

August 2013

Royal Commission into Institutional Responses to Child Sexual Abuse Issues Paper One: Working With Children Check

A Response by Anglicare Australia

INTRODUCTION

Anglicare Australia is a network of 45 independent local, state, national and international organisations linked to the Anglican Church and joined by values of service, innovation, leadership and the faith that every individual has intrinsic value. Our services are delivered to more than 500,000 Australians, in partnership with them, the communities in which they live, and other like-minded organisations in those areas. In all, over 23,000 staff and almost 16,000 volunteers work in around 40 different service areas and spend a combined budget over \$1 billion each year, in every region of Australia.

Anglicare Australia agencies work in close co-operation with government and other community organisations, and some receive funding from federal, state and local governments to provide a wide range of services. These include:

- Foster care, Out-of-Home Care, residential care, adoption and childcare
- Support programs for vulnerable families and children
- Support for people with disabilities
- Financial counseling and low/no interest loans
- Family and relationship counseling
- Alcohol and other drug treatment and support programs
- Family violence programs
- Youth programs
- Residential and community aged care
- Emergency relief
- Employment services
- Community housing and emergency accommodation services
- Community development through building communities of hope
- Working with Aboriginal and Islander Australians
- Programs for refugee and migrant communities
- Social research and advocacy.

Given the broad role of Anglicare Australia agencies in the delivery of support services to some of the most vulnerable members of our communities, we welcome the opportunity to respond to the First Issues Paper on the 'Working With Children Check (WWCC)' emerging from the Royal Commission into Institutional Responses to Child Sexual Abuse.

The Working With Children Check (together with other state-based systems, such as the 'Blue' and 'Oche' cards) has an important role in the risk assessment and management systems and processes employed by Anglicare Australia agencies as part of their delivery of a wide range of care and support services to children and young people. As leading service providers in the areas of out-of-home-care, foster care, residential care, adoption and permanent care, child and family support and youth programs, the Anglicare Australia network of agencies have considerable investment in ensuring that the WWCC system is robust, rigorous, consistent and efficient across all Australian states and territories. The WWCC system must augment and strengthen our own risk management, screening and monitoring practices, and our commitment to the care, safety and wellbeing of vulnerable children and young people.

RESPONSE

The following responses to the questions identified by the First Issues Paper represent the views of a range of key agency stakeholders across the Anglicare Australia Network.

1. Should there be a National WWCC?

Anglicare Australia supports the introduction of a National Working With Children Check system. An integrated and consistent WWCC across all states and territories would allow for improved and more systematic access to information about a person's suitability to work with children and young people across state and territory jurisdictions (i.e. sharing of information held by state-based professional bodies and panels not obtainable via a national criminal history check), and a more consistent approach to serve the best interests of all Australian children and young people.

In particular, we propose that a national WWCC has the potential to reduce 'lost information' across states and territory borders, as individuals (employees, carers and volunteers) move between organisations that have little to no connection with one another, and are governed under different state legislation. In the absence of a national Out-of-Home Care (OOHC) system and/or national database for carers and employees working with children, any national WWCC scheme must address how greater access to information about the suitability of employees and volunteers across states and territories can be achieved.

Many of the concerns raised by organisations across our network pertain to the ease by which care concerns raised about employees, carers or volunteers can be too easily 'lost' to potential new employers, particularly if the employee or volunteer resigns before a disciplinary process can be completed and their position formally terminated as a result of their behaviour. In such instances, there is the potential for an individual to be re-employed by another organisation in possession of a valid WWCC, and continue to be a potential threat to children in their new role. This is a key gap in the current system that a national WWCC must look to address.

Whilst the varying WWCC systems in place across the states and territories have the support of the corresponding state-based Anglicare agencies, it is the position of Anglicare Australia that a national system has the potential to strengthen what is already in place. It is critical, however, that:

- any such national system maintain strong connections with state-based authorities to manage the risk of becoming broader and less sensitive or specified, and
- WWCC applications are processed in a timely manner so as not to impede employment processes, or in the case of foster carers, place greater stress on an

already stretched OOHC system through lengthy WWCC application periods.

It has been the experience of some agencies across the network that WWCCs can take up to 12 weeks to be processed: such a timeframe would be unacceptable in any new national system, and the provision of adequate resources across states and territories must be a priority if the system is to be implemented adequately.

A national system may also reduce the potential for confusion across some of our network about what types of checks are needed before work with children can proceed (particularly in states where the WWCC is not established). In South Australia for example, agencies report that new employees often apply for a *National Police Clearances (SAPOL)* rather than the *Screening and Licensing's National Police Checking Service (DCSI)*, which is required for work with children in that state. A national WWCC may help to better inform potential employers, employees and volunteers alike of such requirements through the delivery of a clear, unified strategy.

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

The following key features are critical to any national scheme:

- WWCCs must be a requirement of all employees, volunteers and carers over 18 years of age with regular, ongoing contact with children and young people.
- The WWCC should encompass a national criminal history check, information from state-based professional registration bodies, panels and government departments (e.g. CARL reports from South Australia, findings from the out-of-home care Suitability Panel in Victoria, and findings from health service disciplinary committees and teaching registration bodies) and information from state-based Civil and Administrative Tribunals relevant to an individual's suitability to have contact with children.
- WWCCs must be processed in a timely manner (no longer than four weeks).
- It is imperative that mechanisms are developed to enable information sharing about suitability across states and territories beyond what is currently available through national criminal records checks.
- It is the responsibility of the WWCC justice authority to provide organisations with immediate notification of any breaches associated with their employees, carers or volunteers.
- Organisations should have the ability to confirm with the WWCC Justice Authority whether they have been made the 'nominated organisation' by their employees/carers/volunteers. At present in Victoria, this is the responsibility of the employee/volunteer/carer, leaving open the possibility for individuals to remain associated with previous employers.

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

In the absence of a national scheme, the minimum requirements outlined above should be implemented across each state and territory, and a consistent national approach developed. We would also advise that a national governing body be formed to guide, monitor and evaluate the efficacy, delivery and adequacy of the WWCC systems in each state and territory, including the systems by which information is shared between jurisdictions. It may be possible for the National Children's Commissioner to be the auspice for this role.

4. How long should any clearance be granted for?

At present there is variability across the states and territories regarding for how long a WWCC is valid; ranging from two years in Western Australia, three years in South Australia and five years in Victoria. Anglicare Australia acknowledges the benefits of both the shorter and longer periods, particularly given the need to balance rigour with the potential burden and costs to the WWCC system, organisations and individuals alike. We conclude that there are benefits to each approach, with the provision that information about any adverse findings and care concerns are made available to organisations from the relevant justice authorities in a timely and systematic manner.

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

A person should be able to commence work before a valid WWCC has been received, but evidence of their application must be sighted and recorded by the organisation (i.e. via a receipt), and no unsupervised contact with children or young people should occur before the WWCC has been cleared.

It is imperative that employees and volunteers who are new to child-related work (e.g. graduates with no previous experience in child-related work, or those who are new volunteers or foster carers) be able to apply for a WWCC before they are employed. The current system in place in Western Australia requires individuals to be employed before they can apply for a WWCC, significantly delaying an individual's commencement of work. Given that a WWCC can take between 4 to 12 weeks to be processed in that state, this provision must be considered in any new national WWCC system.

6. How should child-related work be defined?

Child-related work should include all work (paid and volunteer, including foster care), and formal roles in the community that involve regular contact with, and proximity to children and young people under-18 years of age. This is particularly pertinent to positions of authority that involve the provision of supervision and care to children and the development of trusting relationships, and also extends to roles that enable regular access to the records held by organisations about children and young people

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

Child related sectors are those where the delivery of services and programs to children, young people and families are a core part of the sector's work, mission, funding and objectives.

8. Are current exemptions for a WWCC adequate or appropriate?

We consider the exemption for parent volunteers who have irregular contact with children and young people in the conduct of an organisation's programs or services as reasonable, however for individuals involved in ongoing volunteer programs or roles, a WWCC should be required.

In terms of children living in OOHC, Anglicare Australia acknowledges the need for comprehensive monitoring and screening of all persons with whom children may have contact in their foster care or residential placements. Across the states and territories, there is variability in the approach taken with regard to obtaining WWCCs for all persons over 18 years of age that a child may reside with whilst in OOHC (e.g. a carer's other children or other adult relatives), but there is consensus that national criminal history

checks should be a minimum requirement in such instances. Anglicare Australia acknowledges the need to balance rigorous screening to safeguard the wellbeing of children in care, with a system that is not unduly burdensome for foster carers and their families.

There is also some support across the Anglicare Australia Network for WWCCs to be a requirement for workers and volunteers who are under 18 years age who also have regular contact with children.

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

The Anglicare Australia network acknowledges the rationale for, and benefit of extending the WWCC to include juvenile records. As community-services organisations that provide support and assistance to vulnerable children and young people we wholeheartedly support a rigorous WWCC approach, but also contend that for many children and young people, childhood and adolescence can be a troubled time in their development, and may result in criminal behaviours that reflect experiences of adversity (combined with a lack of maturity) rather than indicating the risk of becoming perpetrators of harm and abuse to children in the future.

If juvenile records are to be included in the WWCC as a way of capturing early sexual offending or violent behaviours, we believe it is critical that individuals have the right to have their individual circumstances taken into consideration either during the WWCC assessment stage or through the review or appeal process. It may also be possible for the assessment process to exercise some discretion depending upon the nature and level of the offence in question, particularly in the case of minor offences.

Any adverse information or care concerns that are obtained or made available through the police and justice systems, professional registration bodies, panels and tribunals, government departments or state-based Civil and Administrative Tribunals must be incorporated into any risk assessment process conducted via the WWCC.

Further, given the number of Anglicare Australia employees, carers and volunteers who have been born, or have lived overseas, we also contend that consideration be given to the systems by which international criminal history records can be reliably accessed as part of the national WWCC.

10. How should an appeal process operate?

Given the wide-reaching impacts that an adverse WWCC finding can have on a person's employment opportunities, it is integral that review and appeal processes be available to all individuals, particularly in relation to assessments made on the basis of juvenile records. We believe the process should:

- allow for the capacity for organisations to present information on behalf of their employees/volunteers/carers if relevant
- be culturally sensitive and
- enable appeals to be assessed on an individual basis taking into account environmental and historical factors (e.g. the high incidence of incarceration/charging of indigenous Australians for minor offences in the past that then remain on criminal records).

A number of agencies across the network have cited instances where adverse findings (past and present) had prevented an employee from holding a WWCC, and where an appeal was warranted as the offence was seen to have little relevance to the person's

suitability to work with children.

However, whilst an accessible and rigorous review and appeal system must be available, it is the position of Anglicare Australia that the wellbeing and protection of children should always take precedence over the review and appeal provisions available to any individual. Given our organisations' Duty of Care and responsibility for the safety and wellbeing of vulnerable children and young people, our programs would be reluctant to place clients in the care of employees, carers or volunteers where previous concerns had been identified, and were shared by our organisations.

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

With automatic barring comes the risk that the broader circumstances surrounding an offence may not be given due consideration. One such example known to Anglicare Australia is that of a mother who whilst defending herself from violence from her partner, accidentally and tragically killed her baby. Whilst this woman is of no risk to future children, her action may have resulted in automatic barring. Such situations highlight the importance of an appeal system.

12. The adequacy of the risk assessment process.

It is beyond the capacity of Anglicare Australia and its member agencies to make an accurate judgement of the adequacy of the WWCC risk assessment process. However, it may be possible to obtain such information from the state and territory government authorities that have responsibility for reviewing the administration of WWCC schemes, such as the Victorian Commission for Children and Young People.

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 WWCC does not in any way minimise the responsibility of organisations to establish their own rigorous screening, monitoring, supervisory and critical incident processes, and the responsibility of organisations to respond diligently to inappropriate employee/carer/volunteer behaviour and concerns raised about the welfare of any child or young person receiving support from an Anglicare Australia agency.

The WWCC is a screen of what 'is known' and what is 'on record', and has no provision to replace the risk management processes within organisations. The WWCC does not reduce an organisation's own duty of care obligations to the safety of children, and is but one part of an organisation's own broader risk management strategy, that should also comprise national (and international, if warranted) criminal history checks, referee checks, regular supervision of staff, established critical incident processes, clear disciplinary processes, clear processes regarding the notification of justice authorities and regular engagement with clients about their experiences of service delivery.

We also suggest that organisations should be mandated to inform a national or integrated WWCC authority of any formal breaches or disciplinary processes related to prescribed issues being conducted in relation to their employees, carers or volunteers. In this way, the potential for such information to be lost or in effect be 'silo-ed' within organisations may be reduced, as would the potential for individuals to be able to move on to other organisations and re-offend in the future.

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

The WWCC should be evaluated and monitored against best practice, existing evidence and international research. There should be regular reviews of its effectiveness, and the capacity to make amendments to the system as gaps become apparent. Any evaluation should be responsive to the practice experiences and concerns of organisations utilising the WWCC system, and outcomes data should be made available to the public (e.g. encompassing the number of applications, number of care concerns made, number of suspensions, number and outcomes of appeals etc).

Anglicare Australia has the view that this role would be appropriately assigned to the Office of the National Children's Commissioner in consultation with state and territory Children's Commissioners/Ombudsmen.

NOTE IN CONCLUSION

This response was prepared for the Anglicare Australia network by Anglicare Victoria with input from a number of the network's member organisations. We appreciate the opportunity to contribute to the important work of the Commission, particularly in terms of sharing our best practices regarding the protection and care of young people and in learning from others.