



Ms Corri McKenzie
Deputy Secretary, Police, Fines and Crime Prevention
Department of Justice and Community Safety
121 Exhibition Street
MELBOURNE VIC 3001

Dear Ms McKenzie

REGULATORY IMPACT STATEMENT FOR THE PROPOSED WORKER SCREENING REGULATIONS 2020

I would like to thank your staff at the Department of Justice and Community Safety (the Department) for working with the team at Better Regulation Victoria on the preparation of the Regulatory Impact Statement (RIS) for the proposed Worker Screening Regulations 2020 (the Regulations).

The regulations are proposed to be made following the passage of the Worker Screening Bill 2020 (the Bill), which will require volunteers and employees intending to work with children or who provide services under the National Disability Insurance Scheme (NDIS) to undergo a national criminal history check and screening process in order to obtain a Working with Children Check (WWC check) or NDIS check.

As you know, under section 10 of the *Subordinate Legislation Act 1994* (the SLA), the Commissioner for Better Regulation is required to provide independent advice on the adequacy of the analysis provided in all RISs in Victoria. A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about any assumptions made, and is proportionate to the proposal's expected effects. The RIS also needs to be clearly written so that it can be a suitable basis for public consultation.

I am pleased to advise that the final version of the RIS received by us on 19 October 2020 meets the adequacy requirements of the SLA.

Background

The purpose of the Working With Children (WWC) check scheme is to screen the criminal history information of people who work, or intend to work, with children and to prevent those people who are assessed as posing a risk to the safety of children from working with them (such as serious sexual, violent or drug offences, and offences that pose unjustifiable risk to the safety of children).

The WWC check commenced in April 2006, and through its administration of the *Working with Children Act 2005* (the WWC Act), Working with Children Check Victoria (WWCCV) within the department conducts checks, gives WWC check cards to successful applicants, and prevents many people who pose a risk to the safety and wellbeing of children from working with, or caring for them.

In December 2016, the Council of Australian Governments (COAG) endorsed the National Disability Insurance Scheme (NDIS) Quality and Safeguarding Framework (the Framework), setting out a new nationally consistent approach to regulation under the NDIS. An Intergovernmental Agreement was subsequently signed by Victoria in July 2018 confirming a nationally consistent approach to worker

screening that minimises the risk of harm to people with disability from the people who work closely with them.

The legislative framework that underpins the WWC check and the NDIS check is the Worker Screening Bill 2020, which was passed by the Legislative Assembly on 15 October 2020. If passed by the Legislative Council without amendment the Bill will:

- establish a new process to screen applicants who seek to work for a registered NDIS provider (to be known as an NDIS check); and
- maintain the existing process for screening applicants who seek to work with children (to be known as the WWC check).

The Government's objectives in making these proposed Regulations are to:

- fully fund the WWC check and NDIS check schemes through cost recovery where possible;
- encourage volunteer WWC check applicants; and
- have parity between WWC check fees and NDIS check fees.

Analysis

The Department explains how its WWC and NDIS checks are processed and, that based on projected numbers of new and renewed applications, they cost around \$23 million per year.

The RIS analyses four options in setting the proposed fees:

- Option 1: Subsidise volunteer WWC check applications and renewals through the fees charged for employee WWC check and NDIS check applications, which are set at the same level. This would also impose slightly reduced fees from current employee WWC check fee levels;
- Option 2: Retain current fee levels for the WWC check, and align NDIS check fees with this amount;
- Option 3: Charge volunteer WWC check applicants a small fee for applications, renewals and card replacements. This would reduce initial employee WWC check fees and renewals fees but not align them with NDIS check fees; and
- Option 4: Fully subsidise the volunteer WWC checks through employee WWC check fees, charging NDIS fees according to actual transaction costs, but not aligning them with WWC check fees.

The RIS then uses a Multi Criteria Analysis (MCA) to assess the degree to which these options are:

- efficient;
- equitable; and
- effective.

All criteria are given equal weighting.

The Department argues that the fees to be recovered under the preferred option are the lowest possible without discouraging volunteer effort and the participation of low income earners. It notes that significant work has been undertaken to streamline processes and reduce costs, and that WWCCV has moved to a highly automated online system which has significantly reduced its operating costs since 2014.

Proposal

Based on the analysis above, the Department identifies Option One as the preferred option. The RIS explains that this option best addresses the Government's objectives while minimising the fee levels as much as possible.

The proposed fee structure is:

Fee Type	Fee Units	2020/21 dollar amount
New applications (employee WWC check)	8.06	\$119.40
Renewal (employee WWC check only)	6.1	\$90.40
Card replacements (employee WWC check only)	0.5	\$7.40
WWC card application, renewals, card replacement (volunteers)	0	\$0.00
New application (NDIS check)	8.06	\$119.40

As the fees are expressed as fee units, they will be automatically indexed each year in line with the Treasurer's annual rate.

The remaining provisions of the proposed Regulations are not deemed to have a material impact or burden and their impacts have therefore not been analysed in detail. These include:

- creation of offences for failing to notify a change in personal particulars (regulation 12);
- prescribing corresponding NDIS worker screening laws (regulation 10);
- prescribing certain entities and findings to enable information to be provided about an applicant for a screening check, or the holder of a clearance (regulations 8 and 9); and
- prescribing persons to whom the Secretary may delegate powers (regulation 11).

Implementation and Evaluation

The proposed Regulations are intended to commence alongside the Bill on 1 February 2021. The RIS notes that as the proposed fee changes are minor, there are no specific implementation issues which will arise for these proposed Regulations. An implementation project for the new NDIS check and associated fees has been established. As part of developing these Regulations, the Department has consulted with the Department of Health and Human Services, the Victorian Institute of Teaching and the Commission for Children and Young People.

The RIS proposes that the Department collect data to identify key performance indicators and any unintended consequences, including:

- fee revenue recovered;
- application processing times;
- the number of fee waivers or reductions granted; and
- communication times between the Department and the applicant.

The Department will also undertake a mid-term review, five years after the commencement of the proposed Regulations.

Should you wish to discuss any issues raised in this letter, please do not hesitate to contact my office on 03 7005 9772.

Yours sincerely



Anna Cronin
Commissioner for Better Regulation