

9 June 2017

Ms Sharminie Niles
Director Legal Services
Office of the Children's Guardian

By email: sharminie.niles@kidsguardian.nsw.gov.au

Dear Ms Niles,

Statutory review of the Child Protection (Working with Children) Act 2012

1. Women's Legal Service NSW (WLS NSW) thanks the Office of the Children's Guardian for the opportunity to comment on the statutory review of the *Child Protection (Working with Children) Act 2012 (the WWCC Act)*.
2. WLS NSW is a community legal centre that aims to achieve access to justice and a just legal system for women in NSW. We seek to promote women's human rights, redress inequalities experienced by women and to foster legal and social change through strategic legal services, community development, community legal education and law and policy reform work. We prioritise women who are disadvantaged by their cultural, social and economic circumstances. We provide specialist legal services relating to domestic and family violence, sexual assault, family law, discrimination, victims support, care and protection, human rights and access to justice.
3. WLS NSW has an Aboriginal Women's Legal Program (IWLP). This program delivers a culturally sensitive legal service to Aboriginal women in NSW. We provide an Aboriginal legal advice line, participate in law reform and policy work, and provide community legal education programs and conferences that are topical and relevant for Aboriginal and Torres Strait Islander women.
4. An Aboriginal Women's Consultation Network guides the IWLP. It meets quarterly to ensure we deliver a culturally appropriate service. The members include regional community representatives and the IWLP staff. There is a representative from the Aboriginal Women's Consultation Network on the WLS NSW Board.
5. We respond to some of the questions in the review below.



Question 2: Does the definition of child-related work need to be changed?

Question 4: Should parents volunteering on overnight camps be made to have a WWCC?

6. We support a definition of child-related work that is consistent with the recommendations made by the Royal Commission into Institutional Responses to child sexual abuse ('Royal Commission'). In particular we support parents volunteering on overnight camps being made to have a working with children check ('WWCC').

Question 6: Does the WWCC scheme collect the most appropriate information?

Question at roundtable: Should a police-initiated AVO for the protection of a child in the context of a JIRT investigation be included?

7. We refer to the NSW Ombudsman's submission to the Royal Commission into Institutional responses to Child Sexual Abuse in response to their WWCC Issues Paper. The NSW Ombudsman notes that "not all investigations of child abuse are managed by the Child Abuse Squad – the NSW Police Force arm of JIRT."¹
8. For this reason we support the NSW Ombudsman's proposal of including "final AVOs made in circumstances where police have sought the order in conjunction with an investigation into physical or sexual abuse committed against a child" in the WWCC framework.² We would see this as triggering a risk assessment.
9. We also recommend more clarity is needed about the impact of AVOs on a WWCC clearance.

Question 8: Do other records need to be assessed under the scheme?

Question 9: Does the scheme need to do anything further to make sure domestic and family violence is captured appropriately?

10. The Discussion Paper refers to Schedule 1 Clause 1(6) "captur[ing] a person who has been convicted of, or has had proceedings commenced for, offences involving violence or sexual misconduct sufficient to indicate a pattern of behaviour that warrants investigation as to whether it may cause a risk to the safety of children."
11. WLS NSW agrees with the comment following this: "A similar clause capturing patterns of behaviour in relation to domestic and family violence offences, particularly where there is evidence of multiple proceedings having been commenced with convictions, may be useful in this context." We support the inclusion of such a clause.

¹ NSW Ombudsman, *Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse in response to the WWCC Issues Paper* at 8.

² Ibid.

Question 10: Should there be a positive obligation on individuals to notify the OCG of changes in their criminal history?

12. We commend the WWCC framework including a continuous monitoring of all relevant new NSW records for the life of a WWCC clearance.
13. The Discussion Paper states: "there are no formal mechanisms for obtaining updated records from each state and territory on an ongoing basis."
14. The Royal Commission recommended state and territory government should amend their WWCC laws to include a consistent and simplified list of offences including "applicants and/or WWCC cardholders failing to notify screening agencies of relevant changes in circumstances."³
15. We agree that a positive obligation on individuals to notify the Office of the Children's Guardian of changes in their criminal history is consistent with Recommendation 16 and we support this.

Question 12: How should historical carnal knowledge records be assessed under this scheme?

16. The Discussion Paper notes that currently historical carnal knowledge offences result in an automatic refusal of a WWCC clearance unless the conviction occurred when the person was juvenile, in which case a risk assessment is triggered.
17. The Discussion Paper acknowledges the carnal knowledge offence provisions (which have been repealed) were "limited and lacked the element of consent, which meant that many individuals who engaged in consensual peer-on-peer intercourse were unintentionally captured within these offences."
18. The Discussion Paper refers to carnal knowledge triggering a risk assessment in Victoria, the ACT, Tasmania and WA in circumstances when the offence was committed against a child between 13 and 16 years, with a presumption that the applicant will be refused a clearance. The Discussion Paper also refers to carnal knowledge being treated as the equivalent of a disqualifying offence where the offence was committed against a child under 13 years.
19. We support a similar approach in NSW, noting that the seriousness of the matter; the age of the person and the victim at the time of the offence; the difference in age between the victim and person and the relationship between the victim and person; the person's present age; the seriousness of the person's total criminal record and the conduct of the person since the matters occurred; the likelihood of any repetition by the person of the offences or conduct are relevant factors.

³ Recommendation 16

Question 13: Should the scheme adopt the same approach in all cases of manslaughter of a child, regardless of the circumstance, as suggested by the Royal Commission, or is it more suitable to risk assess some cases, such as in the case of motor vehicle accidents?

20. In the case of motor vehicle accidents we believe there may be some circumstances where it is more suitable to have a risk assessment.

Question 15: Does the WWCC scheme provide sufficient review opportunities?

21. Concerns have been expressed that due to over-policing of Aboriginal and Torres Strait Islander people they may be more likely to have a criminal record. Should their WWCC clearance be denied they may also be less likely to seek a review. See further information below at paragraphs 26-28.
22. The information about review mechanisms provided by the Office of the Children's Guardian to people that have had their WWCC clearance denied should include the contact details of free legal assistance services.
23. There is little information provided on the Office of the Children's Guardian website about what information an applicant would be invited to submit if a risk assessment is required. Providing further information about this would help people to know in advance what evidence they need to gather. A list of legal assistance services that can provide free legal advice should also be included.
24. It is also important that there is extensive community education about how to review a WWCC refusal so people understand when a decision can be reviewed and how this happens.
25. We commend the Office of the Children's Guardian for providing fact sheets on their website about the WWCC process. Factsheet 8 about risk assessment states the risk assessment process can take "in excess of six months". If the matter is not determined within 6 months we recommend a letter is sent to the applicant providing an update on the matter.

Do you have any other suggestions to improve the scheme?

Aboriginal Advisory Group

26. We recommend the Office of the Children's Guardian have an Aboriginal Advisory Group to ensure culturally safe practices. This is particularly important given the history of the Stolen Generations and the fear of many Aboriginal people of child protection organisations as well as the over-policing of Aboriginal people. More works needs to be done to engage with Aboriginal communities about the work of the Office of the Children's Guardian; how WWCC clearances are undertaken; and opportunities to provide information, for example, during a risk assessment process. We recommend the Children's Guardian consult further on possible membership of the Aboriginal Advisory Group.

27. The Aboriginal Advisory Group could also raise issues relevant to a WWCC framework.

28. It is vital that Aboriginal people are part of the decision-making process.

If you would like to discuss any aspect of this submission, please contact Liz Snell, Law Reform and Policy Coordinator or Janet Loughman.

Yours faithfully,

Women's Legal Service NSW

Janet Loughman
Principal Solicitor

Dixie Link-Gordon
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