



### **WORKING WITH CHILDREN CHECK SUBMISSION**

#### **INTRODUCTION**

This paper responds on behalf of the Anglican Church of Australia (other than Anglicare Australia and Anglican Schools Australia) to the questions in Issues Paper 1 entitled Working With Children Check issued by the Royal Commission into Institutional Responses to Child Sexual Abuse on 17 June 2013.

#### **SUBMISSIONS**

##### **1. Should there be a national WWCC?**

- 1.1. There should be a national WWCC. Currently, not all States and Territories have systems for WWCC and there are material differences in approach and content between the systems which do exist. This makes it difficult for a national organisation operating in more than one State or Territory to institute a single consistent system. This is not optimal for the protection of the children with whom they work or for the confidence of their families. These inter-jurisdictional differences add to the administrative complexity and cost burden of relevant organisations. Consequently, steps may be overlooked or poorly performed.
- 1.2. A national system would facilitate consistency and completeness of approach to the protection of children. This must improve the outcomes for child safety.
- 1.3. Different models which have been adopted for national schemes in the past could be used for WWCC. For example, there may be Federal legislation, uniform State and Territory legislation or complementary State and Territory legislation.
- 1.4. A national system will allow for efficiencies for national organisations and individuals in having one system, instead of several systems, to administer. It will also free resources to enable national organisations and individuals to provide better services and protection for children.

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

Seven features should be part of the national scheme:

###### **2.1. Scope of checks**

Checks should be made for:

- 2.1.1 convictions (whether recorded or not) including spent convictions and convictions of juveniles for specified criminal offences including the following:
- any sexual offence;
  - any assault, ill treatment, neglect of, or psychological harm to a child;
  - any offences involving violence;
  - drug related offences;
  - child pornography;
  - driving offences involving danger to persons;
- 2.1.2 charges of the offences in paragraph 2.1.1;
- 2.1.3 apprehended violence orders;
- 2.1.4 completed disciplinary proceedings (it will be necessary to ensure that government and private organisations inform the applicable WWCC authorities of completed disciplinary proceedings);
- 2.1.5. court orders under mental health legislation.

## **2.2. Categories of persons to undergo WWCC**

Checks should be made in respect of all officeholders, employees and volunteers including children whose usual duties/functions involve, or are likely to involve, child-related work as defined in Section 6 below. Many clergy of the Anglican Church of Australia are officeholders and not employees. A WWCC should extend to Australian organisations sending Australian citizens and residents overseas to engage in child-related work.

Consideration should be given to allowing employers who carry on activities for children at their own expense to have an office holder, employee or volunteer checked even though their usual duties/functions do not involve, or likely to involve, child-related work (such as the members of the governing body).

## **2.3 Duration**

A WWCC should be unlimited in time, unless or until a person is disqualified or has notified the issuing authority that they wish to relinquish their clearance, if it is issued as part of a system applicable to officeholders, employees and volunteers which includes the following features:

- an issuing authority issues a permission to work with children to an individual, by card or otherwise;
- the issuing authority maintains an up-to-date record for each individual;
- before appointing an individual to a relevant role, an organisation checks with the issuing authority;
- upon appointing the individual to a role, the organisation registers that appointment with the issuing authority;
- the issuing authority notifies the individual and each registered organisation of any change to the record of the individual as soon as practicable after relevant information becomes known.

In such a system of continuous disclosure and registration, it is unnecessary for an individual's permission to work with children to be limited to a fixed term.

If a WWCC is to be limited in time, then the appropriate time is three years. A longer period is too long because significant disqualifying events are more likely to occur in a longer period. Shorter periods are likely to be too burdensome, particularly for volunteers.

#### **2.4 Recognition throughout Australia**

It is essential that permission to work with children be recognised throughout Australia, to achieve the consistency and efficiency contended for in paragraphs 1.1 to 1.4 above.

#### **2.5 Cost**

No fee should be charged in respect of volunteers. A very significant proportion of volunteers who work with children are themselves young people such as students who do not earn incomes. Other volunteers may be unemployed or pensioners. It is a disincentive to such people to require them to pay a fee for a WWCC. The organisations in which they do their voluntary work are usually not well resourced to meet the cost of regular WWCCs.

#### **2.6 Speed**

It is essential that the processes for:

- collecting relevant information concerning applicants,
- making decisions to determine applications;
- notifying decisions to applicants;
- and notifying updates to applicants and relevant organisations

be prompt and streamlined so that children are protected as much as possible. Electronic forms of identity confirmation should be explored.

#### **2.7 Proper resources**

The system for WWCCs must be properly resourced to maintain confidence in the system.

### **3. If there is no national scheme, should there be minimum requirements for each State and Territory scheme?**

If no national scheme is established, a State and Territory scheme should have the seven features identified in paragraphs 2.1 to 2.7 above.

### **4. How long should any clearance be granted for?**

See 2.3 above.

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

As a general rule a person should not be able to commence work before a WWCC is completed. There should be exceptions where:

- 5.1** a person is in a low-risk activity or role, that is, one in which they are supervised and not involved in one-to-one contact with children, for a limited period whilst making application for a WWCC; and
- 5.2** a person is a short-term replacement in a low-risk activity or role as described in paragraph 5.1.

Normally these exceptions should apply where a person has applied for a WWCC. However, the requirement of having applied for a WWCC should not apply in the situations referred to in paragraphs 5.1 and 5.2 in circumstances of necessity (such as where in illness or otherwise persons are unavailable to undertake a low risk activity or role).

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

Officeholders, employees and volunteers should be required to undergo a WWCC if their usual duties/functions 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 or by telephone or other electronic means; and
- written communication, whether on paper or by electronic means such as email, SMS or social media.

Those who are involved in making decisions on a day to day basis about policies and procedures relating to child-related work, and those involved in disciplinary processes for responding to inappropriate behaviour of staff (officeholders, employees and volunteers) in child-related work should undergo WWCC to ensure the integrity of the policies and procedures and the disciplinary processes.

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

The primary requirement for a person to undergo a WWCC is that the person is working with children. The requirement for a WWCC should not be defined by the sector in which they work.

It is important to ensure that the definitions of settings in which WWCCs are required are precise so that the system does not become unmanageable.

Ministers of religion (whether ordained or accredited by a religious organisation) should be deemed to be in child-related work even though working with children may not form part of their usual duties/functions. This is because the status of clergy potentially puts them in a position where they will have to work with children without notice or formal requirement to do so.

Ministers of religion who do not hold any permission from a relevant authority of the applicable religious organisation should be exempt. In the Anglican Church of Australia, the exempted category would encompass retired or other clergy who do not hold any licence or other form of permission from the Bishop of the relevant Diocese and are not involved in child-related work.

Consideration should be given to deeming other categories of persons to be involved in child-related work where persons in those categories have potential contact with children although it is not part of their usual duties/functions.

**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?**

Adults living in the dwellings of children in out-of-home care should have a WWCC.

There is evidence of the increasing incidence of children abusing other children. A difficulty with requiring a WWCC for children living in the homes of other children in out-of-home care is that children will rarely have a criminal record. However, relevant information will be known by the relevant child protection agency. Consideration should be given to whether any such information can and should be made available for a WWCC.

**b. Parent volunteers?**

- i. A WWCC should be required for high risk activities, that is, where there is opportunity for one-to-one contact with children (such as overnight camping, sport coaching or management, providing transport).
- ii. A WWCC should not be required for low risk activities as defined in paragraph 5.1 above.

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

See 2 (a) and 8 (a).

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

There should be an appeal process which provides:

- a. to both applicants and employers/organisations:
  - i. administrative review on merits through Federal or State/Territory administrative tribunals;
  - ii. with appeal on questions of law;
- b. to excluded persons (those automatically barred from working with children), a right of review after a substantial period.

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

Conduct resulting in automatic barring should be clearly defined. Within this category there will be some conduct which should permanently disqualify a person from working with children.

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

There should be a clear recognition that a WWCC will be only part of an effective risk assessment process. That process will include other elements such as personal interviews, referee checks including checks with previous employers/organisations, other relevant information such as National Register check for which provision is made in the Anglican Church of Australia, and complete psychological assessment for ordination candidates. Education will be necessary to ensure that organisations understand that a WWCC is only the first stage of an effective risk assessment process.

**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?**

A WWCC is only one tool to assess risk. The issue of a WWCC will not avoid the need for a comprehensive system to assess risk when making appointments or for an effective disciplinary system for responding to inappropriate behaviour of staff or volunteers working in child-related positions.

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

Evaluation and monitoring the effectiveness of the system for the WWCC is essential. It should include qualitative and quantitative research as well as a regular audit. The evaluation/monitoring body or bodies (e.g. Australian Institute of Family Studies for the research component) should be independent of the agency issuing WWCCs. It will be important that this process is adequately funded. One way of assessing effectiveness of WWCCs is to track and compare the incidence of use of WWCCs and the incidence of child sexual abuse over time, both retrospectively (to the extent possible) and prospectively.

Yours sincerely,



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