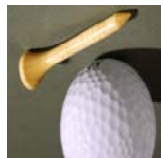


issue 4: working with children bill 2005



Introduction

The Working with Children Check (**WWCC**) is a screening process intended to reduce the risk of sexual or physical harm to children. Once the Working with Children Bill 2005 (**Bill**) is passed, it will have a significant impact on sporting organisations throughout Victoria. Whilst it is uncertain when the Bill will be passed, sporting organisations should start preparing for the introduction of the legislation now.

The Bill has taken into account and attempted to incorporate the best elements of the existing schemes in Queensland and New South Wales as well as the proposed scheme in Western Australia.

This paper provides an overview of the Bill and the implications it will have for sport in Victoria.

Who must obtain a WWCC?

The WWCC must be obtained by all employees, self-employed persons and volunteers who are engaged in 'child-related work'.

Under section 9, child related work is work performed as an employee, contractor or volunteer that involves contact with a child in connection with a service or activity involving (not an exhaustive list):

- Clubs, associations or movements (including of a cultural, recreational or sporting nature) with significant child membership or involvement;
- Coaching or private tuition services of any kind for children;
- Overnight camps for children regardless of the type of accommodation or of how many children are involved.

Under section 3, contact means any form of contact between a person and a child and includes physical contact, any form of oral communication (whether face to face or by telephone) and any form of written communication, including electronic communication.

It is unclear from the Bill what a "significant child membership" means. However, if a sporting organisation has a large number of members under the age of 18, then any person within the organisation who has contact with children (as defined in section 3) will be required to obtain a WWCC.

Interestingly, under section 9(3) of the Bill, a person is engaged in child related work if he or she is a member of the committee of management or board of an association that is engaged in child related work. Therefore, if a sporting association provides coaching services to children, the members of the committee of management of that sporting association will be engaged in child related work under the Bill and will need to obtain a WWCC. This will apply unless one of the exemptions from the WWCC applies. This requirement is likely to be an unnecessarily onerous requirement on sporting organisations. It will be useful for the intent and application of this section to be clarified during the consultation process.

Who is exempt from the WWCC?

There are four proposed exemptions from the WWCC:

- Volunteers whose child ordinarily participates in the activity (section 29) – a parent performing work as a volunteer in relation to an activity in which that parent's child ordinarily participates is exempt from the WWCC in respect of that activity. The definition of parent for the purposes of this exemption is any person who has the

custody of a child. This exemption only applies to volunteer parents.

For example, if a parent is a coach of their child's team, they will be exempt from the WWCC in relation to the coaching of the team. However, if the child is a member of a sporting organisation and the parent is a coach of a team different to the team their child is in, they will not be exempt from the WWCC.

- Persons working with closely related child (section 30) – a person working in a position where any child with whom he or she is required to have contact during the work is a child who is closely related to that person, is exempt from the WWCC in respect of that work.

This will cover members of the child's immediate and extended family, such as parents, step-parents, grandparents, siblings and uncles and aunts. The definition does not extend to the child's cousin and therefore cousins will need to obtain a WWCC. Unlike the volunteer parent exemption under section 29, this exemption may apply to volunteer and non volunteer roles.

- Volunteers with limited contact (section 31) – a person performing work as a volunteer in child related work no more often than 4 times in a 12 month period and not more than 2 times in any 1 month period and who is supervised at all times when in contact with a child by a person who has a current assessment notice and does not have overnight contact with the children, is exempt from a WWCC.

This exemption will allow people who have not had a WWCC to fill in for regular volunteers on an infrequent basis and will allow people to participate in special events (such as the annual championships) that may only be held on an annual basis.

- Exemption for children (section 32) – a child who has not attained the age of 14 years is exempt from a WWCC. Further, a child who is a student at a school is exempt from a WWCC in respect of any work at that school.

Obtaining a WWCC

The WWCC will be carried out by a new agency to be created within the Department of Justice.

A person required to obtain a WWCC must lodge an application form with the new agency. The application form will ask the person to, amongst other things:

- consent to a police record check;
- consent to checking relevant professional bodies;
- consent to ongoing checks of the person's police record and relevant professional body information throughout the period of the assessment notice;
- provide identifying information with the application; and
- pay a prescribed fee.

It is proposed that the fee for the WWCC will range from \$50 to \$120, with a significantly reduced fee for volunteers. This amount will be deliberated as part of the 2005-2006 Budget.

People will not be prohibited from working with children while their application is pending unless they have previously failed a check and received a negative notice or are on the Sex Offender Register. As long as an application has been lodged, there will be no criminal consequences for a person who works with children or for the sporting organisation that engages the person.

What will be checked for?

The check will involve examining a person's criminal record and history of relevant professional disciplinary proceedings.

More specifically, the check will consider:

- convictions or findings of guilt for serious sexual offences (will result in issuing of a negative notice);
- convictions or findings of guilt for other serious offences that are related to children or where the victim is a child, such as murder, manslaughter, kidnapping etc (will be presumed that a conviction for these

offences will result in a negative notice unless exceptional circumstances apply); and

- pending charges for serious sexual or other serious child-related offences (will be presumed that a pending charge for these offences will result in a negative notice unless exceptional circumstances apply).

What is the result of the WWCC?

The applicant will receive either:

- a negative notice, meaning that they are ineligible to work or volunteer with children; or
- an assessment notice, which will enable the applicant to be engaged in child related work.

The assessment notice will be valid for five years. A person may apply to renew their card anytime six months before the expiry date or three months after the expiry date.

The agency must notify the applicant of the outcome and where it is known, any person who engages the applicant in child related work.

Under the Bill, the term “assessment notice” is used over “positive notice” or “suitability notice”. The main reason for this is to emphasise that the check is not a guarantee that a person is safe or suitable to work with children. The assessment notice simply indicates that the person has been assessed and there is no criminal record or professional disciplinary information that makes them ineligible to work with children.

Once an assessment is finalised and an assessment notice granted (which will happen in most cases), a card will be issued stating that the holder of the card is a person who has received an assessment notice, and it will contain an expiry date five years from the date of issue.

The advantage of the WWCC is that it does not end when an assessment notice is issued. Once a database of assessment notices is established, Victoria Police will notify the agency of any cases where the assessment notice needs to be reconsidered. Further, a person who holds an assessment notice must inform the agency, and where they are

engaged in child related work, an employer, if he or she is charged or convicted of a relevant criminal offence.

Offences under the Bill

Under the Bill, it will be a criminal offence to:

- engage in child-related work without an assessment notice (section 33);
- apply for child-related work if you hold a negative notice (section 34);
- engage people in child-related work if they do not have an assessment notice (section 35);
- offer the services of a person who does not have an assessment notice (section 36);
- use a false assessment notice; and
- provide false or misleading information.

The test under sections 33 to 35 is if the worker or employer knew the work was child related and they knew or were reckless about whether they had an assessment notice.

If these sections are contravened, the offending worker or employer (as the case may be) may be subject to a penalty of 2 years imprisonment (maximum) or a fine of up to \$24,540 (maximum) or both.

Note that where parents are ‘employers’, they will not be guilty of an offence for engaging an employee who has not been granted an assessment notice. For example, if a parent engages a private coach for their child and the coach does not hold an assessment notice, the parent will not be guilty of breaching section 35. However, the coach may be guilty under section 33.

Conclusion

The Bill will be introduced into parliament this year and there seems little doubt that it will be passed in one form or another. It is intended that the WWCC will be phased in over a five year period. The phasing in process will be considered further during the consultation period and will be announced by the Government before the WWCC is introduced.

It is important for sporting organisations to become familiar with the proposed legislation

and commence preparation now. Sporting organisation can commence preparation by:

- identifying paid and volunteer positions which will be "child related work";
- considering whether any of the exemptions will apply to paid or volunteer child related work positions;
- determining how changes to the exemptions will be monitored. For example, if the sporting organisation is relying on the limited contact exemption, how will the number of contact times be recorded and by whom;
- who will pay for the cost of the WWCC;
- considering existing policies and procedures and whether they will need to be reviewed or amended; and
- increasing awareness amongst members, volunteers, officials and staff of the WWCC and the obligations placed on individuals.

Importantly when passed, the legislation will provide the minimum benchmark in reducing the risk of sexual or physical harm to children. It is important to highlight that the WWCC will only detect those persons which have been or are subject to criminal or certain professional disciplinary proceedings. Sporting organisations should not see the WWCC as the solution to child protection and should ensure that other strategies are considered and implemented to protect children in sport.

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Our sports business group:

Ian Fullagar – partner
Jackie Solakovski – senior associate
Matthew Finnis – lawyer
Paul Gray - lawyer

Direct dial: 03 9672 9325
www.landerson.com.au

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