



Submission to the Royal Commission into the Institutional
Responses to Child Sexual Abuse regarding the Working with Children Check (WWCC)
Issues Paper 1
September 2013

Provided by the
Youth Affairs Council of South Australia Inc.

The Youth Affairs Council of SA (YACSA)
was established by the youth sector in 1980
and is the peak body representing the views and interests
of young people and the youth sector in South Australia.

www.yacsa.com.au

Level 4, 182 Victoria Square
Tandanyangga
Adelaide SA 5000

GPO Box 2117
Adelaide SA 5001
ABN 21 294 698 466

P 08 8211 7546
F 08 8211 6653
E yacsa@yacsa.com.au

Introduction

The Youth Affairs Council of South Australia (YACSA) is the peak body in South Australia representing the interests of young people, youth workers, organisations and networks throughout the non-government youth sector. Policy positions are independent and not aligned with any political party or movement. YACSA's aim is to encourage young people, and those working with them and for them, to achieve meaningful improvements in the quality of young people's lives.

YACSA is pleased to have the opportunity to provide comment to the Royal Commission into Institutional Responses to Child Sexual Abuse regarding the Working with Children Check (WCCC). We believe that the protection of children is paramount and that all children have the right to feel and be safe at all times including when they come into contact with social services and social service staff and volunteers. Therefore we support the use of WCCCs for anyone working with children and young people.

Types of screening undertaken in Australia

There are two types of screening systems currently undertaken in Australia. Queensland, Victoria, Western Australia and the Northern Territory employ a certification system¹ in which individuals working in child related industries submit to a government department for 'certification' to work with children that lasts for a specified time (for example 3 years).

In South Australia, employer initiated police checks (required by Section 8b of the Children's Protection Act 1993 (SA)²) for those who have regular contact with children as part of their employment³, typically involve a static point in time check of police records from the moment of the application and into the background of the individual. This occurs once for each period of employment and lasts for as long as the person is employed with a singular agency.

The difference between a police check and the certification system employed in other jurisdictions is that the WCCC employed in other states is an ongoing assessment, undertaken by government of the suitability of an individual to work with children and young people. This collection of information can be attained from a variety of sources (and not just from police records) and can include a primary focus on specific offences⁴. YACSA argues that the WCCC is a more comprehensive system which consistently checks the appropriateness of an individual to work with children across the term of their employment.

¹ Australian Institute of Family Studies, 'Pre-employment screening: Working With Children Checks and Police Checks', Australian Institute of Family Studies, 2012.

² Children's Protection Act 1993 (SA).

³ National Crime Check, 'Working with children's checks in Australia', National Crime Check 2013.

⁴ Australian Institute of Family Studies, 'Pre-employment screening: Working with Children Checks and Police Checks', Australian Institute of Family Studies, 2012.

Response to the submission questions

1. Should there be a national WWCC?

YACSA is concerned that under the current incongruent state based criminal history check systems, children across the country experience different levels of protections while accessing services. The disparate systems in each state and territory make it difficult for organisations to accept the checks completed in other states and because there are no coordinated information pathways, if there is a change to the status of an individual, this can't be easily communicated across other jurisdictions⁵.

Therefore, YACSA strongly supports the establishment of a uniformed national scheme with a set of definitions, standard checks and requirements that are applicable in all states and territories. We believe that this is important in providing a less confusing, standardised and transferrable system across the country.

A standardised national system would provide the following:

- Greater protections for children accessing services, institutions and systems.
- The ability for people that work with children to have better career mobility, particularly across jurisdictions
- Negating the need for those who work across different states and territories to obtain various state based clearances
- Agreed definitions of what constitutes child-related work or child related sectors.
- Standardised checks, information, requirements and protections.
- Information regarding a change to an individual's suitability status that would easily be communicated across jurisdictions.

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

The strength of a national system is in the uniformed requirements, obligations and protections that it provides. More specifically, we recommend the features of a national scheme include the following:

- The WWCC should be transferable across employers (so no need to obtain a new clearance for each employer) within a specified time frame.
- Standard definitions, including child related work, child related sectors and child related roles
- Robust and reliable screening procedures
- Standard requirements for employers, such as ensuring that all staff who work in child related roles have a valid WWCC
- Standard requirements for individuals, such as informing the screening authority of changes to employment or changes to circumstances (including any relevant incidences) within a specified time frame

⁵ FAHCSIA, 'Position Paper: Toward a Nationally Consistent Approach to Working with Children Checks', Department of Families, Housing, Community Services and Indigenous Affairs, 2011

- Ongoing criminal history checking, compliance checking and reporting
- Standard follow up mechanism (how often you need to renew the WWCC)
- Standard information sources (Where the information regarding criminal histories is gathered from)
- Consistency across jurisdictions of the type of information that is considered relevant
- Strong awareness and support of the system by child related sectors and workers in child related roles⁶.

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

YACSA strongly advocates for the implementation of a standardised national scheme for WWCCs, however, if this did not occur, YACSA would support the development of a set of minimum requirements for WWCCs that is agreed to by the states and territories.

The features of this set of minimum requirements would reflect many of those already highlighted as important in a national scheme including;

- Sharing of information across jurisdictions
- Consistency and agreement across jurisdictions of the type of information that is considered relevant
- Consistency in decision making
- Ensuring the process of criminal history checking is ongoing and not one static report obtained at the beginning of employment in a child related sector/role.

While this would offer a more uniformed response by the states and territories and offer greater protections for children, YACSA suggests a national standardised system would be the preferred and more appropriate option.

4. How long should any clearance be granted for?

If there is a system in place set to consistently check the individual's suitability to work with children and report any changes (such as relevant charges or convictions) in a timely manner, then the length of time that a WWCC is valid for should be at least 3 years.

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

As YACSA is advocating for a WWCC that is transferable across employers over a three year period, only new workers to the sector or former workers whose clearance has lapsed would need to obtain a WWCC before commencing work.

As the primary purpose for the WWCC system and police criminal history checks is to offer protections for children accessing services, YACSA recommend that someone subject to a WWCC in a child-related sector should *not* be able to work with children until their WWCC is

⁶ FAHCSIA, 'Position Paper: Toward a Nationally Consistent Approach to Working with Children Checks', Department of Families, Housing, Community Services and Indigenous Affairs, 2011

complete and they receive clearance. However, for an individual to obtain a WWCC quickly, the WWCC processing system needs to be properly resourced to enable WWCCs to be processed expeditiously (within a fortnight). Potential employees in child related sectors should not be disadvantaged by having to wait an inordinate and unfair amount of time to receive their clearance.

6. How should child-related work be defined?

For the purposes of deciding who needs to undertake a WWCC, child related work can be defined in the following way;

[Child-related work can be defined as] *paid or voluntary work within occupations where regular contact/engagement with children occurs.*

This engagement also refers to non-physical contact in online spaces. Further, a list of child related positions and industries could be developed as part of the national system to guide individuals and organisations in who needs to undertake screening.

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

For the purposes of deciding what sectors are child related, such sectors can be defined in the following way;

[A child-related sector can be defined as] *one in which the agencies, practitioners and volunteers, as part of their usual duties, either engage or will likely engage with children.*

Again, a list of child related sectors could be developed as part of the national system to guide individuals and organisations in who needs to undertake screening.

YACSA suggest that child related roles should reflect the definitions for child related work and child related sectors (provided previously) and be defined as;

[A child-related role can be defined as] *one which requires child related work within a child related sector.*

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

It is worth pointing out that exemptions to the requirement to undertake criminal history screening varies between jurisdictions. In South Australia, those who are exempted from undertaking a criminal history check are identified within the Children's Protection

Regulations Act 2010 (SA)⁷. This section of the Act highlights a range of exempted individuals including those who are already bound by the standards of professional associations such as teachers, and public servants such as police officers. YACSA suggests that those individuals and professions that are exempted under legislation including those that may be exempted under a national piece of legislation should be considered carefully with the safety of children in mind.

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

YACSA argues that with the protection of all children in mind, it is important that all adults who reside within the homes of children in out-of-home care should be subject to a WWCC.

b. parent volunteers?

Again YACSA maintains that with the protection of all children in mind anyone working as a parent volunteer should be subject to a WWCC. In order to ensure that this requirement is not so cumbersome as to dissuade parents from volunteering, the system that is in place must be resourced to process WWCCs both quickly and efficiently.

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

YACSA recommends that the following records should be included in a WWCC:

- Criminal history: including a check for relevant charges and convictions.
- Employment history – such as any records kept while employed, relevant disciplinary procedures/findings and information that is gained from any reporting bodies.
- Information from Courts: such as the findings of guilt
- Disciplinary actions/findings from professional associations

YACSA does not support the use of juvenile records within WWCCs. The juvenile justice system is based on the premise that young people sometimes make mistakes and that these mistakes are learned from. Holding an adult responsible for a juvenile criminal record would be inappropriate in most circumstances⁸.

10. How should an appeal process operate?

YACSA suggests that appeals should be dealt with in the form of a review which studies the particulars of the appeal including all of the evidence which lead to the decision. The review could be undertaken in each state by a specialist panel whose job it is to hear and review appeals and complaints regarding the WWCC process. The panel would work most effectively as an independent entity reporting decisions to the government department that has carriage over the WWCC process.

⁷ Children's Protection Regulations Act 2010 (SA).

⁸ Commissioner of Victims' Rights, 'The juvenile justice system', Government of South Australia 2012,

To aid this process, the rules for making decisions by the regulatory body need to be clear, with outcomes that are consistent within each jurisdiction.

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

YACSA supports the automatic barring of a person who might work with children if that automatic barring is due to previous convictions/disciplinary action relating to relevant offences. However, the criminal history/disciplinary action information that leads to automatic barring should be consistently applied across the states and territories where a national scheme isn't in place.

12. The adequacy of the risk assessment process.

The risk assessment process is central to a functioning and effective WWCC. The risk management process must be consistent across all jurisdictions to ensure common standards in the type of information that is collected and the relevance of information that will be used to determine an individuals' suitability to work with children.

13. To what degrees should the WWCC minimise the need for institutions to establish clear processes for responding to inappropriate behaviour of staff in child related positions.

YACSA recommends that the existence of the WWCC, or the a national WWCC system should not affect or decrease the need for institutions to establish, monitor or review processes for responding to inappropriate behaviour of staff or volunteers in child related positions. In the same way that organisations currently undertake internal processes to respond to inappropriate behaviour of staff in child related positions, a national WWCC process would in no way absolve organisations of their obligations to protect children and provide appropriate and safe services.

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

YACSA contends that a comprehensive evaluation of a WWCC system that is currently being undertaken in Australia takes place to determine its effectiveness in a variety of ways. The evaluation should review:

- The costs of the system
- The efficiency of the application process
- Accessibility of the system
- The ability of the system to pick up changes in the personal circumstances of individuals with a WWCC
- How effectiveness is the information exchange across jurisdictions
- Complaints and grievance processes including the process of appeals.

The results of this evaluation will guide the way in which a national system is evaluated and how the results of that evaluation informs any changes or improvements to the system.

In conclusion

YACSA strongly recommends that a national WWCC be established to provide a uniformed process across all jurisdictions for the protection of children accessing services. This process must provide standard checks, standard information, standard processes and standard outcomes across the country.

But for the system to function consistently and effectively we strongly recommend that a national process needs to be legislated and adequately resourced to be able to ensure the processing and monitoring of WWCCs are completed in a timely manner.

YACSA strongly suggests that with any national change in criminal history check for child related roles and sectors, government must embark on a comprehensive awareness campaign of the changes, the obligations and the paths of communication.

YACSA believe that the protection of children is paramount therefore we support the use of a national system for WWCCs for anyone working with children and young people.

Bibliography

Australian Institute of Family Studies, 'Pre-employment screening: Working With Children Checks and Police Checks', Australian Institute of Family Studies, 2012, <http://www.aifs.gov.au/cfca/pubs/factsheets/a141887/>, viewed 29 August 2013.

Children's Protection Regulations Act 2010 (SA).

Commissioner of Victims' Rights, 'The juvenile justice system', Government of South Australia 2012, http://www.voc.sa.gov.au/Information/The_legal_process/The_juvenile_justice_system.asp, viewed 4 September 2013

FAHCSIA, 'Position Paper: Toward a Nationally Consistent Approach to Working with Children Checks', Department of Families, Housing, Community Services and Indigenous Affairs, 2011 http://www.fahcsia.gov.au/sites/default/files/documents/position_paper.pdf, viewed 4 September 2013.

National Crime Check, 'Working with children's checks in Australia', National Crime Check 2013 https://www.nationalcrimecheck.com.au/police-checks-individuals/resources/working_with_children_checks_in_australia#h3, viewed 2 September 2013.