

SUBMISSION TO THE ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD SEXUAL ABUSE

Anglican Schools Australia (ASA) is a network of Anglican Schools across Australia under the auspices of the General Synod of the Anglican Church of Australia and includes both established and new schools from a variety of socio-economic backgrounds. The ASA provides a forum at a national level for Anglican schools to facilitate discussion on spiritual, moral and values related issues as they have a bearing on education. As a forward thinking, dynamic organisation, it aims to develop a strong unity of purpose among Anglican Schools.

ASA member schools cater for the Early Learning Years through to Year 12, educating 160,000 students in 160 schools across all states and territories in Australia.

NOTE: This submission was endorsed by the Management Committee of Anglican Schools Australia at a meeting on 8 August 2013. It should not necessarily be seen as purporting to represent the views of any or all of our member schools.

1. Should there be a national WWCC?

Currently the WWCC legislation in each state varies substantially and access to information from state to state varies sufficiently for there to be concern in maintaining the current state based system.

A national WWCC would ensure uniformity across the states and provide confidence for employers that staff arriving from interstate will have been checked using a consistent approach. While we would endorse a national WWCC, care needs to be taken to ensure that if a national WWCC was developed, it is not less rigorous than the checking currently being carried in some states already, for example, Western Australia.

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

2.1 Access to the following records:

Charges and convictions (including spent convictions) whether committed as an adult or a juvenile for:

- any sexual offence;
- any assault, ill treatment, neglect of, or psychological harm to a child;
- any violent offences involving children and drug related offences involving children;
- any pending charges or finalised charge that did not result in a conviction for a Class 1 or Class 2 offence (class 1 and 2 offences include various sexual offences against a child as well as offences such as murder, manslaughter, grievous bodily harm, indecent assault, making/viewing pornography and involvement in child prostitution and other offences).

and, disciplinary information from professional organisations associated with employees and volunteers related to the child-related work definition in question 6.

2.2 Access to records from around Australia, not just within the state in which the person is working.



2.3 A comprehensive listing of settings where employees and volunteers would be required to have a WWCC:

- Child Protection Services
- Children's Services
- Community Services
- Remand centres
- Youth residential centres
- Youth supervision units or youth justice centres
- Pre-schools, kindergartens and child care centres
- Schools and other educational institutions, including school boarding facilities
- Detention centres
- Refuges or other residential facilities used by children
- Wards of public or private hospitals where children are patients
- Churches, clubs, associations, movements, societies, institutions or other bodies (including bodies of a cultural, recreational or sporting nature) having a significant child membership
- Religious organisations
- Entertainment venues where the clientele are primarily children
- Babysitting or child minding arranged by a commercial agency
- Fostering of children
- Transportation services for children
- Coaching or private tuition of children
- Direct provision of child health services
- Counselling or other support services for children
- Road crossing services for school children
- Sports coaching or sports lessons for children
- Gym or play facilities
- Photographic services, talent or beauty competitions and entertainment or party services provided for or arranged for children
- Overnight camps for children
- Education programs conducted outside of school

These settings should apply when the person is working with children, and not defined by the sector in which they work. For example, not all nurses, but nurses working with children.

2.4 A commitment to have compliance teams with sufficient resources to ensure that the checking of records is able to be done throughout Australia, not just in the state that the person is currently living, and that the team have access to information throughout the life of the WWCC card for each person so they can see if any charges, convictions or disciplinary matters have occurred once the card has been issued.

2.5 A clear understanding for employers and volunteer groups that rely on the WWCC card for their employees and volunteers, that the WWCC is only one aspect of minimising risk to children. Employers also need to have other strategies in place, including interviews, reference checks, policy development for a child-safe environment, and rigorous accountability requirements for responding to allegations.

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

3.1 Access to records from around Australia, not just within the state in which the person is working.

3.2 The inclusion of non-convictions in all states

3.3 For the WWCC to be transferrable from employer to employer within each state.

3.4 The ability for ongoing monitoring of an individual's ability for child related work. This allows for the administering authority to inform employers of relevant criminal offences committed during the validity of the card, or for relevant work-related disciplinary procedures to be taken.

4 How long should any clearance be granted for?

Currently each state operates differently with the clearance being valid anywhere from 2 – 5 years. Our understanding is that the checking process varies substantially from state to state with some states only carrying out a 'static' check for the person when they receive their WWCC, and other states carrying out a national police check when the person receives their WWCC, then carrying out ongoing monitoring during the validity of the check.

We would recommend that the clearance be valid for 3 years. However, it would be important as part of the review process, if a national WWCC was implemented, that a risk assessment is carried out to ensure that this length of time poses an acceptable level of risk. For example, if a 5 year check was implemented, the cost would be lower but there would be a possibility of an increase in the risk to children as part of the checking is only carried out when the WWCC card is issued.

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

It is our understanding that the time taken to complete a WWCC assessment varies greatly and that often, at the start of the school year, there is a delay in obtaining a completed check due to the number of applications being processed.

The issue of whether a person should be able to commence work before a check is completed is one of weighing up the right to work against the right of children to go to school in a safe environment. In the school setting, teachers are required to have a National Police Check as part of their teacher registration process prior to commencing work. This initial check would go some of the way to minimising the risk to children until the WWCC is completed. We would recommend that teachers be able to start work before the check is completed.

It is also important for schools to understand that the National Police Check and WWCC are only part of the strategy to minimise the risk to children. Schools also need to have other strategies in place, including interviews, reference checks, policy development for a child-safe environment, and rigorous accountability requirements for responding to allegations.

We would also recommend that the WWCC is transferrable from employer to employer, rather than the individual being required to apply for a new WWCC when they change jobs, as is required in some states.

For non-teaching staff in schools currently there is no legal requirement for them to have any other form of check prior to employment, apart from the current WWCC. A National Police Clearance may be required as part of the employment contract, that that is up to the individual employer. We would like to see this area tightened up so that it becomes a requirement for non-teaching staff to have either a WWCC or a National Police Clearance before they commence work.

6 How should child-related work be defined?

Employees and volunteers in the following settings would be required to have a WWCC if their usual duties involve, or are likely to involve, contact with children in a paid, unpaid or volunteer capacity. Contact includes any form of physical contact, oral communication, whether face to face, by telephone or otherwise electronic communication.

- Child Protection Services
- Children's Services
- Community Services
- Remand centres
- Youth residential centres
- Youth supervision units or youth justice centres
- Pre-schools, kindergartens and child care centres
- Schools and other educational institutions, including school boarding facilities
- Detention centres
- Refuges or other residential facilities used by children
- Wards of public or private hospitals where children are patients

- Churches, clubs, associations, movements, societies, institutions or other bodies (including bodies of a cultural, recreational or sporting nature) having a significant child membership
- Religious organisations
- Entertainment venues where the clientele are primarily children
- Babysitting or child minding arranged by a commercial agency
- Fostering of children
- Transportation services for children
- Coaching or private tuition of children
- Direct provision of child health services
- Counselling or other support services for children
- Road crossing services for school children
- Sports coaching or sports lessons for children
- Gym or play facilities
- Photographic services, talent or beauty competitions and entertainment or party services provided for or arranged for children
- Overnight camps for children
- Education programs conducted outside of school

These settings should apply when the person is working with children, and not defined by the sector in which they work. For example, not all nurses, but nurses working with children. It is important to ensure that the definitions are 'tight' otherwise it could become unmanageable.

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

We believe that the WWCC should be based on the setting in which the person is working, rather than their industry sector or role at work. The settings listed above in Q6 look at a comprehensive range of settings but only apply when the person's usual duties involve, or are likely to involve contact with children.

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

a) Living in the home of children in out-of-home care?

Our understanding is that this category relates to foster carers and relative carers where the state based child protection departments are also involved. We believe that it would be a requirement for these people to have a WWCC as they are in child related work and their usual duties involve contact with children.

However, other adults staying in the house that are not the foster parents or the relative carers would not be required to have a WWCC as they are not in child-related work. We believe that the reality of requiring these individuals to have a WWCC would be too difficult from a compliance perspective and that other risk minimisation avenues would be adequate eg. Child Protection

agencies are already working with the family so would be able to incorporate risk minimisation strategies, or there could be a requirement for them have to have a national police check.

b) Parent volunteers?

The UN Convention on the Rights of the Child specifically refers to the family as the fundamental group of society and the natural environment for the growth and well-being of its members, particularly children. Under the Convention, States are obliged to respect parents' primary responsibility for providing care and guidance for their children and to support parents in this regard, providing material assistance and support programmes. States are also obliged to prevent children from being separated from their families unless the separation is necessary for the child's best interests.

As a member of this fundamental group of society, parents should be encouraged to participate in their child's education rather than discouraged from volunteering when their child is involved in the activity. In a majority of cases, schools should still be encouraged to apply other risk minimisation strategies including supervision and the National Police Check.

However, there are certain times where parents should be required to obtain a WWCC such as overnight camps, working with other people's children, coaching, over a certain number of days each year that they are volunteering at the school, and for certain levels of contact and where supervision by school staff is not able to be maintained at all times.

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

Charges and convictions (including spent convictions) whether committed as an adult or a juvenile for:

- any sexual offence;
- any assault, ill treatment, neglect of, or psychological harm to a child;
- any violent offences involving children and drug related offences involving children;
- any pending charges or finalised charge that did not result in a conviction for a Class 1 or Class 2 offence (class 1 and 2 offences include various sexual offences against a child as well as offences such as murder, manslaughter, grievous bodily harm, indecent assault, making/viewing pornography and involvement in child prostitution and other offences).

and, disciplinary information from professional organisations associated with employees and volunteers related to the child-related work definition in question 6.

10 How should an appeal process operate?

The appeal process should operate completely independently of the WWCC process to ensure impartiality. An Appeals Tribunal within each state's court system would be the most appropriate approach.

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

In some states, certain convictions lead to an automatic barring from working with children. We believe that automatic barring would need to continue if a national WWCC was developed in certain circumstances, for example, a class one conviction (sexual penetration with a child under 13).

The main issue arising from automatic barring is one of social justice. If a national WWCC was developed, a process needs to be developed where the person, in some instances, has the right of reply through an independent tribunal. It would be important for the tribunal to be appropriately resourced to ensure that the final decision made weighed up the social justice issue with potential child protection issues.

12 The adequacy of the risk assessment process?

Due to the state based system currently in place, there are gaps in ensuring adequate risk minimisation for children in schools around Australia. A national WWCC could address many of these issues including access to interstate records, ongoing monitoring of an individual's ability for child-related work during the validity of the card, and making it easier for employees and volunteers to move jobs and states without increasing the risk to children.

While the WWCC check is an important aspect of the risk assessment process, it is important for employers to understand that it is just one of the many strategies that should be implemented to ensure that risk is minimised.

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 should have no relationship with each institution's processes. Each institution should take full responsibility for establishing their own clear processes for the inappropriate behaviour of staff in child-related positions.

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

Evaluation should include both quantitative and qualitative feedback, such as that listed below.

Quantitative

A comprehensive statistical analysis on what occurs when a check is done, including:

- what information comes in from interstate to show the value of being able to access information from around Australia;
- the length of time taken to finalise a WWCC and whether it has increased under a national system;
- the number of people now requiring a check due to the change in categories;

- the number of charges, convictions and disciplinary information received that would otherwise have not been collected in the previous state based system.

Qualitative

A survey to a selection of employers to obtain information on employees, volunteers and third party providers used by the employer who would be considered exempt from obtaining a WWCC eg. parent volunteers, visiting speakers, and an analysis of the potential risk involved.