

WORKING WITH CHILDREN CHECK

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Thankyou for the opportunity to provide this submission to the Royal Commission into Institutional Responses to Child Sexual Abuse regarding a National Working With Children Check.

The following is my personal opinion regarding the Working with Children Check and should not be taken as a representation of the opinion of my employer.

My professional qualifications include nursing and post-graduate qualifications in behaviour modification; in the course of my studies I developed an understanding of normal function of the human body, medical conditions, pharmacology, anatomy and physiology, normal childhood development, developmental abnormalities, normal psychological development and abnormal psychological presentation, psychiatry, behavioural theory, motivation affecting underlying behavioural characteristics, and the principles underlying treatment methods to modify abnormal behaviour.

I also hold a Graduate Certificate in Business and a Master of Commerce (Human Resource Management and Industrial Relations). I have worked as a registered nurse in child-related environments and have worked with intellectually disabled children and adults with severe challenging behaviours, psychiatric and medical conditions. I have worked as a manager in a residential facility providing a service to children who were wards of the state.

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I believe my experience in this field and my professional qualifications will give credence to my submission.

1. Should there be a national WWCC?

There should certainly be a national Working with Children Check.;

- A national system would serve to identify persons with known risk issues in a consistent manner across the nation.
- Without a national check the jurisdiction with the least robust system would be the target location for persistent known predators to relocate to.
- A national check would standardise systems and apply the pre-engagement system of scrutiny equally across jurisdictions allowing for changes and enhancements to be introduced across the nation.
- A national WWCC may serve to ameliorate the cross jurisdictional issues with the release of information currently experienced by state based systems.

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

A national scheme should;

- Ensure the safety and welfare of children as the primary concern.
- It should be applied consistently across all states and territories.
- It should be governed by a national body and implemented in each state and territory by an appropriate body established within each state.
- The governing national body should have representatives of the state agencies implementing the check on a central steering committee.
- The governing national body should consult with various national expert panels.
- Be recognised in each state and territory, i.e. a person would apply once for a national clearance which could be issued by any jurisdiction.
- It should apply to people working in a paid or voluntary capacity directly with children irrespective of the degree of supervision afforded.
- It should include persons with access to sensitive information on vulnerable children such as administration staff working with disadvantaged children, and administrative staff assisting child protection workers.
- It should include sporting and recreational activities for children, educational services, medical, psychological, social, legal services and specific transport services provided to children.
- It should specify certain types of child-related environments where the check would apply and also identify certain roles where the check would apply.
- It should specify the types of roles where the check should not apply.

- A child should be defined as a person 17 years of age or under.
- It should take into account information available on individuals applying for the check;
 - Criminal convictions for specific offence types within Australia or elsewhere.
 - Criminal charges for specific offence types within Australia or elsewhere.
 - Disciplinary proceedings reported to a national register regarding specific conduct that has satisfied the standard of proof at least to the civil standard and was investigated by an agency with sound investigative practices and systems.
- Once a relevant matter is identified it should also consider substantiated intelligence material available from child protection and Police agencies and any other source available to the agency.
- It should include constant monitoring so if a child-related worker is charged with an offence it would be taken into account as to whether the working with children authority should be allowed to remain in force.
- It should include constant monitoring of notifications of investigations into proven specific misconduct undertaken by employers to allow a determination to be made that the working with children authority remains valid.
- It should allow an issuing authority to
 - Bar an individual from working with children.
 - Allow a person to work generally with children.
 - Place binding conditions on the type of work a person can undertake with children and the power to publish those conditions for the benefit of any person or agency engaging the individual.
 - Prosecute individuals for working with children
 - In contravention a bar.
 - In contravention any condition placed on a clearance.
 - With an expired WWCC.
 - Without a working with children clearance.
- It should allow an issuing authority to prosecute an individual or organisation for engaging a person that does not hold a valid clearance.
- It should allow prosecution of an agency or individual for allowing a person to undertake child related work in contravention of any condition placed on the authority.

- Employing individuals and agencies should be able to verify the current validity of a clearance.
 - The issuing authority should be able to inform an agency or individual that verified a person that the WWCC clearance has been suspended, or has lapsed, or has had conditions imposed upon the authority.
3. If there is no national scheme, should there be minimum requirements for each state and territory scheme?
- The requirements should be nationally applied with a national exchange of information so information available in one jurisdiction is available in another.
 - The workforce is mobile and information in one jurisdiction should be available equally in another.
 - The jurisdiction with the lowest standard of scrutiny of child-related workers risks establishing itself as the default destination for persistent known child abusers.
4. How long should any clearance be granted for?
- A clearance should be subject to continual monitoring for screening indicators throughout the course of a clearance.
 - A clearance should only be valid for a specific period at the end of which the clearance would lapse and continual monitoring would cease until an application for renewal was sought.
 - An application for a clearance should be on a user pays system and a clearance should be available for 5 years.
5. Should a person be able to commence work before the check is completed?
- Some consideration should be given to this as it may be necessary for a person who does not hold an authority to engage in child-related work in an emergency.
 - In such cases they individual should not be able to engage in other child-related work until such time as a clearance is issued.
 - An emergency worker who has not applied for a clearance should be required to make that application within a short time frame.
6. How should child-related work be defined?
- There should be clearly defined parameters applied, just because a person has business in a child-related environment such as a school, hospital or childcare centre etc does not mean they are working with children. A sensible approach must be applied otherwise most of the population of Australia would require a clearance.
 - For example a worker engaged on a construction zone on school grounds irrespective of whether the school is open or not should

not be required to have a clearance even though there may be some possible casual interaction with children.

- Child related work needs to take into account voluntary or paid roles where a person has direct access to children, where they may be able to develop a relationship with children, where they have access to information on vulnerable children, where they may have indirect access to children such as through a telephone counselling or on-line service.
- Child-related work should not be extended to general wards of hospitals that have a children's ward in operation.

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

- The sectors and roles should be defined by a national expert advisory committee.
- The national legislation should define sectors in the first instance that would be subject to a WWCC, these would include environments such as employees of educational services for children, child care centres, paediatric hospitals, university centres involved in research on children, entertainment services for children, sporting and recreational services for children, legal and correctional facilities for children, residential and out of home care services for children etc.
- It would then define roles that would also be subject to the requirement, paediatricians, child psychologists, members of sporting associations with direct access to child members (coaches, referees, leaders etc), children's legal officers, tutors, workers engaged in a paediatric unit of a general hospital, contractors and consultants engaged for the specific purpose of providing a direct service to children; professional babysitters or child minders etc.
- It should also define roles that are specifically not in child related work, e.g. trades professionals called into a child-related environment to undertake repairs would not be required but a handyman or maintenance worker or cleaner who is part of the school's general workforce would be.
- Persons working in an agency issuing a WWCC should themselves be subject to a WWCC.

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?

These persons should be subject to the requirement but should only include adult household members.

b. parent volunteers?

Parent volunteers working with their own children should not be, but any person volunteering generally to work with children should be.

9. What records should be included in the check? For example, should the check include juvenile records?
- It should be remembered that relevant offences are only representative of when an offender may have been detected, an offender is not usually caught the first time they engage in undesirable behaviour.
 - Ideally the types of relevant criminal offences would be determined by a national expert panel drawn from a range of professional occupations such as Police, child protection and existing WWCC practitioners.
 - Relevant criminal records should include but not be limited to;
 - all actual, attempted or incitement to commit a sexual offence irrespective of an adult or child victim;
 - all offences involving actual, attempted or incitement to cause serious harm to children including more serious offences of malicious wounding, grievous bodily harm; assault occasioning actual bodily harm; manslaughter; murder; poisoning etc;
 - all offences relating to serious neglect of a child;
 - all offences relating to the supply or provision of illicit drugs to children;
 - all offences dealing with creation, possession and publication of child abuse material;
 - all offences dealing with sexual servitude and child prostitution;
 - all offences dealing with the grooming of a child as described in criminal statutes;
 - all offences dealing with deliberate exposure of a child to pornography;
 - all offences dealing with the stalking, intimidation or harassment of a child.
 - The check should include all relevant records irrespective of how long ago the conduct occurred or how old the offender may have been at the time.
 - It should include charges as well as convictions for specific offences, this is because prosecutions involving child victims and witnesses can be very difficult to secure.
 - It should exclude listed offences from spent conviction regimes.
 - It should not include quashed or pardoned offences.
 - It should not include offences that are no longer an offence under relevant statutes i.e. decriminalised offences.
 - As many matters are never referred to the Police at the behest of guardians or victims who are happy to have the employer address the

issues or are reluctant to engage with the Police or appear before court as a witness, it should include certain disciplinary proceedings notified by an investigating agency.

- A national expert panel drawn from child-related employers, workplace investigators, child protection workers and WWCC practitioners should specify the types of workplace disciplinary processes that should be considered.
- Workplace disciplinary records should only include matters that have reached the civil standard of proof unless there is a pattern of behaviour that is emerging.
- The sanction put in place by the employer should not have a bearing on the requirement to notify.
- Workplace records notified by an organisation should not be limited to child-related workers.
- Workplace records should include;
 - Sexual misconduct directed at or in the presence of children.
 - Physical assault which is at least serious (would require definition).
 - Conduct that was directly linked to causing or resulting in a deterioration in a professionally diagnosed psychological injury or psychiatric condition.
 - Serious neglect that resulted in actual harm (not misadventure) to a child (such as failure to thrive).
 - Grooming of a child – this of a civil and not criminal definition where significant crossing of professional boundaries has occurred that may diminish a child’s resistance to sexual misconduct or has been directed at agency boundaries designed to protect children from potential misconduct.
 - Misuse of medications to alter the mental presentation of a child e.g. deliberately giving a child another child’s ADHD medication to ‘settle them down’; overdosing a child with over the counter medications eg. to make them sleep (phenergan); deliberately giving a child prescription only medication prescribed for another person.
- The requirement placed on an employer to report workplace proceedings should not impact on the ability of a worker to provide care and comfort to a child or to protect them from harm or from causing harm, for this reason matters that are false, vexatious or misconceived need not be reported.
- Any reporting guidelines should specify conduct that does not need to be reported.

- It is an unfortunate fact of life that some children will need to be restrained for their own protection or the protection of others.
 - In determining whether to report an incident involving restraint the agency needs to distinguish between excessive force and physical assault, the two elements are quite different where the latter involves some malicious intent.
 - Should any of the above be detected an agency determining the suitability of a person for a WWCC should be able to take into account any other information it has available that goes to the persons suitability to be engaged with children such as previously unproven allegations held by that employer that establish a pattern of concerning conduct.
10. How should an appeal process operate?
- The Working with Children Check should be a fair process that appropriately balances the rights of children to be safe against the rights of an individual to engage in work, paid or voluntary.
 - This can only be achieved through a robust system with appropriate appeal rights.
 - Some convictions should be considered so heinous that a person should never be allowed to work with children and should not be appealable. These offences should be limited to convictions for serious sexual offences and convictions for serious offences that placed the physical well-being of children at risk.
 - The appeal process should be nationally consistent and undertaken at low cost to an individual appealing a bar by a national agency other than the agency that issued the bar.
 - It should place the burden of proof on the individual appealing the bar that they do not pose a risk to the safety of children.
 - The national agency able to hear a bar appeal should be required to have regular professional development in and an understanding of child protection and offender behaviour.
11. What issues arise from the current regime of records that result in automatic barring of a person from working with children?
- Automatic bars should only apply to criminal convictions and cover serious offences.
 - The worst category of proven offences should result in an un-appealable bar.
 - Persons should not be automatically barred on the basis of certain convictions such as carnal knowledge.
12. The adequacy of the risk assessment process.

- The issue that arises here is that despite the best intention of any profession there is no test that can accurately predict the likely risk a person may pose to children nor of the likelihood that a person will offend or reoffend.
- This would imply a professional judgment model would be needed, but these models are notorious for being inconsistent.
- Most likely a blending of the two approaches would need to be used.
- In any instance, any recommendation to bar or restrict a persons ability to work with children would need to be critically analysed at a number of levels prior to a bar or restriction being issued.
- Risk assessments should be part of an ongoing audit process to ensure best practice case management, outcomes and fairness are provided.
- An audit process should be undertaken by the national body and be able to issue improvement notices.
- A copy of any improvement notice should be required to be issued to the State government responsible for the agency.
- The national agency should be able to recommend organisational changes required of an issuing authority in order to resolve outstanding improvement notices and this should be served on the state government responsible for that agency.

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?

- A working with children check will not reduce the need for an organisation to take responsibility for supervising the conduct of its workers.
- Agencies need to specify or generally describe practices that are not allowed by their workers e.g. exchanging personal mobile telephone numbers, meeting outside the service environment, meeting for social purposes, electronic communications by other than official means (face book, personal email, internet chat etc), transporting children in personal vehicles and other such conduct.
- Agencies generally inform their workers of the code of conduct that they are required to abide by but do not normally inform children or guardians of the standards of conduct expected of people working with children, and yet they have entered into an implied or real service contract with that family or children.
- Unless a child or guardian is aware of the types of conduct an agency has deemed unacceptable, how can employers expect these persons to be alert to breaches and report matters so corrective action can take place.

- Agencies need to have sound codes of conduct and supervision in place, a known child abuser has to have abused a child for the first time at some stage.
- Agencies are vicariously liable for the actions of their employees if they do not have sound systems in place to monitor and respond to risk.
- In every instance of abuse within child related environments there has been a breach of acceptable standards of conduct. The people we are most intent on detecting and keeping out of child related employment are those very persons who push the boundaries of acceptable practice established by an employer according to current community standards.

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

- The WWCC should be implemented by states and territories and be governed and audited by an overarching national governing body.
- State agencies should be responsible for auditing the compliance of individuals and employers within their state and reporting their auditing activities to the national governing body.
- The national governing body should monitor and deal with emerging issues and communicate these with the authorities in each state and territory.
- The national governing body should be able to issue practice directions and guidance to state agencies, this is a program of national cooperation.
- Ongoing evaluation should be required from implementation date to allow emerging issues to be addressed as they occur.
- A formal evaluation of the system should be reported two years after implementation.
- Following the initial formal evaluation, it should occur every 4 to 5 years.
- Each state agency involved in the system should be required to independently report on the system to the State parliament with a copy of the report provided to the national governing body.
- The national governing body should be required to independently report on the effectiveness of the entire system to the Federal parliament.
- The national body should report on the effectiveness of state agencies as determined by audit results through a Federal Minister or Commissioner to the relevant state government and head of state agency.

Submissions should be made by
Monday 12 August 2013.