



## Royal Commission into Institutional Responses to Child Sexual Abuse Issues Paper 1 – Working with Children Check

Submission by ACT Children & Young People Commissioner  
August 2013

### General comments – Important components of a pre-employment screening system

#### 1. Wider organisational strategies to create child safe environments

On its own, no system of ‘working with children checks’ can ensure children and vulnerable adults will be completely safe from harm. Pre-employment screening should be promoted as one part of a broader approach to create safe environments for children and vulnerable adults.

The wider organisational strategies necessary to protect children include:

- policies and procedures (child safe policy, risk management, responding to incidents and concerns, complaints management, privacy and data collection),
- staff training on child safety awareness,
- human resource management (codes of conduct, rigorous recruitment and selection processes, clear job descriptions and duty statements, effective staff supervision and performance management), and
- enabling the participation of children (mechanisms for children to express their views, and to be involved in planning, policy development and decision making within an organisation).

Organisations such as the NSW Children & Young People Commission and the Victoria Child Safety Commissioner have for several years produced publications and training courses to assist agencies to build their capacity to maintain child safe environments. Recently I conducted a pilot training program in the ACT, providing Child Safe Child Friendly training to local community organisations. An external evaluation demonstrated the value and success of the pilot.

Any attempt to progress towards national harmonisation of ‘working with children checks’ should include widespread promotion of such resources to organisations working with children and vulnerable adults.

#### 2. Evidence based approach

There are different statutory pre-employment screening processes in each Australian state and territory (different groups of employees and volunteers are included, different background information is examined, using different risk assessment tools). The significant variation between each system suggests that there is not a clear basis of evidence from which to identify a best practice model.

Any attempt to progress towards national harmonisation of ‘working with children checks’ should first involve the development of an evidence base which establishes the proven elements of an effective screening process. For example:

- what type of background information contributes to an accurate indication of risk,
- what assessment tool(s) are effective in identifying risk, and
- which categories of employees and volunteers need to be screened.

In this Issues Paper, the Royal Commission has invited the community to contribute opinions on these matters. While public discussion is important, ideally such questions would be resolved by research evidence.

### **3. Pre-employment screening to protect vulnerable adults**

The pre-employment screening system legislated in the Australian Capital Territory includes employees and volunteers working with children, as well as those working with vulnerable adults (people with disability, people with mental illness, people accessing drug and alcohol services, people living in homelessness, victims of crime, people in correctional centres, migrants, refugees and asylum seekers).

Any attempt to progress towards national harmonisation of ‘working with children checks’ should include consideration of whether it is appropriate to expand coverage to employees and volunteers working with vulnerable adults.

### **4. Community education – completing the screening process does not demonstrate a person is ‘safe’**

A national discussion of ‘working with children’ checks should challenge any community perception that, because a person has completed a pre-employment screening process, they are therefore ‘safe’ to work with children.

For example, the ACT Working with Vulnerable People Check framework uses the language of ‘acceptable level of risk’ and ‘registration’, rather than ‘approval’ or ‘clearance’. This language reinforces to employer organisations that WWVPC registration does not mean their staff and volunteers pose no risk to clients. The organisation must still undertake a continuous process of reviewing and strengthening its policies and procedures to create a safe environment for children and vulnerable adults (as discussed above).

### **5. Procedural fairness**

In any discussion of national harmonisation of pre-employment screening, the paramount consideration must be the wellbeing of children and vulnerable adults, and their protection from harm. However, there are additional considerations. While a system of ‘working with children checks’ should be effective in identifying risk, it must also provide proper safeguards to protect the rights of potential employees and volunteers.

People subjected to pre-employment screening must be provided the opportunity to:

- know what information could be used to declare them ineligible to work with children or vulnerable adults,
- know what information is held about them,
- have input into the decision making process,
- provide information and references if they believe information used in the screening process is unfair or inaccurate,
- be informed of any proposed decision to be made about them,
- receive reasons for the proposed decision, and
- apply for the decision to be independently reviewed.

Additionally, people’s privacy must be protected. There must be safeguards surrounding the collection, retention, use and disclosure of personal information.

## **6. Deciding which records should be used for background checking and risk assessment purposes**

'Risk assessment should be based on information which has been tested, validated or assessed in some way, either through the courts, policing systems, disciplinary panels or other formal processes.'<sup>1</sup>

In addition to criminal history information, relevant categories of information include non conviction records such as:

- domestic violence orders
- personal protection orders
- child protection orders
- outcomes of the disciplinary proceedings of professional registration bodies
- outcomes of professional misconduct proceedings during previous employment

However the screening authority must give full disclosure about how, what and when such information will be sought. The applicant must be fully aware that, by participating in the screening process, they give consent for the authority to obtain and consider such information.

Further, there must be clear guidance around the weight to be given to such information, which leads to consideration of the risk assessment process.

## **7. Designing a risk assessment process**

Pre-employment screening must be based on risk assessment tools that are evidence based. There should be an evidential, clinical or legal basis for selecting particular assessment tools, or for combining them. The risk assessment instrument must meet the highest professional and academic standards with respect to test reliability and validity. Staff employed by the screening authority must have the necessary skills and expertise to apply the instrument appropriately, and to interpret results accurately and sensitively.

Procedurally, the risk assessment procedure must be transparent, documented, and consistently applied. The decision making process must be efficient and timely. The assessment and decision making processes must follow principles of natural justice and procedural fairness (as discussed above).

## **8. Monitoring and evaluation**

As discussed above, there is not a clear basis of evidence from which to identify a best practice model for pre-employment screening. Discussion of national harmonisation will be more constructive if we first monitor and evaluate current state and territory schemes, taking into account the developing research into the risks posed to children in organisational environments.

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<sup>1</sup> Community & Disability Services Ministers Conference (2005) *Creating Safe Environments for Children – Organisations, Employees and Volunteers, National Framework*, 'Schedule: An Evidence Based Guide for Risk Assessment and Decision-making when Undertaking Background Checking'.

**1. Should there be a national WWCC? What features should be included in any national scheme?**

Consistency between states is desirable, however in the process of negotiating a national scheme, we risk losing important components of particular systems. National harmonisation is a useful goal, but we should focus first on developing sufficient research evidence to identify a best practice screening model.

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

In the absence of evidence to identify a best practice screening model, the minimal requirements are for:

- effective information sharing of criminal history information between screening authorities in each state and territory, and
- promotion of resources and guidelines to assist organisations to build their capacity to provide child safe environments.

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

Screening processes are renewed at different times in each jurisdiction, most commonly every 3 years or every 5 years. Ideally such decisions will be based on risk management principles, rather than minimising administrative burden and cost.

Whatever the renewal period, the legislative framework can be designed to include safeguards if circumstances change within the 3 year or 5 year timeframe. For example, there might be:

- an obligation for applicant to notify authorities of any criminal charge or conviction, or a change of name or address, and imposing significant penalties for failure to do so,
- an obligation for employer organisations to notify the screening authority of any professional misconduct proceedings against an employee/volunteer,
- the option for an employer organisation to request a review of a particular employee/volunteer's registration if they have reasonable cause for concern, and
- the option for the screening authority to undertake a review of a person's registration if they receive additional information.

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

Such an arrangement would not be ideal, but it may be necessary in practice. The legislative framework can require the employer organisation to guarantee a higher level of supervision of the applicant during this waiting period.

**6. How should child-related work be defined? How should child-related sectors and roles be defined?**

There is inexplicable variation between jurisdictions in the way 'child related work' is defined. For example, full time administrative or maintenance workers at NSW schools are *not* captured by the NSW Working with Children Check. In contrast, full time administrative or maintenance workers at ACT schools *are* required to participate in the ACT Working with Vulnerable People screening program. Resolving such differences in a national scheme should be based on evidence of risk.

As discussed above, the ACT statutory scheme is broader than other states and territories, in including employees and volunteers who work with vulnerable adults.

**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, and (b) parent volunteers?**

(a) Yes, pre-employment screening should apply to all adults living in the homes of children in out of home care. While there are sensitivities around kinship placements, screening is still necessary, and can be carefully explained.

(b) The evidence is unclear on this question. However the current distinction (which exists in ACT and NSW) seems to be a fine one which is difficult for clubs to administer. For example, what if the child plays in under 13s team, but the parent coaches the under 11s team? What if the parent teaches Sunday school every week, but the child only attends once a month?

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

As discussed above, the check should include criminal history, as well as non-conviction information which has been tested or validated through a formal process, such as:

- domestic violence orders
- personal protection orders
- child protection orders
- outcomes of the disciplinary proceedings of professional registration bodies
- outcomes of professional misconduct proceedings during previous employment

The more information that is available to the screening process, the more informed the risk assessment process will be. Systems can be designed to facilitate appropriate access to personal information while also protecting the rights of individual employees and volunteers.

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

As discussed above, applicants should have access to an independent review and appeal process if they disagree with a decision.

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

While in other states and territories an applicant will either receive clearance or be completely barred from working with children, the ACT system has been designed to be flexible and avoid the problems of a binary outcome. The ACT scheme includes capacity for 'conditional registration' or 'role based registration' (for example, a person who has a history of drug convictions can apply for registration to work with other adults in a drug and alcohol service).

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

As discussed above, the significant variation between each state and territory suggests that there is not a clear basis of evidence from which to identify a best practice model.

**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?**

Not at all. See discussion above relating to the wider range of strategies needed to create child safe organisations, including codes of conduct, performance management, supervision, and complaints processes.

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

As discussed above, it would be helpful to evaluate and compare the range of current models across jurisdictions before nominating a model for national operation.