

Royal Commission into Institutional Responses to Child Sexual Abuse  
Via [solicitor@childabuseroyalcommission.gov.au](mailto:solicitor@childabuseroyalcommission.gov.au)

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2 Delhi Street, West Perth,  
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30 August 2013

Dear Sir/Madam,

**Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse  
Re: Working with Children Checks**

Please find a brief submission from the Western Australian Council of Social Service (the Council) in relation to issues paper 1 concerning Working With Children checks.

The Council is the leading peak organisation for the community sector, and represents around 300 member organisations and individuals, and over 800 organisations involved in the provision of services to individuals, families and children in the community. The Council has strong relationships with the community services sector and represents the interests of the sector and the communities they serve. The Council therefore is in a unique position to comment on critical social issues that affect members of the WA community.

**We understand that while the date for submissions was several weeks ago, that you are happy to accept these comments and we appreciate your willingness to do so.**

The Council would like to draw to the attention of the Royal Commission previous attempts to introduce a national working with children check as well as two issues that are of particular interest in Western Australia at the current time that reflect some of the issues you have indicated that you wish to hear about.

If the Council can be of any further assistance, please let me know.

Yours sincerely,



Irina Cattalini  
CEO

## Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse

### Re: Working with Children Checks

#### 1. General comment on previous attempts to introduce a national WWC system

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Two COAG processes have addressed this issue in recent years and it would be relevant for the Royal Commission to consider this history.

##### 1.1 The National Quality Framework

The National Quality Framework aims to raise quality and drive continuous improvement and consistency in education and care services and school age care through:

- the Education and Care Services National Law and the Education and Care Services National Regulations ('National Law and National Regulations')
- the National Quality Standard for Early Childhood Education and Care and School Age Care ('National Quality Standard')
- a national quality rating and assessment process
- streamlined regulatory arrangements
- a new national body jointly governed by the Australian Government and state and territory governments—the Australian Children's Education and Care Quality Authority (ACECQA)—to oversee the new system.

The National Quality Framework took effect on 1 January 2012 with key requirements (such as relating to qualifications and educator-to-child ratios) being phased in over time. The new system replaces existing state and territory licensing and national quality assurance processes.

The objectives of the National Quality Framework include *to ensure the safety, health and wellbeing of children attending education and care services*.

In developing the new national law and regulations, extensive discussions were held between the relevant officials from the Federal, State and Territory Governments in relation to a nationally consistent Working With Children system. In the end, agreement could not be reached and the existing regime in each jurisdiction has remained.

##### 1.2 National Framework for Protecting Australia's Children 2009-2020

In April 2009, the Council of Australian Governments (COAG) endorsed the National Framework for Protecting Australia's Children 2009-2020. One of the actions under Supporting Outcome 2 (children and families access adequate support to promote safety and intervene early) is the development of a 'nationally consistent approach to working with children checks'. One of the actions under

Supporting Outcome 6 (sexual abuse and exploitation is prevented) is the implementation of a national framework for inter-jurisdictional exchange of criminal history for people working with children.

In June 2010 the Community and Disability Services Ministers Conference (CDSMC) agreed to progress a nationally consistent approach to working with children checks.

The Position Paper: Toward a Nationally Consistent Approach to Working with Children Checks [http://www.fahcsia.gov.au/sites/default/files/documents/position\\_paper.pdf](http://www.fahcsia.gov.au/sites/default/files/documents/position_paper.pdf) provides an update.

Neither of these two initiatives has resulted in a national check being introduced. The Council suggests that part of the reason is that in both cases, the discussion has been substantially limited to an inter-jurisdictional one between the various Governments, rather than a broader conversation involving the community sector, concerned individuals and so on. It is suggested that a further Discussion Paper be prepared by the Royal Commission in response to the submissions received to the Issues Paper, which could be the catalyst for a more inclusive national discussion.

## **2. Issues in relation to particular terms of reference**

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### **2.1 Question 5: Should a person be able to commence work before the check is completed?**

While there would be general agreement that it is desirable for a person to have the Working With Children check completed before they commence employment, the realities of the length of time this can take makes it impracticable. An issue has also arisen recently in Western Australia which may have relevance to the considerations nationally.

As part of the implementation of the State Government's Delivering Community Services in Partnership Policy, changes regarding Working with Children Checks have been introduced.

The original arrangement allowed a person to commence work immediately, their ongoing employment being subject to a satisfactory check. The requirement under existing service contracts for a new employee involved in activities with children to apply for a WWC is consistent with the Working with Children (Criminal Record Checking) Act 2004. By contrast, the new provisions require employees to have the completed WWC assessment before undertaking work that has been contracted from a government agency, where the work requires such an assessment. The implication is that, for staff who are new to the area, the service provider will need to employ a person, undertake the WWC assessment and only once that assessment is complete can that person undertake child related work.

In effect, agencies providing child related services will be paying employees to stay at home or do non-child related duties. The impact on and cost to organisations is significant and given that Working with Children criminal record checks can take up to 6–9 weeks to process and sometimes longer, this new provision is simply unworkable.

## 2.2 Question 6: How should child-related work be defined?

The existing ambiguity of the definition of *child-related work* in the WA legislation has been highlighted since the introduction of the national early childhood legislation. The approved provider of a Family Day Care (FDC) Service who is responsible for assessing the 'fit and proper' status of FDC educators and occupants of the FDC residence only has access to a Criminal History Check (National Police Check) for occupants of the FDC residence who are over 18 years of age. Prior to 1 August 2012, the Department for Communities was responsible for assessing 'fit and proper' status and in undertaking this role the department had access to an additional check, the Department for Child Protection Record Check.

Occupants of the FDC residence who are over 18 years of age are not considered to have contact with children (according to one of the 19 categories in the Working with Children legislation) therefore, they are not eligible to apply for the Working with Children Check in WA. However, the national legislation requires the approved provider of a FDC service to take all reasonable steps to ensure persons over 18 years of age who live at an FDC residence are 'fit and proper'. The definition of 'reasonable steps' appears to differ greatly nationally. For example, in NSW, the new Working with Children Check which was introduced earlier this year, will be required by all adults living in the FDC Educators home and will be provided with no fee.

FDC is a unique service that caters for the diverse needs of families. Many FDC educators operate 24 hours (including weekends) to cater for the needs of families engaged in shift work. Centre based care cannot provide flexibly to cater for many families that work outside standard working hours and therefore, FDC is a quality child care option that meets the needs of the community. When providing this service, FDC educators often have adults living in their home, these adults have access to children when they are attending FDC for varying periods of time. These adults may not be officially engaged in child related work however, they often engage with the children in the FDC setting and join in activities such as reading stories, building blocks, outdoor games etc. They are in a prime position to inappropriately influence children if they are not fit and proper to be with them.

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