



21 Carrington Road, Marrickville NSW 2204  
PO Box 604, Marrickville NSW 1475  
Telephone: (02) 9559 5299 Fax: (02) 95591669  
Email: [admin@absec.org.au](mailto:admin@absec.org.au)  
Website: [www.absec.org.au](http://www.absec.org.au)  
ABN: 22 477 168 898

Rod Best  
General Counsel  
Royal Commission into Institutional Responses to Child Sexual Abuse  
Sydney NSW 2001  
[solicitor@childabuseroyalcommission.gov.au](mailto:solicitor@childabuseroyalcommission.gov.au)

**Re: Issues Paper One: Working with Children Check.**

Dear Mr Best

I refer to the above and thank the Commission for the opportunity for Aboriginal Child, Family and Community Care State Secretariat (NSW) (AbSec) to provide comment on Issues Paper One, released 17 June 2013.

#### About AbSec

AbSec is an incorporated not-for-profit community organisation, primarily funded by NSW Family and Community Services, Community Services (CS) and is recognised as the peak NSW Aboriginal body providing child protection and out-of-home care (OOHC) policy advice to the government and non-government sector on issues affecting Aboriginal families involved in child protection and OOHC system. AbSec also advises on funding decisions related to service provision by local Aboriginal community controlled organisations (ACCOs) that provide or seek to provide Aboriginal child protection and associated services.

AbSec also auspices the Aboriginal State-wide Foster Care Support Service (ASFCSS). This service provides a free telephone advice and advocacy service for the carers of Aboriginal children and also assists in local communities in establishing Aboriginal foster carer support groups.

AbSec remains a partner alongside NSW Community Services (CS) and the Association of Child Welfare Agencies (ACWA) in facilitating the transfer Out-Of-Home Care (OOHC) service provision to non-government service (NGO) providers over the next 5 to 10 years.

The AbSec Transition Team work to support established and new agencies build their capacity to take on placements of Aboriginal children and young people in care.

#### Background to AbSec response to Issues Paper One

AbSec acknowledges the effects of traumatic past policies and practices that involved the removal and separation of multiple generations of Aboriginal and Torres Strait Islander children from their families across the nation.

Aboriginal individuals and communities have been left a number of legacies, well documented in '*Bringing Them Home*', the report from the "National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Families"<sup>1</sup> and in multiple inquiries and government

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<sup>1</sup> HREOC (1997)

reports. The effects have manifested across generations in a multitude of ways, impacting on physical and mental health, use of alcohol and other drugs, affecting relationships, family structure, parenting skills and social, as well as on criminal behaviour and consequently, continued institutionalisation and incarceration.

The *'Bringing Them Home'* Inquiry also found Aboriginal children forcibly removed throughout the many years these systematic policies and practices were in place were highly likely to experience sexual abuse:

“Children in every placement were vulnerable to sexual abuse and exploitation... Almost one in ten boys and just over one in ten girls allege they were sexually abused in a children’s institution... One in ten girls allege they were sexually abused in a work placement organised by the Protection Board or institution. Other exploitation was known and condemned but not prevented.”(BTH, pp140-2)

The rates of involvement of Aboriginal children and families in the NSW Care and Protection system today remain vastly disproportionate to that for other families. Consequently the risks to children of experiencing forms of sexual assault, whether whilst in care, incarcerated or through other institutional means, remain high today<sup>2</sup>.

In light of AbSec’s role in supporting Aboriginal community controlled OOHC agencies and facilitating the roll out of the transition of OOHC, we have a number of comments in response to the Issues Paper. These are set out below and relate overall to checks concerning Aboriginal children and young people in the care and protection system.

## AbSec response to Issues Paper One

### **1. Should there be a national WWCC?**

A National WWCC would ensure consistent scrutiny, as well as the application of risk assessment frameworks on applicants. A national WWCC in place would help prevent workers with adverse findings from relocating and commencing work with vulnerable children interstate. OOHC agencies have found that carer histories in other state jurisdictions have to date been difficult to obtain, including for carers with child protection histories that present a risk to children.

We understand that the WWCC database is updated with information from the NSW Police database on criminal charges and offences committed by individuals who have a WWCC number.

However, there is currently no arrangement with police interstate for charges and offences committed interstate to be automatically provided. A potential benefit of a national WWCC is that police information from all jurisdictions would be made available to a national database holding WWCC information.

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<sup>2</sup> Australian Institute of Health and Welfare (AIHW). (2013). Child protection Australia 2011–12. In AIHW (Ed.), Child welfare series no. 55. Canberra: AIHW, p 17.

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

In the new NSW WWCC system, the risk assessment process appears to appropriately balance the need to assess any potential risk to children with a fair assessment of the applicant seeking to work with children.

Another helpful feature of the NSW system is that it is appropriately skilled staff at the Children's Guardian, rather than a potential employer, that make a decision on whether an applicant can work with children. Based on the outcome of a risk assessment, they determine whether an applicant can work with, or will be barred from working with children. Any adverse findings are then not attributable to potential employers by an applicant.

AbSec would support a National scheme adopting the new NSW WWCC system.

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

Yes. See above.

**4. How long should any clearance be granted for?**

AbSec suggests a maximum of 5 years, on the understanding that any new criminal charges by a person will be forwarded and appropriately assessed by the Children's Guardian. The Children Guardian would then flag these matters with the respective employer.

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

No, definitely not. Allowing commencement before a check is completed would pose an unacceptable risk to vulnerable children in the care and protection system.

**6. How should child-related work be defined?**

The definition in the *Child Protection (Working with Children) Act 2012* is adequate.

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

The definitions contained in the *Child Protection (Working with Children) Act 2012* are adequate.

**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?

Yes.

- b. parent volunteers?

Not applicable to AbSec agencies.

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

All adult criminal records should be included in the WWCC; the current system that allows for discretion in consideration of historical offences should be maintained. For instance, past offences may fall into the category of criminal, but do not affect the applicant's ability to care for or work with children, or do not present a real risk to the child's safety and wellbeing.

In the case of juvenile records, only sexual or serious violence offences should be considered.

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

The appeal process should not be cost prohibitive. At times, matters being resolved in the Administrative Decision Tribunal (ADT) can carry significant financial cost and burden to involved parties. The financial cost may prohibit many people in Aboriginal communities from lodging an appeal to an adverse outcome. The appeal process must be transparent and independent, for example a panel may comprise independent parties such as NSW Ombudsman representatives.

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

In OOHC placements, an automatic bar means that either the barred person or the child in care will need to leave the household. The OOHC agency will then need to find a new placement for the child. Consideration needs to be given to the timeframe for the barred person or the child to be removed from the placement.

The child or young person's safety is always the number one consideration in any situation. For an Aboriginal child, the automatic barring of a person could potentially result in the risk of loss of connection to extended family, community and culture and to information about them, particularly if the person who has been barred is an extended family member or kin carer.

In such cases the cost to the child should never be the cutting off of their connections to family, community and culture and therefore to the child's wellbeing and sense of belonging or to their knowledge in relation to cultural issues.

Therefore proper consideration and contingencies must be in place to ensure that the child's connections and knowledge are not solely dependent on one person (for example through proper case planning and sound cultural care planning measures). These crucial links must not be lost, leaving the child isolated from family connections, community and culture, simply through the barring of that person.

**12. The adequacy of the risk assessment process.**

AbSec is supportive of the majority of the risk assessment process, though we do have concerns with the following assessment factor relating to Conduct:

*'Seriousness ( as demonstrated by details of the conduct, court outcomes and penalty)'*

Absec's concern is that court penalties should not be the sole indicator of the seriousness of an offence. There are many well documented factors that may influence the issuing of court penalties, particularly for Aboriginal people. For example there may be geographical factors at play, or systemic factors such as access to quality or even adequate legal, justice, advocacy or other services, as well as previous unrelated matters such as incomplete Community Services Orders, suspended sentences or good behaviour bonds. Focusing only on the court penalty in assessing risk may not always be a true indicator of risk and may disadvantage certain groups from across society, including and especially, Aboriginal community members.

**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?**

An effective WWCC should prevent all high risk adults from working with vulnerable children, thereby minimising the possibility of inappropriate behaviour by staff.

However, the WWCC can only be one tool in managing risk; institutions will always need clear, transparent and robust processes for identifying and dealing with inappropriate behaviour by staff in child related positions.

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

Whilst numbers of adverse findings against employees with WWCC would be an indicator over time, these may need to be evaluated in combination with other factors to ensure the safety of the child is continuously monitored, in an effective and timely manner.

We thank you for considering our responses to the Issues Paper questions. Should you wish to discuss any aspect of our submission, please do not hesitate to contact me by telephone on 9559 5299 or by email through Executive Assistant Jodie Porter at: [jodie.porter@absec.org.au](mailto:jodie.porter@absec.org.au)

Yours sincerely



Tracey Keevers Keller  
Acting Executive Officer, AbSec

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