



Review of Australian Charities and Not-for-profits Commission (ACNC) legislation

ACNCReview@treasury.gov.au

Mr Murray Crowe
Individuals and Indirect Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Enquiries can be initially directed to ACNCReview@treasury.gov.au
02 6263 3992

Dear Mr Murray

Please find our comments below.

One of the objects of the Act includes (a) maintaining, protecting and enhancing public trust and confidence in the Australian not-for-profit sector.

Q. Are there gaps in the current regulatory framework that prevent the maintenance, protection and enhancement of public trust and confidence in the Australian not-for-profit sector?

Simple answer is Yes. OxFam is the latest high profile case who have declared that their vetting and screening process are not up to public expectations. The Royal Commission's Recommendations clearly state that vetting and screening process for named & shamed religious institutions are deficient.

Q. What activities or behaviours have the greatest ability to erode public trust and confidence in the sector?

Lack of Vetting - both pre-employment screening and ongoing, regular screening. If large organisations don't get it right, the rest of the sector don't and won't either. The WWCC is deficient in so many ways.

Year	Number of applications for a card	Number of applicants with a criminal record	Number of negative notices issued
2005-06	9 118	579	1
2006-07	49 804	4 664	19
2007-08	74 894	10 532	29
2008-09	83 862	12 779	59
2009-10	95 260	14 881	85
2010-11	101 755	17 098	56
2011-12	101 617	16 665	61
2012-13	106 217	16 858	99
Total	622 527	94 056	409

One in Six Clearance Holders have criminal histories which are not even looked at.

1 in 1522 are awarded an adverse finding.

Table 2: The number of working with children check applications, number of applicants with a criminal record, and number of negative notices issued from 2005-06 to 2012-13
Prior to 2009 it was not compulsory to classify an applicant's offence so 2005-06 to 2008-09 figures are not as complete as subsequent years.

1 in 6 WWCC (Working With Children Card) also known as Blue Card holders have a criminal record!

Do you think if rank and file parents and the general public knew this that they would feel that we as a nation had adequate background screening processes and safeguards in place and the Act is meeting it's goal to enhance public trust and confidence?

1 in 6: it's true – here is the WA Government [audit](#):

The reality of the WWCC

The WWCC only checks for convictions for a specific category of crimes. In particular, crimes against children and convictions for violent crimes such as murder or manslaughter. Anyone with an extensive criminal record for offences like fraud, stealing or maybe a string of DUIs, drug possession etc would not be considered an issue and therefore the WWCC would be granted.

It's a false sense of security that the government gives our community and it's a false level of trust in a Candidate who has been granted a WWCC.

Does that sound acceptable to you?

Unfortunately, we don't believe the WWCC is designed to assess a person's honesty, trustworthiness, or resilience. But surely, this is what most people EXPECT a government background screening check would do.

There lies a clear and present danger and the risk is real. In 2015, for example, a 27-year-old Albury woman was charged with fraudulently claiming \$3 million through her family day care business. Later that year, a ring of six people in Melbourne were charged with making false attendance on behalf of childcare centres to defraud the system of more than \$15 million.

Not an Isolated Event. Good news: not all government background screening checks are as narrow or as basic as the WWCC.

Take for example, national security clearances. These checks (which range from Baseline, NV1, NV2 and TSPV) can take months and sometimes years to obtain. They have been described as intrusive process because the government needs assurances that certain people in certain roles have the character required to keep Australia safe.

As a leader in delivering national security clearances to the Commonwealth, we provide a comprehensive background screening regime that can enhance your organisation's existing security standards in order to meet community expectations without altering the official WWCC process. It's called Cleard.life.

Cleard.life is a risk mitigation 'suitability clearance' that has the effect of greatly exceeding the WWCC background screening process because it uses the Attorney General's standards and guidelines for personnel security and use the same vetting officers as the official security clearances. With over 350,000 APS staff and Contractors holding a national security clearance (at varying levels), the AG's standards are robust and delve into mental health, financial, drug use, personal conduct, illegal conduct, criminal associations -- not just narrowly focussed red flags.

As a screening body, we believe that the Cleard.life background screening qualification will meet NFP requirements for appropriate employment and volunteer standards. If organisations rely predominately on the background screening check done by the WWCC, then they can revisit their employment standards.

Cleard.life Express Service gives NFPs a 3 business day turnaround from the time of the Candidate nomination request to the time the Result is delivered.

CL1: The Standard Assessment.

1.5 hours of qualified expert vetting including:

One-on-One phone interview focusing on the last ten years

Post-interview factor area analysis

Suitability Recommendation

Likened to the depth of a NV1 (SECRET) national security interview

No ID verification

Express delivery - 3 days (usually next business day after the interview)

A response to the Child Abuse Royal Commission: a way forward to stop the pain of hiring the wrong person in the NFP Sector.

The Royal Commission's Final Report relating to human resource management noted that *"the nature of religious ministry requires more rigorous screening and selection than for other employees, to ensure that individuals are suitable for their roles."* (emphasis added)

In the final report, Standard 5 mentions that *"people working with children are to be suitable and this should be assessed at the point of recruitment, including screening"* and *"relevant staff and volunteers have Working With Children Checks [WWCC]."* (emphasis added)

Cleard.life believes that the WWCC is not a rigorous screening solution, in of itself. It needs to be augmented. WWCC considers only a filtered, handful of convictions which each State body deems to be relevant. That's why, at present, 1 in 6 current WWCC holders have criminal convictions. The WWCC's aim is not to assess a person's overall character and therefore it leaves a lot of gaps and therefore risk on the table for the organisation.

When considering "suitability", criminal history is just one dimension that should be screened and assessed. The provision of a rigorous character screening 'suitability clearance' will give the religious organisation the confidence it needs to know for sure that the person has a suitable character. Imagine being able to also screen a person's background for mental health issues, hidden alcohol or drug abuse, or personal conduct, allegations in the workplace and sexual mis-conduct. A 'suitability clearance' that checks, and risk assesses, ten different areas of a person's life can make an extremely valuable contribution to the recruitment and screening improvements and recommendations handed down by the Royal Commission.

Recommendation 16.4

The Anglican Church of Australia should develop a national approach to the selection and screening of candidates for ordination in the Anglican Church.

The Cleard.life Suitability Clearance can completely and thoroughly check a person's background for the last ten years – or even their entire life (CL3). The standards used to make assessments are applied to more than 350,000 Public Servants and Contractors as security clearance holders. Think of it this way: **if** a religious Candidate's character can pass this examination, and theoretically access SECRET or TOP SECRET information, then they would be suitable and would be trusted to work with the most valuable (and oft-times, vulnerable) people in our society.

Recommendation 16.21

The Australian Catholic Bishops Conference and Catholic Religious Australia should establish a national protocol for screening candidates before seminary or religious formation

The Cleard.life Suitability Clearance ‘omni-screen’ can be done in conjunction with (and not to the exclusion of) any other external tests and checks deemed appropriate (eg. national police, check, psychometric testing). Additional data points to make the screening interviewing more relevant and useful is always welcome. Using the Cleard.life suitability clearance as part of your national screening protocol is one way to meet the Royal Commission’s recommendations.

Recommendation 16.46

Religious institutions which receive people from overseas to work in religious or pastoral ministry, or otherwise within their institution, should have targeted programs for the screening of those people.

Use Cleard.life as one of your targeting programs. Cleard.life only uses trained, experience, qualified and official government approved vetting officers, so a tailored suitability program can delve into the life experiences of all overseas Candidate’s. Cleard.life uses Video Teleconference Technology (VTC) to interview overseas Candidates – even before they reach our shores, if required.

Assessing risk

23. State and territory governments should amend their WWCC laws to specify that the criteria

for assessing risks to children include:

- a. the nature, gravity and circumstances of the offence and/or misconduct, and how this is relevant to children or child-related work*
- b. the length of time that has passed since the offence and/or misconduct occurred*
- c. the age of the child*
- d. the age difference between the person and the child*
- e. the person’s criminal and/or disciplinary history, including whether there is a pattern of concerning conduct*
- f. all other relevant circumstances in respect of their history and the impact on their suitability to be engaged in child-related work.*

The Cleard.life suitability screening assessment takes into consider all above factors (a-f) but not just for children – but for every arrest, charge and conviction and every victim. It can even consider undetected illegal activity. Judgements comply with the Anti-Discrimination Act (including criminal history discrimination). Specialist vetting officers take the time to hear and understand each and every issue and then balances the aggravating evidence with the mitigating evidence to come to a concise, easy-to-understand recommendation: 5/5: For Sure, 4/5: Think So, 2/5: Doubt it, 1/5: No Way. Higher levels of suitability clearances (CL2 and CL3) also quantify character traits such as Honesty, Trustworthiness, Tolerance, Maturity, Loyalty and Resilience.

24. State and territory governments should amend their WWCC laws to expressly provide that, in weighing up the risk assessment criteria, the paramount consideration must always be the best interests of children, having regard to their safety and protection.

Cleard.life agrees. Using the Attorney General's Adjudicative Guidelines as ‘the’ suitability standard and “Whole of Person Concept” means that each assessment produced errs on the side of the Commonwealth. In the Cleard.life context, the Vetting Officer hears the Candidate’s story and the assessment will err on the side of safety and protection of children and the reputation of the religious institution.

Please consider how a 'suitability clearance' that is PSPF Compliant could be incorporated into your review of screening and selection processes and the ACNC protective legislation.

The "NDIS Quality and Safeguarding Framework".

NDIS: How it will work: A nationally consistent screening process will be developed: the results of the screening process for an applicant will be valid throughout Australia, regardless of the state or territory in which it was issued.

Cleard.life response: As a national security vetting agency, we consider not only is a nationally consistent approach to a person's suitability the logical one, but specifically we recommend that the screening determination be linked directly to the Attorney Generals' Suitability and Adjudicative Guidelines (inside the Protective Security Policy Framework – PSPF).

NDIS: Who will be risk-based screened: workers, including employees, agents, volunteers, contractors, and sub-contractors engaged by NDIS providers and the National Disability Insurance Agency (NDIA) that have significant contact with people with disability as a part of their work or role. Those who have already undergone equivalent checks through other systems will also be exempted.

Cleard.life response: as mentioned later in the NDIS framework comments, "regular, thorough screening is essential", so we recommend that existing holders be updated and upgraded within 12 months to meet the new national suitability standards. Why? Because trusted Insiders can cause much damage.

NDIS: Employers should be required to obtain referee and police checks for all staff who will have client contact.

Cleard.life response: Referee reports, especially "un-nominated" Referees are an exceptionally important part of this process – as it offers another degree of independence and impartiality. However, not many employers are trained to secure what the trade call "developed" referees and go with "Referee Aunt Betty, or perhaps Referee who is the in-law". Cleard.life offers a "Referee Addon" option which mean we will obtain a referee, interview that person. This allows our decisions to be even more certain. As part of the Cleard.life general service fee, however, the Sponsor/employer/provider can provide "additional information" which can include adverse or dubious Referee comments that they obtained. Our Vetting Officers will get to the bottom of the allegation or the raised issue.

NDIS: However, these are minimal safeguards [because] mistreatment of people with intellectual disability seldom lead to criminal convictions.

Cleard.life response: Sadly, this is true. Therefore, Referee comments and a Police check should not be used as the basis of any suitability screening determination alone. It should not be considered even the barest of minimum safeguarding.

NDIS: The more safeguards in place the better.

Cleard.life response: True, but there is a risk/cost analysis that should be done. If the clearance costs \$10,713 (like an official AGSVA TSPV clearance does) and takes 18 months, then can we say the 'more the better'? No.

The good news is, this is a service that covers more than 10 dimensions of a person's background and can be done for a minute fraction of that cost.

For example, our Background Suitability Interview Questions relate to:
Background & Family structure
Education & Employment
Personal Relationships

Allegiance & Loyalty
Substance Use
Illegal conduct
Emotional health
Financial
Resume check
Personal conduct

NDIS: Regular, thorough screening is essential.

Cleard.life response: We agree. But what is regular and what is thorough? We would define thorough as at least checking 10 dimensions in a person's background and 10 years of history. What is regular? Is it 12 months, 2, 5 or 10 years? Is the review/revalidation the same as an initial? Having access to real-time 'black-mark' governmental / quasi-governmental databases is an important and valuable technological step / aspiration – but it contains the same limitations as admitted previously concerning police checks. However, when a black mark (or to mix metaphors, a red flag comes up), it needs to be followed up with a “review-for-cause” one-on-one interview with an expert in a timely manner. Will it?

NDIS: Predators will look for areas to exploit vulnerable people. The more rigorous the screening the more an inappropriate person will be deterred from seeking this out as an area of employment.

Cleard.life response: This is true. And that is why having a national security vetting agency conducting components of the process is an invaluable tool to develop market capability and a recruitment screening solution that is effective, timely and value-for-money.

NDIS: Employers have varied levels of knowledge and understanding about issues such as domestic violence and sexual assault (e.g. grooming dynamics etc.), and may not always have the competencies to make the judgement in such situations. A specialist organisation like [sic] operates for the New South Wales Working With Children Check is a better option.

Cleard.life response: This is true. And Judgements and bias vary greatly. One geographic pocket of speciality implies no speciality in another location and therefore risks an inconsistent application in terms of judgements. And that is why having a specialist national security vetting agency conduct the interview & suitability risk assessment, it ensures that there is a consistent approach to adjudications and is therefore an invaluable tool.

NDIS: **How will the decision be made:** the screening process will assess whether or not, on the balance of probabilities, a person would pose an unacceptable risk. It will take into account information such as convictions, including spent and quashed convictions; other police/ court information, such as current or pending charges; Apprehended Violence Orders, Child Protection Orders and child protection information; international police checks for those who have worked overseas, when feasible; and workplace misconduct, which comes to light through complaints and serious incident reporting. The assessment of risk will ensure that people who have committed offences in the past that have no bearing on their current ability to safely support a person with disability will not be excluded from the workforce.

Cleard.life response: Exactly “HOW” are these risk assessments done, and to which standards or guidelines does each case rely on or look to? We would recommend that the suitability risk assessment and the screening determination be linked directly to the Attorney General's Suitability and Adjudicative Guidelines (inside the Protective Security Framework Policy – PSPSF). More than 350,000 APS staff and their contractors have undergone their security clearances using this formula. For example, filter all known “issues” through:

Guideline A: External loyalties, influences and associations
Guideline B: Personal relationships and conduct
Guideline C: Financial considerations
Guideline D: Alcohol and drug usage
Guideline E: Criminal history and conduct

**Guideline F: Security attitudes and violations, and
Guideline G: Mental health disorders**

Then the risk assess the Candidate using the AG's "Suitability Factors":

**Honesty
Trustworthiness
Tolerance
Maturity
Loyalty
Resilience**

To reach a consensus and conclusion that 350,000+ people have already attained, in order to return a Result:

**For Sure
Think So
Doubt it
No Way**

NDIS: Linkages: providers will need to develop effective recruitment and selection processes to ensure they hire workers with the right attitudes and capabilities for particular roles, as well as effective ongoing management and supervision. Referee checking will remain a core responsibility of employers.

Cleard.life response: We can help in this regard to ensure that effective recruitment occurs, and that proper referee checking is done.

NDIS: Linkages: the NDIS complaints commissioner will support best practice approaches to complaints handling. The NDIS senior practitioner will support delivery of best practice behaviour support. Quality assurance requirements will assist registered providers to identify weaknesses, build capability and drive continuous improvement.

Cleard.life response: We hope that our input will help to drive continuous improvement.

NDIS: The NDIS registrar has a role to working collaboratively with providers to build market capability.

Cleard.life response: We hope that our input will help to build market capability.

If you require any further clarification or assistance, we would be pleased to assist the Review.

Regards

Edward Barker
Principal