Submission on the review of the *Child Protection (Working with Children) Act 2012*

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Association of Children's Welfare Agencies
Level 9, 110 Sussex Street, Sydney 2000
www.acwa.asn.au
Email: acwa@acwa.asn.au

Introduction

The Association of Children's Welfare Agencies (ACWA) is pleased to contribute to the review of the *Child Protection (Working with Children) Act 2012* (WWC Act). Working With Children Checks (WWCC) are an important part of the safeguarding strategies that prevent abuse to children in NSW, and we are pleased to have the opportunity to contribute to this review.

About ACWA

ACWA is the NSW peak body representing non-government community organisations that deliver services to children, young people and their families in vulnerable circumstances. Our member agencies include organisations providing a range of important services to improve children's safety, including early intervention, family preservation and out-of-home care (OOHC) services. We collaborate with our members, partners, government and non-government agencies and other peaks to advocate for systemic reform to improve the lives of children and young people.

Our approach to this submission

This submission focuses on the following focus areas that are of particular interest to our members:

- requiring under-18s to obtain a WWCC clearance
- WWCC for relative and kinship carers
- continuing residence approvals
- domestic and family violence offences.

We developed this submission in consultation with our member organisations, AbSec (the peak body advocating for the rights of Aboriginal children and families in NSW) and Domestic Violence NSW (the peak body for specialist domestic and family violence services in NSW).

We support self-determination for Aboriginal communities, and as an ally and a non-Aboriginal peak body we support Aboriginal peak bodies, organisations and communities to determine the solutions that will work for them.

Considerations

We highlight the following considerations relating to our submission response and urge the Office of the Children's Guardian (OCG) to take these into account when making decisions about potential changes.

Understanding the limitations of WWCCs and potential impacts of reforms

WWCCs are an important element of a more comprehensive approach to developing and maintaining child safe organisations in NSW. However, it is important to understand the limitations of the WWCC system, in particular:

- the WWCC is limited by its reliance on a person's known history past offending, detecting only a subset of adults who are unsuitable to work with children
- we know that employers sometimes fail to verify WWCCs with the OCG, providing a potential loophole for offenders
- there is a risk that employers will rely on WWCCs to ensure children's safety which can create a false sense of security

- the process of applying for a WWCC can be administratively burdensome, and managing the different jurisdictional WWCC systems is burdensome and costly for national organisations
- Aboriginal and Torres Strait Islander applicants face several barriers and therefore potential disadvantage, including satisfying identification requirements and the impact of increased likelihood of contact with the criminal justice system
- children and young people who have had contact with child protection systems might also be disadvantaged due to increased likelihood of contact with the justice system – 65% of young people under youth justice supervision in Australia in 2022-23 had engaged with the child protection system[1].

Understanding these limitations helps to inform decision-making as we explore the extent to which a change to the system would make children safer and/or could potentially have negative impacts for some applicants.

We are also cognisant of the levels of demand for WWCCs and the often-lengthy wait that applicants and employers experience while a risk assessment is conducted. Our members told us that while some expansions to WWCC requirements would be beneficial, they are concerned about the potential for the risk assessment process becoming even further protracted. This is particularly challenging for OOHC providers who are trying to recruit carers and give children a much-needed home in the face of decreasing carer numbers.

Data informed decision making

It is vital that any reform of the WWC Act and associated WWCC processes be informed by up-to-date data for NSW. We note that the OCG has not provided data relating to the questions posed in the discussion paper, nor is sufficient data available publicly to inform our consideration of these issues. This submission is based on the wisdom and significant experience of our members and other peak bodies. However, without current data it is not possible to assess the extent to which current or potential system configurations are proportionate to the risks they seek to manage.

[1] Australian Institute of Health and Welfare (2024) Young people under youth justice supervision and their interaction with the child protection system 2022–23, catalogue number CSI 030, AIHW, Australian Government.

Requiring under-18s to obtain a WWCC clearance

Should the current exemption for children under 18 years of age be removed for children when they are engaging in:

a. **paid child-related work**
b. **paid or unpaid child-related work as part of a workplace placement during a post-school qualification?**

We support, in principle, the removal of the current exemption for children under 18 years old working in the categories proposed by the OCG. The recent Australian Child Maltreatment Study indicates that some offences by adolescents have been increasing in recent generations:

- Child sexual assault (CSA) by known adolescents is increasing with time, while CSA by adults is decreasing; CSA by known adolescents in non-romantic relationships was reported by 13.2% of participants aged 16-24 (compared to 4.4% for CSA by a caregiver in the home and 4.4% by other known adults).[2]
- Among participants who experienced it, nonconsensual sharing of sexual images was perpetrated predominantly by non-romantic known adolescents (48.8%); overall, over 80% of all instances of nonconsensual sharing of sexual images were perpetrated by adolescents.[3]

We note, however, the issues raised in the Discussion Paper that would need to be considered, including:

- the difficulty for young people in accessing the required identification for a WWCC
- the significant risk of long-term impacts for career development and future employment for young people who are unable to obtain a clearance – a risk which is significantly higher for those young people who are disproportionately represented in the justice system
- whether the regulatory burden on employers and the risks noted above are proportionate to the risk being mitigated.

We recommend that if children under 18 years are required to obtain a WWCC, the OCG explore options for a tailored risk assessment process specifically for that age group, such as appropriate definitions, standards or thresholds for disqualification.

[2] Mathews, B., Finkelhor, D., Pacella, R., Scott, J. G., Higgins, D. J., Meinck, F., ... & Collin-Vézina, D. (2024). Child sexual abuse by different classes and types of perpetrator: Prevalence and trends from an Australian national survey. *Child Abuse & Neglect*, *147*, 106562.

[3] Walsh, K., Mathews, B., Parvin, K., Smith, R., Burton, M., Nicholas, M., ... & Tran, N. (2025). Prevalence and characteristics of online child sexual victimization: Findings from the Australian Child Maltreatment Study. *Child Abuse & Neglect*, *160*, 107186.

Relative and kinship carers

Should relative and kinship carers be exempt from the definition of child related work when caring for children and young people in out-of-home care?

ACWA and our members recognise the benefits of relative and kinship care for children and young people and strongly support efforts to reduce some of the barriers to becoming a relative or kinship carer including applying for a WWCC. This is particularly important in supporting Aboriginal and Torres Strait Islander carers, for whom the barriers to WWCC checks include an increased likelihood of having had contact with the criminal justice system and challenges with the WWCC application process such as acquiring identification documents, navigating the online system and travelling to a Service NSW centre. We understand that some Aboriginal and Torres Strait Islander applicants disengage from the application process even if a clearance is likely[4], and support efforts to address this issue.

We also suggest that any changes to the WWCC requirement for relative and kinship carers should be applicable to *all* relative and kinship carers. We note that there are many non-Indigenous relative and kinship carers, with data for NSW indicates that in 2025:

- 33.8% of Aboriginal and Torres Strait Islander children were placed with Aboriginal or Torres Strait Islander relatives or kin
- 23.8% were placed with non-Indigenous relatives or kin
- 12.4% were placed with other Aboriginal or Torres Strait Islander carers.

Overall, we are concerned that exempting relative and kinship carers from needing a WWCC could give perpetrators of child abuse unsupervised access to children who are already vulnerable.

We understand that the OCG has implemented several initiatives to support Aboriginal and Torres Strait Islander applicants[5]. We recommend that the OCG work with Aboriginal organisations and communities to explore further such strategies and potentially replicate and expand initiatives such as the Maranguka agreement with the Bourke Tribal Council in partnership with other communities. One of our members that is an Aboriginal Community Controlled Organisation (ACCO) suggests working with ACCOs to explore their potential role in supporting Aboriginal and Torres Strait Islander people with the application process.

We also recommend that the OCG work with Aboriginal and Torres Strait Islander organisations and communities to develop a nuanced, trauma-informed approach to assessing prospective relative and kinship carers' individual circumstances. This would involve distinguishing between genuine child safety risks and criminalisation arising from systemic racism and balancing identified strengths and risks.

[4] Office of the Children's Guardian. (2020). Response to the Family is Culture independent review into Aboriginal out-of-home care in NSW.

[5] Office of the Children's Guardian. (2022). Special Report under section 139(2) of the *Children's Guardian Act 2019*: Family is Culture Review. https://ocg.nsw.gov.au/organisations/statutory-out-home-care-and-adoption/family-culture-review

Continuing residence

Should residence approvals be expanded to include broader categories of people who reside on the same property as an authorised carer, including:

a. **young people returning to reside in a former OOHC placement, or with their family or kin who are authorised carers or live in a carer household;**
b. **adult family members with physical or other disabilities, or who are elderly, who require care by authorised carers or someone in the carer's household.**

We acknowledge the importance of the existing continuing residence approvals in preventing the breakdown of OOHC placements and avoiding disrupting carer environments. We therefore support the expansion of continuing residence approvals to young people returning to live in a former placement or with family who are authorised carers.

We support, in principle, expanding residence approvals for adult family members who require care, noting that further detail would be required to understand the risk assessment process and definitions. For example, how the OCG would define and assess 'requiring care' in relation to older people and people with disability to ensure that offenders are not able to exploit a potential loophole.

We also note that to understand the scale of the risks and benefits, and make an informed recommendation, we would need relevant data such as the number of continuing residence approvals granted and cancelled each year, and patterns in the relationships between the people eligible for continuing residence approval and the authorised carer and children in their care. This information would shed light on whether any risk concerns have historically related to the two groups being considered for inclusion in residence approvals.

Domestic and family violence

1. **How should domestic violence offences, and patterns of domestic and family violence, be treated under the WWCC scheme?**
2. **Should certain new domestic violence offences (such as choking, suffocation and strangulation and coercive control) or patterns of such offending trigger a risk assessment?**
3. **How should ADVOs be treated under the WWCC scheme? Specifically:**
    a. **Should a final ADVO, initiated by police in conjunction with an investigation against an individual, trigger a risk assessment under the WWC Act?**
    b. **Should a breach of a final ADVO, which has been initiated by police in relation to an investigation, trigger a risk assessment under the WWC Act?**
    c. **Should any other domestic violence related offences or types of offending trigger a risk assessment?**

We support the inclusion of the domestic violence offences as triggers for a risk assessment. It is important that the WWCC scheme keep up to date with contemporary offences and the increasing understanding of the risks associated with patterns of offending.

The question of whether final ADVOs should trigger a risk assessment is complex. Our concern with including even final ADVOs initiated by police in conjunction with an investigation is the pervasiveness of misidentification of the primary aggressor.

The prevalence of misidentification is unknown, with various Australian studies estimating the occurrence at between 12% and 50% of the time[6]. The experience of specialist domestic and family violence services supports research indicating that Aboriginal and Torres Strait Islander women, women with disabilities and women from migrant and refugee backgrounds are at an increased risk of being misidentified as the primary aggressor. Research also shows that for many misidentified women, the process of challenging an ADVO and attending court can be highly stressful and re-traumatising. Some already marginalised women additionally face language barriers, social isolation and family or community pressures. This results in misidentified women being more likely to consent a Final ADVO, or courts making a Final ADVO when the woman does not attend court. [7]

There is therefore a greater risk of being disqualified from a WWCC for these groups of women, with potential long-term impacts on future employment opportunities.

If the OCG does include Final ADVOs as a trigger for risk assessment, we strongly recommend that the risk assessment process and decisions be informed by the advice of peak bodies and community groups that specialise in domestic and family violence and women's legal issues.

[6] Family Violence Reform Implementation Monitor. (2021). Monitoring Victoria's family violence reforms. Accurate identification of the predominant aggressor.

[7] Moffa, M., Flynn, A., & Burns, K. H. (2025). Misidentified Victim-Survivors as Domestic and Family Violence Perpetrators: Plea Negotiations as a Tool for Justice?. *The British Journal of Criminology*, *65*(5), 1053-1070.