



31 May 2010

Secretariat
Review of the Commission for Children and Young People Act
Communities NSW
GPO Box 7060
Sydney NSW 2001

Re: The statutory review of the Commission for Children and Young People Act 1998

Dear Mr Evers

Carers NSW welcomes the opportunity to provide this submission to the statutory review of the *Commission for Children and Young People Act 1998*. As one of the non-government organisations in NSW working with vulnerable children and young people, Carers NSW has a particular interest in any legislation that affects their wellbeing. It is gratifying to see that the NSW Government is committed to reviewing the legislation in order to better reflect the need for increased protection of children and young people from potential abuse perpetrators.

1. About Carers NSW

Carers NSW is the peak organisation for carers in NSW. It is a member of the national Network of Carers Associations and has an exclusive focus on supporting and advocating for all carers in the state.

Carers NSW's vision is that caring is accepted as a shared community responsibility and that all carers in NSW are recognised, valued and supported by their communities and by governments. The goal of all the work undertaken by Carers NSW is to help carers in NSW to have improved opportunities and access to services that meet their needs regardless of their age, gender, circumstances, location or cultural and linguistic backgrounds.

While Carers NSW delivers key elements of the Young Carers Program in New South Wales other service providers, such as the Commonwealth Respite and Carelink Centres, provide respite and camps.

2. Who Carers NSW represents

Carers NSW defines a carer as any individual who provides unpaid care and support to a family member or friend who has a disability, mental illness, drug and alcohol dependency, chronic condition, terminal illness or who is frail.

Carers come from all walks of life, cultural backgrounds and age groups. For many caring is a 24-hour job that is often emotionally, physically and financially stressful.

Across NSW, there is estimated to be approximately 750,000 carers, comprising individuals as young as 8 years of age through to the very elderly.

3. Key statistics about caring in NSW

According to statistics on carers from the Australian Bureau of Statistics in 2003 Survey of Disability, Ageing and Carers (SDAC):

- Approximately one-third of all carers in Australia live in NSW
- 40 per cent of primary¹ carers cared for a partner, 29 per cent for a child, 32 per cent for other (eg sibling, parent)
- Women aged 45-54 years were the largest single group of carers
- 45 per cent of primary carers provided 40 hours or more care per week on average
- 78 per cent of primary carers lived with the person they supported
- 75 per cent of carers were of workforce age although 45 per cent were not in the workforce
- 55 per cent of primary carers relied on a government allowance or pension as their principal source of income (ABS, 2004)

4. Young carers in NSW

A young carer is a child or young person 25 years or under who provides support for a family member who has a long-term disability, mental illness, chronic illness, or drug or alcohol problem. Young carers usually have more responsibilities than other young people their age. The person they care for may be a parent, sibling, their own child, other relative or friend.

In NSW it is estimated there are currently 90,200 young carers (ABS, 2004). There is currently no available data of age breakdown of young carers in the 9-14 year age bracket.

Young carers may undertake tasks ranging from cooking, cleaning, being responsible for finances, minding siblings and supporting the person with an illness or disability. Supporting the individual may involve personal care such as showering, emotional support, or medical support such as administering medication.

The Young Carer Program at Carers NSW, funded by Ageing, Disability and Home Care Department of Human Services NSW and the Australian Government Department of Families, Housing, Community Services and Indigenous Affairs, was created to make a positive impact on the wellbeing of young carers and to provide support for them to complete secondary education.

The Program undertakes the following activities to achieve its objectives: state-wide camps, quarterly newsletter, telephone group counselling, face-to-face counselling, telephone support/information/referrals, interactive young carer website, and development of regional networks, community awareness and education. Young carers also have the opportunity to participate in Carers NSW Carer Representation Program.

5. Submission format

This submission addresses the aspects of the review in regard to the Working with Children Check and provides an overview of issues for Carers NSW to conduct necessary checks on all people involved with children, including unpaid volunteers.

¹ A primary carer is someone who takes on the main caring responsibilities of a care recipient. Australian Bureau of Statistics defines a primary carer as a person who provides the most informal assistance on an ongoing basis, to another person who is restricted by one or more core activities in the areas of communication, mobility and self care. A secondary carer provides informal care in a supporting role where either another family member or formal services provide the majority of care.

It is not the intention of Carers NSW to respond to all of the questions posed in the Review.

6. The need for statutory change

Carers NSW strongly believes that the process applicable to paid employees should equally apply to volunteers and self-employed people. Carers NSW feels very strongly that the arrangements currently in place do not offer sufficient protection to children from predators, particularly given that it is far easier to seek contact with children through a voluntary capacity than to apply for and be offered a job in child-related employment.

Comprehensive background checks must be completed on any person who is a foster carer, religious leader or engaged in any form of paid employment which will bring them into contact with children. Conducting a Working with Children Check will uncover any relevant criminal record (including all child-related offences); relevant apprehended violence orders; any child protection prohibition orders; or any relevant employment proceedings.

However, there is no requirement to carry out the Working with Children Check for anyone having contact with children in a volunteer capacity. Instead, volunteers are only required to complete and sign a Prohibited Employment Declaration which relies on their willingness to truthfully disclose if they have any criminal convictions for a serious sex offence or child-related violence. Whilst the declaration can be used for conviction if breached, in most cases it is not checked against any police records. The findings of the Auditor General's report into the effectiveness of the Working with Children Check confirm these observations. The audit conducted in 2009 found that the Commission for Children and Young People rarely conducts checks of these declarations (NSW Auditor's General Report, 2010). This serious situation needs to be urgently rectified.

Carers NSW welcomed the inclusion of additional employment categories to the Prohibited Employment list, as recommended in the last Legislative Review of the Act completed in 2004. The review specifically highlighted the need for the inclusion of additional employment categories to the Prohibited Employment list, most notably employment involving provision of personal care to children.

In addition, the Review made specific recommendations for increased scope of background checks outside the course of paid employment, for volunteers and self-employed people seeking contact with children. The Review specifically recommended mandatory background checks for volunteers in high risk categories, such as voluntary support at overnight camps for children and employment involving provision of personal care for children.

Carers NSW has a particular interest in the implementation of these recommendations as this would eliminate our exposure to risks and ensure streamlined compliance with the requirements of the *Commission for Children and Young People Act 1998*. Each year Carers NSW runs two camps for children and young people aged between 8 and 18 years. Due to limited funding and the high demand for participation in the camps by young carers, we rely on at least forty volunteers each year to assist in running the camps.

In the absence of the Working with Children Check requirement for volunteers, Carers NSW undertakes a National Criminal Record Check for each volunteer through NSW Police. However, the usefulness of this measure to uncover potential child-abusers is limited since spent convictions do not appear on a National Criminal Record Check. While we appreciate that convictions for sexual offences can never become spent, certainly convictions for other serious crimes can, such as assault, violence, and any other conviction which resulted in a prison sentence of less than six months.

This is of particular concern to Carers NSW because the children we work with are generally vulnerable as they are often primary or secondary carers to parents, siblings or other family members with chronic illness, mental illness, disability or drug/alcohol problems and therefore sometimes living within dysfunctional family units. Many young carers also live in single parent (mother) families.

Carers NSW believes that the *Commission for Children and Young People Act 1998* needs to recognise that involvement of volunteers and self-employed people could carry the same risks for children as with paid employees, especially in situations where unsupervised proximity to children is possible.

Recommendation 1

Carers NSW recommends that the *Commission for Children and Young People Act 1998* be amended to ensure that the rigorous background check of all those undertaking paid work with children, is likewise applied to those in a volunteer capacity. This is especially important for engagement of volunteers in high risk categories, such as fostering, mentoring, provision of personal care to children, including respite care and overnight camps for children.

7. Models in other jurisdictions

Queensland uses its Blue Card system for regulating child-related employment. Importantly, this applies equally to paid workers and volunteers. Only people who have successfully undergone a Working with Children Check can hold a Blue Card and only those in possession of a Blue Card can work with children – even in a voluntary capacity. Anyone with a sex or child-related offence is disqualified from ever holding a Blue Card.

In Victoria, the Department of Justice undertakes a National Criminal Record Check on all volunteers or paid workers in contact with children. Applicants who pass are given an Assessment Notice and Working With Children Check Card that lasts for five years. Any organisation wishing to employ someone in a paid or voluntary capacity has up-to-date online or telephone access to a person's Working With Children Check status at all times. Importantly, this check is updated on an ongoing basis for the five years that the person concerned is in possession of a Working with Children Check Card, ensuring that any future convictions are not overlooked. The Card can be suspended at any time in the event of a relevant conviction.

Western Australia follows the same system as Victoria, with the exception of issuing Working with Children Check Cards for a maximum of three years.

Carers NSW believes that there are merits in considering adopting an accreditation model similar to that in place such as Queensland and Victoria. NSW is the only state where the onus for a rigorous background check is on an employer, not an employee (Audit Office NSW, 2010). Amending the legislation to request that future employees be certified before seeking child related employment may reduce the administrative burden on employers and facilitate better compliance.

Recommendation 2

Carers NSW recommends that the NSW Government explore the feasibility of adopting the models from other jurisdictions in order to streamline the background checking process and reduce the administrative burden currently placed on the employer.

8. Conclusion

Carers NSW thanks the NSW Government for the opportunity to make a submission to the *Commission for Children and Young People Act 1998*. If you require any further information please contact Maja Frölich, Carers NSW on 02 9280 4744 or email majaf@carersnsw.asn.au.

Yours sincerely



Elena Katrakis

CEO

Carers NSW

8. References:

Australian Bureau of Statistics (2004) Survey of Disability, Ageing and Carers (SDAC) Summary of Findings, Australian Bureau of Statistics, Canberra

L'Orange H AM (2004) Review of the Commission for Children and Young People Act 1998 and the Child Protection (Prohibited Employment) Act 1998, Report to the Hon Carmel Tebutt MLC Minister for Youth, NSW Government, Sydney

NSW Auditor General's Report (2010) Working with Children check: NSW Commission for Children and Young People, Series Performance Audit, NSW Audit Office