

Theme 4: Criminal justice and the protection of children

This theme at a glance

The Royal Commission's Working with Children's Checks (WWCC) and *Criminal Justice Reports* made recommendations to better protect children from child sexual abuse. The recommendations covered:

- strengthening protections under state and territory WWCC
- reforming criminal justice systems in Australia.

In Volume 7 of the *Final Report*, the Royal Commission also recommended a number of changes to strengthen laws around:

- mandatory reporting
- reportable conduct schemes.

The Australian Government has worked on implementing recommendations from the reports that apply to the Australian Government both as a government and as an institution.

Key national achievements

- **February 2017:** The Australian Government established a working group. It is made up of state and territory representatives and is designed to consider the recommendations of the WWCC Report.
- **September 2017:** The Australian Government introduced a Bill into Parliament, the Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection) Bill 2017.
- **December 2017:** The Commonwealth agreed to the establishment of a national database for WWCC decisions within the Australian Criminal Intelligence Commission and sought the support of the states and territories.
- **Early 2018:** The Council of Attorneys-General (CAG) established a working group to develop reforms to evidence law. This group works across the states and territories. The working group has developed several reform options to allow courts to consider the past behaviour of a person who has been accused of a crime.
- **June 2018:** The CAG agreed to continue to work on privileges for religious confessions.
- **November to December 2018:** Relevant ministers consider whether to endorse the National Standards for WWCCs.

Australian Government progress

Working with Children Checks

There are 36 recommendations in the Royal Commission's WWCC Report. They are mostly directed at state and territory governments. To make sure there is greater national consistency of WWCC schemes and that the schemes provide appropriate protection for children, the Australian Government is working with states and territories on the recommendations in the WWCC Report.

Relevant recommendations:

From the *Working with Children Checks Report*: 1, 5 to 29, 32 and 33

In 2016, the Australian Government established and chaired the WWCC Working Group. The Working Group is made up of state and territory representatives responsible for the operation and policy for WWCCs and has met on many occasions to consider the recommendations of the WWCC Report.

National Standards for WWCCs

The WWCC Working Group developed the National Standards for WWCCs so that there could be a consistent minimum standard around the country. The National Standards are consistent with the recommendations in the WWCC Report. The Council of Attorneys-General (CAG) have considered the National Standards for WWCCs and have provided endorsement. Community services ministers are currently considering endorsement of the National Standards for WWCCs.

Once all relevant ministers have endorsed the National Standards for WWCCs, states and territories will need to change their laws to make sure that the National Standards for WWCCs have force. When the National Standards for WWCCs are implemented, there will be:

- higher and more consistent standards for WWCCs across Australia
- greater protections for children.

WWCC database

The Australian Government is also developing a database within the Australian Criminal Intelligence Commission which will be called the WWCC National Reference System. This will allow all agencies who issue WWCCs to be aware of whether an applicant has previously been refused a check in another jurisdiction.

Relevant recommendations:

From the *Working with Children Checks Report*: 3

The Australian Government has been working with the states and territories through a series of workshops to develop the WWCC National Reference System. Between August 2017 and October 2018, the workshops have been helping the Australian Criminal Intelligence Commission to understand the business needs of each agency.

The development and implementation of a WWCC National Reference System is expected to deliver the database by 30 June 2019 and on-boarding of screening agencies to occur thereafter. This is however dependent on legislative change.

Criminal Justice Report

Developing reforms to evidence law

In December 2017, CAG agreed to look at the way evidence is considered by courts under the Uniform Evidence Law. A Working Group is looking at options, and developing a proposal, to improve the test for admissibility of tendency and coincidence evidence. If these reforms were put into practice, this would mean that courts could consider a person's previous conduct to decide whether someone is more likely to have committed a crime because of the way they have behaved in the past.

Relevant recommendations:

From the *Criminal Justice Report*: 44 to 51

The Working Group was established in early 2018. It includes representatives from all states and territories, with New South Wales chairing and providing secretariat support. The Working Group has developed several options to allow greater admissibility of certain types of evidence in criminal proceedings. They will report to the CAG on the options at its first meeting in 2019.

Registered intermediary schemes

The Royal Commission recommended that state and territory governments introduce intermediary schemes. These would use a person, called an intermediary, to help vulnerable witnesses with communication difficulties when they have to give evidence in child sexual abuse prosecution cases.

Relevant recommendations:

From the *Criminal Justice Report*: 59 to 60

The Australian Government in its response indicated that these two recommendations would be for further consideration. Since the response, the Australian Government has been carefully monitoring registered intermediary schemes in Australia and overseas. This work included monitoring a New South Wales Child Sexual Offence Evidence Pilot, which the New South Wales Government recently made permanent. The Final Outcome Evaluation Report of the Pilot found that the Pilot:

- received very strong support from participants
- reduced stress for children
- resulted in a better quality of evidence from child witnesses.

The Australian Government will continue to monitor this program.

As a number of other states and territories are also thinking about introducing registered intermediary schemes, the Australian Government is continuing to look at how an Australian Government scheme could best support or work alongside other schemes. It is important that schemes like this support victims without complicating processes or overloading courts.

Consideration of data developments

The Australian Government has set up the Steering Committee for the Review of Government Service Provision (the Steering Committee). It is made up of representatives of the Australian Government and all state and territory governments. The Steering Committee prepares the Report on Government Services. They do this work every year on behalf of the Council of Australian Governments.

Relevant recommendations:

From the *Final Report*: 12.3

In its *Criminal Justice Report*, the Royal Commission recommended that the Steering Committee:

- review the reporting framework for police services
- look at whether the data could include reporting on child sexual abuse offences
- understand the measures police could use to investigate child sexual abuse offences.

The Steering Committee has agreed to start this work through the Productivity Commission. The Productivity Commission will also consult with the Police and Emergency Management Working Group. This group includes people from the state and territory police departments. It is well-placed to advise the Productivity Commission and the Steering Committee on data in this area.

Strengthening child abuse reporting laws

The Royal Commission recommended a number of changes to strengthen laws in the following areas:

- mandatory reporting
- reportable conduct schemes
- failing to report offences.

Relevant recommendations:

From the *Final Report*: 7.3, 7.4, 7.10 and 7.12

From the *Criminal Justice Report*: 33 and 35

These laws mean that people must report child sexual abuse to child protection authorities or the police. Child abuse reporting laws are mostly the responsibility of the states and territories. Some states and territories have already introduced changes to the law to put the Royal Commission's recommendations into practice. This includes extending these laws to cover religious ministers and requiring them to report information disclosed in religious confession.

The CAG has also discussed the privilege around religious confessions in relation to the Royal Commission's recommendations. They have agreed that further work needs to be done in this area.

Information sharing regimes – family violence

The Australian Law Reform Commission and the New South Wales Law Reform Commission wrote a report. It's called *Family Violence: A National Legal Response* (ALRC 114).

Relevant recommendations:

From the *Criminal Justice Report*: 8

Recommendation 8 of the *Criminal Justice Report* asks state and territory governments to put the recommendations of the *Family Violence* report into practice, in particular its recommendations about disclosing the identity of a mandatory reporter to law enforcement.

Related to this issue, the CAG Family Violence Working Group of justice officials is working to develop an information sharing framework. This framework will improve the sharing of information between the family law, family violence and child protection systems. The framework being developed will consider how best to share court orders, judgments, transcripts and other documents between the family law, family violence and child protection systems. The Family Violence Working Group are also looking at technological solutions to help this work well. They will continue their work on this topic and will report back to the CAG in 2019.