

Regulating Child Safe Organisations

Feedback on Discussion Paper to the Office of Children's Guardian

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**Prepared by: Federation of Parents and Citizens Associations
of New South Wales**

FEDERATION OF PARENTS AND CITIZENS ASSOCIATIONS OF NEW SOUTH WALES

Locked Bag 5114, PARRAMATTA NSW 2124

Telephone: 1300 885 982

Fax: 1800 655 866

Website: www.pandc.org.au

ABN: 37 439 975 796

Introduction

Federation of Parents and Citizens Associations of New South Wales (P&C Federation) is thankful to the Office of Children's Guardian (OCG) for this opportunity to contribute to the discussion paper on Regulating Child Safe Organisations. P&C Federation supports the position of individual educational and developmental needs met by a range of differential services expressed through appropriate and well-planned curricula, programs and environments conducted by sensitive and well-trained personnel in conjunction with parents¹ and families.

The core belief of P&C Federation is that the education of our children and youth is the most fundamental means of ensuring individual and collective success and, as a result, our greatest national resource.

P&C Federation Feedback

Q1: In what ways is a principle-based approach a good fit for regulating child safe organisations in NSW?

Q2: In what ways would a different approach be a better fit for regulating child safe organisations in NSW?

A risk of principle-based regulation is that it may create ambiguity for organisations around what they must do to be compliant, whereas a more rules-based framework can provide more clarity for organisations.² In an area as important as child safety, such ambiguity is not an acceptable risk. We also note that the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) stated that “(T)hrough our consultations and from observing the implementation of current voluntary child safe institution frameworks, both nationally and in states and territories, we have heard that institutions might not implement all of the Child Safe Standards unless required to do so.”³

We therefore suggest that organisations should operate under high-level principles which are accompanied by clear rules, and breaches of these principles and rules would entail sanction. This may still allow organisations to fulfil their obligations in ways that make sense for their context.

Q3: What types of organisations should be regulated to meet child safe standards in NSW?

Q4: What types of organisations should not be regulated to meet child safe standards in NSW?

¹ “Parent” refers to anyone with legal care of a child, such as a parent, carer or legal guardian

² Australian Government. *Best Practice Regulation Handbook*. August, 2007, pp. 95-103

³ Royal Commission into Institutional Responses to Child Sexual Abuse. Volume 6. Making institutions child safe. P. 257

It is wholly reasonable to require the sectors listed in the discussion paper (page 8) to meet child safe standards. At the same time, work such as after-school care may be done by volunteers who are parents or close relatives of children at the school, and they are thus exempt from requiring a Working with Children Check (WWCC). P&C Federation reiterates our support for this exemption, as it recognises that volunteering in a child's school community is a welcome part of family life that should not be hindered, and that the need for a WWCC for such activities would be an intrusive over-regulation. The implementation of child safe standards should not alter this.

Q5: What sorts of organisations should help to co-regulate child safe standards?

We question the advisability of co-regulation in enforcing child safe standards. In most contexts where co-regulation is implemented, it is at least partially intended to reduce public costs of regulation. However, studies of regulation in other fields have found that without careful implementation, co-regulation may quickly degenerate into self-regulation, which carries risks that organisations will operate without adequate oversight.⁴ The OCG must also recognise that some organisations do not have the administrative capacity to adequately regulate child safe standards.

We further note that research commissioned by the Royal Commission reviewed various regulatory models and found that a "*centralised form of direct regulation and program delivery*" is the most appropriate model for child safe contexts. This review emphasised that regulations aiming to prevent child sexual abuse should be "*stronger than a conventional co-regulatory approach*".⁵ For these reasons, we caution the OCG to not outsource its regulatory duties to other organisations.

If the OCG considers some form of co-regulatory arrangements, we strongly urge stringent safeguards and enforcement capabilities to ensure child safety standards are not weakened in any organisation. Such safeguards would have to include close monitoring and regular inspections of organisations, requirements for organisations to regularly report to the OCG, and swift consequences for organisations that do not comply with the standards. We would suggest that the NSW Education Standards Authority (NESA), as the body responsible for registering schools, would be the most logical candidate to be co-regulator for all education facilities in New South Wales.

Q6: How should the OCG support organisations to build their capacity to meet the child safe standards?

⁴ Balleisen, E.J and M. Eisner. The Promise and Pitfalls of Co-Regulation: How Governments Can Draw on Private Governance for Public Purpose. In Moss, D. and J. Cisterino (eds.) *New Perspectives on Regulation*. 2009.

⁵ Matthews, B. *Oversight and regulatory mechanisms aimed at protecting children from sexual abuse: Understanding current evidence of efficacy*. Report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2017, pp. 19-20

Q7: How should the OCG roll out regulation of the child safe standards so that organisations have time to plan and make changes if required?

We reiterate section 4.5.5 of Royal Commission's final report (volume 6) outlining best practice in capacity building for organisations.

We would only add that overall responsibility for maintaining WWCC records should lie with a WWCC regulator rather than individual organisations. Alternatively, responsibility could lie with the most relevant government agencies for organisations (e.g. for government school P&C Associations, the responsibility could lie with the NSW Department of Education). Currently in New South Wales, businesses and volunteer organisations are required to keep records of employees and volunteers who require a WWCC, including records of allegations, investigations and findings. For organisations such as P&C Associations, whose responsible persons can change every 12 months, this requirement is burdensome. It is unrealistic to assume that a frequently-changing group of volunteers would always have the requisite skills and knowledge to consistently meet these obligations, and this assumption carries risks of WWCC records being lost or otherwise inadequately maintained. We believe a WWCC regime would be better served if responsibility for maintaining records lay with a government agency whose skillset and knowledge base for maintaining such records would presumably be superior to that of a frequently-changing group of volunteer officers.

Q8: What powers should the regulator have to monitor the child safe standards?

Q9: What powers should the regulator have to enforce the child safe standards?

Chapter 10 of the *Children and Young Persons (Care and Protection) Act 1998* outlines the functions of the OCG. We would suggest this as the most logical framework into which to incorporate monitoring and enforcement capabilities of the child safe standards.