

IEU
Independent Education Union of Australia

Submission to Royal Commission into Institutional Responses
to Child Sexual Abuse

Working with Children Check – Issues Paper 1
12 August 2013



Preamble

The Independent Education Union of Australia (IEU) is pleased to have the opportunity to make a submission to the Royal Commission into Institutional Responses to Child Sexual Abuse Issues Paper 1 – Working with Children Check (WWCC).

The IEU is the federally registered union that represents workers, including teachers, principals, and school support staff, in Catholic and non-government Independent schools across all the states and territories of Australia. While the majority of members of the IEU are teachers, the membership of the IEU also consists of workers engaged as teacher aides, administrative staff, gardeners, cleaners and caterers.

Membership of the IEU is also diverse in respect to the types of workplaces included in its coverage. These range from very large schools with significant resources to extremely small rural schools with very limited resources. The variety of schools represents great diversity. . These include a wide variety of faith based and non-denominational schools, including, Catholic schools, Independent schools, Islamic schools, Steiner schools, Lutheran schools, Montessori schools, and privately run post-secondary providers. The union currently has a membership of over 73,000.

Introduction

The IEU, as the Union representing teachers and other employees in non-government schools and early childhood centres, has a high interest and strong commitment to child protection. The Union would support a national WWCC that provided an organised consistent approach to the protection of children and young people across the country, while ensuring fair and transparent processes for employees working with children.

The IEU would welcome a national WWCC that contained acceptable features and reflected

best practice, but not one that was more onerous and expensive than existing models. In particular the IEU has a concern that casual or part-time members who live adjacent to a state/territory border must meet additional costs to pursue child-related employment across the relevant state/territory jurisdiction.

However, the IEU believes that there needs to be prior consultation on the models or frameworks for a national approach and the consistent application of WWCC processes within the states/territory. We also believe that WWCC processes need to be allocated adequate resources to ensure its timeliness and cost effectiveness.

A national WWCC that merely duplicated existing jurisdictional arrangements and thereby requiring our members to undertake effectively two checks and equally not resolve the current issues for workers employed across borders, is unacceptable to the IEU.

Fees

The community is the beneficiary of child protection legislation and we strongly oppose the imposition of clearance fees on employees. It is unreasonable to ask child related employees to pay for clearances that have been legislated in the best interest of children and we submit the costs should be borne by the employers in each state/territory.

Fees pose financial hardship for education staff (and others in child related employment) on low wages. In our sector this includes teacher aides working with children with disabilities, indigenous education workers, childcare workers and part-time casual workers. Fees serve as a detriment to recruitment of quality persons in important child related employment.

The IEU has concerns about any legislation including the placement of interim bars on employment. We also seek to ensure that existing state definitions resulting in a bar to employment are designed to address serious matters, particularly relating to sexual behaviour impacting on children. These issues are outlined in the IEU attached submission.

The following responses represent the IEU's consideration of the questions in the Issues Paper:

Should there be a national WWCC?

The IEU sees some potential advantages in a national WWCC. These include, allowing persons to work in child-related employment anywhere in Australia after receiving a clearance from the national body and eliminating the need for persons to pay for a new WWCC when moving between states/territories. However, the IEU believes that there needs to be prior consultation on the models or frameworks for a national WWCC and the consistent application of processes within the states/territory.

What features should be included in any national scheme?

It is the IEU's view that one national body should oversee the operation of the national scheme. It is also our view that there is a need for the definitions, reporting requirements, investigation standards and the available findings relating to 'relevant disciplinary records' to be consistently applied within each state/territory.

The IEU believes that 'relevant disciplinary records' should only include findings of sexual behaviours and serious physical assaults against or impacting on children and 'relevant criminal records' should focus on sexual offences and acts of indecency, whether committed against children or adults and child pornography offences. Matters of a trivial and negligible nature should not be considered as part of a national WWCC. The IEU believe that there should be an internal and external appeals process (relevant Tribunal) and as part of such appeals process a person should have access to their WWCC file.

How long should any clearance be granted for?

The IEU believes that any clearance under a national scheme should be granted for a minimum of 5 years from the date the clearance is issued.

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

The IEU submits that a person should be allowed to commence work in child-related employment before any WWCC is completed as long as they have submitted an application for any WWCC clearance and an Application Number is issued. The child-related employer can then enter this Application Number into a designated website to verify the person has applied for a clearance.

The IEU draws attention to the fact that there are frequent occasions where non-government schools and early childhood centres require the urgent appointment for a child-related position and are unable to wait for any WWCC to be completed. This is more common in regional areas as they do not have access to the large number of suitable candidates that city based non-government schools and early childhood centres will have.

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

The IEU considers that 'relevant criminal records' should focus on sexual offences and acts of indecency, whether committed against children or adults and child pornography offences. The IEU believe that 'relevant disciplinary records' should only include findings of sexual behaviours and serious physical assaults against or impacting on children. Matters of a trivial and negligible nature should not be considered as part of a national WWCC.

The IEU submits that the following records should not be considered as part of the proposed national WWCC: spent convictions, offences committed as a juvenile, charges which have not been heard or finalised by a Court, charges which have been proven but have not led to a conviction or have been dismissed, quashed, expunged, withdrawn or discharged by a Court.

How should an appeal process operate?

The IEU believes that in the interests of natural justice it is essential for persons to have access to an appeals process. The appeals process should apply in situations where a person receives a bar or any other adverse decision relating to their application to work in child-related employment.

Further, we believe that an internal appeals process should operate prior to an appeal being submitted to a relevant state tribunal. The IEU submits that the person appealing the bar or any other adverse decision should be entitled to access his/her risk assessment file as part of the internal appeals process and provide information relevant to the possible removal of the bar or amendment of any other adverse decision.

The IEU objects to the application of an interim bar, which prevents the person from working during any stage of the risk assessment process.

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

The IEU is concerned that NSW, for example, places an automatic bar on a persons whose charges have not been finalised at Court. We are also concerned that these persons are prevented from appealing the automatic bar during this period. The IEU submits that some matters take months and even years to be finalised at Court and this has the potential to cause severe financial hardship on a person who seeks child-related work. Automatic barring should be limited to convictions of extremely serious criminal matters.

The adequacy of the risk assessment process.

The IEU is concerned that currently in NSW, for example, risk assessments are left to the professional judgment of the risk assessor dealing with the matter. The

professional judgement of each risk assessor is not always consistent with each other and we believe the implementation of a thorough checking process by senior officers is required to provide consistent and fair risk assessment outcomes.

The IEU submits that any risk assessment process should be subject to stakeholder reviews to ensure that the process is practical and workable and the stakeholders should have the opportunity to recommend changes to legislation/processes.

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 IEU submits that any WWCC should not to any degree minimise the need for employers to establish clear processes for responding to inappropriate behaviour. Any WWCC clearance does not guarantee that a person will not offend in the future and the establishment of clear processes reduces the risk to the employee, employer and children of inappropriate behaviour occurring.

We submit that whilst the protection of children and young people is paramount, any WWCC authority should also ensure that processes are fair and transparent and respect the rights of all concerned parties. The provision of staff training related to such matters is critical.

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

The IEU submits that the risk assessment process should be subject to stakeholder reviews to facilitate consultation, evaluation and monitoring of any WWCC with a view to recommending changes to the legislation/processes. The IEU wishes to be included in any stakeholder review.

The IEU further submits that as part of the evaluation and monitoring of any WWCC a formal complaint process should also be established to identify:

- the complaints made by employees/employers about processes, decisions, delays in the finalisation of any WWCC by the proposed national body.
- the grounds submitted by persons for internal/other tribunal appeals.
- the number of upheld appeals by persons together with the reasons for the appeal of a bar or other adverse decision being upheld.