



**Statutory Review of the Child
Protection (Working with
Children) Act 2012 –
Submission to the NSW Office
of the Children’s Guardian**

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

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Introduction

Federation of Parents and Citizens Associations of New South Wales (P&C Federation) is thankful for this opportunity to contribute to the Statutory Review of *the Child Protection (Working with Children) Act 2012* (WWC Act). 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 parents and families. It is essential that school staff, parents and the Government work in partnership to ensure that the needs of each student in the Public Education system are met.

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's response to the review is guided by several broad principles:

1. Free public education should be open to all people irrespective of culture, gender, academic ability and socio-economic class.
2. School models should be sufficiently broad to reflect regional, ethnic and cultural differences in the Australian community, and should not contain rigidly implemented programs.
3. The basic aim of education is to help each student progress toward reaching their full potential, both as an individual and as a member of society. It is important that the individual needs of students be addressed by the application of principles of equity, the participation and empowerment of student, parents and educators.

P&C Federation's response to this Review is limited to Working with Children Check (WWCC) requirements as they relate to volunteer organisations, particularly parent volunteer organisations. The protection of children is unquestionably of paramount importance, and P&C Federation supports strengthening regulations where such action would bolster the safety of children. To this end, P&C Federation broadly supports the aim of the Office of Children's Guardian (OCG)'s Discussion Paper to streamline child protection legislation across states and territories. At the same time, care should be taken to not excessively increase the compliance burdens on volunteer organisations, especially where this would result in little or no improved safety for children.

Submission

Who should be exempt from needing a WWCC?

A concern of P&C Federation is that the burden of documentation and ongoing management of personal information can be heavy for organisations that try to ensure their workers have a WWCC. Some of the compliance required for organisations involved in child-related work includes verifying via the online portal that all workers have a WWCC clearance or application, and responding to relevant changes to the status of a worker. Such required documentation and ongoing management of personal information may be particularly burdensome for volunteer organisations, such as P&C Associations, whose responsible persons may change every 12 months. P&C Federation believes care should be taken to avoid overreach of the WWCC legislation into areas currently outside its scope, as

this risks overstressing OCG resources and diminishing its effectiveness in identifying unsafe individuals.

With this in mind, P&C Federation supports the current exemption for parents or close relatives of children at an educational institution from needing a WWCC when volunteering at or for activities of the institution, as outlined in Part 4 of the *Child Protection (Working with Children) Regulation 2013* (WWC Regulation). This exemption 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 exceptions to this exemption (i.e. where the volunteering is part of a formal mentoring program or involves intimate, personal care of children with a disability) are also commendable.

However, P&C Federation has concerns about the recommendation of the OCG Discussion Paper and of the Royal Commission into Institutional Responses to Child Sexual Abuse to require parents who volunteer on overnight excursions with children to attain a WWCC. An amendment of the WWC Regulation to this effect would mean organisers of such overnight events would need to ensure that all parent volunteers have a WWCC, which imposes an extra administrative burden on the organisers and needlessly risks activities being unable to attract sufficient volunteers.

These extra compliance burdens would be understandable if there were evidence that a WWCC requirement for parent volunteers at overnight events would lower the potential risks to children. However, the main rationale for this recommendation is that parents/close relatives who volunteer at overnight events with children "often have access to children in unsupervised arrangements". This overlooks that parents/close relatives volunteering at their child's school events may gain unsupervised access to children in a wide variety of other ways. For example, events that involve carpooling children may lead to unsupervised one-on-one contact between a parent and someone else's child, as is the case with events that run for a full day. It is thus not fully clear why the OCG and Royal Commission singled out overnight events as an area to reduce exemptions for parent/close relative volunteers, as it is not obvious that the potential risks to children at overnight events are worse than at numerous other events.

Moreover, a WWCC requirement for parent/close relative volunteers at overnight school events is not wholly compatible with the Royal Commission's acknowledgement that "participating in activities or services for their children is intrinsic to being a parent and should be encouraged" and that "there are many other strategies that are critical to making organisations child-safe, including family and community involvement, supervision and adequate child protection policies." The OCG and Royal Commission also recommended that those working in accommodation and residential services for children, including overnight excursions or stays, require a WWCC. P&C Federation considers this entirely justified, as such work is clearly consistent with the definition of child-related work laid out in Division 1 of the WWC Act and Part 2 of the WWC Regulation. However, P&C Federation also believes it would be more consistent with the intended scope of the WWCC scheme if parents and close relatives volunteering at overnight events of their child's educational institution continue to be exempt from needing a WWCC, as per current WWC legislation.

The Royal Commission also recommended that the current exemptions for parent volunteers should not apply to close relatives. The OCG Discussion Paper does not comment on this recommendation, and its position on such an amendment is thus not clear. P&C Federation supports maintaining the

current exemptions for close relatives as defined in Section 3(1) of the WWC Regulation, which includes in the case of Aboriginal or Torres Strait Islanders, persons who are part of extended family or kin according to the indigenous kinship system. Narrowing these WWCC exemptions to only parents would unfairly hinder the ability of indigenous people, and of people in other ethnic communities for whom extended family is important, from fully enjoying the benefits of volunteering in a child's school activities.

Applications from exempt persons

Another concern of P&C Federation is the common tendency of organisations to over-rely on WWCCs and demand that those exempt under the WWC Act and Regulation obtain a Check. Anecdotally, P&C Federation has noted frequent instances of school principals implementing a blanket requirement on all volunteers at school events to have a WWCC, including parents and close relatives of children at their school who are clearly exempt under WWC legislation. This requires such volunteers or volunteer organisations to undergo the strenuous compliance obligations alluded to earlier. A common justification for such blanket requirements is that they maximise child safety by minimising the possibility of unsafe individuals volunteering with children, and that allowing for some exemptions is more complex and less efficient.

However, compelling out-of-scope individuals to apply for WWCCs carries numerous risks. If information about an out-of-scope individual is shared, this creates the potential for privacy breaches, raising the possibility of needless legal ramifications for organisations. Moreover, as both the Royal Commission and OCG Discussion Paper note, a benefit of exemptions is that they ease the strain on OCG resources. Applicants for a WWCC undergo a risk assessment that is "a time and resource-intensive activity" which involves sourcing an exhaustive array of personal records, such as medical and court records. The more broadly these activities are applied, the more OCG resources are stretched and the greater the difficulties are of carrying out effective and time-efficient risk assessments. This will become more likely if other suggestions throughout the focus questions of the OCG Discussion Paper are implemented to increase the effectiveness of risk assessments. For instance, the OCG Discussion Paper suggested that individuals must notify the OCG of any changes in their criminal history and there are numerous other recommendations to raise the bar for automatically refusing clearance. P&C Federation does not intrinsically object to tightening compliance regulations, particularly those that bolster the safety of children. Nonetheless, ignoring exemptions to WWCC requirements, however well-intentioned, increases the likelihood of unsafe individuals slipping through the cracks. It also represents an unreasonable burden on organisations, such as parent volunteer groups, who fall outside the scope of WWC legislation to undergo such risk assessments.

A current difficulty in mitigating against this is that Section 13 of the WWC Act requires the OCG to assess all WWCC applications, including from applicants who are outside the legislation's scope. To this end, P&C Federation supports the OCG's recommendation to amend the legislative ambiguity around child-related roles and work to discourage out-of-scope individuals from being compelled to undergo a risk assessment. P&C Federation also supports the OCG's more tentative suggestion to amend the WWC Act and Regulation to explicitly prohibit organisations from compelling individuals outside the scope of WWC legislation to undergo a WWCC application. As the OCG notes that establishing penalties for such organisations carries the risk of diverting child protection resources toward compliance enforcement, a viable alternative may be an amendment of the WWC Act granting

the OCG more discretion over which applications to consider. Additionally, it may be possible to amend the WWCC application form to compel applicants to specify whether the reasons for which they seek a WWCC fall outside the scope of WWC legislation (e.g. whether it is for the purpose of volunteering at their child's or a close relative's educational institution), and for the OCG to disregard applications which fall outside its scope. P&C Federation believes such measures could both lessen the compliance burdens on parent/close relative volunteer organisations in their child's school and limit OCG resources to areas that fall within its legislative scope.

Responsibility for enforcing WWCC regulations

On a more general note, P&C Federation believes overall responsibility for enforcing WWC regulations should lie with the New South Wales Department of Education. It is ultimately an unreasonable expectation that volunteer organisations such as P&C Associations and other entities be responsible for enforcing compliance, not least because such organisations are often characterised by a regularly-changing group of responsible persons. It would be more reasonable if enforcement responsibilities lay with the department behind the WWC legislation, as this is the entity with the largest knowledge base and most extensive resources necessary for monitoring and enforcing compliance.