

Working with Vulnerable People (Background Checking) Bill 2010: Risk Assessment Guidelines

Community Roundtable

MINUTES

MEETING DETAILS

Time: *Wednesday, 29 September 2010, 1:00pm – 2:30pm*

Venue: *Level 2, Theo Notaras Multicultural Centre*

*North Building
180 London Circuit
CANBERRA CITY ACT 2601*

Chair: *Ms Joy Burch MLA, Minister for Disability, Housing and Community Services*

ATTENDANCE

Ms Joy Burch, MLA	Minister for Disability, Housing and Community Services
Mr Chris Steel	Advisor, Minister Burch's Office
Mr Martin Hehir	Chief Executive, DHCS
Ms Bronwen Overton-Clarke	Executive Director, Policy and Organisational Services, DHCS
Mr Brett Phillips	Executive Director, Office of Regulatory Services, JaCS
Ms Meredith Whitten	Senior Director, Governance, Advocacy and Community Policy, DHCS
Ms Sara Lynch	Senior Manager, Consumer Advocacy and Quality Services, DHCS
Mr Josh Rynehart	Senior Manager, Office of Regulatory Services, JaCS
Mr Mathew Munro	Policy Manager, Consumer Advocacy and Quality Services, DHCS
Ms Leeanne Maher	Senior Advocate, Consumer Advocacy and Quality Services, DHCS
Ms Gillian Eshman	Senior Advocate, Consumer Advocacy and Quality Services, DHCS
Mr Alasdair Roy	Children and Young People commissioner, Human Rights Commission
Ms Mary Durkin	Disability commissioner, Human Rights Commission
Ms Gabrielle McKinnon	Senior Advisor, Human Rights Commission
Ms Jo Powell	ACT Chamber of Commerce
Ms Narelle Hargreaves	ACT Children and Young People Services Council
Mr Alan Hodges	ACT Ministerial Advisory Council on Ageing
Ms Kiki Korpinen	ACTCOSS
Mr Peter Sandeman	Anglicare Canberra and Goulburn
Ms Natalie Lang	Australian Services Union
Ms Jocelyn Gammie	Australian Services Union
Ms Veronica Wensing	Canberra Rape Crisis Centre
Mr Geoff McPherson	Canberra Refugee Support
Ms Helen Walker	Carers ACT
Ms Anne Kirwan	Catholic Care
Ms Annette Halloran	Catholic Care
Ms Paula Trevisan	Catholic Care
Mr George Grunbaum	Communities@Work
Ms Lyn Renno	Independent Education Union
Ms Jane Strang	National Disability Services ACT
Ms Adele Chadwick	Northside Community Services
Ms Di Jay	Red Cross

Ms Kristine Flanagan	Red Cross
Mr Bevil Purnell, OAM	Refugee Resettlement Committee
Ms June Healy, OAM	RSL ACT Branch
Ms Louise Shea	Salvation Army
Mr Gordon Ramsey	Uniting Care Kippax
Ms Frances Crimmins	YWCA
Ms Emma Robertson	Youth Coalition of the ACT

APOLOGIES

Ms Kirsten Cross	ACT Playgroups
Ms Cathy Smith	Australian Education Union
Ms Dee McGrath	Carers ACT
Ms Brooke McKail	Mental Health Community Coalition of the ACT
Ms Carrie Fowlie	Alcohol Tobacco and Other Drug Association of the ACT
Ms Carol Mead	DIRECTIONS ACT

Background Papers for the meeting were sent by email to participants on 23 September 2010 (Attachment A). A revised Table 1: Example Registration Types was tabled at the meeting.

MINISTER'S OPENING ADDRESS

Minister Burch welcomed participants and outlined the background to the Working with Vulnerable People (Background Checking) Bill 2010 (the bill) and the development of risk assessment guidelines (the guidelines) as an instrument under the bill.

The Minister noted that the ACT is the first Australian jurisdiction to extend checking to include people working with vulnerable adults. The Minister noted the important work of the community organisations that assist vulnerable people in the ACT.

Minister Burch highlighted the need for community input into the development of the guidelines, and invited participants to use the roundtable to voice any issues about the mechanics and operation of the guidelines proposed in the meeting papers.

Minister Burch introduced Ms Meredith Whitten, Senior Director, Governance, Advocacy and Community Policy.

OVERVIEW OF THE PROPOSED RISK ASSESSMENT PROCESS

Ms Whitten noted that checking systems for people working with children are established or under development in all Australian states and territories and that the bill is an extension of these initiatives.

Ms Whitten acknowledged the forum hosted by ACTCOSS with community organisations in 2009 and that stakeholder issues about the bill generally relate to the risk assessment process which is the focus of this roundtable.

Ms Whitten briefly described the proposed risk assessment process before asking roundtable participants to introduce themselves and share the main issues for their organisation. The following issues were raised:

Ms Gabrielle McKinnon	Enforcement of conditions and the presumption that a general registration will be issued for class 3 information.
Mr Peter Sandeman	The general exemption for close relatives.

Mr Gordon Ramsey	The breadth of inclusion of volunteers, including local congregations.
Ms Mary Durkin	Low risk organisations.
Ms Emma Robertson	Seeks clarity around who will make decisions and the training involved. Concerned about the impact on Aboriginal and Torres Strait Islander communities.
Mr George Grunbaum	The system should be complemented by policies and procedures at the organisational level to reduce risks.
Mr Bevil Purnell	Impact on volunteers.
Ms Kiki Korpinen	Processes must be streamlined as far as possible and the system must include an educational component.
Ms Anne Kirwan	Impact on people with alcohol and drug related histories and the effects on recovery and peer mentoring.
Ms Kristine Flanagan	Impact on current recruitment processes, including volunteers.
Ms Di Jay	Affect on people working with those exiting the justice system. National uniformity of checking systems is required.
Ms Jane Strang	Implementation costs and timelines.
Ms Adele Chadwick	Clients who provide volunteer support for other clients. Impact on carers.
Ms Narelle Hargreaves	Effect on volunteers and mentoring programs. Linkages with teacher registration.
Ms Louise Shea	Impact on church programs and volunteers.
Ms Frances Crimmins	Links to current checks.
Ms Natalie Lang	Concerns on how non conviction information will be used and the effect on former clients as mentors. Unions ACT was also interested in employment rights.
Mr Martin Hehir	Proportionality – is the balance right? Guidance around conditions. What level of risk is acceptable? The Department recognises that ‘lived experience’ can be beneficial in some support programs.

Ms Whitten introduced Mr Mathew Munro, Policy Manager, and referred participants to the Proposed Risk Assessment Process for Working with Vulnerable People in the ACT on page 4 of the Meeting Papers. Mr Munro explained the risk assessment flow chart and that there are four possible approval outcomes: general registration, conditional registration, position-based registration and negative notice.

The outcomes will be decided by a dedicated screening unit. The screening unit will have give the highest (most general) approval possible based on the information provided.

A general registration is transferable across agencies and sectors. General registration will be given to applicants who have no relevant information returned during the national police check or who pose an acceptable level of risk. It is anticipated that general registration will be applicable to the majority of applicants.

If relevant information is returned in the national police check, the commissioner will request further information from the applicant or other sources in order to inform a risk assessment. Conditional registration could be given if the commissioner considers that any risk can be managed through set conditions.

Mr Roy suggested that the commissioner should seek information in addition to the national police check in the first instance, rather than only seeking this information if a criminal history is apparent. Mr Munro stated that this is technically possible but might be limited by available resources and the cost of conducting broader searches on all applicants. It would be useful to establish additional triggers for seeking further information.

Mr Martin Hehir (DHCS) raised Council of Australian Government (COAG) obligations regarding what information needs to be collected. Mr Hehir added that it could be beneficial to add questions that would be triggers and identify patterns that may not be found through a national police check. Ms Kiki Korpinen (ACTCOSS) agreed that it was important to look for patterns of behaviour.

ACTION: DHCS to investigate a process for triggering broader background checks for individual applicants.

Mr Peter Sandeman (Anglicare) suggested that the screening unit include “Have you ever worked for an ACT Department?” as a qualifying question.

Mr Sandeman further suggested that a standard declaration process and checklist could be utilised by all organisations and streamline the application process. Specific questions for individual organisations could follow a standard template. The Minister for Disability, Housing and Community Services agreed this proposal would be strongly considered.

Ms Natalie Lang (Australian Services Union) questioned whether one standard declaration form would successfully cross-over from one sector to another, as each has sector specific questions. Mr Sandeman commented that having a standard screening process could build trust across different sectors and agencies. Ms Lang suggested that further scope was needed to ask deeper questions.

Mr Geoff McPherson (Canberra Refugee Support) commented that the department would need a standard set of questions to collect the minimum amount of information required and organisations could build from this. Mr McPherson also asked if the Australian Standards of Risk Assessment would be embedded in the risk assessment process used by the screening unit.

ACTION: DHCS to investigate the feasibility of establishing a list of core questions that can be asked by organisations when engaging new employees or volunteers.

Ms Whitten informed participants that the department is referring to the *National Framework for Creating Safe Environments for Children: an Evidence-based Guide for Risk Assessment and Decision Making when Undertaking Background Checking*, and its application to the Australian Standard. (Post script: The *Working with Vulnerable People Checks Policy* refers to the use of the Australian Standard at page 29 <http://www.dhcs.act.gov.au/publications/wwvpc> .)

Ms Gabrielle McKinnon (HRC) commented that the department needed to maintain a balance between the right to privacy and the risk assessment. Ms McKinnon asked how far the

screening unit could go to gather information and what information would be released to employers.

Ms Robertson followed by asking what would the screening unit do with the information collected, what information will be released and what information will be confidential? The group discussed the need to achieve a balance. Mr Sandeman reiterated the need to protect vulnerable people.

Mr Alasdair Roy (HRC) raised a question about the risk of false positives in the screening process. Ms Di Jay (Red Cross) suggested the screening unit weight the history of the applicant against suitability for the position.

Ms Whitten referred the group to steps B, C, D and E to discuss the suggested screening process.

Ms Korpinen commented that some organisations have been managing this risk well with their current processes and asked if there was any flexibility around step C and step D.

Mr Munro explained that applicants will be given a general registration if possible that will allow the registered person to work in all organisations. In more complex cases, applicants may be given a conditional registration or a position based registration that could involve some input from an employer concerning their risk mitigation strategies.

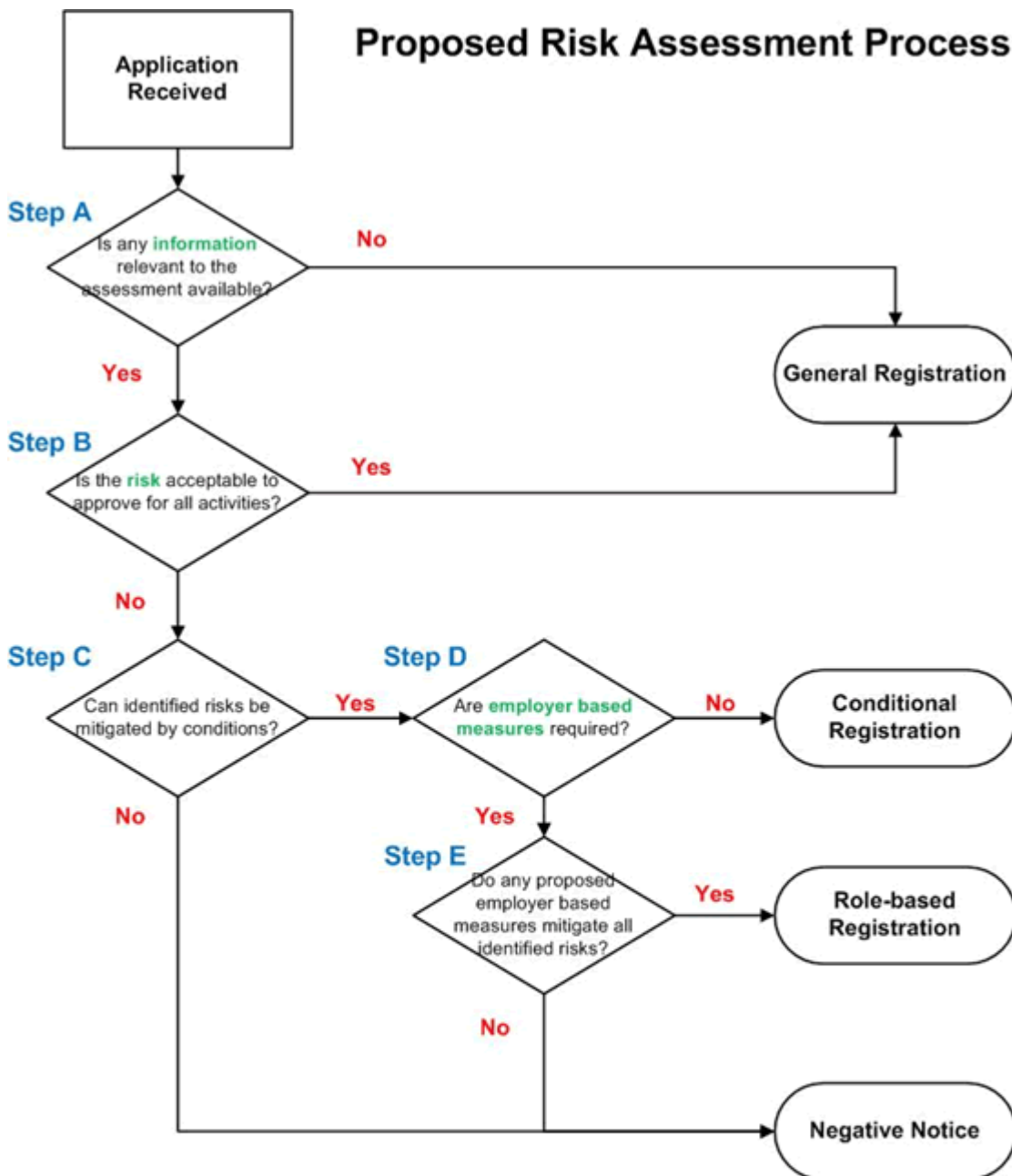
Ms Korpinen suggested that a multi-disciplinary panel could be used to assist with decision making.

ACTION: DHCS to consider the use of a multi-disciplinary panel to assist with decision making.

Mr Sandeman and Ms Adele Chadwick (Northside Community Services) raised an issue about positions changing depending on funding rounds. Ms Whitten and Mr Munro agreed there was a need to clarify the meaning of 'position' so that it may encompass a broader 'role' in the organisation.

ACTION: DHCS to clarify the use of the term 'position' to encompass a broader 'role' with an organisation.

An updated risk assessment diagram is included below.



LEGEND

Information: Refers to all available information including conviction and non-conviction information obtained by the screening unit or supplied by the applicant at any point in the process.

Risk: The Commissioner must be satisfied that the applicant poses no risk or an acceptable level of risk of harm to a vulnerable person.

Employer based measures: Risk reduction strategies implemented at the employer level including risk management plans, codes of conduct, supervision levels, incident management plans etc.

Ms Jay asked what kind of understanding the screening unit will have of the individual sectors. Ms Lyn Renno (Independent Education Union) also raised an issue about specific positions such as practicum teachers. Will they be given position based registration? Mr Munro replied that most would be given general registration but that conditional or position based registration were possible depending on the findings of the screening unit.

Ms Frances Crimmins (YWCA) asked about the breadth of controls in place in relation to position descriptions. Ms Crimmins also asked about registration and how employers can be

sure they are current. Mr Munro answered that registration is valid for 3 years. He explained that a database will hold the record for the validity of the registration. It is anticipated that it will be available to employers by phone and internet. Mr Hehir advised that due to different jurisdictional systems and prohibitive costing, the database will not be live.

Mr Sandeman raised an issue around the level of information provided to employers via the registration validation service. Mr Munro responded that the validation service will disclose information relating to whether or not a registration was valid and whether or not conditions applied. A unique number will be attached to each registration card and the employer will require knowledge of this number and perhaps the name and date of birth of the applicant in order to access the validation service.

Mr Gordon Ramsey (Uniting Care Kippax) and Mr Sandeman suggested that employers should have to register for access to the database in order to restrict access. Mr Munro and Ms Whitten agreed this would be further explored.

ACTION: DHCS to consider requiring that organisations register their details before being granted access to the online validation service.

The group discussed the creation of a framework for the application of conditions. The framework could include an examination of the role, activities and levels of vulnerability.

ACTION: DHCS to explore the possibility of developing a framework for the application of registration conditions.

Ms Anne Kirwan (Catholic Care) asked about the timeframes expected for processing of applications. Mr Munro informed that the timeframe would vary. It is anticipated that general registrations will be the quickest, taking about a week from the receipt of the application. Other types of outcomes could take longer depending upon the response time for the National Police Check, the type of approval requested, the level of information required to make an assessment and the review options exercised by the applicant.

Mr Munro referred to the current NSW process of completing a risk assessment on organisations as well as individuals. This process could be useful in addressing identified risks. Mr Munro referred participants to page 11 of the meeting papers.

Mr Sandeman suggested that the 'protective factors' on page 11 were actually 'mitigating factors'.

ACTION: DHCS to update terminology on page 11 of the meeting papers to change 'protective factors' to 'mitigating factors'.

Mr McPherson suggested that, given that the system would first be applicable to the more complex groups of volunteers and new employees, the department could conduct a trial before roll out to test the system. Mr Munro responded that the system will be implemented progressively in a number of phases targeting specific regulated activities. It is anticipated that any problems will be identified and rectified in the early stages of the roll-out.

The group briefly discussed protective factors and mitigating factors.

Mr Bevil Purnell (Refugee Resettlement Committee) asked if employees and volunteers can work while undergoing checks. ***Mr Munro advised that volunteers and employees can work pending approval provided that the applicant is supervised until the outcome of the application is known.***

Ms Chadwick asked how the screening unit will become aware of new information concerning registered people. Mr Munro responded that the Department recognised the limitation of individuals notifying of status changes and have shortened the initial 5 year check to 3 years in order to mitigate this risk.

Mr Munro stated that registered people will be required to inform the screening unit if they are charged or convicted of a new offence during the registration period.

The commissioner will conduct a new risk assessment if it is determined that the information may affect the person's registration status and will inform the person that the new risk assessment is being conducted. Mr Munro stated that the commissioner will have the option to suspend the registration while the new risk assessment takes place but will not automatically do so. The commissioner will inform the employer of a suspension or cancellation if the employer is known.

Ms Lang suggested that employees should have the option to work in 'safe duties' or 'supervised duties' in preference to being stood down as a result of a suspension. Participants debated whether or not to suspend a registration pending the outcome of a risk assessment. Suspension was considered appropriate in some cases (e.g. sexual offences) but not in others (e.g. driving offences).

ACTION: DHCS will consider the inclusion of a section on grounds for suspension in the risk assessment guidelines.

Ms Renno asked who would be charged for the cost of the check. Ms Whitten replied that checks for volunteers are free and that individual employees (not employers) would be responsible for application fees.

CONCLUSION AND NEXT STEPS

Minister Burch thanked participants and summarised the main points discussed during the roundtable, reiterating that the information would be used to inform the further development of the guidelines. The meeting papers will be updated and further policy information included before re-circulation.

Minister Burch sought an acknowledgement from the community sector that there was broad agreement to the bill and associated development of the risk assessment guidelines. Agreement was provided by meeting participants.

The Minister stated that there are no major amendments planned for the bill at this time and requested that meeting participants put their views in writing if amendments are proposed. The Minister proposed to debate the bill in December 2010.

Ms Whitten committed to circulate a meeting record and participants were asked to provide any further written comments to the Department of Disability, Housing and Community Services by **11 November 2010**. These may be submitted by email to

WorkingWithVulnerablePeople@act.gov.au

ACTION: DHCS to circulate a meeting record to all participants.

ACTION: Meeting participants to supply further written comments to DHCS by 11 November 2010.