

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

Issues Paper 1:  
Working with Children Check



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## **About the Authors**

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In 2005, Hetty was announced as a finalist for the 2006 Australian of the Year Awards – she is the recipient of two Australian Lawyers Alliance Civil Justice Awards (2003, 2004) and was named a finalist in the 2008 Suncorp Queenslander of the Year Awards. She was awarded a Paul Harris Fellowship in 2010 and is a Fellow of the Australian Institute of Community Practice and Governance (March 2010). In early 2009, Hetty was recognised as one of approximately 70 outstanding leaders throughout the world, receiving the prestigious annual Toastmasters International Communication and Leadership award. Hetty is a member of the International Society for the Prevention of Child Abuse and Neglect.

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# About Bravehearts Inc.

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Our **Mission** is to stop child sexual assault in our society.

Our **Vision** is to make Australia the safest place in the world to raise a child.

Our **Guiding Principles** are to at all times, do all things to serve our Mission without fear or favour and without compromise and to continually ensure that the best interests and protection of the child are placed before all other considerations.

Bravehearts has been actively contributing to the provision of child sexual assault services throughout the nation since 1997. As the first and largest registered charity specifically and holistically dedicated to addressing this issue in Australia, Bravehearts exists to protect Australian children against sexual harm. All activities fall under 'The 3 Piers' to Prevention; Educate, Empower, Protect – Solid Foundations to Make Australia the safest place in the world to raise a child. Our activities include but are not limited to:

## **EDUCATE**

- ◆ Early childhood (aged 3-8) 'Ditto's Keep Safe Adventure' primary and pre-school based personal safety programs including cyber-safety.
- ◆ Personal Safety Programs for older children & young people and specific programs aimed at Indigenous children.

## **EMPOWER**

- ◆ Community awareness raising campaigns (Online and Offline) including general media comment and specific campaigns such as our annual national White Balloon Day.
- ◆ Tiered Child sexual assault awareness, support and response training and risk management policy and procedure training and services for all sectors in the community.

## **PROTECT**

- ◆ Specialist advocacy support services for survivors and victims of child sexual assault and their families including a specialist supported child sexual assault 1800 crisis line.
- ◆ Specialist child sexual assault counseling is available to all children, adults and their non-offending family support.
- ◆ Policy and Legislative Reform (Online and Offline) - collaboration with State Government departments and agencies.

Bravehearts Inc. is a National organisation, it is a registered Public Benevolent Institution, registered as a Deductible Gift Recipient, operates under a Board of Management and is assisted by State based Community Regional Committees, Executive Advisory Committees and a Professional Finance Committee.

# Working with Children Checks

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## 1. Should there be a national WWCC?

Bravehearts notes that currently there are diverse approaches to mandatory requirements for Working with Children Checks across jurisdictions. We believe that there should be, for the sake of consistency and best practice, a national Working with Children Check.

As an agency that is focussed on advocating for appropriate and effective responses to child sexual assault, Bravehearts was encouraged by the agreement by COAG (under the *Protecting Children is Everyone's Business: National Framework for Protecting Australia's Children 2009-2020*) to facilitate the inter-jurisdictional exchange of information relating to criminal histories and we support any move to increase the effectiveness of Working with Children Checks across the country. However, it is our position that encouraging a national, centralised administration system to undertake screening checks for suitability to work with children promotes best practice in ensuring suitability for working with children and monitoring compliance with legislation across Australia.

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

It is our position that key features of a national Working with Children Check (or alternatively if there is no national scheme, for state and territory schemes) include:

- **Retrospective checks:** The Working with Children Check needs to be retrospective to include all employees in regulated child-related employment. It is clear, for example with the large number of cases emerging regarding the abuse of children in care, that in order to ensure the safety of our children we need to screen all workers.
- **Consideration of Pending Matters:** In some cases, a relevant matter may be pending at the time a *Working with Children Check* is sought. In these cases the Commission should be required to refuse the issue of a card while the matter is pending, or perhaps to issue temporary cards that might, for example, allow supervised contact with children until the resolution of the pending matter.
- **Expansion of Criminal History Checks:** We believe that information should include information of all findings of guilt, so that bonds, sentencing deferrals and diversions are covered in addition to information on pardons, quashed and spent offences.
- **Inclusion of Employment History:** Bravehearts would advocate that background checks include (for example) disciplinary hearings, diversionary programs, and employment history. There needs to be consistent requirements for employer organisations to notify of work-related disciplinary matters as part of legislated screening systems. The inclusion of employment history in the checks overcomes one of the major limitations of criminal history checks – the fact that relevant matters which do not result in prosecution or a finding of guilt, or which are dealt with by internal disciplinary hearings, can be missed through the criminal history check process.

- **Overseas Criminal History:** The feasibility of requesting criminal history checks from overseas needs further exploration. It would secure higher levels of child protection if the Federal, State and Territory authorities were able to extend the criminal record check beyond a national to an international process. Related to this, for all individuals undergoing Working with Children Checks, it should be mandatory that offences committed overseas be reported as part of the process. Suitable penalties should apply to those who do not notify of such criminal histories.
- **No Excluded Categories:** All offences that relate to children should be automatically included in the offence list to be considered during the screening process. In addition, Bravehearts believes that other interpersonal and family violence offences, as well as relevant offences committed as a juvenile, should also form part of the decision making process.
- **Photo Identifications:** One of the issues that has recently been the subject of discussion around the Queensland Working with Children Check is that of photo identification. Apart from the application process, where proof of identification is needed, the cards currently do not include a photograph. It has been suggested that with 'smart cards' now being used by the Department of Transport (for both drivers licenses and over 18 cards), a process could be facilitated whereby digital photos of applicants could be shared as part of the identification process and included on the Working with Children Check card..
- **Valid Card Lists:** One of our concerns regarding the suitability cards is that if cards are lost or stolen individuals who have not proceeded through the correct channels to apply for a card, or who have previously received a negative notice, may be able to misuse a card and attain employment and consequently inappropriate access to children. If a list of *valid* cards was made available to employers this would allow for added security to ensure that the applicants/employees are suitable for working within child-related employment
- **Child Protection Policies and Risk Management:** All organisations that are considered as a 'child related' organisation must be legislatively required to have a child protection policy, including a risk management strategy. A minimum standard should be determined to include, for example: a statement of purpose, code of conduct, employment procedures, risk management strategies, disclosure/concern response, and staff training.

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

As stated in our response to Question 1 it is Bravehearts' position that there is a vital need for consistency across States and Territories in their implementation of Working with Children Check requirements.

However, if there were no national scheme implemented, as stated above under Question 2, we believe that there are a number of minimum requirements that are needed to ensure a consistent and effective approach (see Question 2 for minimum requirements).

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

While it is important to include penalties for individuals who do not alert the Working with Children Check authority of any changes that may affect their clearance status, ensuring that there are regular re-application processes that do not over-burden the authority but that still provide regular check is a vital component of any system.

It is our belief that even with the safeguards in place, and with continued monitoring, a three-year period would be appropriate. There are considered to be too many risks associated with any clearance periods longer than a three-year review scheme including the continued use of the cards by individuals who should otherwise be excluded from working with children due to a change in their criminal history. Despite sufficient penalties for non-disclosure, it is a concern that individuals would not necessarily notify.

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

The timeliness of the Working with Children Check is a critical issue. In many cases it may not be viable to wait until the completion of the screening check before a person is able to be employed or volunteer in an organisation.

In recognition of these barriers, Bravehearts position is that as long as an application for a Working with Children Check has been made and there is a legislative requirement for the organisation to have in place a child protection policy, a person should be able to commence work within the organisation prior to the completion of the screening process.

#### **6. How should child-related work be defined?**

Child-related work should be defined as employment or volunteer work within an organisation where the business of the organisation involves contact with a child aged under 18 years.

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

Child-related sector should be defined as a sector where the business of the organisations involves engaging people as employees, volunteers, student placements to work with children or young people aged under 18 years.

Roles should include any employment or volunteer work (including Management Boards and student placements) with a child-related organisation, including, but not be limited to:

- Child protection services provided through or for the statutory child protection department
- Education services, including government, non-government and private tutoring or coaching
- Residential facilities, including juvenile detention, child accommodation services, and overnight camps

- Children’s services, including child care services, child-minding services, child care at special events
- Health, counselling and support services
- Churches, clubs, and associations involving children
- Education programs conducted outside of schools
- Amusement parks, gym and play facilities
- Transportation services for children

**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?**

While those who provide out-of-home care for children are, in the majority of cases, required to undergo criminal history checks, Bravehearts position is that it is in the best interest of our children and in the interest of ensuring the highest level of child protection that these workers are also subject to the Working with Children Check.

Bravehearts believes that encouraging a centralised administration system to undertake screening checks for suitability to work with children promotes best practice in ensuring suitability for working with children and monitoring compliance with legislation.

**b. parent volunteers?**

The question of whether or not a parent or carer’s child is attending the school, sporting club etc. should be irrelevant to whether or not that parent or carer requires a Working with Children Check. There is nothing in the offending literature to suggest that parents and carers do not offend against their children’s peers, in fact the literature suggests quite the contrary. Research into offenders’ modus operandi indicates that child sex offenders often use their children and their partner’s children to access and groom victims.

The reality is that offenders are often also parents and many offenders do access victims through their own children:

“By and large, then, extra-familial and mixed-type offenders seek victims close to home - among the children of friends or other children with whom they already have some social relationship” (Smallbone & Wortley, 2000, p.42).

Offenders in this study also identified volunteering for a child or teen organisation as a way of accessing victims (3.9% of intra-familial offenders used this strategy, 6.8% of extra-familial offenders and 13.4% of “mixed type”) (Smallbone & Wortley 2000, p.45).



Certainly the *Working with Children* check is only able to tell us about known and suspected offenders and should be seen as part of a wide range of organisational child protection strategies. But surely, if there are known child sex offenders volunteering in their own children's school or recreational organisation, we should utilise the best tool we have to protect our children from these known offenders.

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

All offences that relate to offences against children, or to interpersonal and family violence, should be considered including breaches of orders.

Juvenile records should be taken into consideration.

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

To be a fair and just process Bravehearts recommends that there be a formal appeal process that allows individuals to appeal a 'negative' notice. Bravehearts position is that this should be a formal external review process through, for example, a civil and administrations tribunal.

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

Bravehearts position on the Working with Children Check regime is simply one that holds that if we know that an individual has previously harmed a child, in any way, there is a duty of care to protect children and young people from known risks.

We believe that a clear and transparent process for assessing Working with Children Check applications, along with an appeals process, would ensure the integrity of the scheme.

Certainly concerns have been expressed that requiring an individual to hold a Working with Children Check will deter some individuals from volunteering. This issue has been raised particularly in the arguments against requiring parents and carers to hold Working with Children Checks.

The application and processing of Working with Children Checks should be as simple as possible. Consideration should be given to an online application process that would not only cut down on 'paperwork' for applicants and organisational responsibilities, but could effectively reduce the time taken to process forms.

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

The limitations of a system based on criminal history checks have been succinctly outlined in 2000 Queensland's Project Axis Report:

*Criminal history checks, while necessary, are far from sufficient. Reliance on criminal history checks alone is not only inadequate, it may well be dangerous. It may give employers undue confidence that all offenders have been detected, whereas only a small percentage of offenders are likely to be charged with, or convicted of, an offence (Queensland Crime Commission and Queensland Police Service 2000, p.78)*

Any suitability for working with children scheme needs to be complemented by the adoption of safe practices and policies and a cohesive approach by the all Governments, employers, voluntary organisations and other groups that involve working with children. Sound recruitment and selection procedures alongside systems supporting children will still be needed by all organisations. For example, it is also important that procedures are in place to ensure the transparency of how any complaints are dealt with by an organisation.

**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?**

The Working with Children Check should not replace an emphasis on organisational policy and responsibility around preventing, identifying or responding to concerns around inappropriate behaviours of staff. Working with Children Checks will only ever tell us about those individuals who are ‘known’ risks to children. While it is absolutely essential that where we are able to utilise this information to protect children from known risks, such a scheme will never replace sound organisational responsibility around risk management and child protection policies.

Employers should not be left with the impression that a working with children scheme will provide comprehensive detection of all individuals who may pose a risk. Any suitability for working with children scheme needs to be complemented by the adoption of safe practices and policies and a cohesive approach by the government, employers, voluntary organisations and other groups that involve working with children. Sound recruitment and selection procedures alongside systems supporting children will still be needed by all organisations. For example, it is also important that procedures are in place to ensure the transparency of how any complaints are dealt with by an organisation.

Ongoing monitoring, training and supervision of employees who have access to children is critical to minimising the incidence of child sexual assault. It is essential to achieve the best possible child protection measures, that there is a comprehensive approach that combines both effective screening and safe government and organisational practices and policies.

Legislating the need to have in place child protection and risk management policies (see response to Question 2) increases the capacity to promote the safety and well-being of

children and provides for the increased capacity of organisations to respond to child protection concerns.

Providing the training and education of child-related organisations in this area is a service that could be appropriately delivered by resourced, specialist non-government organisations. Bravehearts has developed a program, Supporting Hands, to provide this training and information to organisations. This full day training program includes information and skill-building in:

- Identifying child protection issues relating to your organisation
- Identifying risks in the workplace
- Creating a tailored risk management strategy to keep children in your organisation protected
- Developing child protection policies and procedures for your workplace
- Ensuring your Code of Conduct covers child protection issues
- Implementing child protection practices in your workplace

We cannot ignore the broader child protection issues faced by organisations in the communities in which they work. It is every organisation's responsibility to do their best to protect the children who they come in contact with. This is true whether harm or potential harm is internal or external to the organisation.

There needs to be consistent requirements for employer organisations to notify of work-related disciplinary matters as part of legislated screening systems. The inclusion of employment history in the checks overcomes one of the major limitations of criminal history checks – the fact that relevant matters which do not result in prosecution or a finding of guilt, or which are dealt with by internal disciplinary hearings, can be missed through the criminal history check process.

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

It is Bravehearts belief that the National Children's Commissioner would be perfectly situated to administer and monitor the progress of the Working with Children Check. In addition, external evaluation should be conducted to ensure that the process is effectively administered.

## References

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Council of Australian Governments (2009). *Protecting Children is Everyone's Business: National Framework for Protecting Australia's Children 2009-2020*. Canberra [ACT]: Attorney General's department

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