

Inquiry into the policy and process to limit and reduce red tape

Submission to the Red Tape Committee (Commonwealth)

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of New South Wales**

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Introduction

Federation of Parents and Citizens Associations of New South Wales (P&C Federation) is thankful to the Red Tape Committee (the Committee) for this opportunity to contribute feedback into this inquiry into the policy and process to limit and reduce red tape. 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.

Our response to this inquiry is focused on areas most relevant to P&C Associations in New South Wales, specifically: Working with Children Check (WWCC) requirements, regulations surrounding charity and not-for-profit (NFP) operations, and the complexity of Fair Work regulations.

P&C Federation Response

Working with Children Checks (WWCC)

Since 2014, all States/Territories in Australia require people seeking to work with children to undergo some form of screening. However, each State/Territory differs in terms of precisely who requires to be checked and how the checks are conducted, and checks are not transferable between States/Territories. Virtually all stakeholders recognise in theory the need for a more nationally consistent approach, as the flaws of having eight independent WWCC regimes in Australia include the following:

- it complicates compliance, as people doing child-related work in different States/Territories must obtain multiple checks;
- it allows dangerous people to exploit the inconsistencies, for instance by seeking jurisdictions where particular types of child-related work are exempt from requiring a WWCC; and
- it raises overall cost of enforcement, as enforcing eight non-transferable WWCC regimes drains more public resources than enforcing a nationally consistent regime.

Despite the near-universal acknowledgement of these flaws,² progress towards a nationally consistent approach has been exceedingly slow. All State/Territory governments endorse the

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

² E.g. Essentially all State/Territory WWCC stakeholders that put submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse noted these flaws and endorsed the need for national consistency.

National Framework for Protecting Australia's Children 2009–2020, which pledged to develop by December 2009 a nationally consistent WWCC approach,³ yet the framework's most recent three-year action plan contains no further updates on this goal.⁴ The Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) noted some steps towards more national cohesion in WWCCs, such as improved criminal history exchange between jurisdictions. However, it concluded that overall progress towards national consistency is “*slow and inadequate*”, in large part because “*governments are reluctant to move away from their existing arrangements.*”⁵

We suggest the Federal Government could improve national consistency in WWCCs by passing legislation that establishes a single standard regarding the type of child-related work that requires a WWCC, and how the risk assessment of a person is conducted. This would essentially establish a single WWCC regime to operate nationally, and override current State/Territory legislation. The work surrounding risk assessments and issuing checks may still be conducted within States/Territories; we take no firm position on whether current State/Territory WWCC regulatory bodies would continue to exist but operate under nation-wide standards, or whether a single nation-wide WWCC regulatory body would be established in their stead. In either case, the inconsistencies and duplications across jurisdictions would be eliminated, and people seeking to work with children could do so with a single WWCC in any Australian jurisdiction.

We emphasise that simplifying WWCC requirements must enhance protections for children. The Queensland Government noted to the Royal Commission that it has “*one of the strongest (WWCC) systems in Australia*” and that while it supports greater national consistency, it opposes weakening those Queensland requirements which provide stronger safeguards for children.⁶ P&C Federation believes that to maximise the safety of children, a nationally consistent approach should incorporate the most robust standards that currently exist in different jurisdictions.

At the same time, a nationally consistent WWCC system should not burden the normal operations of community organisations with onerous obligations that have no clear benefit to children's safety. Currently in New South Wales, there is an exemption for parents and close relatives of children at an educational institution from needing a WWCC when volunteering for most activities at the institution. This exemption recognises that volunteering in a child's school community is a welcome part of family life, for which requiring

³ Council of Australian Governments. *Protecting Children is Everyone's Business National Framework for Protecting Australia's Children 2009–2020*. April 2009 (Strategy 2.2).

⁴ Council of Australian Governments. *Protecting Children is Everyone's Business: National Framework for Protecting Australia's Children 2009–2020 — Third Action Plan 2015–2018*. December 2015. (We are mindful that the next three-year action plan is due in December 2018).

⁵ *Royal Commission into Institutional Responses to Child Sexual Abuse: Working with Children Checks Report*. 2015. Page 47

⁶ Queensland Government. *Queensland Government response to the Royal Commission into Institutional Responses to Child Sexual Abuse*. June 2018. Page 11

a WWCC would be an intrusive over-regulation. While the Royal Commission supports the exemption for parents, it recommends removing the exemption for close relatives.⁷ However, it does not elaborate on how this would improve children's safety, and we suggest there are at least two reasons to not implement this: (1) it does not recognise that extended relatives such as grandparents often act as carers of children while parents work, and without this assistance many parents would struggle to meet the basic costs of living expenses, and removing the WWCC exemption for close relatives may create unnecessary burdens for these families; and (2) it would unfairly hinder the ability of people in communities for whom extended family is culturally important (such as Indigenous or other ethnic communities) from fully enjoying the benefits of volunteering in a child's school activities. We therefore recommend against removing the exemption for close relatives. A national WWCC system must also mitigate the possibility of organisations compelling individuals to apply for WWCCs for activities that do not require WWCCs, as this unnecessarily burdens both the individuals and the WWCC regulators.⁸

We further believe that overall responsibility for enforcing WWCC regulations and maintaining WWCC records should lie with a WWCC regulator rather than individual organisations, whether that be current State/Territory regulators or a possible future national regulator. 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 WWCC regulatory body, whose skillset and knowledge base for maintaining such records would presumably be superior to that of a frequently-changing group of volunteer officers.

Regulations for charities and not-for-profit (NFP) organisations

Charities and NFPs face myriad compliance obligations. As outlined above, reducing the WWCC obligations of charities and NFPs would simplify their operations. We also recommend

⁷ *Royal Commission into Institutional Responses to Child Sexual Abuse: Working with Children Checks Report*. 2015. Page 79

⁸ A more detailed account of P&C Federation's views on these matters is in P&C Federation. *Statutory Review of the Child Protection (Working with Children) Act 2012: Submission to the NSW Office of the Children's Guardian*. June 2017. Available at <https://www.pandc.org.au/forms/Advocacy/Submission%20in%20Relation%20to%20the%20WWCC%20review.pdf>

allowing P&C Associations in government schools to gain Deductible Gift Recipient (DGR) status. Currently, the only donations to P&C Associations that may be tax deductible are those donated to a school building fund that the P&C Association operates. However, there are a range of activities in other than the maintenance of school buildings that P&C Associations would be able to support, such as the provision of teacher support for students with a disability. Granting DGR status to P&C Associations would allow P&C Associations to more easily gain the funds necessary to provide these services.

Fundraising activities is another area with complex and multilayered obligations. Fundraising laws are not consistent between States/Territories, so fundraising across State/Territory borders may require multiple fundraising permits. Most State/Territory fundraising laws do not adequately support adequately modern fundraising methods, such as Internet fundraising – in New South Wales, the only mention of Internet fundraising is in the *Charitable Fundraising Regulations*, which simply states that person conducting fundraising appeals by email and is being remunerated for it must disclose that they are being remunerated. The New South Wales Government also found that most breaches of New South Wales fundraising laws are “*minor and unintentional mistakes*” which usually “*result from the complexity and of different requirements of various Acts.*”⁹

We suggest this complexity could be reduced by establishing a uniform, nation-wide fundraising regulatory regime that would supersede current State/Territory fundraising legislation. This would cover the nature of activities that are considered acceptable fundraising activities, which should explicitly include the crowd-funders and other online fundraising, and establish set of expected conduct and financial reporting requirements. Some have noted that the Commonwealth framework that could most easily govern fundraising nationally is the Australian Consumer Law (ACL), as the ACL already applies to business, trade or commerce that is not carried on for profit. We note that that legal advice provided to Justice Connect stated that the ACL “*currently applies to regulate most ordinary not-for-profit fundraising activities*” and that it “*has the potential to regulate every commercial and non-commercial activity in every Australian State and Territory*”.¹⁰ Consumer Affairs Australia and New Zealand (CAANZ) further recommended clarifying “*the current application of the ACL to the activities of charities, not-for-profit entities and fundraisers*”, including possible amendments to the ACL to support charity fundraisers.¹¹

We therefore suggest the Committee consider amending relevant portions of the ACL to explicitly reference fundraising. As per suggestions from Justice Connect, this may include a code of conduct for fundraising bodies sitting under the ACL addressing the expected conduct in a charity’s marketing activities and the need to maintain acceptable financial records and

⁹ New South Wales Government. *Charitable Fundraising Review, Discussion Paper*. July 2016. Page 11

¹⁰ Legal advice from Dawson Chambers to Justice Connect, in *Joint Statement on Fundraising Reform*. 12 September 2016

¹¹ Consumer Affairs Australia and New Zealand (CAANZ). *Australian Consumer Law Review: Final Report*. March 2017. Page 97

accounts of fundraising activities.¹² We also suggest that reporting requirements for the Australian Charities and Not-for-profits Commission (ACNC) could be amended to cover fundraising information in an organisation's Annual Information Statement, which could replace the need for fundraising licenses.

The ACNC is one of the principle regulators of charity and NFP operations, and we commend the ACNC for its ongoing efforts to reduce red tape. Other possible steps include making the temporary transitional provisions a permanent feature of ACNC legislation. This provision enables the ACNC to accept reports given to other Australian government agencies under Australian law, and the transition was recently extended to 2018-2019. We suggest making this provision permanent would be more beneficial to charities and NFPs.¹³

Complexity of Fair Work Regulations

It is widely acknowledged that the information provided by the Fair Work Commission (Fair Work) to small businesses regarding their obligations as employers is highly labyrinthine. One survey commissioned by workplace relations advisory EmploySure of small and medium sized businesses found only 10% of managers are confident they understand the *Fair Work Act*, that 20% admit to knowing little or nothing about the *Fair Work Act*, and that a quarter have difficulty calculating correct pay and entitlements.¹⁴ Generally, workplace relations legislation makes little differentiation between large corporations and small employers. Some frequent areas of uncertainty include the precise entitlements under Fair Work awards and the rules surrounding dismissal.

A report released by Fair Work found concern among small employers of employees pursuing unmeritorious claims (e.g. claiming that performance management processes amount to bullying), which are highly costly, and that Fair Work procedures "*don't recognise that service of an application automatically creates significant costs for smaller employers.*"¹⁵ It recommended that Fair Work establish a 'triage' function, under which there would be a minimum threshold of information a claimant must provide to Fair Work before an application is served to an employer. The report also recommended creating an official 'Small Business Division' that handle matters specific to smaller enterprises.

We commend Fair Work for pledging to improve information for small businesses, as this recognises that small employers are likely to lack the legal expertise and resources available to larger corporations. However, it is disappointing that Fair Work rejected the establishment of a triage system and Small Business Division, and we recommend that such changes be

¹² Justice Connect. *Submission to the Interim Report for the Australian Consumer Law Review*. December 2016

¹³ CPA Australia. *Submission to Review of Australian Charities and Not-for-profits Commission legislation*. February 2018.

¹⁴ Research Shows Red Tape Has Employers Walking on Eggshells. *Business Franchise Australia*. 22 November 2017

¹⁵ Bruce Billson. *Working Better For Small Business: Report from the Connect & Engage small business consultation program*. 2018. Page 15.

implemented. We also recommend the Committee consider amending Fair Work legislation to make greater differentiation between the size of businesses.

We further recommend that P&C Associations be allowed to employ workers in ways that allow them to follow uniform requirements. Currently, employees of P&C Associations in New South Wales may come under multiple potential awards depending on whether they are employed as a bookkeeper or in a P&C-operated canteen, uniform shop, after-school care, or other facility. If an employee wishes to work in several P&C-operated facilities, this creates further complexity for P&C Associations. P&C Federation is proposing the introduction of an Enterprise Agreement to be used by P&C Associations, which would eliminate the need for multiple awards and rates of pay, and allow P&C Associations to adopt a uniform set of employment conditions and remuneration for employees, regardless of where the staff is employed. We urge the Committee to allow P&C Associations to employ staff under a single enterprise agreement, under the umbrella of P&C Federation.