



Royal Commission Into Institutional Responses to Child Sexual Abuse



SCOUTS
AUSTRALIA

The Scout Association of Australia
Incorporated by Royal Charter



**Scouts Australia: Submission to Working
with Children Check - Issue Paper 1.
August 2013**



On behalf of Scouts Australia (Scouts) and each of the State and Territory branches of Scouts Australia, Scouts has welcomed the Federal Government's decision to establish a Royal Commission into institutional responses to instances and allegations of child sexual abuse in Australia.

We are now pleased to contribute further to the Commission's work through our Submission on the "Working With Children Check – Issue Paper 1" (WWCC).

Background of Scouting

Scouts is an international organisation with over 30 million members worldwide. In Australia it is a family-based organisation that provides its 66,000 Youth members, aged six to 25, with fun and challenging opportunities to grow and develop.

As the biggest and most successful youth organisation in Australia, Scouts is a part of every community. Our members come from a wide variety of cultural and religious backgrounds, across the socio-economic spectrum and include individuals with intellectual or physical disabilities.

The aim of Scouting is to encourage the physical, intellectual, emotional, social, and spiritual development of young people, so they may play a constructive role in society as responsible citizens and as members of their local and international communities. This is achieved through a series of strong and active non-formal education programs that inspire young people to do their best and to always be prepared.

The youth leadership team is comprised of some 12,000 adult volunteers supported by a relatively small number of paid administrative staff in each state. Our volunteer Leaders are generally parents of youth members. In each State and Territory we have training teams, responsible for delivering modern and up to date training for all our Leaders. Leader training is provided through the Scout Association Institute of Training which has RTO status.

Scouting in Australia operates through a federal model. In each State and Territory, Scouting is organised through a separate body; in most cases it is incorporated by statute. This submission is made on behalf of Scouting throughout Australia.

Child Safety

The safety and wellbeing of the children in our care is our number one concern and priority. As a thriving, modern organisation, we strive to be vigilant in identifying and eradicating child abuse. We have a zero tolerance policy on child abuse and for decades have had a practice of reporting any allegations of child abuse to police.

Scouts has a number of practices and policies in place to avoid criminal abuse of children. If any such allegations are made, we deal with them by reporting such allegations to the police and suspending any Leaders in respect of whom such allegations are made.

Scouts currently requires all adults applying to join the Association to satisfy Working with Children Check (WWCC) arrangements relevant to each State or Territory; consent to a Police and Character Check as well as undertake a suitability interview by a local community committee. For well over 30 years all potential Scout Leaders had to be and are still being Police cleared – this is compulsory not an option.

All approved adult Leaders then receive comprehensive and ongoing training in dealing with children and the various aspects of Scouting. All Leaders must sign a document under which they agree to abide by a Code of Conduct which incorporates important principles of Child Protection.

Each state and territory has formal policies dealing with inappropriate conduct or behaviour and child protection.

National harmonisation

In Scouts' submission on the Royal Commission's Terms of Reference (November 2012) we proposed that to ensure that necessary improvements in both prevention and protection of children are considered, the Commission needs to investigate the current lack of consistency across the various Australian jurisdictions, as far as reporting and background checking provisions are concerned.

This would go a long way towards helping to investigate options for organisations and institutions when allegations are raised. Serious and a deep attention to reporting in every organisation should help provide victims with greater confidence to report sexual abuse.

National tools

We also submitted that an examination of possible administrative and law-enforcement tools, such as a national and centralised 'working with children' database and aligned state and federal legislation.

Submission on Working With Children Checks – Issue Paper 1.

Question 1. Should there be a national WWCC?

Yes –to provide consistency and eliminate duplication. The lack of National consistency is in itself an issue for Scouting which is a National Organisation. An example is the recent Jamboree in Queensland where Adult Leaders from States and Territories other than Queensland who had clearances to work with children in their own State had to get clearances to work in Queensland for the Jamboree. About 2500 adults were involved.

A National WWCC will also be the lowest cost and best value as individuals would be able to transfer without re-application. Institutions with national membership systems will need to make one entry per person regardless of home state. Further it will provide consistent decisions at the "OK/No go" boundary as back-ground checks and notification process would be standardised. If States don't have a common definition for OK/No Go then Institutions will be faced with some people being OK in one state and NOT OK in another. This will lead to questioning of the system and requests for reviews, all at extra cost.

Of paramount importance will be the shortest possible cycle time (time from application to issue of the Card), correct funding of such a system so that it is responsive, accurate and relevant to the legislation of each jurisdiction. Ideally, such a system should be provided at no charge to individuals or organisations applying for checks to work with charitable, benevolent, or volunteer-based organisations.

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

That a national WWCC replace state systems and legislation so there is a truly national system in place

That the check apply to paid workers and volunteers.

Even in the event of a positive WWCC check, the decision to accept an individual as a member or participant in Scouting must remain the prerogative of the Organisation.

An online application and renewal process with the ability for individuals or organisations to lodge an application for a WWCC

A requirement for an individual or organisation to state a 'reason' for seeking to obtain a WWCC

The ability for "authorized" organisations to update and validate a current WWCC online with possible "live" feedback. Without this a person with a suspended or cancelled WWCC could use that card to gain access to another organisation.

A National Card transferrable between organisations as well as States and Territories without immediate re-application. A truly national card like an Australian passport with truly national processes common in all States and Territories.

A secure 'lost' or 'damaged' WWCC card replacement system will be needed to prevent fraudulent applications.

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

There must be consistency of process across all jurisdictions. Inconsistency between jurisdictions at the margin is likely to result in individuals being accepted to work with children in some jurisdictions and rejected in others. This will inevitably result in appeals and bring the credibility of the process into question. The WWCC must be for both paid workers and volunteers.

The check to include a National Police check.

That the results of the National Police check be made available to employers so that employers and volunteer organisations can consider applications in light of all criminal history (ie the details of the criminal history are shared), including:

- a. Convictions (spent or unspent)
- b. Charges (whether heard, unheard or dismissed)
- c. Juvenile records.

This system should include 'pending matters.'

This will enable the employer to make their own informed assessment regarding the individual's suitability to work in their particular organisation, in addition to the assessment of the body administering the Working With Children Check.

The nominated period for which the WWCC is valid should be common in all jurisdictions.

Once issued WWCC cards should be able to be used in all jurisdictions without re-application until renewal is due. Under these arrangements organisations with a national personnel database would be saved the cost re-application for a WWCC and of data re-entry as people move from jurisdiction to jurisdiction.

That every State's check process permits that State to release information relating to a person's criminal history to another jurisdiction.

That every State's check process permits that State to receive and act on information relating to a person's criminal history received from another jurisdiction.

Continuous monitoring of records of individuals working with children – not a once off check.

Individuals can carry their certification between positions and do not have to obtain a new check while their check is valid. This should only be a provision if the provision of continuous monitoring above is instigated.

That employers are contacted by the administering authority and can withdraw the individual's employment if a check has delivered an adverse result. That the legislation/regulations governing this process be drafted to be consistent with the provisions of employment law, including being consistent with the legal obligations attached to an employer terminating an employee's employment fairly and lawfully. That the legislation/regulations governing this process also be drafted to be consistent with the principles of natural justice and procedural fairness, which are crucial to the fair dismissal of a volunteer.

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

The following requirements are proposed in the response to Q2 (what features should be included in a National scheme) above viz.:

The ability for "authorized" organisations to update and validate a current WWCC online with possible "live" feedback.

The requirement for any one of the Authorities to advise promptly a work-place or volunteer organisation (registered by any individual in their application of the WWCC or for which an organisation has sought validation of a WWCC) of any circumstance that would warrant an adverse report.

A mandated (legal) requirement for individuals holding a WWCC to promptly report to their workplace(s) and/or volunteer organisations in which they participate (that require them to hold a valid WWCC) of any instance of Authority/Police investigation or charges laid.

If these requirements are met then a review process is only needed in case the system (one of the dot points above) fails.

On this basis, a review every 5 years on the anniversary of the original application should be adequate.

The actual WWCC card should be durable and the card and card number should remain unchanged after a 5 yearly review. As mentioned in Q2 above a secure 'lost' or 'damaged' WWCC card replacement system will be needed to prevent fraudulent applications.

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

No – protection of young people from harm must be the highest priority. To consider a person starting work without a check means something other than safety of young people is the priority. If applications for a WWCC are handled promptly with a quick turn around this will not be an issue. The requirement of a short cycle time strengthens the case for on-line applications and “authorised” organisations being able to validate existing WWCC cards.

If an applicant is let start work and their application for a WWCC card is then rejected it leads to a difficult situation that becomes very public in a local community. No start before a clearance is a far less public process.

Question 6. How should child-related work be defined?

Any work where supervised or unsupervised adults individually or collectively directly relate to and work with a young person or young people individually or collectively face to face or on line including work that uses a child’s personal information, locational information and records.

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

Sectors and roles where employees and volunteers are caring for young people or working with children face to face or online either collectively or individually or working with young people’s personal data including locational data and records.

Question 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?**
- b. Parent volunteers**

With regard adults living in the homes of children in out-of- home care, we have no experience or information so have no comment.

In principle, Parent Volunteers (Parent Helpers in Scouting terms) should not be exempt. There is nothing to say parents have not been offenders just because they are parents. However, the practicality of having to apply for a WWCC for two or three activities a year needs to be considered.

In Scouting, Parent Helpers are supervised by a warranted Adult Leader regardless of whether they hold clearances to work with children or not. Parents, at times, provide assistance in program delivery and transport to activities. Some parents have a very small number of interactions per year with other people’s children whilst others are very active with their children and hence with the group to which their children belong. Those parents who participate more are identifiable. These parents should have to hold a WWCC card. Those parents who participate 2 or 3 times per year under supervision probably should be exempted.

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

All forms of adult and juvenile records should be included. They should include:

- All criminal history in National Police Records, spent or unspent convictions and

charges whether heard, unheard or dismissed or pending,

- Sex Offender Registers', specifically any sexual offence or instance of abuse recorded (child or adult);
- Family and Community Service reporting,
- any offence involving physical harm to another person (to an adult or young person) by the applicant as an adult or as a young person
- disciplinary information held by certain professional organisations (including teachers, child care licensees, foster carers and certain health practitioners), and
- information that the Police Commissioner can provide in relation to police investigations into allegations of serious child-related sexual offences, even if no charges were laid.

However, there needs to be an appeal process to deal with those individuals that feel the records are not consistent with the facts as they know them.

Question 10. How should the appeal process operate?

A WWCC 'finding' should be able to be challenged for fact or error by the recipient. This process should be timely, occur directly through the issuing authority (police or other body issuing the national WWCC) and the individual. The onus should be placed on the individual to appeal and prove incorrect information and not the workplace or the receiving volunteer organisation

An appeal process opens the process to negotiation and potential lack of consistency in outcomes for the same offence unless it is confined to appeals on matters of fact.

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

Different States and Territories have different checking processes usually dictated by State and Territory Governments or in the case of Tasmania by the Organisation in that State. Issues reported include:

- In Queensland, if someone is excluded from working with young people, but is a parent of a youth member, the extent of their allowable involvement in Scouting, and the disclosure of this to the organisation could be problematic.
- In SA, the National Police Check is a 'statement' of criminal record with no interpretation as to the suitability of persons to work with children, it is left for the Branch Chief Commissioner and Branch CEO to make a judgement as to the suitability of each applicant. A nationally accredited system may actually alleviate the subjective nature of our own assessments by determining a 'suitability' to work with children.
- In Tasmania, the Chief Commissioner makes decisions based on a National Police check and statements by referees.
- Victoria and the Northern Territory Branches indicate they have no issues arising from the current regime of record checking.

- The NSW process is new but it has revealed some issues detailed below:

Scouts NSW is concerned that the threshold used by the Office of the Children's Guardian (the body administering the NSW WWCC) to determine whether an individual should be cleared or barred from working with children may be different from the threshold Scouts NSW would use when considering whether to allow an individual to become a Member of the Association. That is, Scouts NSW agrees that the offences listed in Schedule 2 of the Child Protection (Working With Children) Act 2012, the "automatic barring records", should always result in an individual being automatically barred from working with children.

However, Scouts NSW would be very concerned if an individual had received a clearance to work with children despite having been charged with or convicted of any one of a number of offences listed in Schedule 1 of the Act. Scouts NSW understands that the offences listed in Schedule 1 result in the Guardian making a risk assessment of the individual with that record, and that the result of the Guardian's assessment might have the same ultimate outcome as an automatic bar (being that the individual would be assessed as requiring a bar from working with children).

However, there are some offences listed in Schedule 1 that would concern Scouts NSW greatly if they did not result in that outcome. Scouts NSW has high expectations of its current Members and a high standard for applicant Members to meet. If an individual applying to be a Member had been charged with or convicted of spiking the food or drink of a young person, of serious cruelty to animals, or supplying prohibited drugs to a person under 16 years old, for example, Scouts NSW would not approve their application to be a Member.

However, these are not listed as offences that would result in the person automatically being barred from working with children. If Scouts NSW was not certain that the Guardian employed the same standard of checking that Scouts NSW would employ, then for individuals who had had one or more of the offences listed in Schedule 1 on their record but had ultimately been issued a clearance from the Guardian, Scouts NSW would wish to be given access to the individual's full records and all information that the Guardian used when they made a risk assessment of that individual. Then, Scouts NSW could itself consider the offences in light of its own standards and its commitment to the wellbeing of its Youth Members.

Question 12. The adequacy of the risk assessment process?

Scouts believes that the relevant Authority or Guardian would undertake the risk management process.

However it would be useful for institutions to understand the various conditions under which the WWCC could be withheld/withdrawn.

The process would obviously need to be fair and consistent.

Question 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?

It is assumed the word staff in the question includes staff and volunteers.

No checking system is perfect: Organisations should not rely on the WWCC as a complete and fail-proof way to ensure their organisation is child-safe. The check is not infallible. It is a check at a moment of time. It needs to be accompanied by organisations being vigilant about

training and supervising people that work with children, and creating processes for responding to inappropriate behaviour by staff and volunteers.

All organisations and institutions should be required to develop and adopt a code of practice that clearly establishes what is inappropriate behaviour in that organisation, the role of staff and volunteers when they witness or hear of inappropriate behaviour and how the organisation would respond to inappropriate behaviour of staff or volunteers in child-related positions. This provides the framework to manage behaviour on an on going day to day basis.

Scouts has defined a Code of Conduct. Breaches of a Code of Conduct are often an early signal and they are always easier to prove than actual abuse.

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

From the point of view of the issuer of the card who is responsible for the checks, the process leading to issue of a WWCC card is a checking process and the number of system failures (people given clearance to work with young people who go onto offend or have their card withdrawn) as a percent of the number of checks is a good measure of the effectiveness of that process.

If all States and Territories have their own checking process the deviations from jurisdiction to jurisdiction will provide information for improvement. The same measure could be used to compare organisations within a jurisdiction to seek best practice and drive improvement.

Thank you for the opportunity to make a further contribution to the work of the Commission through this submission. Enquiries can be directed to the following.

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Yours sincerely,



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