

**ROYAL COMMISSION INTO INSTITUTIONAL
RESPONSES TO CHILD SEXUAL ABUSE**

Private Hearing

ROUNDTABLE ON WORKING WITH CHILDREN CHECKS

Australian National University
Canberra

On Monday, 16 June 2014

Before: Justice Peter McClellan AM
Commissioner Robert Fitzgerald AM

1 JUSTICE McCLELLAN: Before we start I would like to
2 acknowledge the Ngannawal people who are the traditional
3 owners of the land on which we meet today and ask that you
4 all remember and pay your respects to their elders both
5 past and present. The Aboriginal people are an important
6 part of the work that we are doing in this Royal
7 Commission, as I am sure many at the table today appreciate
8 and it is important that we continue to bear that in mind.

9
10 Can I welcome you all to today's roundtable - it is
11 not really round is it - we will have to call it
12 rectangular. But it is an important meeting today in the
13 work of the Commission because it enables us to bring
14 together all of the people in the country who are capable
15 of contributing to what we see to be a very important
16 discussion. And that is, at the, as it were, primary level
17 of protection for children what should be the rules and how
18 should they be applied.

19
20 I don't for a moment pretend to know as much as any of
21 those around this table or perhaps others in the room know
22 about these issues. I don't know as much about them as
23 Robert Fitzgerald knows, but what I have learnt is that,
24 although in some respects it might appear that there are
25 obvious solutions, there aren't and the problems are indeed
26 complex.

27
28 As we just learnt the microphones are very
29 directional. You have to press the green button I think to
30 turn them on. And I am told that no more than four people
31 can talk at the one time, but I would be grateful if we
32 could make sure that only one person talks at the one time.

33
34 The arrangements for today don't provide for members
35 of the audience to directly participate, but I know that
36 there will be some of you at least who have questions you
37 would like to be raised. If you do, I gather you have been
38 provided with the capacity to just write out the question
39 and give it to one of our people at the table there and it
40 will be brought forward and I will make sure that the
41 question is asked and, if we can, answered. But
42 nevertheless asked so it contributes to the discussion.

43
44 As you know, the work of the Commission has three
45 fundamental elements. The first and particular element in
46 the work of this Royal Commission is the conduct of private
47 sessions, for which the federal parliament amended the

1 Royal Commissions Act to allow them to occur. We have now
2 heard from more than 1,700 people in private session. We
3 have also gathered more than 1,600 written accounts from
4 people who speak of their personal abuse. We have another
5 1,000 people in the queue for private session and we are
6 receiving applications still at the rate of at least 40
7 a week. And I don't know when that is going to stop - that
8 is an ongoing and very significant part of the Commission's
9 work.

10
11 The second part is the public hearings and, as we are
12 here today, you will all probably know that another panel
13 of Commissioners is sitting in a public hearing here in
14 Canberra and the work of the Commission continues through
15 private sessions and public hearings effectively without
16 stop. When Commissioners aren't doing public hearings you
17 can assume that they are holding private sessions.

18
19 The third part of our work starts with research but is
20 carried forward through occasions like today into policy
21 recommendations. The research program has already
22 completed some of its work but there are multiple research
23 programs still underway. A lot of that is being done on
24 commission by the Royal Commission to the private sector.
25 Some of you may be aware of some of the projects that are
26 taking place and they are being supervised by Professor
27 Bromfield from South Australia. But they cover the broad
28 range of issues that the Commission's letters patent
29 require us to understand and provide in recommendations.

30
31 Now, as a consequence, today's session should be seen
32 as part of the ongoing gathering of information by
33 Commissioners with a view to the Commissioners ultimately,
34 when we believe we have sufficient information that make
35 recommendations, bringing forward recommendations which we
36 hope will show the way forward. None of the Commissioners
37 are interested in making recommendations which have no hope
38 of ever being implemented. We all know of the constant
39 refrain of Royal Commissions, we provided a detailed
40 report, it sat on the shelf and no one ever looked at it
41 again. I don't think that is a useful exercise.

42
43 So part of today's discussion will be to help Robert
44 and I understand both where the problems lie but also where
45 the practical solutions might come from. We might in
46 report talk about the ideal but that is not going to be of
47 much use unless we also talk about what can practically be

1 achieved. So, if you would help us by letting us know what
2 your perspectives are but also help us to understand what,
3 in the real world, might be capable of being implemented.
4 And I appreciate that in a topic like this that
5 implementation requires the agreement and cooperation of
6 all of the interested governments. I have said to people
7 on many occasions, we are actually seven Royal Commissions,
8 it gave me a problem when I was trying to work out who to
9 send reports to. I didn't see myself visiting seven
10 governors general or governors or lieutenants around the
11 country. So we worked out a way of doing that which I hope
12 suits everyone but an issue like this of course involves
13 every one of the state and territory administrations in
14 trying to reach a common position.
15

16 I am going to vary from the agenda a little because I,
17 part or anything else for my own benefit, I would like us
18 all to be on the same page. Firstly, in relation to where
19 we are in developing a national approach. And I am aware
20 of the history in a sketchy form of the development of
21 a national approach. And I am going to ask Barbara Bennett
22 in a moment if she would be so kind to give us the national
23 perspective on the national approach because I think that
24 is a useful starting point for the discussion. I am then
25 going to ask someone, if they can, to help us understand
26 where we are with CrimTrac, because that too really is the
27 starting point for understanding how we might to forward.
28 I know of the CrimTrac work. I have spoken with Police
29 Commissioners about it. I know it is not a universal
30 application but I would like us all to understand where
31 CrimTrac is up to so that we then have a bench from which
32 to go forward in terms of developing, if we can, the
33 appropriate response. But, first of all, Barbara, if you
34 can let us have an update, as it were, on the national
35 position.
36

37 MS BENNETT: Thank you very much. Firstly, can I just
38 sort of - concepts of national schemes really do rely on
39 cooperation and working together, whether this be in a
40 national scheme in this space or in other areas. And
41 certainly the commonwealth government does work very
42 closely with the state governments in discussing these
43 issues and issues that we have in common.
44

45 Under that system, as you would be well aware, state
46 and territory governments have the legislative
47 responsibility for child protection and operate within

1 their own statutory schemes for Working with Children
2 Checks. And therefore the role of the commonwealth is to
3 see where we can provide assistance and sit at the table
4 and share views in appropriate forums.

5
6 We the commonwealth can't require new systems or
7 national standards, we can just work with our colleagues in
8 the state. That said, the work that we have been doing
9 with the states has shown that there are quite different
10 statutory schemes based on different legislation and policy
11 and administrative arrangements. And these differences
12 often reflect different purposes, different local
13 communities, different arrangements and the different needs
14 of the role in these employment checks - Working with
15 Children Checks.

16
17 Some of the fundamental differences that we are aware
18 of go to who is required to undergo a check and for what
19 purpose that that check is used and what information is to
20 be considered and how long the validity and exemptions.
21 And they are the areas that I will talk a little bit more,
22 where if we could find greater harmonisation we believe
23 that it would be a more positive and manoeuvrable outcome.

24
25 Over the past three years the commonwealth and states
26 and territories have been working to move towards more
27 national consistency on some of those issues I have just
28 mentioned. Our view is that good progress has been made,
29 particularly in the area of sharing information across the
30 states about someone's criminal history but that is only
31 one component of the process.

32
33 Commissioner, you talked about the importance of the
34 national exchange and criminal history information for
35 people working with children and, yes, Mr Doug Smith from
36 CrimTrac is available and he will be able to talk about
37 their role and experience in facilitating the sharing of
38 the information of criminal history. And this is obviously
39 done in accordance with CrimTrac's governance arrangements
40 and the legislative provisions about sharing information
41 between the states and the territories.

42
43 I think it is important to note, and I am sure
44 Mr Smith will go into this in more detail, that a person's
45 criminal history and the work undertaken through the
46 national exchange of criminal history information for
47 people working with children is only one component of more

1 extensive screening approaches carried out by the agencies
2 in the states specific to the nature of the work and the
3 type of assurance that is needed for that individual in
4 what they are being asked to do.

5
6 One area that I think is important to focus on is that
7 while CrimTrac will be able to talk about how they share
8 criminal information, the other aspects of a screening and
9 why someone may be approved or not approved to work with
10 children, we don't believe is fully shared between the
11 jurisdictions for a whole lot of reasons that each of them
12 would be able to explain. And possibly one of the things
13 that the Commission needs to look at and we need to discuss
14 is what is a simple way in which someone - in which we can
15 share the information that someone who may have been denied
16 at least sets up some flag that requires further
17 exploration. And it might be that, if it could be a simple
18 sharing of information that they went through a process for
19 a Working with Children Check on this date, was given, was
20 not given, and then the receiving jurisdiction who may not
21 have conducted the check themselves, but is alert, that
22 there is a reason and then they can make through their own
23 investigations a decision, well, there was a difference
24 between working in residential care with young children
25 verses is it still suitable to be a bus driver or work on
26 the school grounds. And there is different obviously
27 criteria and assessments that will be made about what the
28 characteristics are needed in that.

29
30 We have been working with the states, as I said, on
31 the national framework since 2011 and we continue to work
32 with the states. And, as I said, there has been work in
33 identifying national issues and areas where we have been
34 able to make some changes and collaboration but it is still
35 three years that we have been doing it and it is still
36 three years that it hasn't - I don't think anyone would say
37 has reached - landed entirely.

38
39 But, that said, as I referenced, is an effective
40 Working with Children Check system needs to have those
41 three elements and screening is just one part of it. Risk
42 management and proportionality to what are you checking for
43 what role is very important. We may have nobody ever being
44 able to work in that space in a voluntary or professional
45 capacity, and in the issues that you have raised in your
46 paper is how enduring are they, how long.

1 So, in summary is that while each of the states have
2 different standards and different levels and different ways
3 that it is applied for different jobs, the work that we
4 have been doing collectively with the states are raising
5 those issues and finding as many areas in common and
6 approaches in common as issues that are unique to either
7 a jurisdiction or different approaches or their
8 complexities in the way that it is imbedded in their
9 specific legislation.

10
11 Our view is that - the commonwealth view is that we
12 wouldn't promote or particularly support a centralised
13 national scheme in which somehow the commonwealth was the
14 gatekeeper, designer, the receiver of and disburser of
15 information. I think I have raised previously when we were
16 talking about - when I appeared last time when we were
17 talking about foster and out-of-home-care, the
18 establishment of building big centralised databases would
19 be a long journey, an expensive journey and that there is
20 actually so much more flexibility that can be done between
21 jurisdictions sharing appropriately and more rapidly the
22 issues that they need to share rather than having one
23 centralised arrangement put in place. We believe that the
24 attempt to set up a national centralised scheme that would
25 be run by the commonwealth would involve spending a large
26 amount of resources and time to create this, both for us
27 and the states, that would have to redesign their systems
28 to be able to interact with it. And particularly it is
29 tricky where we are not actually, neither legislatively or
30 the deliveries of those services and so the creation of it
31 is a more tenuous versus direct role.

32
33 We do believe that we do have an effective role in
34 facilitating moving towards national consistency and shared
35 responsibility. Through the national framework we
36 contribute and make an investment in areas of research and
37 shared information in this area and we believe that is an
38 important contribution that we can make in working with our
39 colleagues.

40
41 We do believe that there would be merit in a minimum
42 standard that could apply for all types of roles and then
43 could be expanded, be more sophisticated and added to more
44 criteria if needed depending on the nature of the role that
45 the individual being checked is involved in and the degree
46 of contact with children. We think that some of the key
47 questions - and many of these are aligned to the questions

1 that you have asked - that it is a priority to try and find
2 agreement on who needs to be checked, agreeing on
3 definitions, what information should be taken into account,
4 who is exempt, who should be automatically barred, how long
5 would a check be valid for, if a fee structure applies,
6 what should it be and should that be consistent, what is
7 the manner and approach that would be used for ongoing
8 monitoring even if there is a period of validity, if
9 something occurs how does that get revoked or changed. And
10 this goes back to what we think is the importance of some
11 real time-sharing between jurisdictions in a way that could
12 send an alert for them to be aware of something that has
13 happened. And natural justice, what appeals processes.

14
15 We make mistakes as public servants sometimes, we get
16 information wrong, it may not be matched and we need to be
17 able to make sure that people - that have a chance to be
18 able to consider why they may have not be granted or not
19 been approved. And we also think there is an onus on
20 responsibility for employers, that this cannot just be
21 jurisdictions and government, that there is a role for
22 employers to ensure that they comply. And, in considering
23 that, what would the penalties be for noncompliance by an
24 employer.

25
26 There was some changes made as a result of broader
27 reforms to COAG which is the Council of Australian
28 Governments. And that, as a result of some of those
29 changes, in March the commonwealth and the state
30 governments agreed to establish the Children and Families
31 Secretary Groups as the head of key agencies to continue
32 the work on projects that require national approach and
33 national collaboration. And we have met once and we have
34 another meeting coming up soon. And certainly responding
35 to the work of the Royal Commission is a high priority for
36 that group. And I am sure that my state colleagues will
37 attest that that has been a regular strong dialogue going
38 on on what we can do about it.

39
40 I also would, in participating in the debate, on the
41 specific questions that you have asked, I do have some
42 views on those, but I thought I would leave that to a more
43 open general discussion.

44
45 JUSTICE McCLELLAN: Thank you. Can I just try and
46 understand, are we making progress, in your view?
47

1 MS BENNETT: I think there is ways to measure progress.
2 I think the importance of the checks, the analysis about
3 what should be in it and what is required to certain jobs,
4 I think that certainly it is front of mind to my colleagues
5 in the states and I think, yes, that has been progress in
6 the way that they apply it and the rigor and attention that
7 they are giving it in each jurisdiction. Have we
8 progressed as far as we could have of having a national,
9 well, as I said, I think there is probably some debate
10 about whether a national or centralised is actually the way
11 to go. But in terms of the attention and the resources and
12 the efforts that the jurisdictions put into working to get
13 this right to their environment under their systems,
14 I believe that there has been, over the last few years,
15 a much sharper focus in this area. But we haven't got as
16 far as we probably need to in the area of harmonising and
17 being able to share information quickly.

18
19 JUSTICE McCLELLAN: I will come back to that later but is
20 there anyone around the table who believes there should be
21 a national scheme centrally managed with a central
22 database? Yes - could you just turn your label so I can
23 see who you are - yes, thanks Martin. Just tell us for the
24 benefit of the pod cast who you are and where you are from?

25
26 MR THOMAS: My name is Martin Thomas, I am a National
27 Chief Executive Officer of Scouts Australia. In
28 consultation with all our state bodies or branches as we
29 call them, there has been a general consensus that there
30 should be a national approach to a Working with Children
31 Card checking process and that the actual process should be
32 able to cross jurisdictions. We understand that there is
33 some significant technical challenges in allowing this to
34 happen, but as a truly national organisation with some
35 26,000 volunteers, we believe it is probably one of the
36 best approaches that we could do.

37
38 JUSTICE McCLELLAN: Is there anyone else? Yes - Francis.

39
40 MR SULLIVAN: Francis Sullivan from the Truth Justice and
41 Healing Council of the Catholic Church. We agree that
42 there needs to be a national system and listening to the
43 situation to date and noticing how slow the COAG process
44 has been, which is typical of other areas that COAG
45 approaches, there needs to be some overarching entity that
46 acts as the controller and the oversight body otherwise the
47 loopholes, the time lags, the lack of consistency won't

1 have any discipline to being addressed. Cooperation
2 between states and the commonwealth doesn't have a great
3 history and if we are not careful we are going to work on
4 an assumption that doesn't work.

5
6 JUSTICE McCLELLAN: Yes - Chris, is it?

7
8 MR WATT: Thank you. Chris Watt, Federal Secretary of the
9 Independent Education Union of Australia. We too support
10 a national approach, whatever the form of it is.
11 I appreciate the issues that Barbara has outlined in terms
12 of structural matters around a database and what have you,
13 but our experience is with our members we certainly need
14 a more sensible approach operationally than we currently
15 have. And I can make very simple observations about
16 members of our's who work across different jurisdictions
17 currently who are required to operate - collect different
18 Working with Children Checks and the differences that arise
19 around the nature of the types of matters are found to be
20 problematic in some checks depending on the jurisdiction
21 and the processes undertaken within one jurisdiction
22 compared to another. So, at the moment, it is not
23 satisfactory and we think that a national approach at least
24 consistency, but sharing a lot more data is - and with
25 appropriate and agreed framework and structures is the way
26 to go.

27
28 JUSTICE McCLELLAN: Yes.

29
30 MS PHILLIPS: Anita Phillips representing the Australian
31 Association of Social Workers. In our submission we too
32 supported a national scheme. The main reason for this is
33 the mobility of the workforce so that people who might get
34 a tick with a check in one jurisdiction may not meet the
35 requirements in another and there is inconsistencies about
36 the different criteria. We believe that it is important
37 that some of the issues that Barbara addresses be
38 harmonised across all jurisdictions and a national scheme
39 would be the best way of doing this. The second best, of
40 course, would be that there is harmonisation so that there
41 is consistency, but a national scheme would be our
42 preference.

43
44 JUSTICE McCLELLAN: Anything else? Now, are there people
45 who vehemently oppose a national scheme? Tentatively hands
46 go up. Yes, if you could just turn your label round for me
47 so I can see - yes.

1
2 MR WATERFORD: David Waterford from the Department of
3 Education and Child Development in South Australia.
4 I wouldn't necessarily say vehement opposition.

5
6 JUSTICE McCLELLAN: No, I put it higher to see what came
7 out.

8
9 MR WATERFORD: I think there are a number significant
10 challenges which are more than technical challenges in
11 moving to a national system. I think the issue that the
12 Australian Association of Social Workers identified that
13 there are people who can be cleared in one jurisdiction and
14 not in another, does point to the fact that we do have
15 differing standards operating. But it is not that there is
16 one jurisdiction which has universally high standards and
17 other jurisdictions with universally low standards, it
18 depends on a whole range of factors, types of employment
19 that we are talking about, historical circumstances,
20 instances of abuse that have been uncovered have developed
21 these multiple systems. South Australia is in the unusual
22 situation that we don't even have a single screening unit.
23 Under our legislation there is a government unit but there
24 is the possibly for other organisations to establish
25 a screening unit. In our jurisdiction, for example, the
26 Catholic Church runs its own screening unit, which is
27 separate from the government unit under the legislative
28 framework. And again, there indicates that screening is
29 not just about collecting information, it is about an
30 assessment process, it is about considering risk in the
31 context of particular circumstances.

32
33 I think the thing that we need to be cautious not to
34 lose sight of in discussion of a unified or a single
35 screening process is that determining suitability to work
36 with children is a further step on from a screening process
37 and we shouldn't consider that simply looking at criminal
38 history or a range of other probative information in and of
39 itself as the final determinant of the suitability to work
40 with children. Employers do have a responsibility to
41 consider a range of factors. And in some circumstances,
42 for example, we would say that psychometric testing ought
43 to sit along side screening, but perhaps not in all
44 circumstances. So I think there is a range of things that
45 need to be unpacked before we go to what, I think at first
46 glance, is a very enticing object of a national approach.
47

1 COMMISSIONER FITZGERALD: But can I ask this question:
2 why has South Australia not yet introduced a centralised
3 system? You are only one of two states or territories that
4 haven't done that, so to an outsider it seems perplexing
5 that, notwithstanding all of these commitments to
6 a national approach and consistency, two states haven't
7 even got a central agency approach and is there any
8 progress or change of heart by the South Australians or
9 other states about that?

10
11 MR WATERFORD: I can say that the issue of a single state
12 screening unit and process is under active consideration.
13 Obviously that will require legislative change and that is
14 something for the cabinet and the parliament in the final
15 analysis, but there is a review process underway and that
16 is under active consideration.

17
18 JUSTICE McCLELLAN: Can I also make your life a little bit
19 more different David, I appreciate you identify that
20 historically South Australia has ended up in a different
21 position as Robert's question just identifies, but that
22 doesn't justify, does it, opposing a national approach?

23
24 MR WATERFORD: No, it doesn't. It was really just simply
25 to illustrate the various stages that things are at. As
26 a further example, in terms of exemptions, South Australia
27 has, if you like, the most stringent requirements in terms
28 of screening of volunteers at national events where
29 children are billeted overnight. There are, if you like,
30 less stringent exemptions in force in other jurisdictions.
31 There are a myriad of examples where it is not just
32 a technical issue, there are some very significant
33 processes to work through in terms of harmonisation. And
34 I don't - while we might want to move towards a national
35 approach, I think it would need to be a staged process.

36
37 JUSTICE McCLELLAN: That may be true but going back to the
38 question: why would you vehemently oppose, I know I put it
39 high, a national approach when what I think you are saying
40 is that what needs to be resolved are the differences which
41 would be incorporated into a national approach; am I right?

42
43 MR WATERFORD: Yes, and that that would need to occur over
44 I think a very significant period of time because the
45 extent of differences are I think much greater than people
46 imagine.

1 JUSTICE McCLELLAN: Well, we are here for at least until
2 the end of next year and one of our tasks is to make sure
3 that something like this progresses as quickly in the
4 national interest as it can and we will be asking all of
5 you to continue to help us to achieve that. We would not
6 want to see the technical differences, as it were, become
7 road blocks to effective recommendations. But that is my
8 plea for help. You have vehement opposition?

9
10 MS VAN SEOLEN: I don't have vehement opposition.

11
12 JUSTICE McCLELLAN: You have opposition. Can you turn
13 your - I can't see your - and your name tag if you wouldn't
14 mind, can we just turn those around - thanks, yes.

15
16 MS VAN SEOLEN: Sandie van Soelen in Western Australia.
17 We don't have vehement opposition. It is not vehement
18 opposition, we certainly support consistency, but not
19 a national scheme. And I think we need to be really
20 cautious because legislation is a very blunt instrument and
21 we can cause some quite perverse outcomes if we use the
22 blunt instrument in too much of a heavy way. The Working
23 with Children Check is effective where there are work
24 relationships with children and very ineffective where it
25 is into the sort of social and personal sphere because you
26 cannot go checking into spheres where people have got
27 a capacity to interact with children anyway, like what is
28 the point of checking people who because they live next
29 door or live in the same community or are relatives of
30 children, there is no extra child protection when you are
31 looking at Working with Children Checks. But I think the
32 other thing is there is a tendency to think of the checking
33 scheme as screening only and not that there are the three
34 elements which is about, yes, you can screen for past
35 behaviour because we know that past behaviour is one of the
36 indicators of what people can do into the future and there
37 is then the sort of ongoing checking, what is happening
38 with present behaviour, how do you check for compliance,
39 how do you know what a person is actually doing, how do you
40 get ongoing monitoring. Compliance regimes are really
41 difficult because if you don't have any teeth to go and see
42 who has a check, if you don't have a capacity to get that
43 ongoing monitoring, it is pretty toothless. And then there
44 is the future behaviour because the majority of people that
45 we are concerned about are first time people that are
46 caught, the paedophiles that people are concerned about
47 quite often haven't been identified in the past and what is

1 absolutely critical is that organisations have those child
2 safeguarding strategies in place, which is about complaint
3 mechanisms, it is about codes of conduct, it is about
4 recruitment. And all those matters are very much part of
5 what happens in each individual state about standards,
6 about engagement with the community, about engagement with
7 organisations and we have got to be very careful about
8 overemphasising only one of those aspects which is about
9 screening for past behaviour.

10
11 And, that said, we would certainly like to see
12 a moving towards a better understanding of what kinds of
13 behaviour that the screening for past behaviour should take
14 into consideration and I think we can make further progress
15 with that in terms of who should be excluded from schemes.

16
17 The other thing that I think we need to be very
18 cautious about is that the Working with Children Check is
19 not the only type of screening. There are other kinds of
20 criminal record checks and I am really concerned about - we
21 work very hard to use the acronym of CHIPWC to get the
22 expanded criminal history information, which means for
23 these kinds of checks it is all the juvenile convictions,
24 juvenile offences and spent convictions and charges where
25 people haven't been convicted. We have got to be very
26 careful about transporting that into a whole area where
27 people may not have a work relationship with children
28 because otherwise what is the point of having spent
29 convictions. We could have perverse results where we know
30 that one of the most effective strategies for any kind of
31 recidivism is engagement with the workforce. And whilst we
32 might not certain people to work with children, we don't
33 want to stop them working because that in itself will
34 increase recidivism rates. So we have got to be really
35 careful about how far a blunt instrument goes with
36 a legislative scheme.

37
38 JUSTICE McCLELLAN: Sandie, again, I don't mean to be
39 unkind, but I assume you are accepting that there should be
40 some government based Working with Children Check process?

41
42 MS VAN SOELEN: Yes.

43
44 JUSTICE McCLELLAN: Well, when you get the detail agreed
45 why wouldn't you have a national one? I understand what
46 you are saying about all of the problems in getting the
47 detail of it right and understanding its proper purpose but

1 why wouldn't you have a national one?

2

3 MS VAN SEOLEN: I don't think you would have a national
4 one because you need your local base to undertake the
5 compliance, to engage the community, to get the
6 understandings, to do the child safeguarding. And there is
7 also a range of different kinds of information that you get
8 at a state level, depending on the other regulatory schemes
9 that surround, that are important to continue to achieve.
10 I don't think you would get the buy-in and I don't think
11 you would have the capacity to do the level of
12 communication to engage with all of the local stakeholders
13 because the relationships on the ground are absolutely key.
14 But there may be some other of my colleagues that may have
15 some different views.

16

17 COMMISSIONER FITZGERALD: Could I just raise this and
18 Barbara can answer it: you listed about 10 minimum
19 standards and now they have been on the table for over
20 three years, in fact this was first talked about in 2005 by
21 the Minters for Disability and Community Services back
22 then. Of those, how many are there actually agreed? Have
23 we got any minimum standards that have been agreed to by
24 the nine jurisdictions so far, are there any at all? The
25 answer is, am I right in saying there is not one single
26 minimum standard that has been agreed by the nine
27 jurisdictions in at least three to 10 year period, not one;
28 is that right?

29

30 MS BENNETT: Those --

31

32 COMMISSIONER FITZGERALD: I don't want to be critical of
33 anyone.

34

35 MS BENNETT: No, no, those that know more about it, I am
36 looking at them and they are saying you are right.

37

38 COMMISSIONER FITZGERALD: Yes.

39

40 MS BENNETT: Can I just make a comment, please?

41

42 COMMISSIONER FITZGERALD: Sure.

43

44 MS BENNETT: And what I would to pick up from WA is, if
45 you have a national system and a national approach, you
46 need to be really clear what is the value of it and what is
47 the nationalness. Is it just going to be a record of

1 something that has happened, a collection of information,
2 because the point being made by WA is very valid. It is
3 about making sure it is current, it is going to see that
4 that person that might have a check to be able to do this
5 is actually doing those type of work and hasn't moved into
6 something else, it is the responsibility of the employer to
7 make sure that they actually conduct it, that it is
8 happening, that if the risk changes, the nature of the
9 contract, the real value of this is actually what is
10 happening on the ground. And I think it is a really worry,
11 unless we start defining. Yes, I understand what you are
12 saying about standards and minimum standard and the benefit
13 of that, and the idea of portability, but a national - are
14 we trying to say that there would be a national monitoring
15 and police type people going out and looking at what is
16 happening, run from somewhere? I think that you need to
17 step back is for a moment and say what would it actually
18 give you and what components would be beneficial that there
19 is harmonising or national consistency rather than doing
20 a default to say we will have a national centralised
21 system, whatever that might mean.

22
23 JUSTICE McCLELLAN: Well, can I go back to Martin, what do
24 you want is the easy question to ask in response to that,
25 what do you actually want?

26
27 MR THOMAS: Thank you. Scouts believes that we should
28 have a national check. The mechanism of how that works is
29 obviously up to others to decide. We originally talked
30 about the concept of a passport, so in other words, the
31 right to work with children would consist of something like
32 a passport structure that was transportable across the
33 nation and which people had to apply for and is renewed.
34 But, of course, that system is really nothing without
35 a checking process and an ongoing information tracking
36 process that actually allows us to maybe rescind that
37 passport if a person transgresses. We acknowledge that
38 there are a number of technical issues in setting up this
39 system. I am quite aware of the legislative requirements
40 across states. I also have a little bit of cynicism to the
41 COAG arrangement that decisions are very slow. But, as
42 a default position, we would also be happy to see
43 a harmonised approach to the Working with Children Card so
44 that all states operated within their jurisdictions on
45 a standardised set of rules.

46
47 JUSTICE McCLELLAN: Francis, can I ask you what do you

1 want?

2

3 MR SULLIVAN: Not a lot dissimilar from that really when
4 you get programmatic about it. But ultimately the system
5 needs some oversight body that has authority because
6 I think the history, not only in this area but other areas
7 of commonwealth and state harmonisation issue, lack buy-in
8 because states can just say it don't work like that here.
9 And we have heard that already. And unless you have an
10 oversight body with authority - we heard earlier there
11 needs to be some sort of penalty on employers, well you
12 would begin to wonder about the penalty on governments who
13 don't comply? Where is it here? I mean the questions that
14 have been put, that we have had three years of no real
15 action, there hasn't been any obligation to deliver on
16 standards. So we need to go the other way, we need to have
17 a body that has oversight and authority and in that means
18 should be able to produce some type of penalty.

19

20 JUSTICE McCLELLAN: Anita, do you want to add to that?

21

22 MS PHILLIPS: I do agree with both of the previous and to
23 reiterate, as I said, we probably would be happy with
24 a harmonised system as opposed to something that was
25 cumbersome and run nationally. However, I do agree that we
26 don't want to let the technical issues become road blocks
27 in achieving something that - what we are talking about is
28 trying to prevent abuse to children. How do we do this and
29 is a national system going to work better than having
30 individual state systems. And they are the kinds of things
31 that I want. I want a system that works. I have been
32 involved in some discussions recently with the national -
33 new national code of conduct for unregistered health
34 practitioners, which has been introduced by the
35 commonwealth government by the Health Department. And it
36 is being administered in each state and with state
37 legislation, but it is a national program and it has
38 national consistency. And I really do think there are
39 other models out there that we could look at.

40

41 JUSTICE McCLELLAN: Vehement opposition Dale - sorry,
42 Chris?

43

44 MR WATT: Whether it is a nationally run arrangement or
45 nationally consistent and nationally harmonised
46 arrangements, in a sense it doesn't matter, the critical
47 thing is having a consistency. And we don't have, despite

1 what is sort of being almost alluded to, even consistency
2 within states. And we have heard that in the context just
3 of South Australia alone. There is inconsistency, there
4 are elements such as the nature and way in which
5 investigations take place, the certification or lack
6 thereof of people undertaking investigations, which go to
7 information that is then collected on people and used for
8 the purposes of screening that needs a whole lot of work
9 and agreement across and between the states. My concern is
10 that this is like the debate we have in education all of
11 the time around things like getting consistent definitions
12 about kids with disabilities and we have finally got to
13 a nationally consistent set of definitions. But I have
14 been involved in those conversations for over 25 years.
15 That is how long it has taken before we have finally got to
16 a solution on that. Why? Because it is all tied up with
17 the federal, state jurisdiction stuff. And all I have
18 heard today is a continuation unfortunately of these are
19 the issues within the state. And the struggle is moving
20 beyond that. And I am not confident that we are going to
21 get very far because the basis is still the state. And
22 even something as simple as - and one of other concerns
23 often is that sometimes we wonder if some of the
24 requirements to have checks in two jurisdictions, if you
25 are a teacher working casually in the ACT but also doing
26 only work in Queanbeyan and New South Wales you have to
27 have two checks - why? Why isn't one consistent, why do
28 you need two and is it something about fundraising, in
29 all seriousness? Is there something about the way the
30 jurisdictions do this that say well actually now we want to
31 do this? Now, that might seem harsh and cynical but we
32 wonder why there is a difference between having a check to
33 work in a school in Canberra and working in a school in
34 Queanbeyan - what is going on there? So I am just - I can
35 see this going the way that a lot of these nationally
36 consistent conversations go and that is taking a long, long
37 time still. And that would be a pretty sad outcome given
38 the work that is currently underway and the issues that
39 critically and urgently need to be dealt with.

40
41 JUSTICE McCLELLAN: Dale?

42
43 MR WEBSTER: Dale Webster from Department of Justice
44 Tasmania. Firstly, to comment on, we are one of the states
45 that don't have a centralised check, that in fact starts in
46 Tasmania on 1 July. The second thing is, I guess what
47 I would say is I am vehemently opposed to a national

1 bureaucracy around this, but not opposed to the national
2 consistency. And what I would say is one of the
3 frustrations of bringing in our statewide system of
4 checking on 1 July has been the bureaucratisation of
5 a CHIPWC. The number of times we have had to answer
6 questions and et cetera when our legislation is exactly the
7 same as another state's legislation who is already part of
8 that process. So I know that particular jurisdiction went
9 through an eight-month process, we went through a six-month
10 process to get a tick off that we were okay to get this
11 addition information when we in fact have the same
12 legislation. So that is a frustration of bureaucracy that
13 surrounds this.

14
15 In terms of the national bureaucracy, our concern for
16 a smaller jurisdiction is what tends to happen with all
17 national bureaucracy is over time the money is not there,
18 you get a risk assessment approach, the risk assessment
19 says if we are going to be doing things for memorandums of
20 understand to exchange information, we should be putting
21 our resources into the Catholic Church in New South Wales
22 because they employ 25,000 people and it will be four or
23 five years before we get to Tasmania because the Catholic
24 Church in Tasmania only employs 1,000 people. And we see
25 that consistently with a number of national regulatory
26 frameworks where basically the Tasmanian office shuts down,
27 we become part of Victoria and then we get deprioritised
28 because our sectors of industry aren't large enough to
29 actually do this. And I think it is critical in this risk
30 assessment that that local information is available, that
31 sharing of employment information et cetera, which can be
32 achieved in smaller jurisdiction at a very local level that
33 we are unlikely to get with a national bureaucracy.

34
35 That said, I think that the national harmonisation
36 process and the point about each jurisdiction being
37 different, and I may actually sit with Chris on this
38 because I think having just been through - you know, the
39 last one to come through the process is, it is
40 a frustration that we can't get our risk assessments the
41 same when, in fact, what we are going is risk assessing for
42 exactly the same outcome so why have we got difference?

43
44 JUSTICE McCLELLAN: Well I think we now understand both
45 sides of the debate but Kerryn Boland in her submission to
46 these matters talked about the elements that we might
47 consider as alternative models for a national consistency

1 approach rather than necessarily a national system.
2 Kerry, can you just help us to understand, I think there
3 is three elements to what you had to say?
4

5 MS BOLAND: Thank you. Kerry Boland, New South Wales
6 Children's Guardian. Perhaps if I could also follow on
7 from what other people are saying and really just to - from
8 our experience now we have obviously been in the Working
9 with Children Check area since 2000 and operated two
10 schemes, both quite different, and modifications in
11 between. We are now one year into our second scheme which
12 is a centralised scheme. And I think at this early stage,
13 I think what we can say is that there is a substantial
14 benefit in the risk assessments and the local knowledge.
15 And in New South Wales we do have the benefit of workplace
16 proceedings, employment proceedings and looking at those.
17 And, just for around the table, I think that that is one of
18 the more useful pieces of information to have included in
19 any scheme that operates.
20

21 We would say that we would see that there would be
22 national minimum standard and above that the states would
23 operate their current systems. Obviously in New South
24 Wales we have had a new system in place for a year, that we
25 would also complement that with other child safe systems
26 including the ones that people have spoken about, codes of
27 practice, recruitment systems, et cetera. We are currently
28 looking at those standards in New South Wales and applying
29 them to particular industries in order to understand better
30 how standards would work within particular industries,
31 thinking that there is no one size would fit all
32 industries.
33

34 And then the third one is obviously to understand and
35 be clear about who is covered, for what purpose, for how
36 long, under what circumstances. I think the critical
37 element in the systems is the continuous checking. It is
38 very early days in New South Wales but we have had about -
39 and I will get the latest figure for you - so we have been
40 checking and we have had 277 matters come to our attention
41 after an initial clearance or risk assessment has been
42 made. So, in the space of a year, that is quite
43 a significant amount of activity. We have an analysis of
44 that and obviously we are looking to see what we can learn
45 from that continuous checking. And obviously when we hear
46 from CrimTrac later it would be great if that was national
47 continuous checking. So I think that is --

1
2 COMMISSIONER FITZGERALD: Can I just ask this question --

3
4 MS BOLAND: Yes.

5
6 COMMISSIONER FITZGERALD: One of the processes is not to
7 have a national administration but to have nationally
8 consistent laws underpinned by minimum standards and we
9 have done that in consumer protection areas. So does the
10 concern of the commonwealth and others dissipate if you
11 actually say, well, okay, we acknowledge that there are
12 administrative burdens having a national body, but surely
13 the notion of a nationally applied law within each state
14 and territory with a minimum set of standards that apply
15 and some form of mutual recognition that doesn't have the
16 administrative burdens that the commonwealth is concerned
17 about but it does have and imbeds the consistency and
18 somehow or another you get a mutual recognition across the
19 states and territories, so we wipe out the administration
20 costs. You then get to the nub of what you were saying
21 about WA, do we actually agree about what those minimum
22 standards are? But that is the debate that is had in every
23 area of public policy that I have ever been involved in.
24 So is that an approach that gets us closer? So you don't
25 have the administrative costs, you don't have the
26 commonwealth telling the states what to do, which we know
27 they always hate, but you actually do help?

28
29 And, at the end of the day, can I just make two
30 comments, it seems to me we are in the unusual position,
31 people in child protection basically believe the Working
32 with Children Checks has a role but they all agree, as
33 everyone around the table does, that it is only part of
34 a suite of measures that are about pre-screening, and we
35 all acknowledge that. So nobody at the table is saying
36 that it is the be-all and end-all.

37
38 The second thing is that the unions have accepted that
39 their members need to be covered by these checks, the
40 institutions agree that their members, their employees and
41 volunteers to varying degrees, should be covered. So
42 everyone agrees so would a national approach in terms of
43 law and minimum standards without the administration assist
44 or not in getting the states on board?

45
46 MR WATERFORD: David Waterford from South Australia. The
47 short answer is yes. The longer answer is the process that

1 will need to be gone through will be a challenging one as
2 it has been in all areas of --

3
4 JUSTICE McCLELLAN: Can I stop you - why?

5
6 MR WATERFORD: I am going to explain that.

7
8 JUSTICE McCLELLAN: I mean, I know it is easy to say there
9 are challenges but the question is who needs to apply what
10 energy to overcome those challenges and what can we as
11 a Royal Commission do to say this is what you must do and
12 you must do it quickly?

13
14 MR WATERFORD: The difference, if we go to a harmonised
15 system there will need to be a reduction in standards in
16 some instances. And the reason for that is that some of
17 the, if you like, "gold standards" that operate in some
18 aspects are the result not of an evidence based decision
19 but of a political decision. And that you would not, if you
20 are going with an evidence based necessarily apply all
21 aspects of some of the higher stands that operate in
22 various jurisdictions. And the politics of a minister or
23 a premier agreeing to reduce the standards in his or her
24 jurisdiction in order to participate in a national approach
25 is always a challenge. It has been a challenge in getting
26 nationally consistent definitions around disability. It is
27 a challenge in every area. And the politics of this is
28 something that we need to go in with our eyes wide open to.
29 That is why it will take time to negotiate those things.

30
31 JUSTICE McCLELLAN: Well can you tell me, when you speak
32 of political decisions as opposed to evidence-based,
33 presumably the political decision was in response to an
34 event or a series of events; is that right?

35
36 MR WATERFORD: Indeed.

37
38 JUSTICE McCLELLAN: And are you saying that a political
39 decision is accordingly bad?

40
41 MR WATERFORD: No, not necessarily. In the context --

42
43 JUSTICE McCLELLAN: Well then why don't you embrace it as
44 well?

45
46 MR WATERFORD: In the context of that situation at that
47 point in time in that jurisdiction, it made sense, but it

1 doesn't necessarily make sense as part of a national
2 approach.

3
4 JUSTICE McCLELLAN: Can you illustrate it for me with --

5
6 MR WATERFORD: The decisions around what sort of
7 exemptions will be given in terms of overnight supervision
8 for national events, there are a range of approaches.
9 There was a very concerted effort to get a national
10 approach and for some jurisdictions it would have meant
11 lowering the standard that they had already publicly
12 committed to. And there was a nervousness for politicians
13 and ministers to do such a thing but there is not
14 necessarily an iron clad evidence base that says you set it
15 this high.

16
17 JUSTICE McCLELLAN: Why do you need an iron clad evidence
18 base if the proposition is one that appears to everyone to
19 be logical even if you don't have the, as you say, iron
20 clad evidence, why wouldn't you do it?

21
22 MR WATERFORD: Because some advocacy bodies will argue
23 that the regulatory burden is being set too high by
24 requiring everybody who has overnight supervision to be
25 screened.

26
27 JUSTICE McCLELLAN: And those advocacy bodies are?

28
29 MR WATERFORD: National sporting bodies and the like who
30 are holding these national events.

31
32 JUSTICE McCLELLAN: I assume the Scouts are on the side of
33 having that check; is that right?

34
35 MR THOMAS: That is correct, yes. We believe that if an
36 adult participates in an overnight activity that they
37 should have the check.

38
39 JUSTICE McCLELLAN: We have had that said to us, at least
40 to me anyway, a number of times in private sessions as
41 well. I don't know whether Robert has had the same --

42
43 COMMISSIONER FITZGERALD: Can I just take that point but
44 let me just put this scenario: If the Royal Commission
45 over the period of time that it is in operation, comes up
46 and says that on the best available evidence that we have
47 these are the minimum standards. Now, the code mentions

1 the words minimum standards, not all standards but minimum
2 standards that have to apply, would it not be fair to say
3 that most jurisdictions, despite the peculiarity of the
4 political system would say that is a reasonable evidence
5 base. And if after several years you have looked at this
6 in the greatest detail it has ever been looked at and we
7 said that these were the sort of minimum standards we
8 think, why would that not be a sufficient evidence base to
9 get some movement, at least on harmonisation with the
10 intent of perhaps a national regulatory regime without
11 a regulator? Maybe David from the ACT wants to comment?
12

13 MR MATTHEWS: My name is David Matthews from the ACT
14 Government. I guess, without maybe directly answering that
15 question, I will come back to that. I just wanted to raise
16 the issue about the interface between any national
17 approaches and state and territory requirements. Just to
18 introduce into the discussion, obviously the ACT's scheme
19 is extended beyond children and young people to other
20 vulnerable adults and our legislation was brought in in
21 2011 so it is a relatively recent scheme. And we are
22 really about a year and a half through the activation of
23 that process and learning a lot as we go through that. The
24 justification for including disadvantaged adults is clearly
25 that they are also vulnerable people. And in the context
26 of developments like the national disability insurance
27 scheme where there will be a different range of service
28 provision arrangements in place for vulnerable adults, our
29 jurisdiction felt it is important to give consideration to
30 their protection as well. The ACT would not necessarily
31 advocate that all jurisdictions would take that approach
32 but our government is interested in taking that approach.
33 So the issue of how you would design a nationally
34 consistent scheme or a national scheme of some nature, that
35 could then also allow our jurisdiction, perhaps other
36 jurisdictions to look at how they could protect other
37 vulnerable people leveraging off similar infrastructure
38 would be something that we would be wanting to consider.
39 So the ACT are open to considerations of how national
40 schemes might operate and how they might interface but
41 I think that is a good practical example of state and
42 territory requirements that we would want to bring into
43 those discussions and to make sure that the design of any
44 national scheme could properly interface across those
45 different requirements.
46

47 JUSTICE McCLELLAN: Yes, Sandie?

1
2 MS VAN SEOLEN: I just wanted to state that I do think
3 that we have made progress toward harmonisation. I know
4 that the process of going through authorisation under the
5 COAG CHIPWC IGA has been cumbersome, and I am just
6 commenting on Dale's responses. But that was a huge effort
7 to get some standards in place, which is not just about
8 what are you checking and who are you checking, but it is
9 about a natural justice processes, it is about having risk
10 assessment frameworks in place, it is about having people
11 who are qualified to do the work. So it is not just about
12 what is in your legislation but have you actually got the
13 infrastructure to make these decisions and to do it in a
14 way that meets certain standards. I think we can build on
15 that. I think it would be terrific to go the way of
16 agreeing on national standards towards what kinds of
17 initial checks we do have, including the range of criminal
18 record and disciplinary information. I think we have made
19 huge progress towards this. I don't think it would take
20 a long time to do that. I think with some technical will
21 between jurisdictions and some capacity resourcing we could
22 find a way to recognise each other's authorisations or
23 prohibitions. I think going down the track of national
24 legislation and model legislation I think is more
25 difficult. At this stage, that is not something Western
26 Australia would be supportive of because at this stage
27 I don't think we have got the evidence base to want to lock
28 in a particular model of legislation. I think there needs
29 to be a lot more national research. I also think we don't
30 want to replace national inconsistency with inconsistency
31 within jurisdictions because there are a whole lot of other
32 regulatory schemes that once you introduce national
33 legislation they all need to be readjusted and I think,
34 quite honestly, to say it colloquially, I think would be
35 a hiding to nowhere. I think we would get great benefit
36 from going the way of more national harmonisation, of
37 agreeing on standards, of loosening up the sharing of
38 information, not just of criminal records but of what we
39 call the third tier information, information from courts.
40 It is atrociously difficult to get information from one
41 jurisdiction to another to find out what has actually
42 happened in a court process to actually get the judge's
43 sentencing comments, to get victim statements that you
44 actually need to make proper decisions. We need to do
45 a lot more in that sphere to actually improve the system.
46 And I certainly would be prepared to work towards that.
47

1 COMMISSIONER FITZGERALD: Before I ask for an update on
2 the CrimTrac, is there anyone who wants to contribute to
3 this debate? Yes.
4

5 MS DE CICC0: Marisa de Cicco from the Department of
6 Justice in Victoria and we administer the Working with
7 Children Check unit. From a Victorian perspective, and we
8 have just recently had our Parliamentary Committee of
9 Enquiry into similar issues - report, and we are as
10 a consequence moving to implement a number of changes in
11 our jurisdiction around Child Safe Organisations and
12 a reportable conduct scheme that will be implemented and
13 will influence and work with our Working with Children
14 Check arrangement. It will be another piece of allied
15 information. As part of that we are also looking at one of
16 the elements that we diverge from our colleagues on the
17 non-conviction charges which we will look to actually move
18 towards a greater harmonisation with the other states and
19 territories. We do think that harmonisation is the easier
20 pathway home in terms of getting a more consistent standard
21 across all jurisdictions. We too agree with Kerryn and we
22 think the continuous checking at a national level would
23 also strengthen enormously the regime. But there is a lot
24 of work that is done at the jurisdictional level, at the
25 state level with organisations and volunteers around
26 Working with Children Checks, around the Child Safe
27 Organisations arrangement. There are a number of other
28 factors that need to be put in place and a lot of that
29 machinery and the elements of that are at the state level.
30 The working relationships we have with our teachers,
31 registration board, with our child protection services,
32 with our out-of-home-care services and all those pieces of
33 information go into those assessment processes at the local
34 level.
35

36 So whilst we would be very supportive of moving
37 towards greater harmonisation doing that quickly, we would
38 be very supportive of and we were looking at our own
39 systems ourselves to ensure that that is far more
40 assessable and far easier and far more transportable across
41 jurisdictions but we think that is far better achieved with
42 harmonisation.
43

44 JUSTICE McCLELLAN: Can I ask a simple question to help me
45 understand what happens: if I applied for a job as
46 a teacher in Queensland tomorrow and I said the last place
47 I taught was in Western Australia, could Queensland find

1 out my position in terms of satisfactory working with
2 children from Western Australia?

3
4 MS DE CICC0: There is mutual recognition for teacher
5 registration through the Queens of College of Teachers in
6 Queensland but not necessarily through the Working with
7 Children Checks.

8
9 JUSTICE McCLELLAN: But does that answer my question if
10 I --

11
12 MS VAN SOELEN: Western Australia a person has got
13 a Working with Children Card, you can check its validity on
14 the website and yes, you can find out.

15
16 MR WATERFORD: In South Australia the Teacher's
17 Registration Board my understanding is shares information
18 with Teacher's Registration Boards in other jurisdictions.
19 The issue will be the employment history of that person and
20 any perhaps unresolved disciplinary matters that might be
21 of concern, et cetera, et cetera. There is certainly
22 things which there is some level of information sharing
23 within a jurisdiction, but we are a long way from, as
24 Sandie had indicated, from that second and third tier
25 information being able to be shared across jurisdictions.

26
27 JUSTICE McCLELLAN: If I apply for a job tomorrow as a day
28 care supervisor or working in Queensland and the last place
29 I was involved in day care was South Australia, could the
30 Queenslanders find out about my position in South
31 Australia?

32
33 MR WATERFORD: It would depend on the timeframe. There is
34 increasing regulation of that sector, but again what
35 happens at the workplace and some of the concerns that may
36 be emerging there are, again, things that are not visible
37 readily.

38
39 JUSTICE McCLELLAN: And what about if I applied to
40 Queensland and I last worked in Victoria, what would
41 happen?

42
43 MS DE CICC0: As a carer?

44
45 JUSTICE McCLELLAN: Yes, as a day care worker.

46
47 MS DE CICC0: Well in Victoria we have only recently

1 implemented our own early childhood care arrangements and
2 I don't know how transportable they are between early
3 childhood centres so --
4

5 JUSTICE McCLELLAN: So your answer is no?
6

7 MS DE CICC0: I would have to check.
8

9 JUSTICE McCLELLAN: You would have to check. Is there any
10 State - Western Australia says you carry a card, do you, so
11 you produce your card? Does any other state do that?
12

13 MS MILLER: Queensland does.
14

15 MS DE CICC0: And Victoria.
16

17 MS BOLAND: In New South Wales we don't have a card
18 system, we have a number system. So you are issued with
19 a number and there is obligations on the employer to verify
20 that number and the status of the clearance or the bar.
21

22 In relation to information exchange on other Working
23 with Children Checks, we do approach Queensland for example
24 if we know that a person has previously worked in
25 Queensland. I think that goes to a fundamental issue, our
26 Working with Children Check is an accreditation if you like
27 of a person for five years. It is not job specific. So we
28 actually assess a person assuming that they can work in any
29 particular area, be it child care, be it a tutor in a home,
30 be it a foster carer, household member, there is one
31 standard there and the assumption is that you can take your
32 Working with Children Check number and you can work
33 anywhere for five years.
34

35 JUSTICE McCLELLAN: To build on what Robert said earlier,
36 is it worth thinking about a national system that has an
37 agreement as to its baseline, in other words the base
38 material and provide for universal capacity to exchange
39 that information? Is that the starting point that we need
40 to get to?
41

42 MS MILLER: Would that still allow the states to have
43 a top up so to speak?
44

45 JUSTICE McCLELLAN: You could have your own top up, you
46 could do what you like in that sense, but provided you
47 agree on the base information and provided you then agree

1 that there can be an automatic exchange of that
2 information, is that the place where we should be starting?
3
4 COMMISSIONER FITZGERALD: Do you also think - Francis
5 Sullivan here - do you also think as part of that base
6 understanding there should be no exemptions? Because your
7 question could be put if you applied for a job in a school
8 in Queensland as a maintenance worker, can you get that
9 information off New South Wales? The answer would be no
10 because they exempt maintenance people in schools.
11
12 JUSTICE McCLELLAN: Well that is part of your baseline,
13 you have got to agree who and you have got to agree what
14 information is incorporated into that discussion, but is
15 that not the standout logical place to start?
16
17 MS BENNETT: Sorry, Barbara Bennett. Would that also, in
18 that model, on a baseline you would still have certain
19 communities where you might want everybody that has any
20 contact to have checking? So, for example, in more remote
21 communities you might want shopkeepers because they are the
22 only shopkeeper?
23
24 JUSTICE McCLELLAN: That would be the state's concern.
25
26 MS BENNETT: It would be up to the states under your
27 model.
28
29 JUSTICE McCLELLAN: That is the extra, you can do what you
30 like above the base. The base is agreed and there is
31 mutual exchange of at least that information, is that --
32
33 MR WATERFORD: David Waterford from South Australia.
34 I think an agreed base and improved exchange of information
35 is something I think we would all support.
36
37 JUSTICE McCLELLAN: Improved, it just should be - it
38 should happen, shouldn't it?
39
40 MR WATERFORD: Yes. I think the issue will be once you
41 have a top up and any significant number of top ups then
42 your ability for transportability begins to erode. And so
43 that I think is always going to be the challenge once you
44 allow enhancements above the minimum standard.
45
46 COMMISSIONER FITZGERALD: But could I just make --
47

1 JUSTICE McCLELLAN: But that is just record keeping
2 though, isn't it, and how you access the record?

3
4 COMMISSIONER FITZGERALD: The problem also is not with the
5 enhancements, the problem is with the exemptions. If you
6 have a minimum, and there is no exemptions from those
7 minimums, it doesn't matter what - if an individual state
8 increases the number of people or the types of categories
9 or whatever it wants, it doesn't effect that. The problem
10 is once you get a minimum that you can't exempt from that.
11 That is the problem. That is the problem in all of the
12 law - consumer policy law and the same. States can do
13 whatever they like over and above the minimum, but you
14 can't deviate from the minimum. If you do that you have
15 got great transportability. The second thing is, I don't
16 understand this, this is one of the very few public policy
17 areas where the major national organisations, including the
18 Catholic Church and others are on the same page. In fact,
19 all the national players basically are saying the same
20 thing and it is only the governments that aren't. So of
21 all the public policy areas I have been involved in this is
22 the one where there is a lay down misere to deal with the
23 national institutions and the national unions to get quick
24 agreement on those minimums and the states work from a very
25 good platform. There is very little disagreement amongst
26 the national players, is my understanding. That may become
27 different as we go through the day. So getting that base,
28 unlike many areas of public policy, should not be that
29 hard. Even though it would - you go against the historical
30 decisions that have been made in some states.

31
32 JUSTICE McCLELLAN: Just before we break, Doug Smith you
33 have moved into position to a microphone, have you got
34 a microphone there? Can you just in a couple of minutes
35 just tell everyone where we are up to in terms of the way
36 CrimTrac operates in the areas that we are concerned about?

37
38 MR SMITH: It will probably take more than a couple of
39 minutes, Commissioner. I have got a number of documents
40 that I might tender that should assist the Commissioners.
41 The governance of CrimTrac I think is the first point to
42 put before you. CrimTrac is an agency. It is
43 a commonwealth government agency but it is managed through
44 a board of management which are the Commissioners of Police
45 and regulated by intergovernmental agreement which is
46 signed by all the police ministers around the country. So
47 the way that CrimTrac operates is that we get a mandate

1 under the IGA to do the particular pieces of work that we
2 do and on a day-to-day basis it is regulated by the
3 CrimTrac board of management.
4

5 Since the inception of CrimTrac in 2000, CrimTrac has
6 had a responsibility for doing background checking of
7 a whole raft of different occupational types. So one of
8 the products that we have responsibility for is the
9 National Police Criminal History Check, which is just
10 a standard employment check. It is a reactionary check, in
11 other words it reacts to the information that CrimTrac has.
12 And I did note the earlier comment that the records that we
13 rely upon do not Commissioner come from courts, they come
14 from police forces. So everything that is provisioned to
15 CrimTrac for the purposes of our background checking is
16 provisioned through a police force. It is the filter, if
17 you like, of the information that is provided. That
18 doesn't come without its difficulties with respect to
19 timeliness and the nature of the information because not
20 all information from a court makes its way to the CrimTrac
21 records. And in some instances there is a timing issue so
22 we are dependent upon paper records making their way to
23 a police force and then eventually making their way into
24 the system. So there is a timeliness issue.
25

26 And with respect to some of the earlier comments about
27 continuous checking, of course, there is a real issue there
28 because if you have a point in time check and then there is
29 a subsequent record made available which was in existence
30 prior to the check, there is obviously a risk associated
31 with that from a public policy point of view. So CrimTrac
32 looks at a range of data and they are used for aviation
33 security, maritime security checks, it is used for standard
34 employment checks and additionally registration, medical
35 practitioners, prostitutes, tattooists, it is used for
36 a whole raft of purposes.
37

38 JUSTICE McCLELLAN: Right. But as far as children are
39 concerned, what is the position there?
40

41 MR SMITH: It is the same information, Commissioner.
42

43 JUSTICE McCLELLAN: So what is the position in terms of
44 the states's capacity to access the CrimTrac material in
45 relation to --
46

47 MR SMITH: I will provide the document because it is

1 a very complicated process Commissioner but basically we
2 get very, very base data, name and some pretty rudimentary
3 elements of data that are associated with it. And that is
4 because of the way that the current system operates. So
5 CrimTrac runs a thing called the National Name Index and
6 that is the centre of the information universe. Attached
7 to that particular name will be information that is
8 provided from the states and territory police forces. So
9 the information comes to CrimTrac and through the National
10 Name Index it supports the background checking that is done
11 for the purposes of working with children and other checks.
12 Once the record is examined by the people that are doing
13 the checking and that basic information is then provided
14 back to the checking services, further enquiries that may
15 be required by those checking services are then conducted
16 between, not through CrimTrac, between the various - the
17 record owner and the record seeker.

18
19 JUSTICE McCLELLAN: Again, if I can just interrupt you,
20 that means that, does it, at the moment, every state shares
21 its information into the CrimTrac system?

22
23 MR SMITH: There is a central source.

24
25 JUSTICE McCLELLAN: But every state participates?

26
27 MR SMITH: They do, Commissioner.

28
29 JUSTICE McCLELLAN: And every state can then access,
30 through the name structure, a person who is relevant to
31 them?

32
33 MR SMITH: Yes, it is a central name index, the National
34 Name Index and it has been in place for some time but it
35 does have some limitations that are relevant to your
36 conversation here today.

37
38 JUSTICE McCLELLAN: Being?

39
40 MR SMITH: Some of the records are historical records that
41 are of interest to background checking services are not
42 digitised. So when you get back into the 1980s data which
43 I know has been of interest to this Commission, it is not
44 real time data, it hasn't been digitised. So those
45 particular records have to be accessed manually for people
46 to do their background checking. There is the time lag
47 between the creation of the record in a court and then that

1 record being uploaded in different ways from states and
2 territories. So there is that time gap that can create
3 some difficulties. Plus there is the scope of the
4 information. So when you talk about what information there
5 is very basic information that is attached to the name.

6
7 JUSTICE McCLELLAN: All right, thank you.

8
9 MR SMITH: So I do have a chart, there is basically two
10 types of agency around the country. They are grouped in
11 two different ways. And this particular chart might assist
12 Commissioners in understanding the process.

13
14 JUSTICE McCLELLAN: Thank you. I will retrieve that from
15 you and we can move, which we can do now but thank you for
16 the initial discussions. We will have a cup of tea and
17 then move on. If we can resume, I think it is programmed
18 at just after 11 o'clock.

19
20 **SHORT ADJOURNMENT**

21
22 JUSTICE McCLELLAN: Well it is very good to see the degree
23 of unanimity we have achieved in the first session this
24 morning, let's build on that. What we thought we should do
25 now is try and track down what we might see as the base
26 line, if you like, and then the other elements that should
27 be included in the Working with Children Check.

28
29 Now, the first part of the program was easy and I
30 appreciate this is the harder bit. And the issues as we
31 see them generally, but this is not meant to be exhaustive,
32 require us to identify the type of activity that you are
33 seeking to obtain a check for. It is easy to think of
34 child related work but I appreciate once you step out of
35 that domain then you get into complex areas. We need to
36 discuss that.

37
38 Secondly we need to look at the records and types of
39 checks, that could mean different things to different
40 people I appreciate, but what is it is that you would be
41 looking at in order to make your assessment is the second
42 limb. But I appreciate a complex limb.

43
44 And thirdly, importantly, and it has been raised by
45 a couple of people already, there is a question as to how
46 often should you require a check to be made. In one sense
47 I suppose from the criminal information it would be

1 possible, I am not suggesting cheap, it would be possible
2 to provide for an alarm to go off as soon as someone turned
3 up in the criminal process if that person had previously
4 been through a checking process. You could set up your
5 information system to that an alarm went off but that is
6 only part of the issue, of course.

7
8 So there is those three general categories but they
9 are in themselves immensely complex. We have to start
10 somewhere in discussing them and Alasdair Roy from the ACT,
11 can I ask you, because I understand some of the differences
12 that have been accepted in the ACT may give us some
13 parameters within which to discuss these issues, but can
14 you let us know what you first of all say about the
15 defining of the activities that should be captured in a
16 Working with Children Check?

17
18 MR ROY: Could you actually clarify what you want me to
19 discuss on that, it is a very broad --

20
21 JUSTICE McCLELLAN: Yes, I want to know what the ACT
22 thinks should be included in the activities that should be
23 checked?

24
25 MR ROY: I guess with a lot of the discussion we have had
26 this morning I go back to the evidence base. As I was
27 going through these questions in preparation for this
28 meeting, a lot of the questions I was thinking well I may
29 have a view but I am not quite sure whether my view is
30 based on evidence in the sense of are we checking the right
31 people for the right behaviours. Sorry, can people now
32 hear - just to reiterate what I said before, in preparation
33 for the meeting I was thinking about answers to many of the
34 complex questions which have been posed in the discussion
35 paper and also listening to the discussion this morning,
36 that it is really difficult to answer some of these
37 questions without seeing the evidence and the analysis of
38 data to answer those questions. I think everyone has
39 a view and I think people have a lot of strong views, but
40 I would be really interested in seeing whether there has
41 been any independent analysis of that information to come
42 up with an informed answer to some of those questions. So,
43 in terms of who should be checked, it is a really difficult
44 question to answer. I mean, to some extent there is people
45 who probably should be included in a minimum set or
46 a minimum standard and people who actually have
47 unsupervised or direct contact with people and young

1 people. You obviously then get into different
2 jurisdictions, include people who have contact with people
3 online and jurisdictions exclude people to have contact
4 with people online or in a digital manner. I am afraid
5 I am stumbling here with an answer to your question.

6
7 JUSTICE McCLELLAN: Well, I have given you the hard one.

8
9 MR ROY: To simply speak, I don't know the answer.
10 I think there is a certain minimum set, we all agree that
11 person should be in, then there is shades of grey and there
12 is also people who in different jurisdictions would say no
13 we shouldn't include.

14
15 JUSTICE McCLELLAN: I don't think you will ever get an
16 entirely evidence based decision about this.

17
18 MR ROY: No.

19
20 JUSTICE McCLELLAN: I think an experienced - the
21 experience however is going to drive your outcomes. But
22 I mean, I starting point I assume is anyone who works
23 full-time with children should be checked. Is there anyone
24 who disagrees with that as a starting point? Francis, do
25 you want to disagree with that?

26
27 MR SULLIVAN: I don't want to disagree with it, I think it
28 is too minimal.

29
30 JUSTICE McCLELLAN: Oh, I agree with that, yes, but that
31 is the starting point. Now, after that, who would we say
32 around the table must be included in a Working with
33 Children Check program?

34
35 MS QUONG: It's Donna Quong from the Northern Territory in
36 the Working With Children Screening and also in the police
37 decision information sharing roles. The Northern Territory
38 has a fairly expansive broad range of persons that require
39 a Working with Children Check and, at this stage, we are
40 still trying in some ways to hone it down because our
41 community have accepted general statements like those who
42 have contact or potential contact with children in
43 connection with transportation services for children to
44 mean all taxi drivers. Now, there is a whole range of
45 issues around what the community wants and expects as
46 opposed to what the policy should be in terms of risk
47 managing from a government point of view. There is only so

1 much that a community can bear in terms of scrutiny when
2 there are other licences to be had. For us the minimum
3 standard is that a person who has or is in a position of
4 trust, responsibility and has the opportunity to form
5 relationships of trust and responsibility with children,
6 our Act talks about harm and exploitation so we actually do
7 take that to expose those persons who deal with children
8 over the internet. I think it would be very - in this day
9 and age where kids basically only communicate online, it is
10 hard to see that you can't look at persons that can build
11 those relationships or trust with children.
12

13 The biggest question for us though is who do you
14 actually ensure doesn't need one. It is not so much who
15 does. We have a lot of questions around the 15-year-old
16 next door neighbour who babysits my kid. And we say well
17 that is a relationship of trust that you build with your
18 neighbour and, even if you do pay her, then there is
19 somebody responsible. A parent, does that need to be
20 checked if they are going in to visit their own child in
21 their own school? Well if you are expecting that other
22 parents that are there are going to be checked, then you
23 need to be checked as well. And you don't know what sort
24 of person they are, let me tell you sometimes paedophiles
25 are fathers as well or mothers as well. The issue is the
26 extent of - the ability for contact or non-contact because
27 we do go for non-contact areas, and as long as it is not
28 random, quite coincidental contact with children.
29

30 We had some people ring us up saying my child works in
31 McDonalds, they see and have contact with children and they
32 work every day with children, do they need a Working with
33 Children Check? Well, no, they serve behind a counter,
34 there were no children's parties involved, they serve
35 adults as well. My child works in or my father works in
36 the cinema? Well, no, at the end of the day we are still
37 not the state of big brother where everybody that has
38 a random passing with a child on the street or in
39 Woolworths needs one. And for us we are trying to work
40 from the other side, not so much who needs one but who
41 doesn't because the community have adopted very seriously
42 the concept of if you have a contact with a child you
43 definitely need a card. And that is a very bad place
44 I believe for the governments and other areas to be.
45

46 JUSTICE McCLELLAN: Does the territory require a check for
47 someone who is involved in an overnight activity, a camp

1 with a child?

2

3 MS QUONG: Very much so. All school parents who may not
4 require a card just to go to visit school or watch an
5 assembly, if they are going on an overnight camp,
6 absolutely must.

7

8 But we also have that one problem that was discussed
9 where, due to lobbying from a sports association, the one
10 exemption of concern for us in the territory is that for
11 billeting a child in your own home for less than seven days
12 you are exempt, and that is a really big hole in our
13 legislation that we have raised.

14

15 MR MATTHEWS: Can I help as well, David Matthews again
16 from the ACT. So just going to our legislation because it
17 defines what activities or services for children are
18 covered by the scheme, just to build the logic that you
19 started there, we would certainly say that both paid and
20 unpaid people need to come within the scheme.

21

22 JUSTICE McCLELLAN: Who are doing what?

23

24 MR MATTHEWS: Sorry, and I was going to say, so that is
25 the first threshold question. The second one is the type
26 of activities that they are engaged in.

27

28 JUSTICE McCLELLAN: Right.

29

30 MR MATTHEWS: And the third would be the nature of contact
31 or interaction with children and young people. So to work
32 through those subsequently. Obviously people that are
33 doing paid or unpaid work and having a type of contact with
34 children and young people should be included. In terms of
35 our legislation it is very clear that it goes to define
36 activities that are provided under our Children and Young
37 People's Act, for example, are exclusively covered. So
38 anything that relates to our child protection services,
39 out-of-home-care, child care services, juvenile justice
40 provision and so on are explicitly defined within it. And
41 I think that that is important because it gives a context
42 of state care and state engagement with children and young
43 people as well as describing types of activities.
44 Obviously, more broadly, children - child care services and
45 children education services are defined as being within
46 scope and specifically child accommodation services,
47 counselling and support services for children and also

1 commercial services for children. So that really gets us
2 to that second part of that question of what type of
3 activities should checking be considered in relation to.
4

5 And then the third area in terms of the nature and
6 type and duration of that contact is also critical,
7 particularly when it comes to the risk assessment phase and
8 you are identifying how much contact and in what
9 circumstances contact would be had.

10
11 JUSTICE McCLELLAN: Just to try and understand that, what
12 would your systems say about a woman who was the piano
13 teacher in a private lesson with a child once a week?

14
15 MR MATTHEWS: That would fit under the definition of child
16 education services so --

17
18 JUSTICE McCLELLAN: A check would be required?

19
20 MR MATTHEWS: A check would be required, yes.

21
22 JUSTICE McCLELLAN: Right.

23
24 MR MATTHEWS: So the way that our scheme works is that
25 there are few exemptions, although there are some of
26 course, but it really goes to the amount of activity then
27 one would have with a child. So it is not intended to
28 cover one-off or incidental contact with children or young
29 people but, for example, if a parent was going into
30 a school and reading to their child or reading to other
31 children and they were to be doing that on a weekly basis,
32 so they met a minimum amount of contact in terms of
33 a threshold limit, then they would require a check. And
34 those people have gone through our checking scheme in year
35 one.

36
37 JUSTICE McCLELLAN: And the boys school is off for
38 a cricket camp, residential for a weekend and all of
39 a sudden, for whatever reason, they are short of teachers
40 and they ask a parent to fill in, what happens then?

41
42 MR MATTHEWS: Well, that type of activity would obviously
43 come within the scheme and those people should be getting
44 their card. In terms of that form of unplanned, unexpected
45 participation in that sort of event, obviously the scheme
46 is not positioned to be able to provide an instantaneous
47 check but the school communities are certainly well and

1 truly aware of their obligations to make sure that only
2 people with cards who have been through the checking
3 process are engaged in those sorts of activities. And we
4 physically have a card. The card declares whether the
5 person has a full and complete check or whether that check
6 is in some way restricted to certain types of activities
7 and that is visible on the card. And normally that would
8 be expected to be furnished in the event that a parent was
9 accompanying people on an excursion.

10
11 JUSTICE McCLELLAN: And the parent, a woman was dragooned,
12 mostly they don't volunteer, to be the coach of the
13 Saturday morning netball team, again, required?

14
15 MR MATTHEWS: So the way - yes. The short answer is in a
16 subsequent year for us, yes. So our scheme, as I said, was
17 introduced in 2011. It has actually got a six year
18 phase-in period and it does cover children and other
19 vulnerable adults. So we have just met the year one
20 requirements, which are activities or services for children
21 and young people up to the age of 18. Year two which has
22 to be met by 7 November 2014, includes things like
23 homelessness people, victims of crime, religious
24 organisations, et cetera. And year three would include
25 things like coaching and tuition, vocational education and
26 training, clubs, associations, migrants, refugees and
27 asylum seekers. So at each point during the roll out of
28 that scheme different people become eligible by the fact
29 that they are engaging in a prescribed activity and have to
30 have that card in place in order to undertake that
31 activity.

32
33 MS QUONG: Commissioner, may I just intervene on your
34 question. We actually have this already in place and our's
35 is the same. We have listed clubs, association and
36 movements of a sporting recreational or religions, anyone
37 that has child membership, which basically means everyone.
38 The difference that we have been trying to put to the
39 community is that a parent that is sitting down watching
40 a netball match doesn't need a card. A parent that is
41 sitting down watching a netball match and they disparately
42 just need someone to run the water out on a once-off basis
43 probably shouldn't have to get a card. But the parent that
44 is there every weekend building that relationship with that
45 bunch of seven-year-olds who get to know him as Coach
46 Rodney for a period of 10 weeks while they play junior
47 football, does need a card. It is a fine line and again it

1 is about community expectation. What we have found is so
2 many of the community groups go look we don't know when we
3 are going to need extra support therefore we will require,
4 and I am sure most states will tell the same - all the
5 schools are saying all the parents that we know are usually
6 parents that come and help our fates and things, just get
7 one anyway because we will never know when we need you to
8 come of that extra school excursion and it would be really
9 good risk management for us to have it in place.

10
11 To a large extent the roll out for each State is going
12 to be guided, and I know you haven't got this bit yet, but
13 that was our hardest bit in rolling out, we did it all in
14 one, by how the community actually perceive it as being
15 a real risk management device. And for some of us that is
16 a bit concerning without the extra elements involved of
17 responsibility by the educators, by the schools, by the
18 employers because it is fine to have a card but if you
19 revoke it and you don't physically send a police man to go
20 get that card, then he can still wave it around and show it
21 to somebody else who doesn't know who he is and get another
22 job and not tell the screening authority, even though there
23 is a law you tell the screening authority, so I screening
24 authority doesn't know you have moved. So even if we have
25 a continuous check that says, oh yes by the way, he just
26 got booked for traffic, you don't know who to tell. Unless
27 those other elements come in place, a one-off card
28 screening licence arrangement that says I am fit or not fit
29 will be adopted as a security device which raises for some
30 people concerns that it will add a level of security that
31 is over and above. And again, one stage of it is the card
32 and the background screening but, as Sandie has very
33 clearly said, unless we can also enforce and prompt more
34 information into public, then it is only stage.

35
36 JUSTICE McCLELLAN: Can I come back to that later on
37 because I still want to establish, if we can, the base for
38 who should be checked. Is there anyone who wants to say
39 that more than the ACT and more than the Northern Territory
40 should be checked or less? Yes, Sandie?

41
42 MS VAN SEOLEN: Please tell me if I am talking too much.

43
44 JUSTICE McCLELLAN: I will, don't worry.

45
46 MS VAN SEOLEN: We would certainly, similar to other
47 jurisdictions say there are a whole lot of places and

1 I know in the Queensland's submission it was very well put
2 and that is something Michelle might like to add to, that
3 there are certain places where children have to be. You
4 know, they have to be in school, there is legislation
5 around placement of children in out-of-home-care. There is
6 places where children have to be, there is places where
7 they have to be in school, there is places that offer
8 developmental experiences for children and we would want to
9 have those places checked for a Working with Children Check
10 because the relationship is one that develops over time,
11 you have opportunities to develop those relationships of
12 trust and authority and if the concern is about those very
13 expert people who groom children, and that is where a whole
14 lot of the issues arise from, that is the kind of
15 relationship we want to capture. What we don't want to
16 capture are those situations where people are having
17 incidental contact with children. And I think the issue
18 that we often don't always agree on is that issue of
19 volunteer parents. And as Donna has said, at what stage
20 does a helpful parent become a volunteer who has to be
21 checked. The way, and I am not saying it is perfect, the
22 way we have chosen to go in Western Australia is to say
23 that volunteer parents who are in any overnight situation
24 with children have to have the check, but other volunteer
25 parents it really depends on the nature of the activity
26 what kind of screening is in place. Legislation is a very
27 blunt instrument so we will say to schools, to
28 organisations we have a volunteer check that is different
29 from the Working with Children Check, it doesn't have the
30 ongoing compliance, it doesn't have the extended
31 information, but do we actually want to criminalise parents
32 who don't get a check for being helpful. So having other
33 options --

34
35 JUSTICE McCLELLAN: Well, can I come back. What
36 I understand you to be saying is that you require a check
37 for those who are employed and those who in various
38 circumstances of continuous contact are volunteers with
39 children, the type of check may be different; is that
40 right?

41
42 MS VAN SEOLEN: The type of check may be different.

43
44 JUSTICE McCLELLAN: Okay.

45
46 MS VAN SEOLEN: And if somebody is being a helpful parent
47 in connection with their own children, how far do we want

1 to go in terms of regulating that. And we, in terms of
2 child safeguarding strategies will provide information and
3 support to organisations to say if you have identified that
4 that is a person who is having regular coaching for the
5 netball team, this is the other suitable check that there
6 is that doesn't force an organisation to say at what stage
7 does my acceptance of a parent's help become volunteering
8 because otherwise if we get into a situation where almost
9 every single adult is checked, and currently in Western
10 Australia it is one in six adults, the whole point of the
11 check in terms of that targeting becomes really moot.
12

13 COMMISSIONER FITZGERALD: Can I just ask this question:
14 You have been working as a COAG group since 2009, putting
15 aside parent volunteers and clergy and a couple of other
16 groups - carers - kinship carers, which we will talk about
17 a little later, is there general agreement about the nature
18 of the activities that are now covered? If we put up
19 a chart, and this may have already been done by our own
20 people in the Royal Commission - and I just should say we
21 have got commissioned external research as well as this
22 roundtable which will inform our thinking - is there now
23 agreement around the nine jurisdictions in particular about
24 what child related work is? Basically, if I said - as
25 Peter - as the chair has been saying through this, you
26 know, of this circumstances, ignoring whether it is the
27 parent volunteers or those, is there general agreement
28 around the activities that you wish to cover through the
29 Working with Children Checks? And if there isn't, what are
30 the stand out issues, where is there controversy between
31 the jurisdictions because it seems to me it wouldn't be
32 hard to come to an agreement about the activities that you
33 would wish to cover. And there will be issues around the
34 clergy which we will come to and parent volunteers and
35 kinship cares and all that in a moment, but is there
36 general agreement or not? I don't know if Michelle from
37 Queensland wants to --
38

39 MS MILLER: There is certainly some consistencies. We did
40 a scoping study for the Royal Commission in our first
41 discussion paper. Certainly in the school sector, child
42 care sector, churches, clubs, health counselling and
43 support. I guess from Queensland's perspective, we have
44 been screening people in essential and developmentally
45 focused services so areas where children are required to go
46 by law in schools, foster care, youth detentions, whether
47 regulated through the child care industry and those where

1 government has wanted to assist organisations to create
2 safe service environments so those in cultural sporting and
3 the religious areas, those areas where parents are not able
4 to exercise parental responsibility. So there is a bit of
5 consistency but then there is areas where other states
6 screen, such as commercial entertainment, commercial
7 photography, talent competitions, that sort of stuff where
8 some jurisdictions screen but Queensland doesn't. And the
9 rationale for that is because it is not essential and
10 developmentally focused. That is where a parent should
11 exercise responsibility from Queensland's perspective.
12

13 COMMISSIONER FITZGERALD: So how - just taking that -
14 given that list is there and thanks for that, how do you
15 resolve that? So let's assume that 90 per cent of the
16 activities are agreed, I am just assuming that - one
17 issue - can I just go back to the comment that was made -
18 some of you only screen for person-to-person contact and
19 some screen for internet contact as well; has that been
20 revolved yet? Are all the jurisdictions on the same
21 page going forward in relation to just that one issue? And
22 is there a view that we should have about that?
23

24 MS MILLER: Certainly some counselling takes place over
25 the phone and so that is where that has been screened in
26 Queensland where that contact may not necessarily be direct
27 face-to-face.
28

29 JUSTICE McCLELLAN: I was wondering when you said, Donna
30 what you said, who are the people that fall into the
31 internet category, what are they doing? Because, as
32 a judge, I have experienced and sentenced people who have
33 used the internet to groom and it happens a lot, but it has
34 got nothing to do with working with children, it is just
35 their use of the internet. So who are the people that you
36 pick out who are using the screen and need a check?
37

38 MS QUONG: We actually found that there are, for example,
39 and it is actually not just internet it is all forms of
40 telecommunication, so kids helpline, even the lifeline
41 services where they can find their voice and create an
42 established rapport. We also found that there were some of
43 the music providers and entertainers that were hosting chat
44 sites specifically for young people to get involved to
45 explore their musical talents that were not necessarily
46 music teachers, so those were some of the interesting ones.
47 We haven't got too many of them yet but we are certainly

1 open to finding more because we seriously are seeing so
2 much of our communication with people for anything. The
3 young people, now all of our school (indistinct) people and
4 the tutors that they get from arts and things like that,
5 they are not going into schools, you know, they are sending
6 it all via email, the tutorials are via email. Some of
7 them may not actually be teachers so they are not
8 registered with the Teachers Registration Board. In
9 particular where we have art performers and dancers who are
10 not necessarily for child related usually but they are
11 doing one-off over a week internet service.

12
13 JUSTICE McCLELLAN: And these would be people committing
14 an offence using the internet?

15
16 MS QUONG: No, no, these are - well --

17
18 JUSTICE McCLELLAN: If they are doing it to groom a child
19 they will be using it in a way that breaches the criminal
20 law?

21
22 MS QUONG: Absolutely.

23
24 JUSTICE McCLELLAN: All right. That is a difficult area,
25 I think.

26
27 MS QUONG: It is, but it certainly is one for us where the
28 only thing we are saying is we think it is very dangerous
29 to limit it only where there is face-to-face or physical
30 contact, you must have contact at a distance or the ability
31 for contact at a distance.

32
33 JUSTICE McCLELLAN: Yes. David?

34
35 MR WATERFORD: I think there is broad agreement at this
36 point in time around 90 per cent of those who ought to be
37 in scope. I think some of those issues, particularly
38 I think an emerging area of disagreement is, or an area
39 that has emerged where there is not yet agreement is
40 probably a better way to put it, is around commercial
41 services.

42
43 JUSTICE McCLELLAN: By which you mean?

44
45 MR WATERFORD: Photography, for example, beauty and talent
46 programs --
47

1 JUSTICE McCLELLAN: We are going to look at talent
2 programs probably in a public hearing. I wouldn't be too
3 quick to exclude them from a Working with Children Check.
4

5 MR WATERFORD: Absolutely not. I think the issue that we
6 do need to grapple with is that people would be seeking to
7 groom children and who are skilled and expert at grooming
8 children are constantly looking for a new frontier. And
9 they look for the holes in our system and they find them.
10 And so wherever we draw the line today, we actually do need
11 to have the flexibility to be able to be adjusting that in
12 the light of new patterns of behaviour which is targeting
13 children.
14

15 JUSTICE McCLELLAN: Well then can I find out, does that
16 mean that there is agreement, and including agreement, that
17 when the net is used for an educational or other purpose
18 which creates a relationship with a child legitimately but
19 it creates a relationship, then that should all be in? Is
20 there agreement about that?
21

22 UNIDENTIFIED SPEAKER: Where it is work.
23

24 JUSTICE McCLELLAN: Where it is work or where it creates
25 a relationship, for example, the music - that is not
26 necessarily work.
27

28 MR WATERFORD: I think if we go with the notion of any
29 service which is wholly or partly for a child then we use
30 that as the very wide net and look for any service that is
31 either directly or indirectly provided to children.
32

33 MR SULLIVAN: Francis Sullivan. Could I just ask this
34 question: it is very specific that you are talking about
35 the service for the child, no one has been talking about
36 the environment in which the child is in and everyone who
37 drifts into that environment, like the school has
38 maintenance people that come in there, they are exempt
39 under the New South Wales arrangement and that is probably
40 in most places.
41

42 UNIDENTIFIED SPEAKERS: Not in our's.
43

44 MR WATERFORD: But they are in New South Wales?
45

46 MS BOLAND: No.
47

1 MR WATERFORD: Okay. So there are exemptions for people
2 that come into the environment where the kids are; is that
3 right?
4

5 MR WEBSTER: There are Francis - Dale Webster from
6 Tasmania - because we have been looking at this as we are
7 introducing. But the important thing is the exemptions are
8 around - and I think David from the ACT - it is that
9 three-step test is the activity then the type of contact.
10 But there is also the opportunity risk. So the exemptions
11 generally around time spent. So the incidental contact,
12 you know, the netball coach versus the person that
13 volunteers to run the water on a particular day is around -
14 you know, the netball coach has greater opportunity than
15 the person that is running the water bottle out. So, you
16 know, the maintenance working where it is an electrician
17 that has come on site from a firm in country Tasmania is
18 exempt. However, if that electrician is on site on
19 a regular basis, then they are not exempt. So it is around
20 activity plus defining contact plus also a time element or
21 an opportunity element. So the three tests that ACT were
22 talking about they apply in most jurisdictions in that
23 sense in different ways. But it is - the exemptions need
24 to be thought about in terms of incidental contact but
25 a maintenance person that has more than incidental contact
26 isn't exempt.
27

28 JUSTICE McCLELLAN: Kerryyn?
29

30 MS BOLAND: Just one of the first issues with the new
31 Working with Children Check in New South Wales was that
32 people wanted us to define and be prescriptive about who is
33 in and who is out. And I think around the table we have
34 a consensus of agreement about certain industries where
35 there is child contact or you are in a child related role.
36 What we did in New South Wales was then above that, talk to
37 employers because after all being prescriptive from the
38 centre and not understanding the nature of the workplace
39 and who comes and who goes is not a call that can be made
40 from central - from a screening agency if you like, but
41 really needs to be done with the engagement of the employer
42 to understand what the systems are. And then there is
43 a provision in New South Wales that allows people to ask
44 the Children's Guardian to include them in the scheme. So
45 we have had a number of requests, so in an environment like
46 schools where there is a multiplicity of comings and goings
47 that has been an area that we have looked at and just

1 included cleaners in the regime there for particular
2 reasons based on risk. So that - but it doesn't diminish
3 the fact that at a really base level there is great
4 consistency about who should have a Working with Children
5 Check across, I think particularly employed and the
6 volunteer sector, apart from those ones that we will talk
7 about later.

8
9 JUSTICE McCLELLAN: Yes.

10
11 MR WATERFORD: I think just as an example, a recent issue
12 that we are sort of struggling with in South Australia is
13 the joint use of school facilities. In a number of
14 regional areas the community library is co-located with the
15 school library. We have been trying to encourage community
16 use of excess school facilities. So, a self-help group of
17 55-plus aged adults who meet in some space at the school,
18 should they be checked? They have no direct contact with
19 children but the opportunity for incidental contact in an
20 ongoing way is significant. And I think that is where the
21 local decision-making and sophistication in risk assessment
22 becomes very important as part of any scheme.

23
24 JUSTICE McCLELLAN: Well, what is the answer in South
25 Australia, are they in or are they out?

26
27 MR WATERFORD: They are not universally placed in the
28 scheme but schools are encouraged to look at the way in
29 which those arrangements operate and what sort of
30 protection is placed around that.

31
32 JUSTICE McCLELLAN: So, in other words, they are not in
33 but if the school wants them to be in, they are in; is that
34 how it works?

35
36 MR WATERFORD: Yes.

37
38 JUSTICE McCLELLAN: So I devolve the responsibility back
39 to the school. Does any other jurisdiction do anything
40 different to that? No.

41
42 MS VAN SOELEN: Yes.

43
44 JUSTICE McCLELLAN: Yes.

45
46 MS VAN SOELEN: We certainly would not see those people as
47 being in child related work but we would work with the

1 schools and the schools, as part of their child
2 safeguarding strategies, if they think that the - you know,
3 what is in place to handle any visitor into school? If you
4 are a parent, if you are anybody who is going into school,
5 do you expect at the door everybody to produce a working --
6

7 JUSTICE McCLELLAN: Sandie, can I accept your invitation -
8 does that mean you leave it to the school to decide whether
9 they should be in for that purpose?
10

11 MS VAN SEOLEN: We don't leave it to the school. They are
12 not eligible for Working with Children Checks. If the
13 school identifies that that is a risk and they want the
14 person screened, there is a National Police Record Check
15 that can be undertaken. But we encourage them also to have
16 child safeguarding strategies in place.
17

18 JUSTICE McCLELLAN: Right, okay, so they are not in. Well
19 can I move to what I think is a more difficult question and
20 that is what do you check? What records do you look at,
21 what is the type of check that is required? Bearing in
22 mind that our search today, as we discussed before morning
23 tea, is probably to identify the parameters, that is what
24 is the base, what would everyone agree on, but also, of
25 course, we need to identify for our purposes anyway what is
26 the absolute that people have. Now, my notes suggest that
27 again Kerryn Boland can help us with this, but I appreciate
28 that everyone has probably got a view about it. So I would
29 like to hear from everyone but Kerryn can we start with
30 you, what do you say should be checked before you give
31 someone a tick as it were?
32

33 MS BOLAND: Well in New South Wales we obviously do
34 a national criminal record check at the beginning and --
35

36 COMMISSIONER FITZGERALD: Could you speak up, I can't hear
37 you?
38

39 MS BOLAND: Oh sorry, we do a national criminal record
40 check when a person makes an application for a clearance or
41 a Working with Children Check. That would include charges,
42 spent conviction, juvenile, et cetera. So there is that
43 level. There are some people who are automatically barred
44 and they are set out in a schedule attached to the Act, so
45 certain charges automatically bar you and that is in
46 schedule two. And then there are a set of, what we call
47 trigger records, which would allow us to risk assess. So

1 we look at all criminal records, not just child related
2 criminal records. You are then either automatically barred
3 or there is a pattern there that would cause us to risk
4 assess. If we risk assess there is a capacity for us to
5 look and see if it is serious. We can put an interim bar
6 on a person while we conclude the risk assessment.

7
8 In terms of the records that we look at there is
9 little limit on what we can look at, there are things
10 prescribed in schedule two, but there is also a section
11 that says we can require other information as needed. Some
12 of the records that are most useful to us are the
13 employment proceeding records, information held by
14 community services. They don't normally settle into the
15 area of criminal charges or any information associated with
16 those. And I will just refer to my South Australian
17 colleague about people who move around. I think that just
18 recently we have seen that in our Working with Children
19 Check where we have had the capacity and the ability to
20 look at information from various sources where patterns
21 emerge that people are moving and grooming around a system
22 but indeed don't have any criminal charges yet, and this
23 legislation gives us the capacity to bar people who have
24 that sort of background record.

25
26 So in terms of value, I think in terms of estimating
27 risk, those workplace records are incredibly important
28 because they give you a really good indication about how
29 people do behaviour in a workplace.

30
31 JUSTICE McCLELLAN: If we go around the country
32 anticlockwise - Queensland - what is the Queensland
33 position?

34
35 MS MILLER: Queensland takes into account spent
36 convictions, charges, juvenile history, investigative
37 information into certain serious child related sexual
38 offences, even though a charge hasn't been laid. We take
39 into account (indistinct) information from teachers child
40 care and foster care environments. We also have an
41 automatic disqualification framework that excludes certain
42 people who have been convicted of a serious child related
43 sexual offence from even coming into the system. Certain
44 people who are convicted and imprisoned have no appeal
45 right. Those people that have been convicted of a serious
46 child related sexual offence can apply for an eligibility
47 declaration to declare that they are suitable to apply for

1 a blue card. So there is a broad range of information that
2 we take into account.

3
4 When I look at the comparison of what other people take
5 into account, there seems to be obviously some
6 consistencies in relation to the convictions, the charges,
7 the juvenile histories but there is a divergence in relation
8 to investigative information and certain disciplinary
9 information. We are not as broad as perhaps New South Wales
10 with regard to employment proceedings. But certainly there
11 is a system that needs to have a robust tribunal in place
12 with some actual justice before it is released to us to be
13 able to take that into account.

14
15 JUSTICE McCLELLAN: Northern Territory?

16
17 MS QUONG: We would like to be able to look at all the
18 records that people talk about but we just don't get access
19 to them and I think that is a real critical fact for us.

20
21 JUSTICE McCLELLAN: You don't guess access because?

22
23 MS QUONG: No, well ultimately the access that we all have
24 that is universal through the CHIPWC exchange and through
25 CrimTrac is the standard source of information from police
26 records the criminal history information. By the time you
27 look into talking about investigative materials, whether it
28 is from police or from child protection workers, we don't
29 all have universal access not only in our own jurisdiction
30 but certainly not through other jurisdictions.

31
32 Similarly employment records would be great if I knew
33 where they were employed before or if we asked that
34 question, but we don't ask that question. So if a person
35 is coming to me and they are just living in Darwin and they
36 are applying, I don't know if they have worked or who they
37 have worked for before. The only way I am finding out is,
38 we in Darwin, and I don't know of the others, we get a lot
39 of phone-ins from people who want to do on someone who is
40 applying for a card and that actually is our trigger. But
41 the honest truth is, although it sounds great to look at all
42 of that, we are also very aware that we are not the court
43 and if there is no conviction and the charges haven't stuck
44 then there is little probative value, unless there is
45 cooperation and we don't have our own investigative arm to
46 be actual - to take it to that next level.

1 For the Northern Territory our primary source is the
2 criminal history information that is provided through the
3 CHIPWC exchange where we can get the third tier information
4 from courts, where it is possible and financially viable.
5 We do not yet have access to child protection records
6 and/or other records.

7
8 JUSTICE McCLELLAN: Western Australia?

9
10 MS VAN SEOLEN: We assess all of the criminal history
11 expanded information which I won't go through again. We
12 can, the same as New South Wales, we can consider any
13 information that we consider relevant, which may include
14 disciplinary matters, it may include child protection
15 matters, but they aren't necessarily triggers for an
16 assessment. We can consider it when there has been
17 a trigger, any charge, including one that did not result in
18 a conviction. We are in the process though of amending our
19 legislation to be able to have certain disciplinary
20 matters - although that hasn't gone up through drafting
21 instructions yet - disciplinary matters as triggers. And
22 those will be similar to what is occurring in Queensland.
23 Because we do use every opportunity to try and get more
24 consistent with other jurisdictions. Where there has been
25 some external natural justice process, so for example if
26 a person has been excluded as a teacher, that is certainly
27 information that is relevant to consider should that person
28 also be excluded from going on and tutoring elsewhere and
29 working with children. And we aim to phase in the
30 different kinds of disciplinary processes that we can take
31 into consideration but there is a lot of work to be done in
32 that area. For example, we haven't yet had any liaison
33 with APRA, we are not sure how to take into consideration
34 people who are medical or working in that sphere, at what
35 point we would be able to take into consideration or
36 receive that information as a trigger. So what we try to
37 do is also separate out what are the triggers for
38 assessment or reassessment and what is information that we
39 should take into consideration with the overall evaluation.
40 And for the overall evaluation it is anything we can get
41 our hands on that is going to be of use to protect children
42 and that includes child protection information.

43
44 JUSTICE McCLELLAN: South Australia?

45
46 MR WATERFORD: Like all other jurisdictions, national
47 criminal history screening is a standard part of the

1 process for all screening units in South Australia. For
2 the government screening unit that then extends to
3 circumstance information relating to matters that have been
4 identified through CrimTrac, disciplinary findings or
5 outcomes from specified tribunals or boards, outcomes from
6 special investigations or care concern investigations that
7 relate to foster carers or child protection works and we
8 also use certain relevant child protection information
9 through the government screening unit. We have been
10 debating what is relevant in that context and are probably
11 coming down on the side of a substantiation of abuse or
12 neglect would be relevant in all circumstances so that we
13 would, as a matter of course, look for such substantiations
14 and to treat all other child protection information as
15 circumstance information which may be accessed depending on
16 what other risks are identified.

17
18 JUSTICE McCLELLAN: Tasmania?

19
20 MR WEBSTER: Yes, we have basically adopted New South
21 Wales's model with a couple of variations and the first of
22 those is we have allowed for non-criminal orders of courts
23 and tribunals to be used.

24
25 JUSTICE McCLELLAN: Such as?

26
27 MR WEBSTER: Our Family Violence Act orders child
28 protection orders, which are non-criminal in nature. So we
29 have specifically allowed for those. The other major
30 difference between Tasmania and New South Wales is that our
31 legislation doesn't allow for automatic negative results so
32 we have got a proposed stage so we are required to actually
33 divulge the information to the applicant and say we
34 proposed to knock you out based on that piece. But they
35 are the only two notable exceptions between New South Wales
36 and Tasmania.

37
38 JUSTICE McCLELLAN: Victoria?

39
40 MS DE CICC0: Very much like the other jurisdictions,
41 charge conviction information we don't have a spent
42 conviction scheme in Victoria. Findings of guilt,
43 et cetera for relevant offences or prescribed findings,
44 Teacher Registration Suitability Panel. We also are able
45 to access our child protection information to conduct
46 assessments wherein something has given rise to it as part
47 of the charge. We are moving towards a Reportable Conduct

1 Scheme as well following our Parliamentary Committee of
2 Enquiry and as part of that review we will also look to
3 include non-conviction charges. So with the reportable
4 conduct scheme we are hoping to obtain better workplace,
5 broader range of workplace determinations as part of the
6 information considered.

7
8 JUSTICE McCLELLAN: So am I thinking you don't go as far
9 as New South Wales?

10
11 MS DE CICC0: Not at this stage, we are working towards
12 that legislation following our Committee of Enquiry report.

13
14 JUSTICE McCLELLAN: I have read the report but I can't
15 remember, are they saying you should follow New South
16 Wales?

17
18 MS DE CICC0: Well they are suggesting we should implement
19 a Child Safe Organisation, Reportable Conduct Scheme
20 similar to New South Wales using our Commissioner For
21 Children and Young People, which we are looking at doing.

22
23 JUSTICE McCLELLAN: And the ACT?

24
25 MR MATTHEWS: Again, David Matthews here. Again, without
26 being repetitive, we access the same information through
27 the interjurisdictional exchange arrangements. The other
28 things that we also consider are things like previous
29 negative notices that were issued by other jurisdictions as
30 well as previous registrations that we have had access to.
31 So we consider that full range of information. We can also
32 receive information from other government authorities, such
33 as the courts, care and protection agencies for other
34 professional regulatory bodies. I think the point needs to
35 be made of course that this takes place within a risk
36 assessment and we have risk assessment guidelines which are
37 subordinate legislation which are publicly available and
38 used to make the decision making. One other point that
39 hasn't been raised yet today, I think it is material to our
40 discussion, is the types of registration that one can have.
41 We have really today talked about the scheme as being
42 a binary scheme, a yes or no scheme, you either are
43 registered or you are not registered, but certainly in the
44 ACT scheme as well as general registration, there can be
45 conditional registration and also role based registration
46 as well. There are circumstances after a risk assessment
47 that it may be appropriate with engagement with the

1 employer for somebody with a particular criminal history to
2 work in a particular context. Obviously that is based on
3 a risk assessment. It might include things such as
4 previous driving offences for example for other offences of
5 a general nature. And then of course there are negative
6 risk assessments. So when we get to the stage of really
7 talking about what does a clearance give you, what does
8 a card mean, I think we will need to explore the variations
9 around the context in which people might be given
10 permission to work in particular context and under explicit
11 supervision.

12
13 JUSTICE McCLELLAN: This is bold, but if I was to say that
14 that sounds like the base for the process should be the New
15 South Wales model. I thought that would happen - who is
16 saying no and why not?

17
18 MS VOIGT: I am from New South Wales, Barnardos of course,
19 and have a lot of credit to the Guardian and the system she
20 has designed. However, I am finding increasing numbers of
21 Aboriginal staff that I am trying to employ are being
22 caught up in this system. And I consider that extremely
23 dangerous given the number of Aboriginal staff we are
24 trying to train to become workers in the out-of-home-care
25 field for example, child care field and generally in
26 welfare. I think we really, you know, one in three children
27 in our state are in out-of-home-care, Aboriginal children,
28 although we have two per cent of the population. We could
29 design beautiful systems that fit us. I think we have got
30 to look and to design a system that fits what we want to do
31 in an inclusive way with our Aboriginal people. I don't
32 see one Aboriginal person here, for example.

33
34 JUSTICE McCLELLAN: Yes, there she is.

35
36 MS VOIGT: Sorry, but I mean - I am sorry about that. But
37 I mean, this is always the left out issue.

38
39 JUSTICE McCLELLAN: Well I am not understanding what you
40 are saying at the moment, so I are going to have to help
41 me.

42
43 MS VOIGT: Well I have got numbers of my staff that are
44 being barred.

45
46 JUSTICE McCLELLAN: No, no, so the system in New South
47 Wales works to bar people who you believe shouldn't be

1 barred?

2

3 MS VOIGT: Absolutely particularly with --

4

5 JUSTICE McCLELLAN: And what is the trip point?

6

7 MS VOIGT: The convictions generally for assaults,
8 et cetera in adolescence early 20s who then come to us to
9 be carers in their late 30s.

10

11 JUSTICE McCLELLAN: Right. Kerryn, do you have a response
12 to that?

13

14 MS BOLAND: In relation to the group that Louise is
15 talking about, I mean I think we are keeping a careful
16 watch on that obviously. I am not sure about people being
17 barred because they have a violent history in adolescence.
18 I mean I would like to see the ones that are being barred
19 in that category because I think we have levels of scrutiny
20 through our system that looks at that contextually.
21 I think some of the more difficult areas sit in the foster
22 care household member regime and kinship care but
23 I understand we are going to talk about those a bit later.

24

25 JUSTICE McCLELLAN: Yes, we are. So you are saying Kerryn
26 you understand the response but you wouldn't suggest you
27 change your system?

28

29 MS BOLAND: I think we are keeping a careful watch on it.
30 The more difficult areas of risk assessment - sorry, the
31 easier areas are around sexual assault, they are quite
32 straightforward. The more difficult areas is where you see
33 a pattern of behaviour that is concerning and what
34 information you take into account to assess that pattern of
35 behaviour. So a violent pattern of behaviour in a domestic
36 circumstance would be looked at in the context of other
37 information. And I would be interested to have a closer
38 look at those ones that you are referring to.

39

40 JUSTICE McCLELLAN: Natalie, do you want to contribute to
41 this decision?

42

43 MS LEWIS: We were coming to speak more in the context of
44 kinship care and of the idea of Working with Children
45 Checks being prohibitive --

46

47 JUSTICE McCLELLAN: Can you just tell the pod cast people

1 who you are?

2

3 MS LEWIS: Certainly, my name is Natalie Lewis, I am the
4 Chief Executive Officer of the Queensland Aboriginal and
5 Torres Strait Islander Child Protection Peak. In terms of
6 the - within the Queensland context Michelle and I were
7 trying to grab some numbers during break, but the list of
8 excluding offences that are applied in the Queensland
9 context don't actually result in a significant number of
10 Aboriginal and Torres Strait Islander people being denied
11 a blue card in our state because those offences are quite
12 focused with regard to offences of a sexual nature and
13 considerable patterns of behaviour around violent offences.
14 So we don't know the distinction between the criteria of
15 those offences across jurisdictions but I know in
16 Queensland that it hasn't been a significant impediment.
17 I would suggested that there are other processes that occur
18 which prohibit Aboriginal and Torres Strait Islander
19 people, particularly in the context of foster and kinship
20 care from actually proceeding to the blue card stage, which
21 actually dropped them out of contention as foster and
22 kinship carers prior to actually submitting an application
23 for a blue card.

24

25 COMMISSIONER FITZGERALD: Can I just ask this question:
26 some of the research that the Commission has commissioned
27 shows that only between 0.05 per cent and 0.06 per cent of
28 applications are denied across Australia in the
29 jurisdictions that we are able to obtain data from, so it
30 is a very small percentage, tiny percentage. On the face
31 of that, that would indicate that in fact the current
32 processes and the information we are getting is working
33 relatively well in the sense that I presume that there has
34 been concern for example about the use of charges rather
35 than conviction, there has been concerns around the use of
36 complaints that haven't been substantiated. If those
37 concerns were very substantial you would expect the denial
38 rate to be much higher than what it currently is. So being
39 careful in what I'm saying here, taking from what we have
40 just said around the room, are we generally satisfied that
41 the jurisdictions, even though different, have basically
42 got it right in terms of the information they are now
43 obtaining? And the question is, are you obtaining
44 information that has proven to be completely useless that
45 you actually don't need or have you discovered that there
46 is information that is critical that you can't access? But
47 the figures show that somehow or another the current

1 information may be sufficient, not in every jurisdiction
2 but just generally; is that a correct assumption?
3

4 MS QUONG: Commissioner, if I may, it is Donna from Darwin
5 again. Our legislation allows us to look at everything
6 that we can get our hands on. The issue is how do we get
7 our hands on it. It would be a concept for example that we
8 had one enormous Australian database, perhaps through
9 CrimTrac where we registered everybody that had a card and
10 so police officers could say okay someone does something
11 you can reports it. But how do we know - how do we get the
12 extra information? When someone applies to me to become
13 a foster parent or any job, do you immediately go to foster
14 parenting records? No - for us we have processed over
15 85,000 - we have got 85,000 viable Ochre cards for on adult
16 population of 225,000. That is one in 2.7 adults. We
17 cannot feasibly construct two ginormous databases that
18 allow us to connect all this information that we really
19 believe would help us make far more appropriate decisions.
20 You know, we would like also psychological reports on
21 people that have had mental history, we would like
22 rehabilitation reports on people that may have suffered
23 alcoholism, but those things are not necessarily accessible
24 to us.
25

26 COMMISSIONER FITZGERALD: Can I ask this question this
27 then: You may say that but what is the evidence that the
28 need it? I mean, at what point do you actually say we have
29 enough, not perfect but no system is perfect, so have we
30 reached the point where the information is available - and
31 I understand in Northern Territory and others it is
32 difficult - we actually don't want more information than
33 what you have described?
34

35 MS QUONG: No, I was actually trying to get to that, sir.
36 My point is I think that we strive to get too much
37 information.
38

39 COMMISSIONER FITZGERALD: Yes, okay.
40

41 MS QUONG: My point is that certainly in cases where
42 courts have found persons not guilty, there is a reason.
43 It may not necessarily be what we want to hear or what
44 somebody has reported it being, but there has been
45 a decision made. Similarly, with the information that we
46 are getting from the various registers that have come
47 from - and we can't tell previously how substantiated they

1 were - going forward if there was a national process that
2 said from a government point of view, the police and the
3 foster caring records on a national basis would share or
4 the teacher registration would all share, if we could
5 guarantee it uniformly then from here on in people would
6 realise how important the reporting is. I think prior to
7 now the concept is that previous reports haven't
8 necessarily been seen to have to be used for another
9 purpose. So there is a lot of information that we believe
10 is probably more detrimental then useful. There comes
11 a point in time when we try to put too much into a check.
12

13 Just on one last thing I am sorry, I majority -
14 a great majority of our applications are from indigenous
15 persons and many, many indigenous persons get their Ochre
16 card who have extensive assault histories in previous
17 lives. We have accepted written excuses that it was
18 cultural marriages or tribal law as being part of the
19 mitigation in the assessment of risk. And again, that is
20 why we all talk about the very specific elements that are
21 specific to our areas and understanding of how some of
22 these things are seen, seems to add value to our particular
23 neighbourhood.
24

25 JUSTICE McCLELLAN: Well, can I go back to the question
26 I asked, understanding the Aboriginal Torres Strait
27 Islander problem, otherwise is there agreement that the New
28 South Wales model is what we should be working towards at
29 this stage?
30

31 UNIDENTIFIED SPEAKER: As I understood Kerryn there is
32 restricted types of charges or offences that you take into
33 account. Further exploration may need to be taken place as
34 to how they match against other jurisdictions to that if it
35 is - is it just restricts to some assaults and sexual
36 offences or is it broader than that, Kerryn?
37

38 MS BOLAND: We get all criminal records, so it is the
39 whole record. And then we go through the whole record and
40 analyse it and then shift it up to risk assessment if there
41 is a pattern of behaviour or relevant records. It is just
42 not the criminal record, we also have a database of
43 workplace proceedings, using the general term, disciplinary
44 proceedings. And it is set out in the legislation what the
45 trigger material is. And then I think a lot of what people
46 are talking about is what happens in risk assessment, it is
47 not that you have to get all of is that information and

1 then make a risk assessment, it is a bit more iterative
2 than that. You know, your risk assessment is, if you like,
3 layered, and you will see particular things and then you
4 will go and get extra information say from community
5 services on the KID system. So it is the risk assessment
6 system and it is the fact that we can - I mean, clearly we
7 have some difficulties getting information, particularly
8 from courts and so forth, and records existing is another
9 issue.

10
11 But the other one is in relation to charges and
12 charges that are - those are very important. If charges
13 are withdrawn and, as we know in this area, charges are
14 withdrawn by victims quite often or victims' families. So
15 we consider that important and that is why the court
16 records are very important to us. So that wouldn't be
17 a precluding factor.

18
19 So I suppose I am just trying to say that it is the
20 access to information, the process is more layered then you
21 just get a whole lump of information. There is also the -
22 obviously the other natural justice side, which is what we
23 will accept and look at, and I think we do quite a rigorous
24 job in asking people for material that will, if you like,
25 mitigate the seriousness of the offence, the timeframe,
26 when the offence happened, the circumstances of the
27 offences or the behaviour. So that is the kind of risk
28 assessment.

29
30 JUSTICE McCLELLAN: We seem to have Victoria, New South
31 Wales - Victoria in the future, New South Wales and
32 Tasmania moving pretty much down the same path. What about
33 the rest?

34
35 MS VAN SEOLEN: I think Western Australia has a very
36 similar model anyway as far as the criminal record is
37 going. I think the workplace proceedings are different.
38 We do not have a system in place through the ombudsman,
39 which I understand is what happened in New South Wales.
40 And certainly what we would be aiming more towards is what
41 is in place in Queensland where there is another licensing
42 or registration body and there has been some natural
43 justice process where there has been a disciplinary finding
44 and not simply an accusation, where there has been
45 a finding that has gone through some natural justice.
46 Because we need to take on board probative information as
47 a trigger. Where it comes to workplace information that

1 can be considered as part of an assessment anything goes,
2 but as a trigger we really need to separate out - I know
3 I have said this before - the difference between what is
4 the trigger for assessment. So on the basis of
5 a disciplinary finding, can I issue an adverse decision,
6 but can I take into consideration any behaviour because our
7 assessment is not about whether a person is guilty for not,
8 our assessment is about what risk they pose to children and
9 it is about the behaviour. So anything that tells me about
10 the person's behaviour I want to consider in an assessment
11 where it is relevant. And that is not just a fishing
12 expedition and going on a trawl for everything that is
13 possibly available, it depends on the circumstances. But
14 there are a few cases where you do have to go on that trawl
15 because of the concerns that are there.

16
17 JUSTICE McCLELLAN: David from South Australia?

18
19 MR WATERFORD: I think in broad terms the New South Wales
20 scheme is consistent with the direction I think we are all
21 headed. As I have indicated earlier South Australia is
22 currently reviewing its screening arrangements. I think
23 probably two areas where it is likely that South Australia
24 may end up in a slightly different space would be, if
25 I have understood the New South Wales scheme correctly,
26 that South Australia would be, as a matter of course,
27 searching the child protection databases for relevant
28 material and the use of certain restraining - an looking at
29 or searching for restraining orders relating to domestic
30 violence and child protection matters.

31
32 JUSTICE McCLELLAN: This means South Australia having
33 a centralised scheme?

34
35 MR WATERFORD: That is certainly one of the proposals that
36 is being investigated.

37
38 JUSTICE McCLELLAN: Well, yes that is where you end up,
39 isn't it? And if we are going to have a national scheme of
40 any form that is where you have to end up, isn't it? That
41 is where South Australia has to end up?

42
43 MR WATERFORD: Yes, as a first step but --

44
45 JUSTICE McCLELLAN: Perhaps we might hasten that process
46 for you. Yes.

1 MS PHILLIPS: I wonder if I could make a comment, not in
2 relation to us all looking at the New South Wales model.
3 One of the databases that we have all talked about
4 investigating is that of the disciplinary boards which is
5 particularly relevant for teachers, for counsellors who
6 deal with children, particularly those who have psychs,
7 et cetera. I just want to put on record that social
8 workers who are the largest group of people who work in the
9 care and protection of children area are not statutorily
10 regulated at all. And so there is no disciplinary board
11 that you can go to to find out if in fact a social worker
12 or a person calling themselves a social worker, albeit
13 a qualified social worker, has got a history of
14 disciplinary, poor behaviour or activity and has moved from
15 state to state. There is no national regulation to be able
16 to identify that professional group. The ASW whom I am
17 representing today has been working towards getting some
18 national registration but, at this stage, we are not part
19 of the APRA scheme which we would like to be. I am just
20 saying that this very large group of people - profession
21 who are working with children, with very vulnerable
22 children, are not subjected to any regulation in Australia
23 as it stands.

24
25 JUSTICE McCLELLAN: Yes, thank you. Now, we have covered
26 everyone's view then about - no, sorry --

27
28 MR WATT: Thank you Commissioner, just a clarification
29 from my perspective and that is that the statements that
30 have been made about the whole criminal record. As
31 distinct through my thinking as to matters that were just
32 mentioned by South Australia I think it was, that it is
33 matters relating to sexual matters or AVOs or matters that
34 distinctly relate to offences against the children sexual
35 for physical, as distinct from the whole criminal record.
36 And so when that expression is being used can people
37 clarify if the intent of understanding is that it is the
38 whole record including DUI offences or fraud?

39
40 UNIDENTIFIED SPEAKERS: The whole record.

41
42 MR WATT: We have been on record about this before, we
43 have real concern about how that is actually related to
44 matters in relation to the protection of children. I think
45 there is any number of offences and particularly offences
46 at particular points in time in people's lives that are not
47 relevant to this. And I know that there are arguments that

1 people put up about patterns of behaviour but I don't - our
2 union doesn't accept still this issue about limits to
3 a person's capacity to be employed based upon particular
4 events in their life - criminal events, charges either
5 found to be true or charges laid or charges suspended or
6 charges not recorded, that are problematic, so I want to
7 put on record at this point in time that we don't accept at
8 this point that the full criminal record is an appropriate
9 basis as a minimum standard for going forward.

10
11 JUSTICE McCLELLAN: Do you want to respond?

12
13 MS BOLAND: I mean, I think I explained before we do get
14 the whole criminal record, that doesn't mean the whole
15 criminal record is used as a basis. It is specifically
16 there to look at certain patterns of behaviour within the
17 context of considerable amount of information. I think the
18 experience previously under our previous Working with
19 Children Check where there was prescribed to a certain
20 section of the criminal record that we received that there
21 were limitations on that. I think there is also - there
22 was some resource issues about the system that we set up,
23 that we took on the responsibility of screening the whole
24 of the record whereas that would have been done before by
25 CrimTrac. So it was a shift of responsibility if you like
26 but that has always been the system, the whole criminal
27 record and then somebody screened out information, it is
28 just in this case we are the screener and not CrimTrac
29 anymore.

30
31 COMMISSIONER FITZGERALD: Sorry, can I just take that
32 point, give that concern that has been raised, and we have
33 heard it other ways, all of your decisions are subject -
34 those were the statutory scheme subject to review?

35
36 MS BOLAND: Yes.

37
38 COMMISSIONER FITZGERALD: Or appeal. What is that showing
39 us? Is that showing us the concerns of the Teachers Union,
40 the Independent Education Union is justified? Have there
41 been decisions that have shown that your jurisdictions have
42 used information in a way that has come up with an
43 assessment that is subsequently been overturned? Is there
44 any pattern to those, we don't have any real information
45 about the appeal or reviews and why they are being appealed
46 or reviewed but are those concerns showing that in some
47 jurisdictions people are putting too much weight on certain

1 material and that is getting overturned later?

2
3 MS QUONG: If I may speak for all I think the answer to
4 that is no. We have been - the operators have been
5 monitoring fairly closely each other's appeals and I don't
6 believe really we have had any that have been based on
7 irrelevant considerations. The concept of irrelevant
8 considerations is very high in making the decision. And
9 again, we come back to the fact that the criminal record
10 material is only one part of the decision-making process.
11 It is not the be-all and end-all. And it sounds very
12 difficult to put it in that context when people are
13 concerned about things that may have happened well and
14 truly in the past and they are embarrassed about it. But
15 the tribunal's, well the decision-making bodies look very
16 closely at how relevant they are to the here and now.
17 A person that has done 17 DUIs and lost his driver's
18 licence three times in the past two years may be considered
19 a risk if he is going to be a bus driver if there is other
20 evidence that shows he still has a substance abuse problem
21 that has been untreated. There would be some indication of
22 that. But he would be eligible to reapply in another so
23 many years, at which time he could provide evidence of
24 rehabilitation and get it. And the likelihood is he would
25 get it. And I think that sort of information about the
26 scheme hasn't necessarily been transmitted particularly
27 well. I think there is potentially a great deal of fear
28 from people that they are thinking well I may have done
29 something in the 60 or, you know, I was very silly I smoked
30 dope, the reality is that people aren't being turned down
31 for those, the reality is that that is not, from my
32 understanding and talking to jurisdictions, the critical
33 decision factor. We have seen them, okay, sometimes we
34 have laughed at them, you know, and we have been
35 embarrassed for the people as well, but again, it is that
36 fear that we talk about using the criminal record. It is
37 only one part of what helps make our assessment and I guess
38 that is why we are talking about DVOs and the other
39 elements. Yes, if a person drowned a kitten that is going
40 to show up and actually that could be very relevant to us
41 even that it is not sexual or children or assault violence,
42 it goes toward a mental capacity. And those are the sorts
43 of elements that will be considered but only in the grand
44 scale of things.

45
46 JUSTICE McCLELLAN: Yes Kerry?

1 MS BOLAND: On the appeals, obviously we are a reasonably
2 new system but those appeals that have gone forward are on
3 the auto-bars if I like and some of those have been turned
4 over because of distance between the event, the number of
5 years between the event and so forth. So we are seeing
6 that distance as being important in our decision-making.
7 In terms of decision bars we haven't had any go through yet
8 but we would expect by the end of the year that we would
9 have a better idea about where we are hitting the bar so to
10 speak.

11
12 MS MILLER: Our experience is also that the applicant will
13 sometimes bring new information that wasn't available to
14 the original decision that will overturn those decisions.
15 But certainly, in addition to the appeal process, the
16 applicant's submissions are vitally important to that full
17 assessment of a person's eligibility, so their ability to
18 provide evidence that they have addressed the triggers that
19 led to their offending behaviour is certainly something
20 that would be taken into account as part of that assessment
21 process.

22
23 JUSTICE McCLELLAN: Am I right in thinking that Tasmanian
24 conditional process - the step that provides for review
25 before final decision is effectively the same as the after
26 review process from New South Wales?

27
28 MR WEBSTER: Effectively. It is, if you like, it is an
29 internal review process before we get to the approval
30 process. But it is also designed to allow for the
31 information from the applicant around, you know, I have
32 addressed this offending behaviour and those sorts of
33 things. So the legislation specifically requires that
34 addition information to be included prior to a final --

35
36 JUSTICE McCLELLAN: So you are doing it earlier and you're
37 doing it after - yes. Yes Sandie?

38
39 MS VAN SEOLEN: We also have a process in place and
40 I think allowing a person to provide you with information
41 about what their behaviour is currently is very important.
42 That is certainly part of our natural justice process. We
43 do struggle to get that addition information sometimes from
44 indigenous people, particularly in remote areas and make
45 every effort to get that. But I think your earlier
46 question about are we considering the sort of information
47 Chris that you are concerned about in denying people

1 a card - no. You just have a look at the facts, say in
2 Western Australia there is 17 per cent of people have
3 a criminal record and it is like 0.08 people that are ever
4 denied a card. So it is really looking at what is involved
5 in that - what kind of behaviour was involved, has somebody
6 assaulted a child, is somebody able to withhold from
7 violence when children are around, not have they been
8 violent towards a person with a bit of biff behind a pub.
9 And I think we are all very much on the same page as that.
10 It is not about excluding people from work, it is about is
11 there behaviour here that is dangerous to children. If it
12 happened some time ago, what has happened since then.

13
14 JUSTICE McCLELLAN: Yes?

15
16 MS LEWIS: I am sorry, may I just comment, that just with
17 regard to the review process, in Queensland the uptake of
18 the appeals processes for Aboriginal and Torres Strait
19 Islander people is particularly low. So even in the
20 instance where a negative notice is issued we have worked
21 quite closely with the Commission on processes for
22 informing applicants about a negative notice and getting
23 them access to advocacy or representation to assist them in
24 appealing that. That has been a real struggle. I think
25 initially even the first bit of paperwork that goes out
26 with regard to a negative notice is I think five pages or
27 something just to basically say no, you are not suitable.
28 However, then you move on to explaining then in the
29 additional paperwork what is the process for appealing and
30 a lot of people will look at that first page, see that they
31 have had a negative notice issued and don't proceed any
32 further and don't then have the access to an appropriate
33 mechanism to assist them to bring their case forward and
34 have their issues heard in an appropriate context. So that
35 is a massive area in Queensland. While the numbers of
36 negative notices are quite small it is the disproportionate
37 impact on Aboriginal and Torres Strait Islander applicants
38 at the end of the spectrum is quite harsh.

39
40 JUSTICE McCLELLAN: Right. Then moving to the next topic,
41 is it agreed that there should be some system or sorry each
42 system should have a process of regular recheck if you
43 like; anyone disagreeing with that? Now, I think the
44 Northern Territory has a bi-annual one every two years; is
45 that right?

46
47 MS QUONG: We do. I think we are two years on the basis

1 of acknowledgement we can only do our continuous check of
2 local history so at every two year mark we check all of the
3 jurisdictions. By that time, if someone has gone on
4 a holiday and done something, hopefully it would have by
5 that stage got to court, got to a charge and got into
6 a system somewhere.

7
8 JUSTICE McCLELLAN: So you require people to check every
9 two years?

10
11 MS QUONG: That is correct. We complete an entirely new
12 national police check and new check of their behaviour
13 every two years.

14
15 JUSTICE McCLELLAN: Right. Now, is that too short, too
16 long, as far as the other's are concerned?

17
18 MS MILLER: We have got a three year renewal period in
19 Queensland. On average only 40 per cent of blue card
20 holders do not renew their cards. So that means that you
21 are sort of probably monitoring them for a longer period of
22 time than they need to. It also - that regular checking
23 allows - because of the transient nature of the employment,
24 allows you to update your records and make sure that you
25 are connecting with the right organisations so that if
26 there is a change in that criminal history you are able to
27 notify the right people. So we have found that that three
28 year period allows for that notification and you don't lose
29 track of people.

30
31 JUSTICE McCLELLAN: So you reckon the years is okay?

32
33 MS MILLER: Well three years is what we currently have.

34
35 JUSTICE McCLELLAN: Right. Victoria?

36
37 MS DE CICC0: In Victoria we have a five year check. We
38 do do continuous checking. Our's varies in terms of the
39 proportion of people at the end of the five year period.
40 It depends on the cohort, in some cases it can be quite
41 high up to 60, but it has for some been as low as 35.

42
43 COMMISSIONER FITZGERALD: Can you clarify to me, say you
44 require a renewal every five years and you say you do
45 continuous checking, what does continuous checking mean in
46 your jurisdiction?
47

1 MS DE CICC0: Continuous it is the weekly ping with the
2 criminal history check to just see whether or not any
3 charges or any other --
4
5 COMMISSIONER FITZGERALD: So how does that happen?
6
7 MS DE CICC0: Through our police service.
8
9 COMMISSIONER FITZGERALD: So you are connected into the
10 police - the Victoria Police --
11
12 MS DE CICC0: The Victoria Police does that, our police
13 information liaison office and they have an office and they
14 work collaboratively with us and with CrimTrac as our --
15
16 COMMISSIONER FITZGERALD: So do most jurisdictions have
17 that were it actually just comes up automatically?
18
19 MS MILLER: Yes, on a daily basis for Queensland.
20
21 COMMISSIONER FITZGERALD: Any jurisdiction doesn't have
22 that?
23
24 MR WATERFORD: South Australia and we can fix that too.
25
26 JUSTICE McCLELLAN: Is there a reason why you don't have
27 that in South Australia?
28
29 MR WATERFORD: Because we don't have a central screening
30 unit for the whole of the state it doesn't --
31
32 JUSTICE McCLELLAN: Right. So you put that in place and
33 you will have a capacity to get it?
34
35 MR WATERFORD: Yes. And the history in South Australia
36 was, when the legislation was first passed, it was passed
37 as an employer's responsibility to do things whereas
38 I suppose the schemes as they have developed across the
39 nation have really been it is a licensing of the
40 individual. So that, yes, it is historical.
41
42 JUSTICE McCLELLAN: Chris?
43
44 MR WATT: If there is ongoing assessments being checked
45 electronically, digitally and pinging and notifications
46 automatically happening and if there are requirements at
47 the jurisdictional level that any employment related

1 matters that have been investigated and undertaken and then
2 reported to the authority, then why on earth do we need
3 a two year or a three year renewal process of licence so to
4 speak other than, I come back to a comment I made earlier,
5 other than it being some sort of fundraising exercise
6 because you have actually got processes in place that are
7 automatically notifying in relation to these particular
8 people. Now, we would think that five years is more than
9 adequate if there is some mop-up process that needs to
10 happen administratively otherwise there are protocols and
11 automatic reporting things happening. So we would like to
12 be convinced that it needs to be anything shorter than five
13 years to start with.

14
15 JUSTICE McCLELLAN: Michelle, can you convince him?

16
17 MS MILLER: Well, only that 40 per cent in our research
18 there is a 40 per cent drop out rate of people that are not
19 renewing.

20
21 MR WATT: So how is that a problem?

22
23 MS MILLER: Well then you are monitoring those people
24 unnecessarily. Then you are having to - if there is
25 a change of criminal history, you are having to reassess
26 their eligibility whereas if they - and to a certain extent
27 you may well have to charge a higher fee so that you can
28 actually maintain your systems during that period of time.

29
30 JUSTICE McCLELLAN: I think what you are being told is
31 that because 40 per cent drop out the point at which they
32 cease to be a cost on the system is because they don't seek
33 a renewal; is that right?

34
35 MS MILLER: That is right.

36
37 JUSTICE McCLELLAN: That is what you are being told.

38
39 MR WATT: It seems --

40
41 JUSTICE McCLELLAN: Tasmania?

42
43 MR WEBSTER: I think there is also the factor that is,
44 Chris is coming at it from a teacher's point of view, who
45 aren't transient in their employment. Most of the sectors
46 have large turnovers, et cetera and if we are trying to
47 contact employers to alert them to a flag that has come up

1 an the criminal history and say we have suspended the card,
2 then trying to track who it is or advising and those sorts
3 of things is part of this renewal process as well. If it
4 is too long we are losing track of who we need to tell and
5 things like that. So there is the other elements other
6 than just the turnover and the cost of it.

7
8 JUSTICE McCLELLAN: Sandie?

9
10 MS VAN SEOLEN: I think the point that is missed is that
11 the pinging that occurs within jurisdictions is only
12 offences that occur within that jurisdiction. What we
13 don't get is that if somebody has a card that has gone to
14 the Northern Territory and commits an offence there and
15 comes back into Western Australia, we don't know. So the
16 risk we have had to balance is how many years do we need to
17 have before somebody is renewed.

18
19 The other factor is that even within Western Australia
20 where we have a link with our police information system,
21 there is some data which doesn't match. So if a person
22 doesn't have what is colloquially called the SID number,
23 because they don't have a local driving licence and they
24 are a clean skin, there are about 14 per cent of our card
25 holders that don't get pinged even locally. So we need to
26 make a decision about how many years we have. And there is
27 an issue of the time taken to do checks. We currently have
28 three years. The consideration now is going to five years
29 because assessment has been made that the time taken to
30 finalise the checks with people going through where the
31 churn every three years is actually increasing the length
32 of time that we have with our limited capacity to manage
33 the checks. So there is certainly consideration now of
34 going to five years, which we would much rather do that
35 with assurity of having updates nationally through
36 CrimTrac.

37
38 JUSTICE McCLELLAN: Martin, you wanted to say something?

39
40 MR THOMAS: Look I have heard a lot of talk today. The
41 bureaucracies have been talking, states are representing
42 their own jurisdictions and I acknowledge that and I have
43 learnt a lot I must say, but the practicalities are often
44 forgotten on how this is delivered and we really have a lot
45 of difficulty with the concept of renewal. We have already
46 been saying that there is a system out there that can
47 actually track and actually pings - it is not my phrase,

1 someone else has used that phrase. It just seems to me
2 that we should be spending a little bit more time talking
3 about how that system can be a little bit more
4 sophisticated so that when I apply for a card that card is
5 with me for as long as I want that card. This concept of
6 three, two, five year renewals is just bunkum. It puts
7 a lot of pressure on volunteers and I honestly think that
8 it is not being well thought out. It is a simple fix where
9 if we were a little bit more lateral I am sure there would
10 be a better solution for that. So we can't hold that. We
11 believe that that is just unacceptable and turns the
12 options --

13
14 JUSTICE McCLELLAN: So is your position that once you have
15 got your card the authorities should have whatever pings
16 are necessary in place and it is only in response to a ping
17 that you get reassessed; is that what it amounts to?

18
19 MR THOMAS: Absolutely or the fact that you are actually -
20 the process of actually updating the card could be a three
21 or five year period but it is not a reapplication, in other
22 words, just enter notification your card will be renewed,
23 do you have any problem with that. And, at that stage, you
24 can either opt in or opt out.

25
26 COMMISSIONER FITZGERALD: Doug Smith, just over morning
27 tea mentioned something that may pick up the issue about
28 interstate issues in relation to card holders, can you just
29 give a very brief comment on that?

30
31 MR SMITH: Yes Commissioner, there has been a fair bit of
32 discussion around the local continuous checking and one of
33 the issues that strikes me is that it is only conviction
34 based if we try to do it nationally anyway and not charges.
35 So your early warning system won't work properly. And the
36 other thing is that it requires a lot of data to be
37 provided as opposed to data to be consumed, if that makes
38 sense. So what we have done in one instance with respect
39 to aviation and maritime security cards is that we make the
40 fact of the card known to investigating police officers.
41 And then they make a determination on a policy setting
42 whether they transfer the information to the record owner,
43 if that makes sense?

44
45 COMMISSIONER FITZGERALD: So just explain how that would
46 work in practice. If somebody offends in Northern
47 Territory and they have got a card from Victoria?

1
2 MR SMITH: Okay. So if you try to collect all of the
3 charge data as opposed to the conviction data, you have got
4 a huge exercise that we currently don't do. So charges are
5 collected at a state and territory level. Convictions are
6 then shared nationally, so it is an information situation
7 that we have to live with at the moment, and despite what
8 Martin says, there would be a lot of time, a lot of money
9 to try and ameliorate that particular situation. So what
10 we did with the A6s and what I would propose a discussion
11 about here is that if you had a central record of the fact
12 of licence holding, which I think goes somewhat to Martin's
13 point, then when an investigating police officer for
14 whatever appropriate policy cause needs to share the fact
15 that he is charging someone with a particular offence would
16 then share that with the record owner and then it would be
17 the record owner's responsibility to make a determination
18 as to what should or should not occur with the fact of the
19 card.

20
21 COMMISSIONER FITZGERALD: So just taking that into
22 practice, the police officer picks up somebody in the
23 Northern Territory, checks your records or the police
24 records that he is a card holder in Victoria. The police
25 officer determines whether or not he will in fact advise
26 Victoria that one of their card holders has in fact been
27 charged with a particular range of offences; is that the
28 practical application?

29
30 MR SMITH: Yes, depending on your policy setting. And it
31 is a much simpler approach and technically a much easier
32 one to implement because the range of information that you
33 keep centrally is much more limited. And the other thing
34 that I think it goes somewhat to dealing with is the
35 multiple applicants in different jurisdictions. So if you
36 have got a person who holds a card in Queensland and then
37 they apply for a card in the Northern Territory, you would
38 have that single view of that fact. As to the amount of
39 data you would attach to that record, of course, there is
40 a debate to be had. But once you know that a person has
41 a card, whether it is a three, two, five year card or
42 whatever, the fact of the card is the issue I think that we
43 are talking about. So a person has a Working with Children
44 Card, in the ACT context that may be conditional on only
45 driving a bus not for other purposes. So then the police
46 officer sees that when they are investigating and charging
47 someone with a particular offence. They then make

1 a determination as to whether they should share the fact of
2 the charge in the Northern Territory with the ACT for
3 example. So if an ACT card holder is charged with a high
4 range drink driving offence in Queanbeyan and the ACT card
5 holder has that card holder for the purpose of driving
6 a school bus, I think that would be something that the ACT
7 issuing authority would like to know. And the way that it
8 will work with A6s and M6s in the - what they call the
9 suspension on charge measure for people who are charged
10 with serious criminal offences at airports and ports, so
11 the determination can be made by the secretary of the
12 Attorney-General's Department whether or not they should
13 continue in that particular employment.

14
15 UNIDENTIFIED SPEAKER: Can I just make one point, I think
16 if we were just having a national scheme about convictions
17 information then we would be having a different sort of
18 conversation then we are having at the moment. I think
19 Doug has just raised the extra complexities that come with
20 that could potentially be worked through about charges but
21 I think it is really important to emphasise that most of
22 the schemes still operate in a much more wholistic way than
23 that. They are relying on information that they have
24 access to make an informed decision. So the problem with
25 any pinging arrangements of course is that it will be
26 limited by whatever information is made available. And
27 that information could potentially trigger further
28 assessments. But I think the important point of
29 self-disclosure or people making proactive applications as
30 part of these systems is an important part of the scheme,
31 certainly in terms of people making an application, they
32 have to declare, they have to make a declaration, they have
33 to make an application and they have to provide all
34 relevant and necessary information. Whilst we would be
35 always conscious about the fact that some people will avoid
36 providing relevant information or not complete information,
37 it is an important part of that process as well. So
38 I think that we have got to get the right balance between
39 automated systems which provide decision-makers with the
40 right information. We have got to look at it wholistically
41 not just in relation to offences. But we have also got to
42 add in that element as well around the requirement on the
43 applicant to self-disclose and to voluntarily enter into
44 these schemes as well.

45
46 JUSTICE McCLELLAN: Doug, there is just a couple of
47 questions I have got on what you said. I am not sure that

1 it is an ideal system to have the police making the
2 decision as to what is put into the ping, no disrespect to
3 anyone who is with the police. But why, if that decision
4 can be made and instigates to a ping, why can't anything go
5 in and leave it then to the assessing body, having got the
6 ping, to decide what to do about it, why don't you do that?

7
8 MR SMITH: That would be perfectly doable. I was just
9 discussing this in the context of what is reasonably and
10 immediately feasible, Commissioner. So looking at
11 technology at solving your problems there is probably only
12 two things to consider from my perspective as the
13 information provider and that is complexity equals cost.
14 And the solution that I was just offering to you then sir
15 was one where I think there is a very simple and doable
16 thing that is reasonably quick to do that could ameliorate
17 some of the concerns that are being discussed around the
18 table. As to something that is fully automated, more
19 aspirational, more complex and more costly but definitely
20 doable.

21
22 JUSTICE McCLELLAN: And if you can do it, it should be
23 achieved, shouldn't it?

24
25 MR SMITH: It is just a question of cost, sir.

26
27 JUSTICE McCLELLAN: Yes.

28
29 MS QUONG: Commissioner if I may, from another policy
30 point of view, we asked the question before, just because
31 we can should we? And I think we need to ask that question
32 again. In the period of time it takes for a major offence,
33 a major sexual offence or a major assault for the charging
34 officer to put the person behind bars and/or to go to
35 court, the information will become available in the state
36 via the media and on Facebook and the newspaper and people
37 will be alerted. Schools have mandatory reporting, in fact
38 for most of the critical events that will cause us problems
39 there is some form of mandatory reporting. We also each
40 and every one of us have very good working relationships
41 with our police partners. And I know that for my state in
42 particular and other states I have heard that if there is
43 concern the police will actually ring the area and say,
44 "Look is this one of your's because we have got something
45 or can you tell me if this person has got a check", or use
46 the online system that we all now have available to check
47 if there is a card. This concept of having a national name

1 check, and that is really what it is, every day or every
2 week for everybody that holds a card, is bordering on big
3 brother. I am going to be right out there and say it. The
4 majority of pings, which is really just the name flag is up
5 because they have come up in somebody's police
6 jurisdiction, will relate to traffic offences and
7 non-violent offences that are not necessarily needing to be
8 reassessed and adds to the bureaucratic load by the
9 screening authority. In the Northern Territory, although
10 we say we renew two years, I have to say we are trying to
11 push it out further because bureaucratically it is
12 difficult and we would prefer it to be three years for five
13 for the same reasons that each person has spoken about.

14
15 If a person has been convicted of a major sexual
16 offence they will be in gaol within the five years
17 regardless of whether they have a Working with Children
18 Card, we hope. Or at least we will have known about them,
19 we hope. If they have just been convicted of smoking dope,
20 which eventually might lead to someone saying that is the
21 last time and that is evidence, you know, you have done
22 seven in a row and this is the eighth one that tips you
23 over the edge, you are now a risk, you weren't a risk
24 before, then surely it is okay to pick that up at three
25 years.

26
27 I guess there is that moderation in me. I am still
28 very concerned, even with my police hat on, that what we
29 are talking are national databases for all the people that
30 have Working with Children Cards, national databases for
31 everyone that ever gets picked up by a police officer,
32 extra onus on operational police officers to actually have
33 to look up whether or not little things have a condition
34 and whether or not that condition means they have to report
35 it to somebody else. In the Northern Territory we have
36 a vast number of people, we do daily apprehension checks
37 and conviction checks. Literally 10 per cent of the people
38 that are arrested every day in Darwin are Working with
39 Children Card holders now and that is because one in every
40 three adults has a Working with Children Card. Of that lot
41 we have known - there have only been two offences that have
42 been done interstate and both of them were traffic.

43
44 Now we see a significant number come through and it is
45 bureaucracy for the sake of saying we think you are safe.
46 Why isn't a standard three year check going to be enough as
47 long as we get alerted to the major offences that we can

1 actually ascertain, which may not necessarily mean setting
2 up big databases, but may be a significant or as simple as
3 communication between and agreement with the police
4 jurisdictions for when certain offences come up that they
5 notify screening authorities when charges have gone ahead
6 with a person as well as going on to the sexual offenders
7 register, as well as going to court, as well as going on to
8 the South Australian website and the Victorian website and
9 the WA website, that somebody picks up a telephone and
10 says, "By the way we don't know if this is one of your's
11 but here is the list of people we have concerns about".
12 That might be a cheaper and better option and one that is
13 almost immediately doable.

14
15 JUSTICE McCLELLAN: All right. It actually is lunchtime
16 or it was a while ago so we might break now and have some
17 lunch and can we come back at say 25 past or thereabouts.

18
19 **LUNCHEON ADJOURNMENT**

20
21 JUSTICE McCLELLAN: I was going to just return to the
22 pre-lunch discussion just for a moment. It was helpful
23 Doug to hear from you about CrimTrac and what could be
24 done. The question has been raised about whether or not it
25 is possible to retrieve information about an individual as
26 to their convictions from overseas. Now, I know this is an
27 issue possibly for the Catholic Church because of the
28 number of religious, probably more than priests, but maybe
29 both, coming in from overseas, and we heard from the
30 Christian Brothers in Perth just a few weeks ago about the
31 extent to which they are now training Christian Brothers
32 offshore. And there will be other organisations that are
33 drawing upon overseas trained people who may also have
34 worked overseas. Is there any effective way of capturing
35 overseas material?

36
37 MR SMITH: I think Commissioner the simple answer to that
38 is that there isn't. With the - I mean there is so many
39 countries, so many different systems and the lack of
40 systems with respect to information. In a number of
41 jurisdictions the prospective employee of course can get
42 ready access to their own history. So in the case of New
43 Zealand in a person was a prospective employee from New
44 Zealand they can go online to the Ministry of Justice in
45 New Zealand and get their own access. But from
46 a centralised point of view, almost impossible to try and
47 establish a --

1
2 JUSTICE McCLELLAN: So that would mean particular
3 employing bodies or potentially employing bodies could,
4 through the applicant, obtain access to that applicant's
5 overseas material in some jurisdictions?
6

7 MR SMITH: Yes, unfortunately the risk taker, the employer
8 in this particular instance, would be well advised to make
9 sure that you get self-disclosure of previous employment
10 overseas as the case may be and get their own records to
11 satisfy the employer. I mean it is almost impossible to
12 remove all risk just through the record keeping nationally
13 and internationally.
14

15 JUSTICE McCLELLAN: All right. Thank you for that. The
16 next thing we are programmed to turn to is the question of
17 who should be subject to a Working with Children Check. We
18 have covered this of course in part in various of the
19 discussions this morning but there is a number of perhaps
20 areas where we need to pin it down.
21

22 One question has to do with churches and Francis
23 Sullivan this will obviously affect the people that you are
24 representing. And there of course are levels there, there
25 is the minister, there is the religious person but there is
26 also in and around churches a variety of volunteer,
27 I suppose, arrangements. I mean the easiest one to think
28 of is the Sunday School Teacher, who I assume still exists,
29 and the youth group leaders and so on. What is the
30 church's position on who should have a check?
31

32 MR SULLIVAN: Our position is there should be no
33 exemptions from the Bishop down.
34

35 JUSTICE McCLELLAN: So the gardener in parish --
36

37 MR SULLIVAN: Yes.
38

39 JUSTICE McCLELLAN: He gets it too?
40

41 MR SULLIVAN: We are taking the view of it being a child
42 related environment really rather than work or role so
43 anybody involved in the outfit would need to be covered.
44

45 JUSTICE McCLELLAN: Right. Does anyone have a different
46 view as to that - no. Yes?
47

1 MR THOMAS: Martin Thomas from Scouts Australia. From
2 a Scouts perspective we are in a similar position to
3 Francis. We believe that everyone who interacts in our
4 program should hold a card, just as simple as that, no
5 exemptions.

6
7 JUSTICE McCLELLAN: Right. Well then we take that to
8 schools. I got the impression from the discussion this
9 morning that the cleaners in the schools should be checked;
10 is that right? The gardeners in the schools should be
11 checked?

12
13 MS THORPE: My name is Jane Thorpe and I work for the
14 Education Department in New South Wales. We believe people
15 that are on school grounds and having contact with students
16 should be checked. We talked a bit about maintenance
17 before, we certainly think that the general assistant who
18 is an employee who has the opportunity to mingle with kids
19 in an unsupervised way is to be checked. However, if it is
20 the air conditioning guy who turns up for half an hour, of
21 course, obviously he is not primarily in child related
22 employment and we need to have child safe arrangements
23 within the schools to make sure that person is
24 appropriately supervised, not checked.

25
26 JUSTICE McCLELLAN: And the school bus driver?

27
28 MS THORPE: We believe they are checked.

29
30 JUSTICE McCLELLAN: Right. And everyone agrees they
31 should be checked. Now, the parent who volunteers to help
32 at the school, and I suppose you can start at one level,
33 the person who manages the tuck shop, are they checked?
34 I think I am getting agreement around the table. And the
35 people who volunteer to help the person who manages the
36 tuck shop?

37
38 MS DE CICC0: What we are finding in Victoria is a bit as
39 Jane has just indicated, a lot of associations, schools
40 organisations are requiring the checks whether the contact
41 is incidental or otherwise, we don't refuse to process
42 those checks. We will process those and it gives all these
43 organisations a greater level of certainly or a sense of
44 risk mitigation as a consequence. So we don't oppose those
45 processing those.

46
47 JUSTICE McCLELLAN: So if they ask for it you will help

1 them?

2

3 MS DE CICC0: Yes.

4

5 JUSTICE McCLELLAN: And do people ask for it in relation
6 to volunteers in the tuck shop?

7

8 MS DE CICC0: Yes, we have found pretty much across the
9 board. If it actually involves an adult going into school
10 and if it can't be supervised regularly, but it very much
11 depends on the organisation's approach as well.

12

13 JUSTICE McCLELLAN: Right. And that extends of course to
14 the volunteer who helps children to read and those sorts of
15 issues?

16

17 UNIDENTIFIED SPEAKER: We apply a slightly different
18 process. If it is a volunteer who is supervised such as
19 mum who goes in to do reading recovery in the class, we
20 wouldn't require them to be checked, but certainly if they
21 have got unsupervised contact with students, we do.

22

23 JUSTICE McCLELLAN: We may tell the story of a hospital
24 which had children who were mostly cystic fibrosis children
25 terminally ill where volunteers were coming in to read to
26 the children with horrific outcomes. But it is one story
27 that we will probably tell publicly as part of a whole
28 process in relation to volunteers. But, yes, Western
29 Australia?

30

31 MS VAN SEOLEN: In Western Australia if you are
32 a volunteer you have to have a check in a school or in a
33 hospital if that is in connection with where children are
34 on wards. But if you are doing the activity that your own
35 child is involved with, no, you don't have a check, not
36 a Working with Children Check. If the school requires it
37 because they think that the level of contact requires
38 criminal record screening at all, there is another check
39 which is not about defining that as a work relationship and
40 we do reject people who apply for checks that are exempt
41 because in Western Australia if you are exempt it means you
42 are not in child related work. So we always direct those
43 people to where it is a more appropriate check. And we
44 provide community information about it to say no you are
45 not eligibility for a Working with Children Check but you
46 are eligible for this check, this is how you go about
47 getting it and these are the kind of child safe practices

1 that need to be in place.

2

3 JUSTICE McCLELLAN: If you are the producer of Channel X's
4 Young Talent Time, do you get a check? Yes, no, anyone who
5 doesn't require that to be checked? Everyone would.

6

7 MS VAN SEOLEN: If it is coaching but if it was - I would
8 have to think about what the person was doing.

9

10 JUSTICE McCLELLAN: They are the producer, they put it
11 together, they tell people where it stand and we are going
12 to do this in this sequence and so on.

13

14 MS VAN SEOLEN: If it is in connection with coaching and
15 teaching what is a children's activity and a skill --

16

17 JUSTICE McCLELLAN: Well it ends up as a television
18 program.

19

20 MS VAN SEOLEN: I would have to have a think about that
21 one, I am not sure.

22

23 JUSTICE McCLELLAN: Well I suppose you could take it to
24 stark terms, would you have required Ralph Harris to have
25 a Working with Children Check?

26

27 MS MILLER: It wouldn't fit under a category of employment
28 under our Act.

29

30 JUSTICE McCLELLAN: Why not? Working with children?

31

32 MS MILLER: It doesn't fit under one of the specified
33 environments.

34

35 COMMISSIONER FITZGERALD: It should have.

36

37 MS MILLER: Again, that is probably where parental
38 responsibility may be invoked as opposed to the government
39 taking responsibility for the screening of those
40 individuals.

41

42 JUSTICE McCLELLAN: But the parents won't see most of what
43 is going on at all. They won't be there even probably.
44 Well, that is interesting. I am amazed.

45

46 MS DE CICC0: I think the point was raised earlier by
47 I think it was Michelle that some of the jurisdictions do

1 have commercial occupational categories, we in Victoria
2 have talent and beauty competitions, gym and play
3 facilities, photography services entertainment and party
4 services, so within those broad categories I guess some of
5 that sort of activity would fit in.
6

7 JUSTICE McCLELLAN: We may look at the history of this in
8 television channels in Australia.
9

10 COMMISSIONER FITZGERALD: Sorry, can I just take that
11 point, just for way of discussion, just before lunch we
12 talked about a number of factors, Donna outlined a couple
13 of notions and I think even David from ACT may have about
14 trust in relationships. You have indicated for example
15 entertainment with children providing parties but they
16 actually only come once a year to a kids party. They don't
17 have any ongoing relationship with the children. So the
18 clown that comes in to run the party during the afternoon
19 do you require that person to have a children's check
20 because they work with children broadly as distinct from
21 working with children in which they have any capacity to
22 form a relationship?
23

24 MS DE CICC0: I guess within that broad category there
25 will be those that meet our definition of child related
26 work which is regular paid or unpaid regular contact with
27 children that may be unsupervised as well. So they would
28 fall within that sort of category, I guess.
29

30 COMMISSIONER FITZGERALD: Can I ask Francis a question but
31 it has just got to do with minters of religion - just
32 before we escape that. A couple of the submissions have
33 said that retired ministers of religion should not be
34 subject to a check. Is your view that the mere fact that
35 you become an ordained minister, be it a priest or in the
36 Anglican community or any other community, sufficient to
37 warrant the holding of a card forever or do you still look
38 at what they actually do? So what is the church's
39 position, is it simply the fact that you hold this
40 particular authority within the church, whatever that is
41 and that is the reason why they are caught?
42

43 MR SULLIVAN: Well, I don't know about the Anglicans but
44 certainly for the Catholics it don't matter whether you are
45 retired or not, you would still need to be current with
46 your card.
47

1 JUSTICE McCLELLAN: All right. Well they are the easy
2 ones. Now, let's go to the hard ones. Out-of-home-care,
3 primary providers, presumably checked as part of the
4 overall checking process. What about others in the
5 household?
6

7 MS CZECH: Simone Czech from Family and Community Services
8 in New South Wales. We check all authorised carers
9 including relative and kinship carers and also adult
10 household members. So the only exemption to an adult
11 household member is where, in the rare instances a birth
12 parent may be living in that placement, but that would be
13 extremely rare.
14

15 The other point to note is that every carer, whether
16 they are a carer through Family and Community Services or
17 one of our none-government organisation providers goes
18 through a carer assessment process that often can take
19 a number of months. It is against a standardised carer
20 assessment tool. And the Working with Children Check is
21 one part of that assessment. So a carer may in fact get
22 a clearance through the Working with Children Check but
23 still be deemed to be unsuitable as an authorised carer.
24

25 JUSTICE McCLELLAN: What is the position elsewhere?
26 Queensland?
27

28 MS MILLER: In Queensland we screen foster and kinship
29 carers and adult household members. The data indicates
30 that it is a high risk area. There is a greater proportion
31 or greater percentage of child protection applications that
32 return a history than other applicants. There is a high
33 proportion of negative notices that are issued to child
34 protection applicants and there are more household members
35 than carers that are issued with negative notices and
36 a significant number have had their blue cards cancelled or
37 suspended. 22.41 per cent of the cancellations and
38 suspensions relate to child related sexual offences so it
39 is a fairly high risk area.
40

41 JUSTICE McCLELLAN: So what happens if there is
42 a household in which there is a child and when the initial
43 assessment is done everyone in that household is okay but
44 in two years time and you have got a three year --
45

46 MS MILLER: That is right.
47

1 JUSTICE McCLELLAN: In two years time the household is
2 changed, different people are there, is that relevant or
3 picked up in any way at all?
4

5 MS CZECH: In New South Wales every carer is subject to
6 a 12-monthly annual review so you would expect any changes
7 in the household composition would be picked up. Not just
8 in the 12-monthly review but, as caseworkers in particular
9 are regularly visiting those families and there is in
10 effect an ongoing assessment of the family's circumstances,
11 but Louise you might like to comment from an NGO
12 perspective?
13

14 MS VOIGT: As an out-of-home-care agency we are required
15 to monitor foster care and kin care households. And during
16 that monitoring process one becomes aware that there is
17 a change in residence for example, a new de facto will move
18 in or something else occurs and either immediately we would
19 require a Working with Children Check as well as a full
20 assessment or if that occurred and the person was unwilling
21 to do so despite some difficulties, if in fact we felt that
22 this was a real problem for children, then we will move the
23 child. It has happened and it is a very sad thing to have
24 to happen.
25

26 JUSTICE McCLELLAN: What about Western Australia?
27

28 MS VAN SEOLEN: In Western Australia we check carers, we
29 check kinship carers and we check those household members
30 that actually do some activities or have any care
31 responsibilities for children under a Working with Children
32 Check. If there are other adult household members who are
33 there for periods of time or who are not having any care
34 responsibilities for the children then they are subject
35 under policy to National Criminal History Check but they
36 are not considered to be undertaking work because they are
37 not doing the care responsibilities. But, to be honest,
38 when you have got somebody living 24 hours - 24/7 in a
39 household it is by exception that those people would not
40 have a Working with Children Check. And it is a same when
41 you have family day care as well. There are certainly
42 situations where people might not be having any care
43 responsibilities or undertaking tasks with children.
44

45 JUSTICE McCLELLAN: And again if the household changes or
46 household members change what happens?
47

1 MS VAN SEOLEN: If the household changes, under the policy
2 of the Department For Child Protection and Family Support,
3 all household members have to have a National Criminal
4 History Check and a check of any departmental records. And
5 if they are undertaking care responsibilities for children
6 then they have to apply for a Working with Children Check.

7
8 And if we issue an adverse decision then it is
9 a really difficult situation because you have either got to
10 have the person themselves move or the child's placement
11 breaks up and that puts the department in a very difficult
12 situation where children have attachments with the primary
13 carers and they are quite often in a catch-22 situation
14 about what is actually in the best interests of children.

15
16 JUSTICE McCLELLAN: The Northern Territory perspective on
17 this?

18
19 MR TWYFORD: Yes, very similar. Working with Children
20 Clearance Checks for residential care, foster carers,
21 kinship carers, child protection history checks for kinship
22 carers and foster carers as well. It is a requirement of
23 the carer - primary carer to inform the department as soon
24 as a new adult member enters the household and all adult
25 members of the household are required to have a Working
26 with Children Clearance Check. I think one of the key
27 points of the Working with Children Clearance Check process
28 is that people simply don't apply if they believe they are
29 not going to pass. And we have issues identifying and
30 encouraging kinship carers to apply on that basis.

31
32 COMMISSIONER FITZGERALD: Sorry, what do you mean? Are
33 you saying that they have to apply or they may apply when
34 you mentioned kinship?

35
36 MR TWYFORD: When a child is in care and we would like to
37 identify potential kinship carers they are aware that they
38 need to pass the Working with Children Clearance process
39 and will simply refuse to be considered as a kinship carer.

40
41 COMMISSIONER FITZGERALD: Can I ask you a couple of
42 questions: when we talk about kinship care, are we talking
43 about only that which is organised through a service
44 provider or are we also talking about informal kinship
45 care? So when we are talking about kinship care there is
46 informal where the agencies have no involvement, there is
47 informal where the agency may facilitate the placement but

1 has no ongoing involvement and then there is formal kinship
2 care using my break down. There might be others Louise,
3 but that is it. Do you have a different rule in relation
4 to those three?

5
6 MR TWYFORD: We, as the Department of Children and
7 Families, will only sponsor formal kinship care, must be
8 registered and assessed and that is for all children under
9 a care and protection order.

10
11 COMMISSIONER FITZGERALD: So it doesn't pick up voluntary
12 kinship placements?

13
14 MR TWYFORD: Well there is no concept of voluntary kinship
15 placements in our jurisdiction. It is either a family
16 arranged placement outside of any care and protection order
17 that the state may seek or it is a formal placement.

18
19 COMMISSIONER FITZGERALD: And the second thing is how far
20 do you go in relation to the kinship families? Is it
21 exactly the same as foster care, that is anyone who is
22 permanently resident? In that out-of-home-care roundtable
23 that you were at and David was at there was some talk about
24 frequent visitors and that was discussed but no agreement
25 was reached, so does any jurisdiction pick up frequent
26 visitors in relation to kinship or foster care?

27
28 MR TWYFORD: Yes, we expect all adult members who reside
29 at the house to be assessed. That includes transient
30 visitors on a regular basis. That is a policy ruling.

31
32 JUSTICE McCLELLAN: Visitors who stay over or people who
33 come and go every day?

34
35 MR TWYFORD: They would have to be at some point
36 a resident of the household, which would involve an
37 overnight stay.

38
39 JUSTICE McCLELLAN: Right.

40
41 MR TWYFORD: But they would have to be assessed as
42 a kinship carer's or foster carer's conditions of approval
43 that they inform the department of any adult member who
44 resides in the house.

45
46 JUSTICE McCLELLAN: But if they reside, as many indigenous
47 people do for short periods of time but come back

1 frequently, that is almost impossible to police, is it?

2

3 MR TWYFORD: Yes.

4

5 JUSTICE McCLELLAN: And so is that requirement actually
6 practical?

7

8 MR TWYFORD: I think the converse presents just as many
9 challenges of not assessing people who you do know visit
10 and attend the house regularly. So it is a paradox. You
11 either check the adult members of the house or you don't
12 and our policy at the moment is to check all adult members
13 of the household who have access to a child in care.

14

15 COMMISSIONER FITZGERALD: But the condition being they
16 have to reside in the residence, so taking the judge's
17 comment, it is not in relation to occasional
18 non-residential visitors?

19

20 MR TWYFORD: If they are spending a night in that house
21 then they should be assessed. If it is a once-off,
22 obviously by the time assessment or a notification is made
23 an assessment can occur, if there is no information to
24 suggest that person will return to the household, then
25 there will be no assessment.

26

27 COMMISSIONER FITZGERALD: Some people in relation to
28 kinship care have indicated that uncles particularly should
29 be caught given the reasonably high number of times they
30 are mentioned, but they are not necessarily residential,
31 they just happen to be around. Has any jurisdiction gone
32 that far and is it desirable to go that far?

33

34 MR TWYFORD: An uncle what is not a resident, I would be
35 cautious that you are then heading towards licensing
36 parenthood rather than licensing working with children.

37

38 JUSTICE McCLELLAN: The answer is no; is that right?

39

40 MR TWYFORD: Not in the Northern Territory.

41

42 JUSTICE McCLELLAN: South Australia and Victoria?

43

44 MR WATERFORD: In terms of checking foster carers, kin
45 carers, very much the same situation as in other
46 jurisdictions, we do have a requirement that carers notify
47 us of any changes in residency in the household, obviously

1 checks, regular case management involvement with the house,
2 annual reviews, all of those sorts of things.

3
4 Where initial assessments are undertaken to
5 a reasonably high standard, and I need to be honest and say
6 we do not universally have high standards in place in terms
7 of those assessments, but where they are performed to the
8 standard that we would expect, the initial assessment of
9 the household would involve creating a genogram of the
10 family and looking at those uncles or near relatives or
11 significant people in the life of that family and having
12 a conversation about the history of those people. And very
13 often the sorts of matters that we would be concerned about
14 that would show up in a criminal history and background
15 screen are known about to some extent in the family. And
16 starting to identify with the family at that point who are
17 safe people and appropriate people to be engaging with the
18 children is a part of, if you like, best practice
19 assessment processes right there at the beginning. And
20 I think the more that we can focus on those sorts of
21 conversations, particularly with kinship care households,
22 the greater the, if you like, the circle of safety that we
23 create around those children.

24
25 COMMISSIONER FITZGERALD: But just to clarify that David,
26 we are talking about two things here. We are talking one,
27 assessing the family for the purposes of foster or kinship
28 care as distinct from a Working with Children Check. So if
29 we just break that down. Yes, it is appropriate that you
30 would look at the immediate and extended family in terms of
31 the assessment of that placement but you are not suggesting
32 that in working for children that you go further than the
33 immediate foster carer or kinship family; is that correct?

34
35 MR WATERFORD: I wouldn't be suggesting that, and I am not
36 sure about the legality of this, but it is fairly standard
37 process for all of the names of people who are identified
38 in that genogram to be subject in some instances without
39 their knowledge or consent to a check against the child
40 protection databases. And if we identified any matters of
41 concern we would probably investigate further.

42
43 JUSTICE McCLELLAN: Victoria - Marisa?

44
45 MS DE CICC0: We don't require in Victoria a Working with
46 Children Check for kinship care. They are assessed by our
47 Department of Human Services. Amongst other checks they

1 perform a full criminal history check prior to approval and
2 accreditation for the placement. They will also do other
3 adults that are in that household. The Working with
4 Children Check does apply however to workers or contractors
5 supervising children in residential out-of-home-care and
6 indeed out-of-home-care services is actually an
7 occupational field within our legislation. We also check
8 primary carer and other adults in a fostering relationship
9 as well.

10
11 COMMISSIONER FITZGERALD: So can I ask why you - and this
12 is just a question - why have you chosen to treat kinship
13 carers, and I presume we are talking about formal kinship
14 here distinct from formal foster carers, why have the
15 Victorians taken a different approach?
16

17 MS DE CICC0: Generally because kinship care arrangements
18 aren't subject to the same sort of planning, they are
19 generally shorter timeframes to actually arrange and they
20 are not amenable to the Working with Children Check. They
21 generally arise in the context of a family crisis,
22 et cetera, so it is the time issue broadly speaking for
23 that.
24

25 JUSTICE McCLELLAN: Natalie, do you have a contribution on
26 this topic?
27

28 MS LEWIS: Yes, when an assessment is being undertaken
29 about suitability of a potential kinship carer it is
30 a requirement that they identify all adults who will be
31 residing, either on a short term or a permanent basis
32 within the home, and that is with regard to Aboriginal and
33 Torres Strait Islander families, we do see those lists
34 become quite long of adults that will be frequenting or
35 that will be features in that home over the duration of the
36 placement. That in itself then triggers a requirement for
37 each of those people to be subject to a working with
38 children assessment and that is a significant impediment to
39 potential kinship carers progressing those applications and
40 actually becoming kinship carers. So I guess that applies
41 to formal kinship care.
42

43 Our organisation has a bit of a different - sees
44 fairly clear distinction between foster care and kinship
45 care, not suggesting that kinship carers should not be
46 subject to Working with Children Checks, but they time that
47 you have deemed a family member - an extended family member

1 suitable to take on responsibility for caring for that
2 child you also would then be assessing and assuming, by
3 approving that, that they have the ability to act
4 protectively for that child. And so I just feel that the
5 requirement to do a Working with Children Check for every
6 adult that will be a part of that family and interacting on
7 a regular basis is overly intrusive for Aboriginal and
8 Torres Strait Islander families.

9
10 COMMISSIONER FITZGERALD: So Natalie, just to be clear,
11 your organisation believes whom should be subject to
12 a Working with Children Check in a kinship arrangement?

13
14 MS LEWIS: The primary carer.

15
16 JUSTICE McCLELLAN: Louise do you have a --

17
18 MS VOIGT: Well, our experience is that increasingly
19 Aboriginal families know that they are going to be liable
20 to a Working with Children Check, it makes them less
21 comfortable about coming forward. We would be comfortable
22 with a situation that Natalie has just described. I mean,
23 there is an awful lot of people around the family and often
24 the person that is most seriously dangerous to the child is
25 in fact that actual parent or somebody who has already been
26 identified. And our work is often to see whether or not
27 the primary carer is able to manage that relationship.

28
29 COMMISSIONER FITZGERALD: So just taking from the
30 out-of-home-care roundtable, can I just be clear, there was
31 some suggestion that the standards applied in kinship
32 should be different to that which is applied elsewhere
33 because of the criminal records of many of the family
34 members. And there was no consensus around that, people
35 didn't necessarily think it should be less but some people
36 did profess that it should be different, that the standards
37 applied for checking should be or could be different in the
38 kinship arrangements. That didn't get universal agreement
39 obviously, but is there any particular view about that or
40 do you believe exactly the same should be applied for the
41 kinship?

42
43 MS LEWIS: I certainly would not be in agreement with
44 reducing the threshold of care extended to Aboriginal
45 children in that the offences that exclude somebody from
46 being able to work with children should absolutely apply.
47 The assessment in context, when we are talking about

1 a large accumulative criminal history with offences that
2 may be deemed to establish a pattern of behaviour,
3 absolutely need to be seen in the context of Aboriginal
4 people disproportionately coming to the attention of the
5 criminal justice system, larger number of offences and that
6 type of thing, so I think assessment in context is
7 absolutely important and I don't know that our system
8 necessarily facilitates that at the moment but I would not
9 agree to a reduction in terms of thresholds of those types
10 of exclusionary offences.

11
12 JUSTICE McCLELLAN: Does anyone want to comment then on
13 those comments?

14
15 MR WATERFORD: I think in terms of criminal history and
16 how we would treat those matters in assessing a kinship
17 carer and a foster carer, I think should be substantially
18 the same. I think the question of how we would treat
19 a pattern of offences that do not relate directly to
20 children we may treat differently in a kinship care context
21 than we would in a foster care context. I think that how
22 we manage kinship care placements in light of those sorts
23 of differences at that level of assessment I think is
24 vitally important and I think my observation would be that
25 the error that we have made in the past is it treat kinship
26 placements as foster placements and manage and support them
27 in the same way. And I think we would do better to
28 conceive them as almost long term family preservation type
29 arrangements. And the type of interventions and support
30 that we provide become very different. And therefore some
31 of the expectations that we have of the household overall
32 would be quite different.

33
34 I find it very hard to conceive a situation where we
35 would register as a foster carer someone who had had their
36 own children removed but I could very easily conceive of
37 how we would approve as a kinship carer someone who 10, 20,
38 30 years earlier had had children removed. Wouldn't say
39 that we would always do that, there is a whole lot of
40 contextual information that needs to be considered and what
41 sort of supports we could put in place. So I think it is
42 not so much at the level of how we treat criminal history
43 in terms of the registration of kinship carers as opposed
44 to foster carers, but all of that other information that we
45 very often take into account as part of a screening
46 process.
47

1 JUSTICE McCLELLAN: Dale, do you wanted to say something?

2

3 MR WEBSTER: Just going back to your question about the
4 uncle, in fact the Tasmanian legislation would capture the
5 uncle as a regular visitor even if he wasn't overnight
6 staying and it is because the out-of-home-care and kinship
7 being regulated activities, the time factor and our
8 legislation is seven days in a one year period, so if he
9 visited that regularly then he would get caught. So it is
10 there. But the other thing I would say that makes our's
11 slightly different is we would check everyone who is not
12 subject to an order who is 16 and above, not just adults.
13 So we lowered that threshold slightly.

14

15 JUSTICE McCLELLAN: Yes.

16

17 MS PHILLIPS: Anita Philips. Just in relation to kinship
18 care, I think you probably addressed this when you did
19 out-of-home-care, the statistics are quite definite that
20 the numbers of kinship carers are increasing and partly
21 that is because the numbers of foster carers are
22 decreasing. Sometimes for good reasons that they have
23 formed a very strong relationship with their foster
24 children and are no longer able to take foster children.
25 But, because of that, in several jurisdictions which I have
26 worked in, kinship placement is becoming the first response
27 of a lot of care and protection agencies. So the response
28 is, is there an aunt and uncle, a grandparent who can care
29 for the children. And so we have got to be just,
30 I believe, as rigorous in assessing the risks in kinship as
31 we are in foster care. And while I agree with some of the
32 things that David was saying, we may not be - once we know
33 the information we may still make some decisions about the
34 safety of the child in that environment, nonetheless,
35 I don't think that we can say that kinship placements are
36 significantly different. In the future they are probably
37 going to be the main placement for children in
38 out-of-home-care.

39

40 COMMISSIONER FITZGERALD: Taking David's point about the
41 assessment of the history, not only criminal but other,
42 would most jurisdictions take the approach that David has
43 applied, that is in DOCS in New South Wales or whenever you
44 would actually apply a slightly different lens to the
45 historical pattern of conduct in a kinship arrangement than
46 you would in a formal foster care arrangement; is that
47 a reasonable position that David has put?

1
2 MR TWYFORD: I will respond and say yes that that is
3 absolutely the case in the Northern Territory. One of the
4 key factors in that is the motivation, someone seeking to
5 care for a child that is unknown to them will apply to be
6 a foster carer and there the risk assessment is different
7 by the very virtue that they are presenting to us with the
8 motivation to care for an unknown child whereas in kinship
9 care we are actively seeking them out. And that by itself
10 changes the assessment process. It doesn't change the
11 standard that you require from someone providing daily care
12 and control to a child, but it does change the assessment
13 and how are approach it.
14

15 The other point I would make is we are missing part of
16 the conversation around the statistics of abuse and who is
17 perpetrating the abuse and whether they are Working With
18 Children Clearance Card holders - the question about Ralph
19 Harris was raised, hypothetically. You know, if we wanted
20 to go through, would a person with that set of facts have
21 passed without the past criminal conviction - potentially.
22 So I think in the foster care kinship care debate, but in
23 call Working with Children Clearance Check debates, the
24 measure of the system is probably the misbehaviour, that it
25 stops, and the misbehaviour that still occurs.
26

27 MS VAN SEOLEN: I think we need to separate out the
28 decision made from a Working with Children Check to that
29 for the assessment as to whether somebody is a suitable
30 kinship carer. The Working with Children Check is one part
31 and certainly within the Department For Child Protection in
32 Western Australia - and I think this is what we have been
33 talking about - something may has a Working with Children
34 Check but not be approved as a carer or kinship carer and
35 that is how it should be because they are able to take into
36 consideration a whole lot of wider factors. But there
37 shouldn't be - and I agree Natalie - there shouldn't be
38 different exclusionary criteria and ways that you assess
39 whether somebody passes a Working with Children Check.
40

41 The one thing I am a bit nervous about with the
42 conversation though is, having spent a fair bit of my time
43 working and running out-of-home-care services and having
44 a lot of contact with children who were in care, is we have
45 got to be really careful about trying to mitigate so much
46 of the risk that we create a false environment for
47 children. And there is nothing worse than being a child in

1 care where you feel every person you visit has got to have
2 a check, every person you visit has got to be known and
3 checked and assessed. And I think we are going too far if
4 we are saying that everybody who comes into the household
5 needs to have a check and everybody the child goes out to
6 visit or stays overnight with - you know, what sort of
7 false environment do we want to give to our children in
8 care and what are we saying to them about being able to
9 mitigate all the risk around them. That is where those
10 child safe practices need to come into place and we really
11 need to be sensible about that.

12
13 MS MILLER: The only thing I would like to add is that we
14 did an assessment of those child protection applications
15 for our own commission of enquiry to look at statistics and
16 the time of offending that was involved and the large
17 proportion of negative notices it is still below 100, 92
18 per cent of those related to offences of violence and
19 serious drug offending. Similarly when we issued
20 a negative notice to an adult member or - sorry, their blue
21 card was cancelled for suspended, about 70 per cent of
22 those offences related to violence and drug offending. So
23 there is still a large amount of serious offending and
24 behaviour that that cohort presents to the family
25 household. Those statistics are in a couple of papers that
26 are on our website that actually go a little bit further
27 with regard to analysis about child protection matters.

28
29 COMMISSIONER FITZGERALD: Does any jurisdiction actually
30 know how many people have offended that hold blue cards?
31 You have just raised the question, does any jurisdiction
32 actually know that question; how many people with blue
33 cards have actually offended in terms of sexual offences?
34 Do we keep those records anywhere?

35
36 JUSTICE McCLELLAN: Looks like we don't.

37
38 COMMISSIONER FITZGERALD: We don't. The second thing is
39 that the research seems to show that in contemporary times
40 most of the abuse in foster care is by older siblings and
41 so the question has arisen whether or not you need to do
42 anything more about older siblings or, as Sandie has
43 indicated, that is a risk but any further intervention is
44 going too far.

45
46 MS VOIGT: Decent assessment at the time of placement
47 takes care of that because taking fairly complex children

1 as we do, we do come across this issue, and we will on
2 occasion then make the decision to place separately because
3 of the risk the older child - not always the older child,
4 but one of the children in the family pose to others. But
5 this is a matter of proper risk assessment. This is not
6 a Working with Children Check matter. And I concur with
7 everybody else's statement, Working With Children is
8 a minuscule part.

9
10 You asked also whether or not we know how many have
11 offended, we certainly in New South Wales should know how
12 many allegations have been received in relation to children
13 who's carers have a Working with Children Check.

14
15 JUSTICE McCLELLAN: Do we?

16
17 MS BOLAND: I mean there is an enormous amount of
18 statistical information we could get but it is not readily
19 at hand at this point in time. So yes, we could analysed
20 database, we could analyse the database, we have - we are
21 currently looking at the continuous check and seeing what
22 is happening there. I just wanted to, if I could, just
23 follow up with a comment about we often hear from people
24 that a Working with Children Check everybody is seen to be
25 best practice. And I think from our perspective we would
26 see it as part of a practice, not best practice, and the
27 concerns that we have really are in relation to what else
28 sits around the Working with Children Check because some of
29 the behaviours we are seeing is that there is too strong
30 a reliance on the Working with Children Check without the
31 kinds of things we have in New South Wales about assessing
32 carers for example, that has probably got to be one of the
33 better practices about Child Safe but it is of concern that
34 we are hearing that a lot from people that this is what
35 they are doing and it is the only thing they appear to be
36 doing.

37
38 MS CZECH: Simone from New South Wales again. I just
39 wanted to add, it alludes to a point Kerryn made earlier
40 that we have had a new Working with Children scheme in
41 New South Wales for the last 12 months or so and Family and
42 Community Services have put every existing authorised carer
43 through the new Working with Children Check or carers have
44 applied for it. And that is in total over 14,000 new
45 Working with Children Check. And of those 14,000 only -
46 well it is less than 40 that came back with a bar. And of
47 that number all but 2 were kinship relative placements.

1 But relatively small numbers from 14,000, which I think
2 tells us something about the rigor of the assessment and
3 support through case management of those particular
4 placements.

5
6 JUSTICE McCLELLAN: Yes, Victoria?

7
8 MS DE CICC0: I was just going to say I do have some stats
9 with me in terms of how many card holders since inception
10 and by year if you needed them, but it is a very small
11 number. I mean, it is about 35 in our most serious
12 offending that has arisen as a consequence of ongoing
13 monitoring and that is in the most serious category. And
14 on new applications it is something like 261 have been
15 barred for those sorts of - so it is not a significant
16 number. There is many more in the others but we would be
17 happy to provide if you needed to review.

18
19 JUSTICE McCLELLAN: Are there any other category of person
20 who is a problem that we need to talk about in the context
21 of best practice?

22
23 MR WEBSTER: It has been mentioned, I think it might have
24 been Northern Territory, but family day care. We apply the
25 same standard there was with out-of-home-care. So all the
26 adults in the household need to be checked on those sorts
27 of things so we apply that same standard.

28
29 JUSTICE McCLELLAN: You mean a child who goes to another
30 household for day care?

31
32 MR WEBSTER: That is right. So there is a network of
33 family day care at someone's home usually set up by local
34 government so they are included and we include the adults
35 or, in our case, those above 16 in that household.

36
37 JUSTICE McCLELLAN: I don't think anyone would say
38 otherwise, would they, to that? No, it is obviously a risk
39 situation.

40
41 I have received no written questions, which I assume
42 means the audience is entirely happy with the questions
43 that are being asked, but if you do have a question, we are
44 about to come to our last major topic of the day, so if you
45 get it in now, we don't have the Q and A capacity for
46 Twitter and so on.

1 The last topic that we wanted to concentrate on was
2 how is information shared. And we have had a fairly good
3 go at this on the way through today as well. And we had
4 some questions there about the continuity of information
5 from CrimTrac. We have talked about that, thank you, Doug.
6 And, I suppose, there is one issue that we could usefully
7 I think discuss; if someone applies for a check in Victoria
8 say and is knocked back and then the same person applies in
9 WA or another state, I assume at the moment there would be
10 no way of that failure being known to the other states; is
11 that right?

12
13 UNIDENTIFIED SPEAKERS: That is right.

14
15 JUSTICE McCLELLAN: Should that be known to the other
16 states?

17
18 UNIDENTIFIED SPEAKERS: Yes, it should.

19
20 JUSTICE McCLELLAN: And how would you do it, just as part
21 of an exchange of information on a national basis?

22
23 MS VAN SEOLEN: In Western Australia we have provision in
24 our legislation to share information in the public interest
25 with a corresponding authority. I guess the question is if
26 you don't know that the person has resided in another
27 jurisdiction how would you know to actually ask? Because
28 we certainly have released information to other
29 jurisdictions about our assessments and about the fact that
30 somebody has a negative notice.

31
32 And similarly there are other national kinds of
33 situations, for example, under the Education and Care Act
34 where somebody is prohibited from family day care that you
35 wouldn't know nationally had been prohibited on a national
36 basis, you would only know that locally. So I think there
37 is certainly an issue around how information about various
38 kinds of prohibitions gets appropriately shared.

39
40 JUSTICE McCLELLAN: So does this mean that, I am not
41 saying tomorrow, but the information sharing arrangements
42 between the states should allow for one jurisdiction to, as
43 it were, issue a general request to all of the others, "Do
44 you know about X?" Is that what we should work towards?

45
46 MR THOMAS: Martin Thomas, Scouts Australia. This might
47 be of some help, Scouts Australia are through its states,

1 which is a federated model has agreed to information share
2 on non-suitable applicants. Now, I appreciate this is
3 a little bit different, but it does actually go to show
4 that we will actually have a national registry where
5 a person's name is flagged and then each state can actually
6 go and look at that list. There is no details but the
7 requirement of that is state then to contact the state
8 where the person has come from so that they can check the
9 name. So it is a name registry not dissimilar to the
10 CrimTrac option actually, much more simple, but we believe
11 it is absolutely critical that there is information shared
12 and that the states, in our case, buy-in to the system. In
13 other words, it is part of their membership process to
14 check that the name of the applicant is not on our national
15 registry.

16
17 MS MILLER: Sorry, it is a complex issue because I suppose
18 it depends on the validity of that negative notice too and
19 whether the fact that person has got a right to come back
20 and reassess and have that decision --

21
22 JUSTICE McCLELLAN: It may just be they were triggered to
23 say make more enquiries?

24
25 MS MILLER: Make more enquiries.

26
27 COMMISSIONER FITZGERALD: So that begs the question, what
28 is the exchange of criminal history information for people
29 Working with Children, COAG, what is the objective of that?
30 Have you actually set a national objective? Is there
31 a goal in relation to this area? I mean I find it
32 surprising that you have got a COAG information exchange
33 but none of you with any enthusiasm are actually telling us
34 what it is going to achieve. So what is the goal?

35
36 MS BENNETT: Prior to handing over to Doug who can
37 actually talk about the agreements, I would also like to
38 tame the distinction of there's criminal checks and that
39 isn't the only aspect of what goes into the Working with
40 Children Check.

41
42 COMMISSIONER FITZGERALD: Sure.

43
44 MS BENNETT: I think the point that I was trying to make
45 in my opening is that I think that if it was potentially
46 possible that each of the states was able to share - I mean
47 they have - when you do an assessment, most of you, accept

1 for South Australia who don't have a centralised unit for
2 doing this, you have one point where that information is
3 gathered where someone registers, they then get a card or
4 they don't get a card. In some other areas where the
5 commonwealth either internally or with other agencies
6 shares data, we authorise an officer to have access. It is
7 almost like giving someone an extension password to
8 a portal and maybe that might be, rather than reengineering
9 quite complicated databases there might be ways in which
10 authorised officers in other jurisdictions could share an
11 assessment that was made by a state. But I think the point
12 is being made is that for example you might not get
13 a Working with Children to be a day care person but you
14 might be perfectly suitable to work in the canteen or the
15 garden. But I think the point that you are making is that
16 a rejection by one jurisdiction should raise some questions
17 and warrant further picking up the phone and ringing and
18 saying what was that about. The issue that Doug can talk
19 about --

20
21 JUSTICE McCLELLAN: That is something to think about --

22
23 MS BENNETT: Yes. Think about it. What Doug handed out
24 was explaining, if you look some jurisdictions have
25 different arrangements about sharing information. You
26 might want to explore with Doug why it is some have
27 different arrangements. But I do think that it is
28 important to emphasise that it is only one component.

29
30 In the commonwealth where we do have public servants
31 that work with children my colleagues in immigration, my
32 colleagues in the Department of Human Services, we as an
33 employer, we comply with the state jurisdictions. So if
34 you are working in Queensland on indigenous student issues,
35 you meet the requirements of Queensland. Or if you are
36 doing something in the ACT, you meet those requirements.
37 I suppose as a user of the system in that sense people
38 understand it is different, that sometimes some of our
39 staff have had to have multiple checks but they
40 fundamentally do feel that the core information that is
41 provided is very similar.

42
43 I think the question being asked is if someone is
44 rejected in one state, how would that add to the knowledge
45 of another state making an assessment. But, as I said,
46 they are for different roles and it depends on the
47 classification or the nature of the card using that

1 language that is given and what would the value of that
2 information, and it probably would then just trigger
3 a further exploration. And I go back to the point I am not
4 certain that everybody putting into something and then
5 sharing it around is any more - is more costly but could
6 that be achieved through authorised officers in certain
7 jurisdictions having access to each other's information for
8 a particular purpose.

9
10 JUSTICE McCLELLAN: I am not sure what you meant then,
11 what is the distinction?

12
13 MS BENNETT: The database, the accuracy of the database,
14 the up-to-dateness of the information collected remains
15 within the state. It is the arrangements they make with
16 their colleagues in other jurisdictions to share it like
17 your organisations, so the central vetting unit in
18 Queensland can share with the central vetting unit in WA or
19 Victoria and that certain individuals in the organisation
20 are able to access it as if almost they worked in that
21 office. So as they are doing one in WA, they can see that
22 in New South Wales someone was rejected. And then they can
23 explore that further rather than putting a whole lot of
24 data into something centrally that everybody else then
25 shares. It is a more direct, relevant, in time --

26
27 JUSTICE McCLELLAN: But if you can - as I understand what
28 you are suggesting, is that the individual state can access
29 information in relation to that person in any of the
30 states?

31
32 MS BENNETT: If they enter into that arrangement.

33
34 JUSTICE McCLELLAN: Yes.

35
36 MS BENNETT: It accommodates the fact that --

37
38 JUSTICE McCLELLAN: But that just means that you are
39 storing the data in each state but it is effectively
40 a national system?

41
42 MS BENNETT: It is a national access.

43
44 JUSTICE McCLELLAN: Well it is a national system because
45 you have got data stored --

46
47 MS BENNETT: Well, with due respect, I would have

1 a slightly different view. A national system is actually
2 about if it was one place that it was stored it means that
3 different platforms and designs and new computer systems
4 get created and someone has to --

5
6 JUSTICE McCLELLAN: I understand what you are saying, but
7 in real terms --

8
9 MS BENNETT: It would feel like --

10
11 JUSTICE McCLELLAN: Well, in real terms, it has no
12 difference. It is like having seven libraries and anyone
13 can access --

14
15 MS BENNETT: The Library of Congress model where you can
16 access something but without each state having to change
17 and make massive investments or a single entity carrying
18 the investment costs of having to design what is new and
19 then it being implemented everywhere else.

20
21 JUSTICE McCLELLAN: Well my next question and I don't know
22 whether you know the answer is: if you did that, in other
23 words you had each jurisdiction having its own library but
24 access to each of the states in relation to individual
25 people, is a very expensive to provide that capacity in the
26 data capacities we presently have in the different
27 jurisdictions?

28
29 MS BENNETT: You would have to ask - the depends how the
30 technology has develops and whether it is a sort of portal
31 where someone could have a password. I also emphasise the
32 authorised officer, each jurisdiction would have had its
33 own arrangements and vetting processes for the people that
34 even make the assessments and so they would want some
35 assurity of things like privacy and protection of
36 information to be shared.

37
38 JUSTICE McCLELLAN: Well you would have to have all that
39 in place, but is anyone going to tell me that it would be
40 very expensive to provide that additional step on top of
41 what is currently available?

42
43 MS VAN SEOLEN: Just thinking, having been part of just
44 having to put in place a new information system, as much as
45 possible it would need to you automated, we would need to
46 go into some specifications and really think across the
47 jurisdictions because you couldn't, if you were getting

1 100,000, 200,000, 300,000 applications a year have an
2 individual officer typing everybody's name to see if there
3 something in each of the jurisdictions.
4
5 JUSTICE McCLELLAN: No, it would have to be automated.
6
7 MS VAN SEOLEN: It would have to be. You would have to
8 have a way of a name being checked against --
9
10 JUSTICE McCLELLAN: Yes.
11
12 MS VAN SEOLEN: So there would need to be an investment in
13 information systems and it would just be about this is
14 a trigger to ask the question about what information do you
15 have.
16
17 JUSTICE McCLELLAN: Are we talking about a lot of money?
18
19 MS VAN SEOLEN: Whenever we get asked for how much IT is
20 going to cost you always seem to have to add a couple of
21 noughts. So what I think is reasonable and what actually
22 works out in the end - and I am sure everybody has that same
23 experience, it is --
24
25 UNIDENTIFIED SPEAKER: But you could start as a first
26 option --
27
28 MS VAN SEOLEN: But it is not --
29
30 UNIDENTIFIED SPEAKER: I am sorry, I didn't mean to
31 interrupt - of those that were denied. So a staged - so
32 a denial was given and that might trigger a further
33 conversation and contact.
34
35 JUSTICE McCLELLAN: Doug, you might know more about money
36 and electronics than any of us. You know what we are now
37 talking about?
38
39 MR SMITH: Commissioner, if I could take you to diagram
40 that was circulated earlier.
41
42 JUSTICE McCLELLAN: Sure.
43
44 MR SMITH: And perhaps explain the way that the current
45 system works. And so when the background check is
46 instituted, it doesn't matter whether it is for Working
47 with Children or the employment related checks. So the

1 process is that the accredited agency, the approved
2 accessor of the data who has got permission to access the
3 name matching element of CrimTrac accesses that particular
4 element within the CrimTrac database. Now, the than only
5 information that they are being given access to at this
6 point is factual records given to police usually by courts
7 and then provisioned to the CrimTrac database. So it is
8 a pretty limited range of information compared to the
9 broader information that is often being discussed here
10 today.

11
12 When the name matching software determines that there
13 is no match, that is given back to the accredited agency
14 and that basically ends that particular matter. Where
15 there is a match, CrimTrac makes no decision. What happens
16 is that the software says you have asked for any record on
17 Douglas Alan Smith, you have got a positive hit. And if
18 the record is owned by Queensland, for instance, the
19 referral is then made to Queensland. They will make the
20 decision as to whether or not, according to the rules that
21 are outlined in the agreement, they will then provide that
22 to the accredited agency that is making the application.

23
24 JUSTICE McCLELLAN: The referral to Queensland is that
25 done automatically by the system?

26
27 MR SMITH: It is done automatically.

28
29 JUSTICE McCLELLAN: Right. And then some individual has
30 to make a decision in Queensland?

31
32 MR SMITH: That is right. So they will have a look at the
33 two pieces of information basically. There is the
34 application and then there is the contact if you like
35 within the system. And then they will look at those two
36 pieces of information and then they will refer on to the
37 applying agency the information that they believe can be
38 shared.

39
40 JUSTICE McCLELLAN: And how many applications a year are
41 being referred on for decision at the other jurisdictions,
42 roughly?

43
44 MR SMITH: Oh, look, I would hate to do this and - I would
45 have to take the factual detail on notice but it is in the
46 single percentages.

1 UNIDENTIFIED SPEAKER: What does that mean?

2

3 JUSTICE McCLELLAN: You mean 10,000, 100,000?

4

5 MR SMITH: I am trying to do the numbers in my head.
6 Look, I would have to go and have a look at the numbers,
7 Commissioner.

8

9 JUSTICE McCLELLAN: Any idea at all?

10

11 MR SMITH: The total number will be in the tens of
12 thousands out of the hundreds of thousands that we do each
13 year, but I would have to defer to someone else for the
14 factual information.

15

16 JUSTICE McCLELLAN: All right. That just gives us some
17 feel.

18

19 MR SMITH: Yes.

20

21 JUSTICE McCLELLAN: And, in terms of the money to
22 provide - and it would be an add-on if you like to existing
23 data systems, I know you are not about to give me an
24 accurate quote, but again, what sort of ballpark are we
25 talking about?

26

27 MR SMITH: I am unclear as to what the additional
28 information requirement would be?

29

30 JUSTICE McCLELLAN: It would be a capacity for a state to
31 trigger a name into another state's system and if it is
32 a negative, well that is the end of that. But if it is
33 a positive, then I guess if you followed that model that
34 would require a decision to be made by that state as to
35 what to release back. But just to set up systems that have
36 capacity to access and trip a name positive or negative is
37 that a lot of money?

38

39 MR SMITH: I think largely when it comes to criminal
40 history records we already provide that capability.

41

42 JUSTICE McCLELLAN: Yes, but beyond that, so take the
43 illustration of someone who seeks a Working with Children
44 Check in Queensland and New South Wales has rejected that
45 person, so there would be a record in New South Wales that
46 they have been rejected, if you put a name into a national
47 system that ends up hitting New South Wales you get back

1 from New South Wales a negative, are we talking a lot of
2 money for the states' systems to be modified to accommodate
3 to sort of request?
4

5 MR SMITH: Yes, there is two ways to do it and both of
6 which are invariably expensive. One is to provision the
7 data to the central database. That doesn't exist, it would
8 have to be created, as would your provisioning and
9 consumption application.
10

11 The other way to do it is through a federated search
12 system through a central search tool, you know, that is
13 your federated library model that you were just discussing.
14 And again, it depends on a couple of elements but, yes,
15 they are always expensive and it depends on the degree of
16 sophistication and capability of local systems.
17

18 JUSTICE McCLELLAN: Is a federated model cheaper than
19 a central database, it feels like it?
20

21 MR SMITH: Oh, unless you do a details assessment that is
22 a big ask, I really wouldn't be comfortable in giving an
23 answer to that.
24

25 JUSTICE McCLELLAN: Okay.
26

27 MR SMITH: Because it does depend on the degree of
28 capability. But you are dealing with information systems
29 that are at different stages of capability and, in some
30 cases, as I said earlier today, you know, you have got
31 paper based record and things like that. It would be
32 a wild guess I would think.
33

34 JUSTICE McCLELLAN: David, we are going to get you
35 centralised now, where do we go from there?
36

37 MR WATERFORD: In addition to the, if you like, building
38 the search capacity, one of the issues is the rejection
39 decision recorded in a single cell now and has it always
40 been so, because if it is not, we are actually trawling
41 through the matching of a name in vast amounts of free
42 text. And that will determine how easily this can be done.
43 From some work that we have done recently in creating some
44 search capacity for similar purposes, we found that, except
45 for the last 12 months, all of our data was not in a
46 searchable form and we have had to go back and recreate
47 those data fields. So it can be an incredibly expensive

1 process.

2

3 COMMISSIONER FITZGERALD: But can I - I want to clarify,
4 let's assume for a moment Working with Children Checks are
5 going to be around for a few decades, is there a view that
6 into the future we should be able to identify by name
7 whether or not a person has in fact been rejected or
8 accepted for a blue card, is that Australia's objective?
9 Butting aside the money, given that this is not a short
10 term policy, this is a long term policy, nobody can imagine
11 any government getting rid of Working with Children Checks
12 into the foreseeable future, so is it the common objective
13 to have a system where a state, on behalf of the
14 institutions, can do what we have been talking about? Is
15 that a realistic objective for the long term? Because it
16 seems to me inescapable that if things were about well it
17 mightn't be round in two years or three years or five years
18 but there is nothing that is indicated in the submissions
19 that we have received that anybody believes that Working
20 with Children Checks should be eliminated in total. There
21 are some questions about how effective it is, but that is
22 a totally different issue. So is that the common objective
23 of the jurisdictions - it seems to be the common objective
24 of the institutions, but is it?

25

26 MS BENNETT: I can only speak on behalf of the
27 commonwealth but we have in several forums thought that
28 there would be great value in mutual recognition of checks.
29 I mean perhaps ideally, but this goes back to a whole lot
30 of issue of definition and purpose, that if they could be
31 shared and used, it would actually reduce workloads and
32 redoing. But the minimum that we think would be valuable
33 for all jurisdictions so that they had better information
34 was at least some alert system that someone failed in one
35 jurisdiction, and if they moved somewhere else, that at
36 least assisted in sharing that information and raising the
37 red flag that there might be a problem. And I do recognise
38 the point that is also going around is who is the exposed
39 party if there is an appeal so that if, for example, if
40 there is a rejection in New South Wales and that forms the
41 basis of a decision in South Australia, someone might say
42 in appealing that or seeking a question where does the
43 liability sit in that rejection.

44

45 JUSTICE McCLELLAN: I don't think actually that is too
46 hard, the liability rests with the actual decision-marker.

47

1 MS BENNETT: At the point in time would be our view, too.
2
3 JUSTICE McCLELLAN: Oh yes, there is no question about
4 that. So that means that there is a common acceptance that
5 whatever the timeframe the states should move to a process
6 which allows one to find out about rejections by another;
7 is that right?
8
9 MS MILLER: It really depends upon that threshold question
10 if you are barring on the same information across the board
11 because a bar in Queensland on investigative information
12 may not necessarily be recognised in another state and
13 can't take that into account.
14
15 JUSTICE McCLELLAN: Yes, but all it is is a red flag just
16 saying check.
17
18 MS MILLER: Right, okay.
19
20 JUSTICE McCLELLAN: It doesn't carry with it an automatic
21 decision by the person presently having to make the
22 decision.
23
24 MS MILLER: So you still would then invoke your own
25 assessment process?
26
27 JUSTICE McCLELLAN: Yes.
28
29 MS BOLAND: Sorry, I was just going to say it is just a -
30 it becomes another trigger about information exchange. In
31 New South Wales we have just gone through a process of
32 establishing a carers registerer which does precisely that.
33 I doesn't hold information, it holds a series of checks
34 and a series of flags and what it encourages is for people
35 to talk to each other and exchange information at an
36 appropriate level. So it is a high level system, checks
37 names and then you go to the agencies to talk about various
38 information exchange and what kinds of information you need
39 to exchange. And that informs your assessment.
40
41 MS MILLER: We have a similar process where we recognise
42 where further screening is required by particular people
43 and so that is the trigger for us.
44
45 JUSTICE McCLELLAN: Well the complement of that then is if
46 you can do that, you could set up a system which enables
47 you to find out whether someone else had given the person

1 a clearance, couldn't you? That is the obviously
2 complement. Now, you would say to me well in some
3 jurisdictions that would mean not as much as it might mean
4 in mine because the threshold is lower, but in some it
5 would be higher. And again, it would be a step along the
6 way, wouldn't it, to having a very useful national system,
7 wouldn't it?

8
9 UNIDENTIFIED SPEAKERS: Yes.

10
11 JUSTICE McCLELLAN: Now, the third step along that journey
12 is then for everyone to sit down, over time, we won't do it
13 today, and agree what the criteria should actually be;
14 correct? And if you finally can't agree on all of the
15 criteria, and there may be different state issues that
16 drive, for example, the Northern Territory position,
17 I don't know, at the very least you will all know that, if
18 it has been approved elsewhere, then they have carried out
19 a check to the level that you have considered to be
20 appropriate. Of course, subject to the need for the
21 periodical review; correct?

22
23 Now, the fourth step is the periodical review. I know
24 there has been some discussion about whether you need it,
25 but if the decision is made that you do need it, it
26 wouldn't be too hard, would it, to agree on the appropriate
27 interval, would it? Anyone going to say that you can't
28 agree on an appropriate interval?

29
30 MS DE CICC0: There will be some challenges to some
31 jurisdictions. In our's for example we don't charge
32 volunteers for their Working with Children Check and
33 haven't done since inception of the Working with Children
34 Check. If we move from a five to say a three year scheme
35 then that will entail even additional costs that we are
36 cross-subsidising for all of our volunteers and there are
37 a significant number and proportion of our Working with
38 Children Check cards are held by volunteers. So whilst
39 I don't dispute the fact that it could be achieved,
40 I suppose I am just flagging that going below five does
41 impose even further burdens in the context of
42 administrative costs for managing these schemes.

43
44 JUSTICE McCLELLAN: Well can I test that now, given the
45 experience of those who have it at less than five, would it
46 be the view that we could all look again at whether or not
47 five is the appropriate rather than three for two period

1 for review?

2

3 MS VAN SEOLEN: I think we could, but I would still like
4 to hear what we could do as far as CrimTrac providing
5 updates of records that are necessary.

6

7 JUSTICE McCLELLAN: Well he can ping I think pretty
8 easily.

9

10 MS VAN SEOLEN: Well hopefully if he can that would be
11 great.

12

13 JUSTICE McCLELLAN: Well is that an issue, if you can ping
14 whenever would that mean that you could tolerate a five
15 year rather than a shorter period, would that be a general
16 view?

17

18 MR MATTHEWS: Again, from the ACT's point of view, I think
19 that is right. There is a direct relationship between the
20 length of period and what real time information can be
21 captured. I think they are linked issues.

22

23 JUSTICE McCLELLAN: And Doug, just to go back over it
24 again, is it difficult to give us an instant ping system?

25

26 MR SMITH: Yes. The problems with real time data access
27 and real time matching of continuously catching records, it
28 is quite an expensive one. I will just reiterate, if you
29 put enough money into anything in technology you can fix
30 the problem. But the more that you want real time
31 continuous matching of records in seven or eight
32 jurisdictions it does add to the cost and the complexity.

33

34 JUSTICE McCLELLAN: Right.

35

36 MS VAN SEOLEN: May I ask a question Doug, if we agreed on
37 not real time but saying - I mean, I am just sucking it out
38 of my thumb - we wanted on a monthly basis or on
39 a bi-monthly basis that everybody that held a card had
40 their history changed since that card was issued and since
41 the last criminal record check was done, if it was specific
42 time spans, would that be cheaper?

43

44 MR SMITH: Probably not. If we assume, for example, that
45 about 35 per cent of the population has got a card, we are
46 dealing with millions of records. What you would have to
47 do - whatever your time sequence was, you would have to

1 match those millions of records with the existing criminal
2 records and find variations. So let's say, for example,
3 there has been 10,000 new convictions added in the last
4 five days, what you are asking us to do is to match
5 millions of records against those new records to see if
6 there is any change of circumstance. So it is a very
7 complicated information question that you ask and it is
8 aggravated by the fact that our systems are name based and
9 so the slightest error in transcription of the name, you
10 are going to get an error in the matching. And again,
11 I have got to reiterate that we are only dealing with
12 criminal records, which is only one element of the
13 background checking. So whilst it is an achievable thing
14 of course, it is a very complicated thing and the one
15 simple rule, like I always articulate with information
16 technology, is that the more complex it is, the more costly
17 it is.

18
19 JUSTICE McCLELLAN: There would of course be a saving to
20 jurisdictions if the interval was increased?

21
22 UNIDENTIFIED SPEAKER: So they could contribute to the
23 building of the commonwealth system.

24
25 JUSTICE McCLELLAN: Well that sounds like the commonwealth
26 talking, is it? Yes, that would be fun, wouldn't it. Well
27 that defines the parameters of the day's discussion,
28 doesn't it? Well, is there more to be said on this topic
29 today? South Australia?

30
31 MR WATERFORD: I suppose one last thing, which comes back
32 to probably some comments right at the beginning of the
33 day, it is the sort of iterative development that you
34 outlined Commissioner is achievable at a cost. And the
35 question that we need to turn our minds to is the benefit
36 that comes from that investment. And criminal history
37 screening and child protection checks are an integral part
38 of creating an environment that is safe for children but
39 there are multiple other aspects that that, which I would
40 suggest, we probably invest less in than we invest in the
41 criminal screening environment. And I think we do need to
42 think about the cost benefit of those different investment
43 opportunities.

44
45 COMMISSIONER FITZGERALD: Can I just make a couple of
46 comments. Firstly, today's conversation takes place within
47 a much broader context and some of you would be aware of

1 that because you have responded to issues papers. And so
2 the ultimate aim is that there will be very substantial
3 consideration given to creating discussions and forums and
4 roundtables in relation to what we have called Child Safe
5 Organisations. So we are conscious that today's
6 conversation has been about a very narrow but important
7 element. But the broader conversation will take place in
8 relation to Child Safe Organisations and that will happen
9 later. And some of you have already put in issues -
10 responded to issues papers around that. We will be looking
11 at that not only in terms of the general but also specific
12 areas so we are looking at whether or not we will have
13 roundtables in relation to particular types of institutions
14 under the broad concept of child safe arrangements. So
15 that is the first thing.

16
17 The second thing is underpinning this is also a series
18 of research, we have commissioned a huge amount of
19 research, as the judge indicated at the beginning, some of
20 which is directly relating to Working with Children Checks.
21 And you have contributed to that in different ways and it
22 is possible that we will publish those research papers at
23 an appropriate time. So there is not just this work but
24 there is also a body of work which is drawn data
25 information across the jurisdictions and that will also be
26 quite helpful.

27
28 The third one I just mention is that the
29 out-of-home-care one in particular will be subject to
30 further public hearings as well as potentially some
31 additional roundtables. So whilst we have covered a little
32 bit of the out-of-home-care stuff today there will be
33 a great deal more attention paid to that over time. So
34 I just want to reassure everybody that we understand the
35 Working with Children Check is just but one small but
36 significant part of creating a child safe environment and
37 the fact that we haven't talked about all those other
38 elements, including a broader pre-employment screening
39 process or assessment process, doesn't mean that we are
40 elevating Working with Children Checks to a level that it
41 shouldn't have. So that is just a bit of background to it.

42
43 JUSTICE McCLELLAN: Is there anything more to say? Well,
44 I guess how many years ago was it that various Police
45 Commissioners thought there should be a CrimTrac record and
46 finally it came to pass.

1 UNIDENTIFIED SPEAKER: Many decades.

2

3 JUSTICE McCLELLAN: Many decades, was it? The was
4 probably too expensive and too difficult to do at the time,
5 was it?

6

7 UNIDENTIFIED SPEAKER: Agreement (indistinct).

8

9 JUSTICE McCLELLAN: That is right, that is right. Anyway,
10 that is just by way of illustrating that none of these
11 issues are ever simple an they are never revolved overnight
12 and they do cost money. But what I hope, and the other
13 Commissioners hope, is that the work that we do as the
14 Royal Commission will enable us all to spend a little time
15 focusing an a variety of issues, which, by reason of the
16 fact that they come forward in a report that we produce
17 after this level of consultation, will cause governments to
18 recognise that there is a need for response in particular
19 areas.

20

21 It is important to remind all of our people from time
22 to time to remember that the various aspects of the work of
23 the Commission, which I referred to earlier in the day,
24 together with the issue that has been raised otherwise by
25 the press, means that we are now in a unique period in the
26 history of the community's response to the sexual abuse of
27 children within institutions.

28

29 I addressed a conference in Queensland last week and
30 an America psychologist spoke and he made exactly the same
31 point and that is that in the history of this issue in
32 America, now is a critical time, there has never been
33 a time when the community and government has been more
34 prepared to listen to difficulties in this area than now.
35 And, as a consequence, you have to consider what we
36 ultimately recommend will be recommended in the context of
37 after research, hearing from people and consultation
38 processes, we believe that at the very least these steps
39 should be taken if you are going to act to properly protect
40 the community's children. And it may be that we have
41 reached a critical point where, although you might think
42 today that some of the recommendations that we might come
43 up with might be bold, when you put it into the context of
44 governments having to deal with what is now being revealed
45 through our work and elsewhere in relation to what has
46 happened to children in the past, you have a context which
47 is quite different to I think any other time in our

1 history. We are conscious of that and I am sure all of you
2 are conscious too. And what I want to do is to firstly
3 thank you for joining with us today to contribute to this
4 discussion but please don't assume it is the last time we
5 will call upon your good officers because it will be an
6 ongoing dialogue and, as Robert said, there are many other
7 issues that we have to consider and many of you will, of
8 course, play a part in the consideration of those issues.
9 But thank you for coming today and thank you for your
10 contribution and we look forward to both talking to you and
11 your written contribution as we go about our work into the
12 future, however long our future might be. Thank you.

13
14 **ROUNDTABLE DISCUSSION ADJOURNED ACCORDINGLY**
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