach to WWCCs necessitates consistent exemptions to obtaining a WWCC.

One of the exemptions in the Northern Territory legislation provides an exemption for a person who provides accommodation for a child in their private residence for no more than 7 consecutive days.<sup>21</sup> Tzedek would not support such an exemption as part of a nationally consistent approach to WWCCs.

Such an exemption or, as in other States and Territories, the lack of clarity on this issue is of concern in the Jewish community context. For example, each year the Jewish sporting organisation, Maccabi, holds a sporting event for which Jewish children from all over Australia congregate in a particular State to participate in sporting events. As part of this event children from interstate can be billeted with a family who host one or more children. While those with whom the children are residing may fall under the exemption of parent volunteers because their children are also participating in events, Tzedek considers that there is a potential risk in *not* requiring those living in the host home (including any children over the age of 15 who reside in the host home) to obtain a WWCC.

Tzedek also supports the view that identified gaps with the WWCC still exist in seasonal jobs (such as a store Santa Claus) and workers in theme parks<sup>22</sup> and that wherever possible, those gaps should be closed so as to prevent those who should not be working with children from coming into contact with children unnecessarily.

In the Jewish context, Tzedek also expresses concern with regards to the age under which a person is not required to obtain a WWCC, which, in the majority of states, is set at 18. In the Northern Territory a WWCC is not required for those under the age of 15.

The Jewish community, like the Christian community, has a number of youth groups run by volunteer leaders. The leaders of these groups can be and often are under the age of 18. In a number of states, juvenile records are considered as part of the checks performed when application is made for a WWCC.<sup>23</sup> This, in Tzedek's view, lends support to the argument that the age at which a WWCC is required ought to be reduced. Tzedek proposes, as part of a nationally consistent approach to WWCCs, a requirement for individuals over the age at 15 to obtain a WWCC (as practiced by the Northern Territory).

In regard to the various matters raised under this heading, Tzedek notes that over a third of all sexual abuse of children is committed by someone under the age of 18<sup>24</sup> and that the British NSPCC charity has found that there were more than 5,000 cases of abuse perpetrated by individuals aged under 18 years reported to the police in the last three years.<sup>25</sup>

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<sup>21</sup> <http://www.workingwithchildren.nt.gov.au/clearance.html>

<sup>22</sup> 'The 3 Piers' to Prevention: Educate, Empower, Protect - Solid Foundations to Making Australia the Safest Place in the World to Raise a Child, September 2012, p17. [http://www.bravehearts.org.au/files/Final\\_The%203%20Piers%20Research%20Audit\\_Sept%202012.pdf](http://www.bravehearts.org.au/files/Final_The%203%20Piers%20Research%20Audit_Sept%202012.pdf)

<sup>23</sup> Refer Table 2 - <http://www.aifs.gov.au/cfca/pubs/factsheets/a141887/index.html#table-2>

<sup>24</sup> <http://www.safersociety.org/uploads/WP075-DoChildren.pdf>, page 3

<sup>25</sup> <http://www.dailymail.co.uk/news/article-2287728/Thousands-18s-sexually-abusing-children-year-warns-NSPCC.html>

## **WWCCs for those living in the homes of children in out-of home-care**

Tzedek considers that there is a potential and non-insignificant risk associated with not requiring all those living in the home of children in out-of-home care to obtain a WWCC. Children living in out-of-home care are particularly vulnerable and should be offered the highest level of protection by ensuring that those who are residing with them (regardless of responsibility for their care) are required to hold a WWCC. Tzedek reiterates its comments above as they relate to sexual abuse of children committed by those under the age of 18.

## **Parent Volunteers**

It is known that offenders will try to access children through their own children.

The issue of parent volunteers was considered in detail as part of the Western Australian Review and a Recommendation was made that the parent volunteer exemption be modified.<sup>26</sup>

Tzedek submits that further consideration should be given to whether the existing parent volunteer exemption should be modified so that such an exemption cannot be accessed by parents who hold a Negative Notice as a result of being convicted of a serious sexual, violent or drug-related offence. Tzedek lends support to the submissions received as part of the Western Australian Review: that is, where a person has been issued a Negative Notice, Tzedek considers it appropriate that the overall safety of children be given priority and that this person's access to volunteering in activities in which their children are participating should be curtailed. They should not have the benefit of the parent volunteer exemption.<sup>27</sup>

Tzedek considers that imposing significant penalties for Negative Noticeholders undertaking parent-volunteering child-related work would be an appropriate mechanism. While Tzedek acknowledges that the number of Negative Notice holders in most states and territories is small and that the cost of compliance may be high, it is considered that this would be an appropriate additional mechanism in order to facilitate the protection of children.

Tzedek considers that the Victorian restrictions placed on those seeking to work while their WWCC application is being processed would be appropriate restrictions to place on the parent volunteer exemption and add an additional layer of protection for children.<sup>28</sup>

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

Tzedek's submission is that there ought to be a consistent approach between States and Territories regarding the records considered as part of determining whether or not to approve a WWCC.

Further, it is Tzedek's view that whatever records are available in each State or Territory should be reviewed as part of a WWCC and that records available in a particular State or Territory that are not yet being considered as part of a WWCC application ought to be included. It is submitted that the more information made available to those processing WWCC applications, the stronger the likelihood of ensuring the safety of children.

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<sup>26</sup> Western Australian Review of the Working with Children (Criminal Record Checking) Act 2004 – July 2012, p20-22.

<sup>27</sup> Western Australian Review of the Working with Children (Criminal Record Checking) Act 2004 – July 2012, p21.

<sup>28</sup> <http://www.workingwithchildren.vic.gov.au/home/about+the+check/purpose/changes+to+legislation+home/>

A number of States and Territories are already reviewing juvenile records as part of their assessment processes for WWCCs.<sup>29</sup> Those States and Territories have determined it appropriate to review those records as part of the WWCC application process. It is possible that those States and Territories have given some consideration to the fact that more than half of adult sexual offenders begin offending in their teens.<sup>30</sup>

**10. How should an appeal process operate?**

N/A

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

N/A

**12. The adequacy of the risk assessment process.**

N/A

**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?**

The WWCC is simply one of many tools for protecting children. No one tool, despite the best intentions, can guarantee protection of children from child sexual abuse. The WWCC does not identify individuals who have not yet offended, or have not been caught.

It is Tzedek's position that the main protection for children must come from the institution that is assuming responsibility for their care at a particular point in time. This position is supported by publications of both government and non-government organisations.

- The Victorian Government on its Working With Children website<sup>31</sup> states that institutions need to have sound screening and supervision practices in place to complement the WWCC and protect children.
- The Australian Government Department of Families, Housing, Community Services & Indigenous Affairs has noted that while WWCCs "are a growing area of practice... there is limited evidence that demonstrates that screening is effective as a stand-alone risk management response. The available literature supports the need for proactive participation from organisations in producing child safe organisational policy".<sup>32</sup>
- The Public Interest Law Clearing House (Vic) Inc (PILCH) states that it must always be remembered that the WWCC is only one way of reducing the risk of recruiting or associating with individuals who may be unsuitable for child-related work and

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<sup>29</sup> Refer Table 2 - <http://www.aifs.gov.au/cfca/pubs/factsheets/a141887/index.html#table-2>

<sup>30</sup> [http://depts.washington.edu/hcsats/PDF/infobrochures/sexual\\_offenders.pdf](http://depts.washington.edu/hcsats/PDF/infobrochures/sexual_offenders.pdf)

<sup>31</sup> <http://www.workingwithchildren.vic.gov.au/home/about+the+check/what+the+check+means+for+you/organisations/>

<sup>32</sup> The Australian Government - Department of Families, Housing, Community Services & Indigenous Affairs, A Nationally Consistent Approach to Working with Children Checks (2011), p2-3 [http://www.fahcsia.gov.au/sites/default/files/documents/position\\_paper.pdf](http://www.fahcsia.gov.au/sites/default/files/documents/position_paper.pdf)

that institutions should ensure that they have internal policies and procedures to ensure the safety of all those who interact with the institution.<sup>33</sup>

Tzedek's position is that institutions must remain responsible for ensuring that they establish and maintain clear policies and processes for protecting children in their care. Institutions must have documented and transparent processes for dealing with allegations of inappropriate behaviour of staff in child-related positions, irrespective of and in addition to the WWCC process.

Tzedek has publicly raised concern regarding how a number of institutions within the Jewish community have dealt with and continue to deal with allegations of inappropriate behaviour of staff or volunteers towards children. It is Tzedek's view that such institutions should, at the very least, include the following as part of their process:

- Immediately remove from contact with children any staff member or volunteer against whom allegations are made of inappropriate behaviour towards children.
- Bring in the police to conduct an investigation in the event that allegations against any staff member or volunteer involve the possibility of a potential criminal offence.
- Ensure that those who have raised the issue of inappropriate conduct have their privacy and personal wellbeing protected.

Clear processes and procedures are also extremely important when dealing with international/overseas employees and volunteers. In the context of Jewish organisations, many of the Jewish youth groups have overseas representatives (referred to as a "shaliach" or "shlichah", an emissary) who provide leadership and direction for the particular group. Other Jewish organisations bring in overseas "scholars in residence" who spend time within Jewish institutions with children.

In such contexts, checks undertaken to determine whether or not to provide a WWCC clearance to those overseas guests is practically meaningless as they will have no Australian record. Further, even if the WWCC includes a police check, currently there are no formal means to obtain police checks for international volunteers. Therefore a broad pre-employment screening process and risk-management processes for dealing with inappropriate behaviour of staff are of paramount importance as they are the primary tools available for protecting children from what is essentially a completely unknown element.

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

**N/A**

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<sup>33</sup>Public Interest Law Clearing House (Vic) Inc, 2011 Guide: Working with Children Checks for Victorian Community Organisations, p10.