

IEU Submission July 2013

Introduction

The NSW/ACT IEU, as the Union representing teachers and other employees in non-government schools and early childhood centres, has a high interest and strong commitment to child protection. The Union would support a national WWCC that provided an organised consistent approach to the protection of children and young people across the country, while ensuring fair and transparent processes for employees working with children. The IEU would welcome a national WWCC that contained acceptable features and reflected best practice, but not one that was more onerous and expensive than existing models. In particular the IEU has a concern that casual or part-time members who live adjacent to the Queensland, Victorian or ACT borders must meet additional costs to pursue employment across state/territory jurisdictions.

The Union has been engaged in reviews of child protection legislation and WWCC procedures dating back to before the establishment of the NSW Commission for Children and Young People (CCYP). The IEU had significant involvement along with other education stakeholders in earlier changes to the NSW Ombudsman Act and the CCYP Act. More recently on 15 November 2012, we made a submission to the Child Protection (*Working with Children Regulation 2012*) seeking reform of the legislation to ensure fair processes for our members engaged in the education of children and young people across non-government schools and early childhood centres.

While the IEU welcomed the general thrust of the NSW WWCC legislation, we have concerns about some of the legislation and would not like to see it duplicated in a national WWCC.

The IEU has a general concern that the NSW WWCC legislation only commenced on 15 June 2013 and the operation of this legislation has not yet been tested. We believe that it is too early to effectively assess the impact of the current legislation and to ensure that the aims, which led to the legislative changes, are being achieved. The IEU submits that a pre-determined period of time should expire prior to such assessment being conducted on the NSW WWCC legislation.

Notwithstanding the above, the IEU can see some benefits in a national approach to the WWCC. However, the IEU believes that there needs to be prior consultation on the models or frameworks for a national approach and the consistent application of processes within the States/Territory.

Fees

The community is the beneficiary of child protection legislation and we strongly oppose the imposition of clearance fees on employees. It is unreasonable to ask child related employees to pay for clearances that have been legislated in the best interest of children. In NSW new teachers have this imposition in addition to current requirements and fees associated with the NSW Institute of Teachers.

Fees pose financial hardship for education staff (and others in child related employment) on low wages. In our sector this includes teacher aides working with children with disabilities,

indigenous education workers, childcare workers and part-time casual workers. Fees serve as a detriment to recruitment of quality persons in important child related employment.

The Union has concerns about other aspects of the legislation including interim bars on employment. We also seek to ensure that definitions resulting in a bar to employment are designed to address serious matters, particularly relating to sexual behaviour impacting on children. These issues are outlined in the Union attached submission.

The following responses are submitted only to questions that have a particular relevance to our members.

1. Should there be a national WWCC?

The IEU sees some potential advantages in a national WWCC. These include, allowing persons to work in child-related employment anywhere in Australia after receiving a clearance from the national body and eliminating the need for persons to pay for a new WWCC when moving between States/Territories. However, the IEU believes that there needs to be prior consultation on the models or frameworks for a national WWCC and the consistent application of processes within the States/Territory.

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

It is the IEU's view that one national body located in NSW, oversee the operation of the national scheme. It is also our view that there is a need for the definitions, reporting requirements, investigation standards and the available findings relating to 'relevant' disciplinary records to be consistently applied within each State/Territory.

The IEU believes that the number of offences and behaviours that constitute 'relevant' criminal records and 'relevant' disciplinary records under a national scheme should not extend beyond the number currently listed under the NSW WWCC.

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

4. How long should any clearance be granted for?

The IEU believes that any clearance under a national scheme should be granted for a minimum of 5 years from the date the clearance is issued.

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

The IEU submits that a person should be allowed to commence work in child-related employment before any WWCC is completed as long as they have submitted an application for any WWCC clearance and an Application Number is issued. The child-related employer can then enter this Application Number into a designated website to verify the person has applied for a clearance.

The IEU draws attention to the fact that there are frequent occasions where non-government schools and early childhood centres require the urgent appointment for a child-related position and are unable to wait for any WWCC to be completed. This is

more common in regional areas as they do not have access to the large number of suitable candidates that city based non-government schools and early childhood centres will have.

- 6. How should child-related work be defined?**
- 7. How should child-related sectors and roles be defined?**
- 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?**
 - b. parent volunteers?**

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

The IEU considers that 'relevant' criminal records should focus on sexual offences and acts of indecency, whether committed against children or adults and child pornography offences. We believe that 'relevant' disciplinary records should only include reported sexual behaviours towards a child and serious physical assaults.

The IEU submits that the following records should not be considered as part of the proposed national WWCC: spent convictions, offences committed as a juvenile, charges which have not been heard or finalised by a Court, charges which have been proven but have not led to a conviction or have been dismissed, quashed, expunged, withdrawn or discharged by a Court.

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

The IEU believes that in the interests of natural justice it is essential for persons to have access to an appeals process. The appeals process should apply in situations where a person receives a bar or any other adverse decision relating to their application to work in child-related employment.

Further, we believe that an internal appeals process should operate prior to an appeal being submitted to the Administrative Decisions (ADT) or any other relevant tribunal.

The IEU submits that the person appealing the bar or any other adverse decision should be entitled to access his/her risk assessment file as part of the internal appeals process and provide information relevant to the possible removal of the bar or amendment of any other adverse decision.

The IEU objects to the application of an interim bar by the relevant WWCC body, at any stage of the risk assessment process.

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

In NSW the IEU is concerned about the automatic barring of persons whose charges have not been finalised at Court and we are also concerned that these persons are prevented from appealing the automatic bar during this period. The IEU submits that some matters take months and even years to be finalised at

Court and this has the potential to cause severe financial hardship on a person who seeks child-related work. Automatic barring should be limited to extremely serious criminal matters.

12. The adequacy of the risk assessment process.

The IEU is concerned that currently in NSW, risk assessments are left to the professional judgment of the risk assessor dealing with the matter. The professional judgement of each risk assessor is not always consistent with each other and we believe the implementation of a thorough checking process by senior officers is required to provide consistent and fair risk assessment outcomes.

The IEU submits that any risk assessment process should be subject to stakeholder reviews to ensure that the process is practical and workable and the stakeholders should have the opportunity to recommend changes to legislation/processes.

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 IEU submits that any WWCC should not to any degree minimise the need for employers to establish clear processes for responding to inappropriate behaviour. Any WWCC clearance does not guarantee that a person will not offend in the future and the establishment of clear processes reduces the risk to the employee, employer and children of inappropriate behaviour occurring.

We submit that whilst the protection of children and young people is paramount, any WWCC authority should also ensure that processes are fair and transparent and respect the rights of all concerned parties. The provision of staff training related to such matters is critical.

In NSW the Ombudsman Office requires employers to establish clear processes for responding to inappropriate behaviour and these processes are auditable by the NSW Ombudsman. However, the IEU believes that the definitions of behaviours, which constitute a 'relevant' disciplinary record, should be consistent between any similar State/Territory body and the proposed national WWCC body.

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

The IEU submits that the risk assessment process should be subject to stakeholder reviews to facilitate consultation, evaluation and monitoring of any WWCC with a view to recommending changes to the legislation/processes. The IEU wishes to be included in any stakeholder review.

The IEU further submits that as part of the evaluation and monitoring of any WWCC a formal complaint process should also be established to identify:

- the complaints made by employees/employers about processes, decisions, delays in the finalisation of any WWCC by the proposed national body.
- the grounds submitted by persons for internal/other tribunal appeals.
- the number of upheld appeals by persons together with the reasons for the appeal of a bar or other adverse decision being upheld.