

## **Context**

I have been a volunteer for around the last ten years. Previously I worked as a volunteer teaching English-as-a-second-language part-time in a library every Saturday. This work involved an initial police check, passed successfully. More recently I have trained and subsequently volunteer for a charity which assists sick, dying or severely disabled kids . This is part-time on weekends. As part of this work I successfully obtained a Victorian *working with children check* (WWCC) in 2012.

## **Overview**

Because of the tragic and devastating impact of child abuse I fully support well-targeted policies to avoid, deter and minimise its impacts.

Child abuse is a cancer and policymakers should ensure no stone is left unturned in forming well-designed polices to combat it.

## **Issues paper questions**

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

The first question such a policy should answer is — what is the objective of the policy?

Policies without clear objectives are *unlikely* to meet their aims, with the lack of clarity potentially causing unintended consequences.

The aim of a national WWCC may be said to be avoiding, deterring and minimising child abuse?

The community may benefit from a WWCC in so far as it reduces child abuse. And in so far as members of the community draw psychological assurance from the protection they believe is afforded by the check. However this assurance will not be well placed where the check is ineffective.

### *Offender categories*

It seems clear such a check would be effective at:

1. avoiding allowing convicted offenders to gain access to jobs or voluntary positions involving work with children.

However, it is *not* clear how such checks stop:

2. latent offenders
3. actual offenders who have yet to be reported
4. nor is it clear if such checks stop known or reported offenders who have yet to be convicted?
  - (a) If so, how does this allow for their rights to a hearing and review under natural justice?
  - (b) If not, would the community accept that known offenders are passing the check because they have yet to be convicted?

#### *Question for the inquiry*

- *What evidence is there on the flow of new offenders relative to known offenders?*
- *Is most abuse by known offenders? Or is there a significant flow of new offenders over time?*

This data will help in judging whether gaps 2-4 in the policy are material.

It could be the case that the policy is largely ineffective at avoiding child abuse if gaps 2-3 especially, cannot be targeted.

### **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?**

There may be a small risk the presence of a national WWCC will reduce the diligence of organisations in establishing their own governance arrangements to minimise the risk of abuse. It is not clear how large this risk would be?

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

and

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

A well-designed and targeted national scheme could be effective at targeting category 1 offenders (known offenders). However, if established, such a scheme should be consistent with *best practice regulatory criteria*. The following section describes a number of relevant criteria: clear objectives, transparency, appropriate risk-based targeting and no unnecessary costs.

*Clear objectives*

As discussed above, clear objectives are essential for effectiveness. They also enhance transparency, and can allow for the regulator and policymakers to be held accountable.

In evaluating policies, it is always worth establishing if any alternative policies could more effectively target the objective? (See *Alternative Policies* section below.)

*Transparency and regular review*

Statistics on the number of checks, the time they take to complete and outcomes should be published.

It should be clear to the public how any check applies to bar individuals, and what rejected individual's appeal rights are (to allow for administrative error to be corrected).

Policy should also be subject to regular review, to ensure it remains both effective and the lowest cost method of achieving objectives.

*Appropriate risk-based targeting*

Best practice principles suggest regulatory requirements should target the actual risks, and be proportionate and flexible. Such regulation ensures administrators minimise obligations on 'low or no risk' counterparties, freeing up resources to target the greatest risks — thus enhancing policy effectiveness.

In the child protection sphere, a risk-based approach would clearly be in the interests of children, as it would be more likely to enhance outcomes than a blanket approach.

A risk-based approach acknowledges that all risk cannot practically be eliminated. (Effectively recognising the ineffectiveness of policies which attempt to reduce a particular risk beyond the point where the benefits of doing so outweigh the costs. For more on risk-based delivery of regulation, see [PC \(2013\) Regulator Engagement with Small Business – Appendix D.](#))

A risk-based approach requires that regulators obtain data on the scale, nature and character of risks. This is not always easy. Uncertainty is a reality when dealing with risk, and any attempt to measure risk will necessarily be imperfect. However, this does not mean that regulators cannot make reasonable estimates of relative risk of particular activities — they can do so as long as they adopt an approach that consistently and robustly relies on as much available evidence as possible (ideally with some quantitative evidence).

*Working With Children Check - Issues Paper 1 - 17 June 2013*  
*Submission by Mr Seaton – August 2013*

Victorian data on their WWCC show the following outcomes pertained from 2006 to June 2013:

WWC Check cardholders	883,600
Interim Negative Notice issued	1,837
Negative Notices issued	1,480
WWC Check cards issued after review by Victorian Civil and Administrative Tribunal (VCAT)	86

Success rate: ~99.6%

Source: <http://www.workingwithchildren.vic.gov.au/home/about+the+check/statistics/>

In this case, it would appear that — to target a pool of less than 0.4% — obligations are being imposed on around 99.6% of applicants. Of course, some category 2 and 3 offenders (latent or non-reported offenders) may have successfully passed the WWCC. Assuming they are in the same proportion as category 1 (an assumption not based on evidence), then this would imply that the regulation imposes a cost-and-time burden on 98.8% of ‘low or no risk’ applicants?

Depending on the costs inherent in this, is not clear such a regulation could be said to be risk-based? (To establish this it would be necessary to establish that there was *no other way* to target this 1.2% other than by imposing obligations on the other 98.8%.)

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

and

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

- **living in the homes of children in out-of-home care?**
- **parent volunteers?**

In this regard, it is salient that there are currently exemptions for ‘Parents volunteering in an activity with their child’ in Victoria. The departmental website notes the exemption with this example:

Emily has volunteered to make and fit costumes for other children in her daughter’s school play. As Emily’s daughter usually participates in the school play, Emily does not need a WWC Check, even if her daughter does not attend all of the rehearsals or performances. ([Victorian Government website](#))

It is far from clear if this is a risk-based exemption? Is there evidence parents are less likely to commit an offence than general volunteers or members of the community? Indeed, I was under the impression parents may, in fact, be more likely to abuse their children?

Notwithstanding this, exemptions should be targeted to the level of risk posed by each category, relative to the average for the community. Exemptions *should not* be granted for categories that report higher prevalence than the community average, as that would be both a breach of equity and duty of care. (It may be the case that it was seen fit to grant this ‘parent volunteer’ exemption for practical purposes, so as not to annoy parents. However, if this exemption, in point of fact, imposes higher risks on children, then this would be reprehensible and could be said to then cast aspersions on the entire merit of the policy.)

At a minimum, the state should publish greater data on the relative risk of exemption categories to promote transparency. This data should cross-reference other factors that may be used to identify higher risk categories.

### *No unnecessary costs*

...a ‘regulate first, ask questions later’ culture appears to have developed. Even where regulatory action is clearly justified, options and design principles that could lessen compliance costs or side-effects appear to be given little consideration. Further, agencies responsible for administering and enforcing regulation have tended to adopt strict and often prescriptive or legalistic approaches, to lessen their own risks of exposure to criticism. - Rethinking Regulation Report ([2006](#), p. ii)

While this quote was not made in the context of child protection policy, it does highlight that regulatory failure can have significant costs and unintended consequences.

A key principle of good practice regulation is that *unnecessary* costs are not imposed. Unnecessary costs can be material, as they can distort behaviour and lower or discourage beneficial behaviour that would otherwise occur. Heavy-handed or bureaucratic implementation of policy can further exacerbate these problems.

Transaction costs — for example the costs of an application or the time and hassle of completing paperwork — can be an important category in this regard. Transaction costs always, to some extent, lower outcomes to less than optimal (because they drive a wedge between supply and demand). The key driver is ‘how big’ these costs are relative to interested parties time and alternative options. In this context, a WWCC application process that imposes high transaction costs (especially on volunteers), could be said to be more likely to result in marked foregone benefits to society.

Minimising unnecessary compliance costs is in everyone’s interests. Regulators must bear in mind that efficient compliance design and efforts to minimise transaction costs are essential in order to minimise unnecessary imposts on employers, the community and volunteers.

Lowering transaction costs, and making processes more efficient can be a win-win outcome for everyone — by lower administrative imposts on law-abiding citizens and reducing impediments to volunteers. ‘[Design thinking](#)’ could be helpful in this regard —

by helping think through processes from the users point of view — and thus re-engineer processes to make them quicker, cheaper and easier to comply with.

If unnecessarily heavy-handed programs can be re-engineered, then this may free up the community to get on with creating value and helping people. Re-engineering and/or innovation in program delivery also has the potential to allow public resources to be reallocated to other public priorities.

#### *What are the costs of WWCCs?*

There are many types of costs, but financial and time costs are most commonly cited. These may be borne (broadly) by taxpayers, employers, employees, volunteers and children (to the extent they miss out on services that would otherwise benefit them in the absence of the cost).

The 2006 Victorian Government Regulatory Impact Statement (RIS) for its Working With Children Regulations<sup>1</sup> contained the following estimate of total government costs:

Once off costs in 2005/06 for establishing the WWCC process of \$1.345m in capital expenses and \$2.275m in operating expenses;

A total of \$76.73m over the life of the regulations to conduct the WWCC process.

With per unit administrative costs as follows:

\$58.33 per volunteer applicant check and \$70.99 per employee applicant check.

These projected costs were not insubstantial. Costs have probably risen since 2006, given inflation and higher staff costs.

In addition to costs to government (taxpayers), costs imposed on Victorian applicants are currently are:

- \$102.70 for an employee WWCC card
- \$0 for a volunteer WWCC card
  - The 2006 RIS concluded against charging fees for volunteers, as “imposing an application fee on volunteers is likely to result in a reduction in the level of volunteering, with consequent reductions in the range and availability of services for children”. The Victorian government subsequently agreed, and currently does not charge a fee for its WWCC.

However, in direct contradiction to this policy intent, there *is* currently a shadow cost of around \$17 for the Victorian WWCC application, via the *requirement* to have a physical

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<sup>1</sup> Department of Justice RIS  
([http://www.vcec.vic.gov.au/CA256EAF001C7B21/WebObj/WorkingwithChildrenRegulations2006RIS/\\$File/Working%20with%20Children%20Regulations%202006%20RIS.pdf](http://www.vcec.vic.gov.au/CA256EAF001C7B21/WebObj/WorkingwithChildrenRegulations2006RIS/$File/Working%20with%20Children%20Regulations%202006%20RIS.pdf))

passport photo <sup>2</sup> attached. (A government requirement that entails a (virtually compulsory) cost is effectively a shadow price.) This means monetary costs are imposed on volunteers, despite the Victorian Government having stated that it "...has an objective of not deterring volunteer activity in the community" (RIS p. 2).

*Box 1: Is the Victorian physical passport photo requirement risk-based?*

As an aside, it is not clear why a passport photo is required? (Not just any photo, a photo where no smile is allowed.) Further, why does the photo need to be printed, when it will be scanned in immediately? Given that driver licence photos allow smiling, what is the precise policy rationale for not allowing a WWCC photo showing a slight smile? And why is this different to the driver licence? No one seems to have made a good case why applicants can't send an *electronic* photo in? (As a further aside, it is interesting to note that after having received my WWCC, no one — let me say again no one — has ever looked at my card, or even asked me if I had one. Which again begs the question, why did I need to provide a passport standard physical photo?)

As outlined above, regulations should ideally be in proportion to the risks, in light of this, what evidence is there that the (arguably unreasonably high) requirement for a passport photo is necessary? For example, is there any evidence that photo fraud could be an issue (especially after a 100 points of ID check is already performed as part of the Victorian application)? The AusPost (exhaustive) 100 points of ID assessment check would surely allow a fraudulent photo to be spotted? I would argue Victoria's passport photo requirement, and the vociferous enforcement of it (even to extent of rejecting photos due to infinitesimally *slight shade of brightness* deficiencies), seems to be taking compliance to the nth degree, without considering the policy intent behind the law, and assessing the risks proportionally.

In addition to monetary costs, there are time costs to applicants from the WWCC process. The Victorian process as of 2012 (when I applied) had a gruellingly long, poorly designed form. Moreover, administrators took a strict interpretation of the form, so applications could be rejected for flimsy reasons, such as placing an answer in the wrong box (further wasting innocent volunteers' time). In addition, the form must be *physically* lodged at Australia Post (apparently a hard copy is still required, despite the fact electronic forms have long had full legal and record-keeping status). This is of interesting because, in this day and age, you can open a *bank account* online without any paper documents. (For example, through innovative banker UBank, who verify identity

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<sup>2</sup> \$16.95 at AusPost (<http://auspost.com.au/passports-id/instant-passport-and-id-photos.html>). Paradoxically, AusPost takes this photo with a digital camera, then prints it and submits it with the application. But get this, this photo is then immediately scanned in by the Victorian Department (no duplicated effort or double handling there!)

with driver licence, voting records, passport number etc etc.) If the private sector can do it surely the government can too? Indeed, some already do. The Australian Electoral Commission currently utilises an innovative entirely electronic form<sup>3</sup> for the important civic duty of voting. The ATO also allows us to file and pay income tax online.

As a volunteer, I can honestly say the Victorian WWCC process almost stopped me volunteering, because it was so slow and difficult to navigate, and so strictly and rigidly interpreted. In this regard, it is gratifying to see that from 1 July 2013 the Victorian Department of Justice appears to have streamlined the WWCC application to allow some online preparation. (Though it still appears physical lodgement is required?)

Notwithstanding these improvements, I would estimate that despite the Victorian Government's objective of not deterring volunteerism, the current WWCC costs and processes associated with obtaining a WWCC do impede law-abiding volunteers.

This is not to say they have to. The Department of Justice's online efforts should be lauded and extended (see Box 2). Government clearly needs to ensure all efforts are made to lower unnecessary costs on volunteers. Otherwise the community will miss out.

*Box 2: Online lodgement options*

100% online or smart phone submission should be trialled, as this could reduce the hassle/time cost on applicants. Clear 'normal' photos should also be able to be submitted electronically. Further innovative improvements to form design (to make them easier to understand) should also be progressed.

A fully electronic form would have many advantages. It would save double handling and errors in input — users could be prompted to fix errors and cannot submit without filling certain bits. It would also obviate the need to print, scan and check — potentially a large saving. It would also save AusPost and the department time (and likely money). (Currently, the Victorian department apparently has to pay for paper storage, but immediately scans in the paper photos (also see footnote 2).) Most importantly, it would be easier and faster for citizens!

How could it work? A number of options could work well. But this option seems easiest. The customer attends AusPost or the Motor registry (noting both have numerous locations and electronic photo capacity also).<sup>4</sup> Here a 100 points of ID Proof of Identity check is done, and an electronic photo taken gratis (with a signature strip added at the bottom). The customer then gets an receipt number

<sup>3</sup> <http://www.aec.gov.au/enrol/change-address.htm>

<sup>4</sup>

<http://www.vicroads.vic.gov.au/Home/HaveYourSay/ContactUs/Agencies+and++licence+photo+point+locations/LicencePhotoPointLocations.htm#>

(which they already currently get). AusPost then electronically submits the composite photo/signature to the department with the receipt code. The customer then fills in the form online and adds their respective receipt code, which allows the photo/signature and form to be matched (this receipt would obviously be unique and only able to be use once). They would email the form in, or submit through the website. This would mean no scanning or input of data by the department. And no need for physical copies or storage costs. (As mentioned already, electronic forms are perfectly legal and constitutional.)

The above suggestion could thus save the government money — and reduce hassles for all. This could be a win-win solution for everyone. By streamlining the regulation's requirements and reducing costs for volunteers, this will increase the number of volunteers (at the margin) and strip out unnecessary compliance costs from the economy. Any resulting savings could be redirected to other public policy priorities.

### **Alternative polices to target the risk of category 1 offenders**

One alternative policy should be more fully examined, as it may have the potential to lower unnecessary costs and better target risks.

#### *Self-assessment — criminalise a failure to notify*

An alternative might be to make it a *legal requirement* that convicted offenders or individuals under professional sanction are obliged to report their status when applying to volunteer or work with children?

If it is subsequently discovered they haven't, then they could be deemed to have committed a criminal offence.

This option has the advantage of narrowing the regulatory intervention to the same group identified in the WWCC check process, but removes the impost on all other innocent members of the community.

Education efforts would have to be made. Though presumably, those under professional sanction and convicted offenders would be eminently identifiable.

#### *Robust RIS*

At a minimum, any national WWCC should be subject to a robust RIS, which tests it against credible policy alternatives (such as the above), to ensure it is the least cost method of achieving the policy objective.

## **Conclusion**

A poorly targeted, possibly ineffective and administratively burdensome national WWCC would *not enhance* child protection outcomes. It may also have unintended consequences in deterring volunteerism, to the detriment of the community.

A risk-based, low cost and user-friendly national WWCC, with narrow and clear targeting of category 1 offenders would be likely to be much more efficient and effective.

- In this regard, every effort should be made to allow innovative administrative delivery. This could include simpler on-line applications, to reduce costs.

Alternative policies to meet objectives should *also* be explored, possibly including criminalising a ‘failure to notify’.