



ISSUES PAPER 1

WORKING WITH CHILDREN CHECK

ISSUE

All states and territories have a system whereby, in general terms, adults working with children, on a paid or unpaid basis, are subject to some level of pre-employment screening to determine their suitability to work with children.

In the majority of states, individuals need to apply for a Working with Children Check (WWCC) before they may work in child-related employment. The sources used for screening checks vary across states and territories, but may include a police check, criminal history check, relevant employment proceedings and / or findings from professional disciplinary bodies.

A number of individuals and organisations have raised with the Royal Commission that the WWCC should be nationally and consistently applied.

SUBMISSIONS

Submissions are sought from interested individuals and government and non-government organisations on this issue. Of particular interest to the Royal Commission is:

1. Should there be a national WWCC?

The Melbourne Diocese of the Anglican Church fully supports a national approach to the WWCC. Indeed, it would also suggest the Commission consider extending such a scheme, perhaps in a modified form, to include overseas countries with which the government has treaties or with countries that agreeable to be part of such a scheme. As increasing numbers of clergy and religious are coming from overseas countries it would be a vital safeguard to ensure the integrity of any national scheme proposed.

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

The NSW scheme serves as a good model where there are a number of sources used for screening including a police check, criminal history check, relevant employment proceedings and / or findings from professional disciplinary bodies. It is noted that the current Victorian model only allows a person's criminal convictions to be assessed in regard to a WWCC. If a person has been charged, but the matter did not proceed, then this is not considered relevant. Consideration could be given to the relevance of such history to the risk associated with the individual and hence the WWCC. Whilst accepting the presumption of innocence in relation to an alleged offender, in many child sexual assault cases the matter does not proceed because the child is too young to give evidence or the parents choose not to put their child through the stress of a criminal procedure. Indeed many adult victims choose not to proceed down the criminal path. It seems that any proposed scheme needs to recognise that the criminal justice pathway in this specific area of offending

is often not the preferred choice. It is not necessarily, because there is insufficient evidence or a lack of strength in the case. The need to respect the presumption of innocence needs to be balanced with the risk posed to children in the person's care. The withdrawal of the charges would occur in open court, therefore is a matter of public record, and as such, technically does not breach the person's privacy.

We would also submit that the findings from an employment or professional body would be very useful screening information regardless of whether there is an actual negative finding made against the WWCC applicant. There may be an internal proceeding on foot with a professional body, such as the Education Department, and the future employer would not be aware of this when considering an employment application.

The Anglican National Register records relevant complaints of a sexual nature against a person as soon as an allegation is made. This register is checked internally when employing people. Given that there is a clear understanding by an applicant that this information will be considered, the applicant may be prompted to raise the matter himself or herself. The National Register record is expunged only if the allegation is found to be unsubstantiated, frivolous or vexatious.

Where possible, overseas checks should occur for anyone who has entered the country, for both a short or longer period, and plans to work with children, or does so within a nominated period.

Whilst controversial, we would also suggest that where a person had committed a significant or relevant offence whilst a juvenile, then this should be considered relevant. This could be at the discretion of the relevant juvenile authorities where they believed the person continued to pose a risk. The empirical evidence in relation to peer and sibling abuse would tend to support the disclosure of such a risk in all the circumstances, and outweigh, we would submit, the privacy considerations of the individual. Patrick Tidmarsh's findings over the years in relation to young abusers would be very relevant to inform this discussion of what type of matters, if any, should be disclosed.

If the WWCC continues to consider only a discrete range of specific activity, the Anglican Church requires that a National Police Certificate be also obtained as we perceive that other activities should be included in evaluating risk, for example a history of convictions for fighting or dangerous driving offences. We consider that other issues also impact upon fitness for ministry.

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

While a national scheme is being contemplated, and if agreed, established, it is very important that each State and territory agree upon the minimum requirements of their own WWCC. We believe that there should be at least a National Police Certificate for persons seeking to work with vulnerable people. We note that currently in Victoria some matters, which appear on a person's criminal history check, do not appear on their separate WWCC. We would suggest that all relevant matters appear in the one check. We also believe that at a minimum, negative findings against a person by an employment or professional body should be considered relevant.

4. How long should any clearance be granted for?

We believe that a check should last for 3 years.

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

Where a person is working directly with children, if they are able to commence work before a check is completed, then it defeats the purposes of the check. The information contained in the WWCC enables a more informed decision about a person, whilst accepting the limitations of the WWCC, and the risk they pose or otherwise to children. However, if the administration of obtaining a WWCC is cumbersome and subject to delay, then employers may be tempted to employ people prior to the check coming through. It is critical that any administrative scheme adopted is timely. An option could be to place the onus of obtaining all relevant checks on the applicant at the time of making their job application, rather than when they successfully obtain the position. This however would lead to many checks being requested.

6. How should child-related work be defined?

The current Victorian definition in relation to the WWCC seems to work well and covers the field, subject to our comments below.

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

The current Victorian definitions seem to be working well from our perspective. We are not aware of any difficulties encountered with the current Victorian definition.

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

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

We believe that there should be no exemption especially in relation to this group of vulnerable children. History has shown that abusers may be attracted to this form of care and therefore a high level of screening is not only warranted but expected as part of the State's due diligence process and as part of their duty of care to this vulnerable group.

b. Parent volunteers?

We believe that parent volunteers who are assisting with activities on repeated occasions should not be exempt from the WWCC. If only assisting on a single occasion, however, then a WWCC may not be relevant or possible. For example we would not wish to prevent the spontaneity of parents helping or filling in for someone in the tuckshop or on sports day because they do not have a WWCC.

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

As outlined above.

10. How should an appeal process operate?

Where an adverse finding is made, the appeal process could operate by an administrative body reviewing the initial decision. If still adverse to the applicant, the applicant could then appeal for a review of the administrative body's decision at a low cost tribunal such as occurs in Victoria at the Victorian and Administrative review tribunal. (VCAT) We believe the Victorian review model is a good one.

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

If a relevant offence has occurred many years ago and the circumstances of the offence may be explainable, then the person is barred from working with children and indeed may be barred from attending their own child's school activities etc. For instance, where a person has been charged with having a sexual relationship with a minor, but the age difference of the offender is marginal, the acts were consensual and perhaps the relationship on-going, then this may not be an offender who poses an ongoing risk. Such a case could be subject to individual risk assessment and review.

12. The adequacy of the risk assessment process.

The current Victorian check requires that a person must be convicted of a relevant specific offence to affect the WWCC. There does not seem to be within the Victorian process an actual risk assessment. The policy defines what offences are relevant offences for the purposes of the WWCC. There is an inherent risk assessment in the choice of the offences chosen by the legislature as the relevant offences. By requiring that only convictions can be considered regarding a WWCC, the result is that where cases do not proceed or the charges have not been found proven, that is in cases where a conviction has not been recorded, a person may still pose a great risk to children. There are many reasons why a matter may not proceed. The child may be too young to give evidence or in a many cases, the parents do not wish the child to be further traumatised by the process of a criminal proceeding. As such, the "risk assessment process" is a very blunt tool, which in many does not reflect the true risk posed the person.

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 a screening tool providing 'before the fact' employment information. The WWCC currently only records an adverse finding when an actual conviction has been recorded. It does not replace the need for institutions to have clear processes to respond to inappropriate behaviour. Indeed the importance of having such processes in place is also a deterrent serving as a preventative measure. Further, if the WWCC was to include notations of professional bodies and employment proceedings in relation to inappropriate behaviours, then it is critical that all institutions have such processes to take account of risk to vulnerable persons.

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

The current Victorian scheme's effectiveness can only really be monitored by the number of checks that return adverse findings, and result in the applicant being prevented from working with children. However, this does not record those potential applicants who may self-select out of making an application; in itself a positive but unmeasurable benefit. It would also be useful to look at the review and appeal processes, to ensure compatibility with the rationale of the legislation and that adverse findings are not being overturned on a regular basis, or if so, is the decision at first instance, not in sync with the policy rationale for the legislation. An audit process should report instances where a negative WWCC application has been overturned, and the person subsequently been permitted to work with children, to see if there have been any incidents in relation to the person's employment.

Whilst the importance of the WWCC is well accepted, the Diocese would like the Commission to consider the concept of a Working with Vulnerable Persons Check to cover work with the elderly and the disabled etc as well as with children. It is possible that some abusers will move to different areas which are less regulated and where the employment requirements are less rigorous. We submit that this simply shifts the problem to a different sector, rather than addressing it.

Submissions are welcomed on any aspect of the WWCC. Submissions will be made public unless the person making the submission requests that it not be made public or the Royal Commission considers it should not be made public. That will usually only occur for reasons associated with fairness.

Submissions should be made by **Monday 12 August 2013**, preferably electronically, to solicitor@childabuseroyalcommission.gov.au, otherwise in writing to GPO Box 5283, Sydney NSW 2001