



Alliance for Children at Risk

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Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse

Response to issues Paper 1 – Working with Children Check

July 2013



1. Abbreviations

‘Alliance’ = The Alliance for Children at Risk

WWCC = Working With Children Checks

2. About The Alliance for Children at Risk

The Alliance for Children at Risk, formed in 2004, is a peak body representing not-for-profit organisations that provide out of home care services (foster, residential or extended family care) to children in Western Australia, and services that reduce the risk of children entering out of home care and support young people leaving care.

Member agencies at July 2013:

Wanslea
Anglicare WA
Parkerville Children and Youth Care
Centrecare
MercyCare
UnitingCare West
Life Without Barriers
Accordwest
Yorganop
Salvation Army
Key Assets
MacKillop Family Services

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3. The situation in Western Australia

The Western Australian State Government recently introduced Clause 14.5 of the General Provisions for contracting services, which requires employees of contracting agencies to have the completed WWCC assessment before undertaking work under contract with a government agency, where the work requires such an assessment.

Before this change was brought in, the previous arrangement allowed a person to commence work immediately, if the application had been submitted, and their continuing employment was subject to a satisfactory check.

This change has caused a number of difficulties and in many cases created unworkable situations. The difficulties fall into three categories:

- increased bureaucratic red-tape, duplication and confusion caused by proliferation of often conflicting requirements;
- increased and unsustainable costs and staffing difficulties caused by very long waiting times for approvals; and
- discretion for Government departments to choose not to apply the clause in their contracts, raising significant, unanswered questions.

Workers in our sector may have to supply three different clearances: Working with Children Checks, Crimcheck (through the Police Department) and the Department for Child Protection Records Check.

The new WWCC exceeds the legal requirements of the Working with Children (Criminal Record Checking) Act 2004.

Waiting times for WWCC clearances can be very long. In June 2013, we surveyed our member agencies to understand the impact of WWCC requirements. Across just seven agencies, 283 applications were made for WWCCs for new staff over 12 months (1 June 2012 to 31 May 2013). One agency reported that the average time to secure the checks was 55 days, ranging from 15 days to 212 days, based on statistical analysis. Other agencies reported similar results anecdotally.

If we were to adhere strictly to the WWCC requirements, employees who are waiting for clearance cannot work in the meantime in child-related activities. In effect, agencies providing child-related services will be paying employees to stay at home or do non-child related duties. The impact on and cost to our agency members – and no doubt agencies in other sectors – is significant. Staff whose WWCC clearance is up for renewal can have a gap before clearance is completed. In these circumstances, they may be stood down without pay.

Some departments, such as the WA Department for Child Protection and Family Support, have indicated that they will not apply Clause 14.5 in their contracts. Many of our member agencies allow staff to work with children while awaiting the WWCC report. This raises questions and legal issues. One of our member agencies is seeking legal advice.

One agency that allowed an employee to work with children for the 212 days it took for a WWCC to be completed had to terminate the employee instantly when an adverse report was returned.

The Alliance has raised these issues with the WA Department of Premier and Cabinet, which is investigating ways to improve the turnaround time on WWCCs.

4. Concerns about the efficacy of WWCCs

The Alliance for Children at Risk supports measures that protect children's safety. We support compliance with mandated measures to ensure that children in our care are safe and our employees who work directly with children are safe and appropriate.

With regard to WWCCs, however, we have a series of concerns, in addition to the cost and time delays detailed above in section 3 *The situation in Western Australia*.

The National Children’s Commissioner, Megan Mitchell, is on record saying that ‘the system of compulsory background checks on... people who work with children needs an overhaul because it misleads people into thinking children are safe, misses some targets, wrongly catches others, and may be a “very costly sledgehammer to crack the wrong nut”’, according to a report in The Sydney Morning Herald, 3 June 2013 (<http://www.smh.com.au/national/screening-of-child-workers-misleading-20130602-2nk0p.html>).

The report goes on to say: ‘Apart from being questionable in scope, Working with Children Checks provide an unwarranted sense of child safety’, ‘the system may unfairly discriminate and discourage, especially in relation to non-crime records’ and ‘Police and other information is not continuously shared across state and territory borders, and there is no mechanism for accessing overseas records.’

Our member agencies report that WWCCs for people who have recently relocated to Australia appear to be completed more quickly than average. This raises the suspicion that checks are not conducted in their country of origin. If this is the case, it would indicate a significant gap in the efficacy of the WWCCs.

The Alliance suggests that in its current form, the WWCC is inadequate protection and more of a political instrument than real protection.

We are not aware of research that has been undertaken to verify the efficacy of WWCCs. Many of our agencies have embraced evidence-based practice in design and delivery of services. We would like to see this approach applied to WWCCs.

5. Responses to specific questions

The Alliance for Children at Risk offers the following responses to specific questions raised in the Royal Commission’s *Issues Paper 1: Working With Children Check* – questions 1, 2, 5, 9.

Question 1: Should there be a national WWCC?

If there is to be a WWCC, it should be national to facilitate people moving between agencies and jurisdictions without disruption to their employment continuity.

However, our concern would be that delays in completing the checks would cause cost imposts to our organisations and practical difficulties for agencies to meet workload requirements while waiting for staff to be cleared to work with children.

Before WWCCs are introduced, we would like to see research undertaken to discover:

- Is there any evidence around the world that validates the use of WWCCs for the intended purpose?
- What systems of checks have been found to be best practice?

- What elements of check systems have been found to be effective and which have been found to be ineffective?

In effect, sound research should be able to answer many of the questions raised in the Royal Commission's *Issues Paper 1: Working With Children Check*.

Question 2: What features should be included in any national scheme?

Given the difficulties for agencies associated with delays in WWCCs being completed, the best solution is for people to be 'work ready'.

The Western Australian WWCC process requires the employee to apply but also requires the employer to complete sections 5 and 6 of the application form for WWCC clearance. The agency therefore appoints a new employee before the application for WWCC clearance. There is a gap – from 15 days to seven months between employee appointment and the WWCC clearance being notified to the agency, during which the employee may not work with children – introducing clear inefficiencies in agency operations and cost imposts. It would be more efficient if individuals working in the industry could apply for WWCC clearance so they are ready for employment when they apply for a job.

It would be desirable for the WWCC to meet the requirements of the Western Australian police check (CrimCheck) and the Department for Child Protection and Family Support (Western Australia) screening so that just one process is required instead of three checks conducted in parallel.

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

Given the length of time that WWCC clearance currently takes in Western Australia, many agencies allow new employees to work with children before the check is completed.

However, doing so gives rise to significant legal issues about the agency's responsibilities, duty of care and risk management. In particular: what is the agency's liability if a child is harmed by an employee waiting for WWCC clearance? One of our member agencies is seeking legal advice on the ramifications.

If WWCC requirements are to be continued and entrenched, people should simply not be allowed to work with children until the WWCC is completed. However, it would be essential to ensure that a system is in place that reduces to a minimum the delay in completing the WWCC. We think the standard should be that WWCCs are completed within 10 working days in all cases. The WWCC system needs to be well resourced to achieve an effective, quick and timely turn-around on applications.

Alternatively, as pointed out in our response to question 2, prospective employees should be able to apply for the WWCC so as to be job ready when appointed to a new position. In this case, too, it would be important to keep turnaround times on WWCC completion as short as possible.

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

The Alliance recommends that WWCCs for people who have recently relocated to Australia should include checks in their country of origin.

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