



Roundtable on Working With Children Checks – Summary report

Background

The Royal Commission into Institutional Responses to Child Sexual Abuse held its second roundtable in Canberra on Monday 16 June 2014.

The roundtable was convened by the Chair of the Royal Commission, the Hon Justice Peter McClellan AM and Commissioner Robert Fitzgerald AM.

The aim of the roundtable was to assist the Royal Commission to better understand how Working With Children Checks (WWCC) can help prevent child sexual abuse in institutional contexts.

The roundtable followed the release of Issues Paper 1: Working With Children Checks, which generated 80 submissions from a wide range of individuals and organisations.

Some consistent themes emerged in the submissions and these formed the basis of the roundtable discussion. The four broad themes for discussion were:

- A national approach to a pre-employment scheme
- What are the important elements of any WWCC to prevent child sexual abuse in institutions?
- Who should be subject to a WWCC and who should be exempt?
- How information sharing between state and territory jurisdictions can be improved.

Summary of the Discussion

Session 1: A national approach to a pre-employment scheme?

A consistent issue that was raised in submissions was whether Australia needs a single national WWCC scheme or a more nationally consistent approach to pre-employment screening.

Opening the discussion, the Commonwealth provided a short update on the National Framework on Protecting Australia's Children, endorsed by COAG in 2009, as it relates to WWCCs. A National Framework Implementation Working Group was established featuring senior policy officers of the Commonwealth, State and Territory governments together with representatives of the Coalition of Organisations Committed to the Safety and Wellbeing of Children, representing 120 non-government organisations working in child protection. Within this Working Group a Working With Children Checks sub-committee was established in 2010 to progress work towards national consistency.

In 2011, the sub-committee identified 10 priority areas that require agreement across jurisdictions as a first step toward harmonisation, but no agreement has yet been reached on any of these. A number of roundtable participants criticised what they saw as a loss of momentum in work towards uniform standards.

The NSW Children's Guardian outlined three alternative models for greater national consistency for consideration:

1. A centralised national system
2. A "federal" system with uniform national laws and shared minimum operating standards with separate state and territory jurisdictions responsible for their operation
3. A minimalist model of mutual recognition laws.

The alternative options of a single national WWCC scheme or greater harmonisation between existing schemes across jurisdictions was debated at length.

Non-government participants were generally strongly supportive of a single national scheme.

However, the jurisdictional representatives were generally not supportive of a single national scheme for the following reasons:

- The high cost of bringing in a new national system when there were already settled schemes in most states and territories (the exception being South Australia, which does not have a WWCC).
- The legislative complexity involved.
- The lack of an evidence base to inform best practice in designing a national system
- The perception that national consistency might require some jurisdictions to lower their standards in some areas.
- The length of time it would take to achieve a national scheme

However, the non-government participants were generally strongly supportive of a single national scheme.

In lieu of a national scheme there was consensus among the group in support of working towards a more consistent approach across jurisdictions. It was agreed that having a harmonised or nationally consistent approach should:

- Provide portability to people who work with children as they cross jurisdictional boundaries.
- Remove the burden on organisations that deliver services to children nationally
- Simplify information sharing across jurisdictional boundaries
- Tighten any loopholes between the current schemes where a perpetrator can slip through across jurisdictional boundaries

Detailed discussion followed about whether greater harmonisation between existing schemes could be achieved on the basis of a set of agreed minimum standards. Concerns were raised about whether this could be achieved without some jurisdictions being required to lower their standards in some areas, which they stated they were not prepared to support. It was agreed once minimum

standards were agreed and established, each jurisdiction could then choose whether it wanted to “top up” its own scheme above this shared baseline, but no state or territory would be able to seek exemptions or transportability between jurisdictions would begin to erode away.

Session 2: What are the important elements of any WWCC to prevent child sexual abuse in institutions?

The group was asked to consider several sub questions to guide this discussion.

What should be considered as child-related work?

The group heard that there was substantial agreement in relation to the definition of child-related work.

- Regular parent volunteers
- One off parent volunteers
- People employed in institutions where children are, even if their role is not working directly with children (e.g. maintenance staff in schools)
- Performers and entertainers
- Photographers
- All ministers of religion

While there was broad agreement around what should be considered as child-related work, the group heard that commercial services and activities for children (photographers, performers and entertainers, talent shows) had emerged as an area where consistency across jurisdictions was still lagging behind.

It was also suggested that the definition of child-related work should not be limited to people who work directly with children, but should include:

- People who access children online (e.g. distance education providers)
- People who have phone contact with children (e.g. children’s helplines)

The group was told that many schools and sporting organisations ask parents to undergo a WWCC as a risk management strategy in the event that a parent might be asked to volunteer at short notice.

What type of checks and histories are most important in preventing child sexual abuse in an institutional context?

There was a broad discussion on the risk of going too far into a background check verses the need for relevant information for the role and institutional setting. While the checks need to be thorough to screen out any potential perpetrators, the group did not want to see an environment created where someone is prevented from working with or caring for a child because of a past event that may not pose a threat to a child. It was noted that only a very small number of applicants are

rejected from a WWCC, however all schemes need to be subject to a review process prior to a decision being made, or an appeals process afterwards.

There was discussion of the variety of different types of records that might be accessed in a WWCC. Currently these vary across jurisdictions, but they include:

- Criminal histories
- Spent convictions
- Charges
- Non-conviction charges
- Juvenile histories
- Employment processes
- Disciplinary proceedings
- Child protection records
- Apprehended Violence Orders

There was some disagreement about whether a person's whole criminal record should be taken into account, or only matters relating to child protection.

NSW, Victoria and Tasmania are all moving towards a similar risk assessment model involving access to criminal records and records of workplace disciplinary proceedings. This model was described as "layered". Certain offences lead to automatically barring, while other records trigger the need for further risk assessment. The group was asked to consider whether this was an appropriate level of check for other jurisdictions to follow.

Concerns were raised in relation to Aboriginal and Torres Strait Islander (ATSI) communities. ATSI people come to the attention of law enforcement at a disproportionately higher rate than the rest of the community. A high proportion of children currently in Out of Home Care are from ATSI backgrounds, and it was suggested that a more inclusive system needs to be considered whereby ATSI people are less likely to be barred as carers (and more likely to be encouraged to apply). It was also noted that indigenous people tend not to take up the opportunity to appeal decisions.

How often should a WWCC be required and how critical is continual checking of criminal histories and employment proceedings?

Currently there is considerable variation between jurisdictions in relation to how often a WWCC is required. The Northern Territory requires a renewal every 2 years; Queensland, Western Australia, Tasmania and the ACT every 3 years; and NSW and Victoria every 5 years.

There was some agreement that the introduction of continuous criminal history checking would make a longer period between renewals more appropriate.

Apart from South Australia, each state and territory has its own system of (daily or weekly) continuous checking, provided through CrimTrac, but at this stage only criminal convictions are

tracked. South Australia does not have continuous checking because it does not have a central screening body.

However, it was suggested that there were also factors in favour of shorter renewal periods. High staff churn rates in some sectors mean a significant number of people do not apply to renew their checks when they expire. Therefore, jurisdictions with longer renewal periods are likely to be monitoring many people unnecessarily. Shorter renewal periods help identify people who drop out sooner, reducing the cost burden on the system.

On the other hand, concern was expressed that shorter renewal periods place unacceptable pressure on volunteers.

Session 3: Who should be subject to a WWCC and who should be exempt?

The group agreed that anyone working in a child-related environment should be subject to a check, whether the work they are doing is paid or unpaid. Exemptions were appropriate where contact with children is incidental (e.g. when a mechanic attends a school to fix the air conditioning).

Some specific kinds of activity were raised as needing a WWCC:

- School cleaner
- School bus driver
- Hospital volunteer
- Piano teacher
- Parent volunteering at a school
- Parent volunteer attending a weekend cricket camp
- Saturday netball coach

There was debate over whether parent volunteers might be exempted from a WWCC in certain limited circumstances. In NSW, unsupervised volunteers require a check, but supervised volunteers don't. In WA, parent volunteers don't require a check if their own child is involved in the activity.

Should all ministers of religion or members of religious institutes be subject to WWCC?

The group heard that in their submissions to the Royal Commission the Catholic and Anglican churches argued that all ministers of religion and members of religious institutes should be deemed to be in child-related occupations and subject to a WWCC and that any church-related institution should be regarded as child-related environments. Support was expressed for the view that there should be no exemptions for retired clergy.

How far should a WWCC be applied in Out of Home Care (OOHC), specifically, other household members and kinship care?

It was noted that a WWCC is just one component in the process of assessing whether someone is a suitable person to become a carer, however primary care givers must have a WWCC. Carer household are closely monitored by the agency that places the child with them, and carers are required to notify the agency of any changes to that household. However it was noted that this can be difficult to police and relies heavily on the carer notifying the agency.

The following people within a household in which children are being cared for were identified as potentially needing to be checked:

- All adult household members (16 years and over)
- Overnight visitors
- Uncles
- All adult household members of family daycare providers (16 years and over)

Specific issues were raised in relation to kinship care. Kinship care is growing as the most common form of OOHC. There was some discussion about whether kinship care should be treated differently from foster care on the basis that they tended to be shorter term, more informal, and needed to be organised more quickly.

Concerns were again raised about potential difficulties for ATSI communities. While it was argued that there should not be a reduced threshold of care for Indigenous children, difficulties arise particularly where there is a large number of regular adult visitors to the household needing to be identified to child welfare authorities. It was suggested that assessment of whether a family was appropriate to become kinship carers should include assessment of the ability of the primary carer to protect the child from harm.

Session 4: How is information shared between jurisdictions currently, and could it work better?

Update on the COAG Exchange of Criminal History Information for People Working with Children (ECHIPWC)

In mid-2013, COAG agreed to a permanent inter-jurisdictional exchange of criminal history information for screening people working with children, and this system now operates under an Intergovernmental Agreement. Information exchanged includes spent convictions, current charges, prior charges, and circumstances of convictions or charges. Victoria has indicated that it will review its current policy of not sharing information about non-conviction charges. However this information is not currently shared on a continuous basis.

An update on ECHIPWC provided by the inter-governmental branch of the NSW Department of Premier and Cabinet was tabled at the Roundtable.

CrimTrac also provided some background material on how it gathers and shares information between jurisdictions.

How should working with children checks – including denied checks – be recognised across jurisdictional boundaries?

There was agreement among the group that when a person is denied a clearance in one jurisdiction, it should be possible to share that information with other jurisdictions. This is not possible at present.

Should CrimTrac provide continuous history checking?

There was support among the group for continuous criminal history information to be shared across jurisdictions on a national basis, but there was debate about how such a system might work and how frequently the rate of continuous checking should be (daily, weekly or monthly).

The Commonwealth reiterated its opposition to creating a centralised national database. A networked system of databases accessible to each state and territory jurisdiction was suggested as an alternative model. CrimTrac indicated that it was technically possible to provide continuous interjurisdictional checking but this would come at considerable cost.

Summary and next steps

In conclusion, Justice McClellan flagged a number of steps that might potentially progress work in this area:

1. Develop a notification system where a person that has been rejected a WWCC in one jurisdiction would be a flag when applying for a WWCC in another jurisdiction. A rejection in one jurisdiction would not mean an automatic rejection in another. Each state and territory would need to use their own assessment process above an agreed minimum standard.
2. Develop a system where it would be possible to see who had been granted a WWCC in a different jurisdiction, and who had failed. This would be an important step on the way to building a useful national system.
3. All states and territories to agree on a set of baseline principals around what the criteria for a WWCC should be. Each state and territory could then 'top up' this baseline for their own scheme.
4. Agree on how frequently the WWCC should be renewed (2, 3 or 5 years), and on the frequency of continuous monitoring of criminal histories (daily, weekly or monthly).