

Response to the Royal Commission
into Institutional Responses to Child Sexual Abuse
Issues Paper 1 – Working With Children Check
by
The Lutheran Church of Australia

Introduction

The Lutheran Church of Australia welcomes the opportunity to contribute a response to the discussion about a Working With Children Check.

The Lutheran Church of Australia engages with children in a variety of ways – through its family ministry programs, Sunday Schools, schools, services to people on low incomes, foster care and other family services. We believe that it is important that children are safe in their contacts with our church. We are committed to doing what we can to ensure that they are protected from all forms of harm and abuse, including sexual abuse.

Background

The Lutheran Church of Australia has a presence in all states and territories. It is made up of 475 congregations and 82 preaching places and has over 52,000 baptised members. A significant number of the members of the church are located in indigenous communities on traditional lands. These congregations have indigenous pastors and evangelists working in them.

The church is divided into five 'districts': Western Australia, South Australia/Northern Territory, Victoria/Tasmania, New South Wales/Australian Capital Territory and Queensland. The head of each district is a Bishop (prior to April 2013 the title was President). There is also a Bishop who is the national head of the church.

The Lutheran church is actively involved with other Christian churches at a local, district and national level through the National Council of Christian Churches in Australia and its related state bodies.

There are 86 Lutheran schools throughout Australia with a student population of over 38,000. In addition, there are 59 kindergartens and early childhood centres with over 4,000 children in attendance. There are also 44 Lutheran aged care services caring for 4,000 residents, primarily in Queensland and South Australia, but also New South Wales and Victoria. There are family and community services provided by Lutheran Community Care in Queensland and South Australia. Australian Lutheran World Service provides overseas aid.

The Lutheran Church of Australia recognizes the need to protect vulnerable people and embraces the regulation that has come to be necessary. During the 1990's the church developed and implemented its *Safe Place Policy* in response to the growing concerns about sexual abuse and the misuse of power within churches. The policy has been reviewed and refined in the intervening years. It provides a range of measures including police checks for staff and volunteers and training about the policy which is provided for staff and volunteers as well as for the worshipping community. Information is available about the policy to all who use Lutheran services. Where there are requirements for accreditation (eg in aged care facilities and schools), these are implemented.

The procedures to implement the *Safe Place Policy* contain guidelines for the processes required to address complaints about sexual harassment or abuse of adults within the church setting.

The Lutheran Church of Australia also has a *ChildSafe* protocol which is a safety management system for children. This includes the mandate for a Working With Children Check (or as required by state legislation), a code of practice for child safety, training and incident management and response.

Each District has responsibility for implementing the *Safe Place Policy* within its jurisdiction, and there is a national Professional Standards Unit to provide support and ensure consistent application of Lutheran Church of Australia policy and procedures across the Church.

1. Should there be a national Working With Children Check?

We strongly support the introduction of a national Working With Children Check. The current system where each state and territory has its own process is complicated to administer on a national basis in today's mobile society. It has however provided an opportunity for a variety of systems to be tested and it is appropriate that a national system which incorporates the best of what is now in place be developed.

We are aware that this has been on the political agenda for some time, but that consensus has not been able to be reached about what is best for our country – and for our children and vulnerable people. It is important that the common good rather than local interests are served and we would encourage that one outcome of this Royal Commission is a commitment to a national process.

Recommendation 1: That a national Working With Children Check system be developed incorporating the best aspects of the current systems.

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

The standard needs to be consistent and to cover both paid staff and volunteers. Some of the features from current processes that we support are:

- The Australian Capital Territory has a Working with Vulnerable People check. A person is defined as being vulnerable 'if they are a child under the age of 18 years or an adult who is experiencing disadvantage and accesses a regulated activity or service related to the disadvantage.' The reason that we support this is because police checks are required for those who work with the aged and with people with disabilities. This would be much simpler to administer, particularly when a person engages with more than one group of vulnerable people.
- In Queensland, when a Blue Card holder is charged with and convicted of a child related offence, the organization employing the person or for whom the person volunteers is advised.
- In South Australia, for example, the child protection database is consulted when a relevant check is undertaken.
- The ACT legislation requires that an applicant disclose if they have been convicted of or found guilty of a relevant offence in Australia or overseas. Anyone who is registered with the Working With Vulnerable People check must also advise Office of Regulatory Services if they are charged, convicted or found guilty of a relevant offence while registered, including offences committed overseas.

We would suggest that offences that preclude the person from working with children/vulnerable people include those of a sexual nature and those involving violence and/or drugs or any major criminal offence.

Undertaking a check is not the only aspect of a national scheme. It is important that there is a training component included which addresses for example:

- Recognising abuse
- Misuse of power
- Raising awareness of grooming behavior
- Recognising and responding to suspected abuse

A further component of the process is the development of protocols for sharing information or information sharing guidelines. There are informal processes in place, but there needs to be a formal process that focuses on keeping people safe rather than maintaining secrets.

We are concerned that there is no adequate system in place to protect our indigenous children. This is something with which our church has struggled since the inception of our *Safe Place Policy*. We are aware of the unacceptable level of sexual abuse as well as other forms of abuse within indigenous communities, but we do not have the resources to be able to respectfully consult with our Aboriginal and Torres Strait Islander sisters and brothers about this and to work with them to develop appropriate policies, procedures and training. We believe that other churches share this concern with us.

Recommendation 2: That there be a national Working With Vulnerable People Check.

Recommendation 3: That the check includes reference to child protection data bases; a central register of those who have been checked and roles with which they are affiliated; applicants are required to declare relevant sexual offences which they have committed while overseas.

Recommendation 4: That there be a training component to the check which includes: recognising abuse; misuse of power; grooming behavior; recognising and responding to suspected abuse.

Recommendation 5: That information sharing guidelines be prepared and implemented.

Recommendation 6: That resources are made available for consultation with indigenous communities and development of appropriate policies, procedures and training.

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

If there is no national scheme, the factors listed above need to be addressed ie police check, child protection database check, consideration given to time lived overseas and a training component. It would be helpful if there were federal guidelines supported with federal legislation.

Recommendation 7: That if there is no national scheme, national guidelines are developed and supported by legislation.

4. How long should any clearance be granted for?

We support the idea that a clearance should be granted for a maximum of 3 years. For teachers, the clearance process should be tied to Teacher Registration application and renewal.

There must be a system to notify should a person who has been checked be accused of or commit an offence during that time – perhaps some manner in which he/she could be suspended as having an active clearance until any Court proceedings are completed. Of course, a clearance would be withdrawn if the holder were found guilty of an offence.

Recommendation 8: That a clearance be granted for a maximum of 3 years.

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

One of the dilemmas in undertaking such checks can be the time it takes for the check to be completed. We are aware that currently in at least two states there can be up to an 8 week wait for a result. This is unacceptable – as it is crucial that the check be completed prior to the person taking up their role. If a person is appointed to a position, they need to be able to commence duties within a reasonable time frame. It is not acceptable practice for them to commence working and then be told that they have to leave if they do not have a successful outcome from the checking process. A key performance indicator for any system has to be the time taken for the check to be completed.

Recommendation 9: That an efficient and timely checking process be implemented.

Recommendation 10: That a person is not permitted to commence work until the check is completed.

6. How should child-related work be defined?

There are several components to child-related work:

- Work which involves regular contact (defined as either continuous, or periodic at frequent intervals) with children or working in close proximity to children on a regular basis, unless the contact or work is directly supervised at all times;
- Access to records of a kind prescribed by regulation to children;
- Supervision or management of persons in positions requiring or involving regular contact with children or working in close proximity to children on a regular basis;
- Any activity in which children are engaged, either by themselves or attending with parents or guardians.

Recommendation 11: That child-related work includes not only work where there is regular contact with children, but also where the worker has access to children's records, where the worker is supervising or managing those who work with children and working in activities in which children participate.

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

- Child related sectors are those whose focus is children – such as schools, preschools, and child care centres; and
- Child-related sectors where there is significant interaction with children – such as churches, organizations, clubs and associations that provide activities for children such as Sunday Schools, sporting groups, surf living saving clubs, scouts.

Child related roles are those that are needed for child related work to be undertaken and for child related sectors to function. They include:

- Any role within the community where a person is with children as part of their paid or volunteer work – eg Father Christmases engaged by stores or by any organization, those supporting extra-curricular school activities. Decision making bodies for activities relating to children – school boards, pre-school boards, committees – all those who make decisions about and for children have a child-related role and should undertake a Working With Children Check prior to commencing that role.

Recommendation 12: Child related sectors are those that focus on children.

Recommendation 13: Child related roles are those that are needed for child related work to be undertaken and for child related sectors to function including governance roles.

8. Are current exemptions for a Working With Children Check adequate or appropriate – in particular, should a Working With Children Check apply to those:

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

There should not be exemptions for adults living in the homes of children in out of home care. They are necessary for the safety and wellbeing of the child in care and also to protect the adults in the caregiving home.

Recommendation 14: There should not be exemptions for adults living in the homes of children in out of home care.

b. parent volunteers?

This is a vexed issue. Parent volunteers are an integral part of many child related activities, and they are a precious resource in promoting healthy lifestyles for our children. There needs to be a balance between ensuring that children are safe and protected and being completely risk averse. We would suggest that if a parent has irregular/one off and/or brief contact with children in connection with a child related activity, that an exemption could be considered. If however the contact is regular and/or prolonged and/or the parent is alone with children other than their own, then a check needs to be undertaken.

Nb: An organization is not responsible for the private arrangements that families make. A Working With Children Check is only required when an organization is responsible for making the arrangements.

Recommendation 15: That if contact with children is regular and/or prolonged and/or the parent is alone with children other than their own, then a check needs to be undertaken.

Recommendation 16: That a check is only required when an organization is responsible for making arrangements for child related activities.

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

Traditionally, juvenile records have not been included – they may be taken into account when sentencing an adult who has continued to offend as an adult but the principle is that children act irresponsibly and this should not affect their whole life if they learn from their mistakes. However, we would suggest that if an 18 - 21 year old needs a check, then consideration should be given to their records for the prior 3 years.

As stated above, police records as well as child protection data bases should be included in the check.

Recommendation 17: That police records and child protection data be accessed for a check.

Recommendation 18: That for 18 - 21 year olds, records for the previous 3 years be considered.

10. How should an appeal process operate?

The reasons for instigating an appeal process would be to introduce flexibility and to allow matters to be considered in their context. Factors that are contra-indications for an appeal process are the need for consistency, to centralize the decision making process, and to take the pressure off those organisations that do not have the infrastructure or expertise to handle an appeal process. The aim of Working With Children Checks is to protect children and to mitigate risks. Given the above, we do not support the concept of an appeal.

Recommendation 19: We do not support the concept of an appeal process.

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

It is acknowledged that people who are sexual predators are very unlikely to be 'cured'. To ensure the safety of our children, a person who has been convicted of abusing children must always be subject to some form of management plan to ensure that children can never be harmed again.

It is not unknown for a person to be falsely accused of sexual harassment or abuse. Once it is known that someone has been accused of such behaviour, the person is labeled within their community and they will never be able to clear their name. This is a terrible load to be borne – if the person is innocent.

It can be seen as inconsistent that we prevent sex offenders from having contact with children, yet we do not limit contact between other serious offenders and children.

Recommendation 20: That a management plan needs to be in place and implemented when known sex offenders are in places where there may be children eg church worship services.

12. The adequacy of the risk assessment process.

Currently the risk assessment process is not consistent. In those states that do not issue a Working With Children card, it can be up to the individual organization to decide whether a person is suitable to work with children or not. There is the facility to allow for monitoring of child abuse training, child protection policies and procedures within non-government organisations, but this may or may not happen. In professions that are regulated such as teaching, child care and social work there is better monitoring of conformity to requirements.

We suggest that there should be guidance by government on the procedure for conducting risk assessments particularly to assist those organisations that are working with children where there are not many resources or the skills and knowledge to develop and implement their own risk management strategies. This would of course lead to greater consistency in implementing them.

Recommendation 21: That there should be guidance by government on the procedure for conducting risk assessments to assist those organisations that are working with children where there are not many resources or the skills and knowledge to develop and implement their own risk management strategies.

13. To what degree should the Working With Children Check minimise the need for institutions to establish clear processes for responding to inappropriate behaviour of staff in child- related positions?

The Working With Children Check provides information on known risks where suspect or criminal behavior has been identified. The most prolific pedophiles function within the community for years without being identified. They have been in high office such as judges or school principals, and would have been subjected to police checks, but until they are caught there is no record of their activities.

That is why community education about grooming behavior, how children respond to abuse and how to report such behavior is an integral part of any system. The Working With Children Check is only one part of the process. Such education is part of a proactive response to keeping our children and vulnerable people safe. The education, like the checks, needs to be undertaken on a regular basis and should involve paid staff, volunteer staff, as well as those people who are using the system (including children) or who are members of the organization.

It is also essential that institutions develop and maintain an appropriate and responsive reporting mechanism.

Recommendation 22: That there is regular community education available about grooming behavior, how children respond to abuse and how to report such behavior.

Recommendation 23: That institutions develop and maintain an appropriate and responsive reporting mechanism.

14. How should the effectiveness of any existing or proposed Working With Children Check be evaluated and / or monitored?

There are several key performance indicators for an effective system. They are that the system is:

- Centralised – a standardised approach throughout Australia
- Fast – a one to two week turnaround should be the standard. Waiting 8 weeks for the results of a check is not acceptable
- Cost effective – volunteers should not have to pay
- Portable – once a check has been undertaken, it should be recognised within the community and throughout Australia; people should not have to undertake multiple checks.
- Responsive – if a checked person offends, those who have accepted the check should be notified
- Accurate – the check should ensure that known offenders are not able to prey on vulnerable people
- Versatile – the check should not just be for working with children but also for working with other vulnerable people.

Recommendation 24: That key performance indicators are developed including that the Working With Children Check system is: centralised, fast, cost effective, portable, responsive, accurate and versatile.

Conclusion

Once again, thank you for the opportunity to contribute to this discussion. It is important to keep our children and vulnerable people safe from sexual predators. As a church we are committed to this outcome.

We encourage you in your challenging task and assure you of our prayerful support of your work as you discuss these matters, and also as you hear the stories of those who have been hurt by institutions such as ours.

Should you require further information from us, please contact the Executive Officer, Peter Schirmer by email on peter.schirmer@lca.org.au or by phone on 0409 156 346

Submitted on behalf of the Lutheran Church of Australia

A handwritten signature in black ink, appearing to read 'P Schirmer', with a long, sweeping horizontal line extending to the right.

Peter Schirmer
Executive Officer of the Church

Recommendations

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