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Royal Commission into Institutional Responses to Child Sexual Abuse
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Sydney NSW 2001

By email: solicitor@childabuseroyalcommission.gov.au

To the Royal Commission

**Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse –
Issues Paper 1 (Working with Children Check)**

Thankyou for the opportunity to provide a submission to the Royal Commission's first Issues Paper on the Working with Children Check (**WWCC**).

PilchConnect provides free legal help to not-for-profit community organisations (**NFPs**) in Victoria and NSW. Since we started our legal service in 2008 we have regularly received legal enquiries from NFPs about the application of the *Working with Children Check Act 2005* (Vic). Those enquiries indicate there are varying levels of understanding about the regime across the NFP sector, but also considerable confusion about 'exceptions' to the regime and cross-border issues.

PilchConnect supports the proposal to develop a national WWCC regime. As indicated in the attached submission, in our experience NFPs that engage employees or volunteers in child-related work are very concerned to ensure their compliance with WWCC legislation. However they find the current, individual state/territory based regimes confusing and resource intensive – it takes considerable time and effort to understand the regime and then implement systems to ensure compliance. This is particularly the case for NFPs that provide services nationally or cross-border, as well as for NFPs who use volunteers or employees who come from another state.

A national regime would ensure there was a single, consistent system across Australia, and this would allow NFPs to divert their limited resources into other essential risk management practices, such as employee and volunteer training and supervision.

We have also made comments urging consideration of a national 'working with vulnerable persons' regime that would not only include children, but also adults in positions of vulnerability. While we understand this may be outside the Commission's jurisdiction, we note that many NFPs work with and provide services not only to children but also to adults in similar positions of risk (for example, adults who have a severe intellectual disability). In our view, vulnerable adults need the same level of protection from harm as children (although we note the relevant offences that might preclude a positive check may differ). Obviously considerable work would need to be done to develop the appropriate legislation for such a scheme but there are examples of other jurisdictions where this has been done, which we have referred to in our submission.

We note that our responses to the issues raised are based on our work providing legal information and advice to Victorian and NSW NFP organisations. We have responded to the issues with which we have had enquiries or experience, and have left other issues for more appropriate bodies to respond to.

We thank you for the opportunity to submit and we would be happy to provide the Commission with any further information as required.

Yours faithfully



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PilchConnect submission to the Royal Commission into Institutional Responses to Child Sexual Abuse

Issues Paper 1 (Working with Children Check)

Executive summary

PilchConnect is uniquely placed to raise some of the concerns within the not-for-profit community sector regarding the use of Working With Children Checks (**WWCC**). PilchConnect is a specialist legal service for community organisations in Victoria and NSW. We provide free and low cost legal services to not-for-profit community organisations (**NFPs**), including legal training on topics such as 'Legal issues in managing volunteers' and telephone advice for NFPs with legal questions.

PilchConnect focusses on providing legal assistance to smaller NFPs who have limited resources. Many of the NFPs we work with engage volunteer workforces (e.g. sometimes involving hundreds of volunteers) to provide essential community services. In some cases these services involve child-related work and the NFPs are undertaking the resource intensive work of ensuring their organisation is compliant with relevant legislation, such as Victoria's *Working with Children Act 2005* (Vic). Despite this legislation being over 7 years old, PilchConnect continues to receive a steady stream of inquiries from NFPs in relation to the operation of Victoria's WWCC regime and compliance with it.

In our experience NFPs are very concerned to meet their duty of care to children in their care and to comply with the *Working with Children's Act 2005* (Vic). However there is ongoing confusion about the coverage of the scheme, the extent to which WWCC regimes have cross-border recognition, whether people can work or volunteer while their WWCC is pending, and the ongoing issue of the need for spontaneous volunteers or occasional volunteers to undergo checks. Another key issue is the practice of some NFPs to be very risk-averse and require employees and volunteers to get WWCCs even where the employee or volunteer might not be engaged in child-related work. We address all of these issue below, initially in some preliminary comments and then in response to the Commission's Issue Paper questions.

In this submission, unless noted otherwise PilchConnect's comments relate to Victoria's *Working with Children Act 2005* (Vic). We also note that this submission responds to some, not all, of the Issue Paper questions.

About PilchConnect

The Public Interest Law Clearing House (**PILCH**) is an independent NFP with a vision of a world that is fair and just; where rights are respected and advanced, laws are fairer, and systems are more accessible and accountable. PILCH improves access to justice through the provision of pro bono legal services to people experiencing disadvantage and the community organisations that support them. We also address injustice through law reform, policy work and legal education.

Since its establishment in 1994, PILCH has developed a reputation for innovation and excellence in responding to unmet legal need in Victoria. Each year we provide free legal help to thousands of people experiencing disadvantage and Victorian non-profit community organisations. On 1 July 2013 PILCH Victoria merged with PILCH NSW to create Justice Connect, which provides pro bono legal services in both Victoria and NSW.

Of particular relevance to this Issues Paper is the work of PilchConnect. This unique service was established by PILCH in response to an identified unmet legal need of Victorian community organisations for tailored, practical, free/low cost legal help. By 'helping the helpers', PilchConnect seeks to maximise the limited resources of NFPs for pursuing their mission – to support vulnerable people and build more socially inclusive communities.

PilchConnect currently assists NFPs in the following ways:

- a legal information webportal with plain language resources and practical tools for Victorian community organisations, based around the 'lifecycle' of a group (see www.pilch.org.au/legal_info);
- a telephone legal advice service for discrete issues staffed by PilchConnect lawyers with NFP legal expertise;
- brokering of pro bono legal referrals for 'public interest' NFPs for assistance from PILCH member law firms;
- training and education for NFPs in Victoria and NSW on common legal issues; and
- law reform and campaign work drawing on our inquiry and service data to inform policy submissions.

More information about PilchConnect is available at our website at www.pilchconnect.org.au.

Preliminary comments

Although outside the scope of the Royal Commission's current inquiry, we submit that work towards any national scheme for a WWCC should widen in scope to look at the broader issue of whether there should be a national check for working with all vulnerable people.

Many NFP community organisations we work with in Victoria raise this issue with us. They know that for their employees and volunteers that engage in child-related work, the WWCC means they will be alerted to any convictions for relevant offences (in Victoria, under the *Working with Children Act 2005* (Vic) the check is for serious sexual, violence and drug-related offences). In contrast, employees and volunteers who work with vulnerable adults (e.g. because of age, intellectual or physical disability etc.) often in the homes of clients and without supervision – are generally subject only to a point-in-time police check. NFPs that have the time, resources or a contractual obligation to do so may ask employees and volunteers to repeat a police check every few years, however many NFPs do not have the resources or systems to institute this risk management practice. This means that long-serving employees and volunteers might be charged with or convicted of offences that make them unsuitable to working with vulnerable people, which may remain unknown to the NFP.

We are aware that some community organisations request people to undertake a WWCC even when they are unlikely to be engaged in child-related work. It appears that organisations do this as a 'risk-adverse' measure or possibly because the 'ongoing' nature of the check is preferable to undertaking repeated, point-in-time police checks for their employees or volunteers that work with vulnerable persons. The courts have (in our view correctly) commented adversely on this practice in the context of the *Working with Children Act 2005* (Vic)¹

¹ See for example [LMB v Secretary to the Department of Justice \(Occupational and Business Regulation\) \[2011\] VCAT 595 at \[43\]](#) per Hampel J.

We note that examples of legislation protecting all vulnerable persons (including children, but also covering vulnerable adults) are in place in the Australian Capital Territory² and the United Kingdom.³

As noted below, any national scheme would need to balance the primary objective of the legislation - to protect vulnerable people from sexual or physical harm - with the rights of check applicants to engage in work, to participate in community life, and to not be discriminated against on the basis of an irrelevant criminal record. The procedure for applying for a check, and for appealing any determination, needs to be procedurally fair and meet the requirements of natural justice.

Response to issues raised by Commission

Below we respond to relevant questions posed by the Issues Paper.

1. Should there be a national working with children check?

Subject to our preliminary comments above (about expanding the WWCC to a vulnerable persons check) PilchConnect supports a national WWCC.

Many NFPs work across state-borders or nationally, often with very limited resources. For those organisations engaging employees or volunteers in child-related work across different jurisdictions, compliance with the different state or territory WWCC regimes imposes a high and ongoing regulatory burden. Most of the NFPs we work with understand the importance of WWCC and are anxious to be compliant. They therefore devote significant resources to understanding each state or territory regime and implementing systems to ensure ongoing compliance with each jurisdiction that has WWCC laws, all of which differ. Because there is no national check or co-ordinating agency, this effort to understand and comply with various WWCC regimes is being duplicated across hundreds and thousands of NFPs Australia-wide.

Despite the development in 2012 of WWCC-agency guidelines to address cross-border movement of volunteers and employees⁴, many NFPs we work with are still confused about when exemptions for cross-border movement apply. This confusion can result in two issues. The first is a risk adverse approach where NFPs make interstate applicants (with a valid WWCC in their home state) get a new check despite the fact that applicant might fit the criteria for an exemption for cross-border work. This 'just in case' approach adds to the administrative burdens for both NFPs and applicants. The second issue is that NFPs may apply, but not completely understand applicable exemptions (e.g. 30 day rule). Any confusion is an opportunity for inadvertently missed checks and for the possibility that inappropriate people will be engaged in child-related work.

A single, national WWCC regime would make it much simpler for NFPs to ensure they only engage appropriate employees and volunteers in child-related work, anywhere in Australia. A single regime would also help NFPs to implement simple, reliable systems to ensure appropriate checking, reducing the possibility of missed checks. Further, a single regime would reduce the compliance burden on NFPs so they can divert resources spent on compliance into other risk management practices, like ongoing supervision of employees and volunteers.

² See http://www.ors.act.gov.au/community/working_with_vulnerable_people

³ See <http://www.legislation.gov.uk/ukpga/2006/47>

⁴ See <http://www.workingwithchildren.vic.gov.au/home/resources/publications/working+across+states+and+territories>

In our experience, there is also confusion amongst Victorian NFPs about the coverage of Victoria's WWCC regime. While the Victorian Department of Justice's WWCC website says that this is a 'national check', some organisations are unsure as to how often and how quickly interstate convictions and findings of guilt are 'fed into' the Victorian check system. A national system, co-ordinated by one agency with responsibility for checking of all relevant state and territory offences in a timely manner, would reduce confusion and provide NFPs with a simple checking procedure.

2. What features should be in the national scheme?

Some of the features we think a national scheme should include are set out below (the list is not exhaustive):

- a single agency should be given responsibility for administration of the national scheme;
- the scheme should effectively balance the rights of a child to be protected from sexual or physical harm (which should be the central purpose of any scheme) with the rights of applicants for a WWCC to work, the right to participate in community life and the right not to be discriminated against on the basis of an irrelevant criminal record;
- legislation and accompanying plain language guidance material must:
 - clearly set out the circumstances in which a WWCC is needed, and when exceptions apply; and
 - provide certainty about who is legally responsible to ensure a check is in place - in particular, whether this responsibility vests with the employee / volunteer or the community organisations that engages them, or both;

*(Please refer to **Appendix A** at the end of this submission for case studies about NFP uncertainty about exceptions to Victoria's WWCC regime).*

- clearly address the principle of 'agency', that is, the legal responsibilities of organisations that might be taken to have procured or arranged child-related work on behalf of others

*(Please refer to **Appendix A** at the end of this submission for case studies about NFP uncertainty surrounding the agency principle).*

- all parties to the WWCC regime (organisations and applicants) should have a clear understanding of the types of offences that will be relevant for the purposes of the check, and what 'status' in relation to that offence would generally preclude a person from receiving a WWCC clearance (e.g. pending charges, charges, findings of guilt, convictions);
- the scheme receives very timely 'updates' from state or territory police sources or other prescribed sources (e.g., findings of professional bodies) about people who have been convicted or found guilty of relevant offences, so that the information held by the scheme is accurate and constantly up-to-date;
- the scheme operates as a constant, ongoing checking system for anyone with a WWCC clearance - so that if any relevant offences are committed by the person who holds a WWCC, the person and organisation engaging them in child-related work are notified immediately that the WWCC clearance is suspended or cancelled, subject to appeal rights;

- the regime should be low cost for employees and free for volunteers;
- the application process is streamlined, allowing checks to be applied for and received within a short timeframe (e.g. 2-5 working days); and
- the process for applying for a WWCC accords with the requirements of natural justice and procedural fairness for the applicant, and there is an avenue for appeal for any person who receives any negative WWCC, with oversight by the courts.

3. If there is no national scheme, should there be minimum requirements for each state and statutory scheme?

If there is no national scheme, each state or territory should have a scheme that meets the features set out above. It would obviously be preferable to have harmonised laws (e.g. all states and territories adopt the same law) or at least cross-recognition of WWCC (requiring all states and territories to be satisfied that the WWCC in each state was comprehensive).

The current WWCC-agency guidelines to address cross-border movement⁵ are not satisfactory in many respects. The guidelines fail to explain how the WWCC works in each state nor how to check WWCC currency in other jurisdictions. The guidelines allow an 'exception' from the WWCC regime 'for 30 days', however this requires NFPs to monitor their daily engagement of an interstate employee or volunteer so not as to be in breach of the legislation. In many cases NFPs will take a risk adverse approach and require a Victorian check despite the exception in the guidelines.

4. How long should any clearance be granted for?

Any WWCC should be an ongoing check - rather than a point in time check (e.g. a police record check). Once a WWCC is issued to a person, any relevant offence that a person is convicted or found guilty of in the future should flag on the system and the person and organisation should be notified and the WWCC cancelled (subject to appeal rights).

The question of the length of time a clearance should be granted for is related to the resources required to keep the check up-to-date for people with a WWCC who are no longer engaged in child-related work. In our view, a 3 to 5 year length would seem appropriate.

5. Should a person be able to commence work before the check is completed?

If a timely check system can be implemented (e.g. 2 to 5 days from date of application), it would be preferable to prohibit people engaging in child-related work until a WWCC clearance has been received.

Currently in Victoria, section 33 of the *Working with Children Act 2005* (Vic) generally makes it an offence for people to engage child-related work without a positive WWCC notice, and section 35 generally makes it an offence for an organisation to engage a person in child-related work where the person does not have a positive WWCC notice. However these provisions also allow for a 'defence' (in certain circumstances) where the person or organisation can show that the person engaged in child-related work has applied for a WWCC and is awaiting the outcome.

⁵ See www.workingwithchildren.vic.gov.au/home/resources/publications/working+across+states+and+territories

In our experience this limited 'defence' (the Department of Justice refer to it as an 'exception') is a source of confusion for NFPs. In our experience, many NFPs 'have heard' that it is fine to allow someone to commence child-related work as long as the person has applied for a check, and we are often asked to confirm that this is the case. While community organisations are trying to comply with the legislation, many organisations are under pressure to quickly fill employee or volunteer positions in order to meet demands on their services.

When PilchConnect provide legal training about this issue we often recommend against allowing people to commence in child-related work before the check clearance has been received, even if sections 33 and 35 may technically allow for this (in certain circumstances). As an alternative we recommend they put in place other risk management practices such as only allowing the person to engage in child-related work under supervision (where the supervisor has a WWCC), or allowing the employee or volunteer to undertake non-child related work, until the clearance is received.

However we know that some NFPs are relying on this 'exception' in section 35(2) and where they do so we recommend they closely track and monitor the person's application (via the application number) to be sure that they can rely on the defence or comply with section 35 as soon as possible.

*(Please refer to **Appendix A** at the end of this submission for case studies about NFP uncertainty surrounding the 'defence' which allows NFPs to engage applicants in child-related work pending receipt of a WWCC under the Victorian regime).*

The best system would be that a more timely check is undertaken (e.g. 2-5 days from date of application) and people and organisations are prohibited from engaging people in child-related work until a positive WWCC notice had been received. This system would also require access to a quick appeals process for applicants that were issued with a negative WWCC notice - so they could have the decision reviewed and resolved in a timely manner.

If a timely system is not possible, the requirement to completely prohibit child-related work without a WWCC needs to be balanced against the needs of NFP community organisations to engage people to fill employee and volunteer positions to ensure they can continue to deliver quality services to the community. If work without a WWCC is allowed, clear guidance should be given to community organisations about the circumstances in which this is permissible.

6. How should child-related work be defined?

We refer to our preliminary comments above, that consideration should be given to a vulnerable persons check rather than limiting the scheme to work with minors.

We have no other comments on the issue of defining 'child-related work'. However we submit that the definition needs to be one that allows NFP community organisations to be able to readily and confidently understand which of their employees or volunteers needs a WWCC, without needing to get legal advice to determine this.

7. How should child-related sectors and roles be defined?

We have no comments on this issue.

8. Are current exemptions for a WWCC adequate or appropriate – in particular, should a WWCC apply to those:

- a. living in the homes of children in out-of-home care?
- b. parent volunteers?

We make no submission on these specific examples, however we note that NFPs often raise with us the issue of ‘spontaneous volunteers’ (those people who might volunteer quickly, for example, in an emergency situation and then be engaged in child-related work) and the need for specific guidance on their legal responsibility under WWCC legislation for these types of situations.

While we do not have a particular view on the appropriateness of imposing a WWCC scheme on spontaneous volunteers, we reiterate the importance of clarity and plain language guidance material for NFPs once a policy decision has been made in this important area.

9. What records should be included in the check? For example, should the check include juvenile records?

Should juvenile records be included, there must always be an opportunity for the WWCC administering agency to exercise discretion when taking into consideration relevant factors before determining a negative WWCC notice. We further submit that there should always be a right for applicants to have the ability to have the decision independently reviewed through an accessible appeal process, ideally without the need for representation.

We note that, whatever records are included in a check, any scheme needs to strike a balance between the central and paramount rights of a child to be free from the risk of harm, with the rights of applicants (as set out above).

10. How should an appeal process operate?

We have no comments on this issue.

11. What issues arise from the current regime of records that result in automatic barring of a person from working with children?

We submit there should never be automatic barring of a person from working with children without a right of appeal. WWCC applicants should be able to ask for consideration of the relevant circumstances of the offence and whether they continue to pose a risk of harm to children.

In this regard, we note that the very first case to be determined in relation to Victoria’s *Working with Children Check Act 2005* (Vic), *PJR v Secretary to the Department of Justice (Occupational and Business Regulation)*⁶ involved an individual who faced, as a result of the failure to be granted a WWCC, the prospect of his foster children being removed from him. The individual had a category 1 offence on his record and the legislation prohibited the Secretary (the person responsible for determining WWCC in Victoria) from exercising any discretion to grant a WWCC where an applicant had been convicted of a category 1 offence. However, the

⁶ [2006] VCAT 2455

legislation did allow a right of appeal to the Victorian Civil and Administrative Tribunal (**VCAT**) and upon consideration of the relevant circumstances of the offence (the circumstances in which the offence occurred, the 30 year time period that had elapsed since the offence and the conduct of the applicant since the offence), the Tribunal instructed the Secretary to issue the applicant a WWCC.

This first case in Victoria is instructive on a number of points, particularly:

- (i) the need to allow people an opportunity to provide details of an offence and whether in their circumstances the offence means they pose a risk to children; and
- (ii) the need for a timely appeal process, as the consequences of a negative WWCC can be significant (ie. in this case the removal of foster children).

12. The adequacy of the risk assessment process.

We have no comments on this issue.

13. To what degree should the WWCC minimise the need for institutions to establish clear processes for responding to inappropriate behaviour of staff in child-related positions?

When PilchConnect provides training to NFPs on risk management and legal issues in managing volunteers, we reiterate that all background checks (WWCC, police checks or reference checks) are just one element of any risk management plan and cannot be relied upon solely to fulfil the NFPs duty of care to its clients.

We suggest NFPs put in place a range of procedures and policies to ensure that they are meeting their duty of care, particularly to vulnerable client groups. The suggested practices include the proper induction of all employees and volunteers, the development of clear policies about workplace behaviour and training on those policies, adequate supervision practices, establishing avenues for client feedback, establishing avenues for employee and volunteer feedback, policies and procedure for investigating concerns and complaints, and ensuring that investigations are conducted appropriately.

All of these suggested practices are to counter the potential over reliance by NFPs on WWCC or other background checks as the only measure needed to guard against inappropriate behaviour of staff in child-related positions.

We refer to our comments above and note that a simple, national WWCC regime would reduce the regulatory compliance burden for NFPs, and therefore NFPs could divert resources into other complementary risk management practices.

14. How should the effectiveness of existing or proposed WWCC be evaluated and/or monitored?

We have no comments on this issue.

Appendix A: Case studies

Despite the fact that the *Working with Children's Act 2005* (Vic) has been law in Victoria for over half a decade now, PilchConnect continues to receive regular enquiries from NFPs who remain uncertain about their obligations under Victoria's WWCC regime.

The examples provided below are given to indicate the confusion some NFPs experience in trying to comply with Victoria's legislation. They are provided in support of our submission that any national regime needs to ensure the legislation and related guidance clearly inform NFPs about the circumstances in which WWCC are required, as well as where exceptions can be relied on.

NFP A: misunderstanding of the 'supervision' exception for 'child-related work'

NFP A attended a training session run by PilchConnect. NFP A advised they regularly send one or two volunteers into a local school to conduct a workshop. Although NFP A did this on a regular basis, they had decided their volunteers did not need a WWCC as 'they had heard' that if the teacher at the school has one, they do not need one.

The PilchConnect lawyer noted that the definition of 'child-related work' in the Victorian legislation is regular direct contact with a child in connection with a service, body, place or specified activity, in circumstances where the contact is not directly supervised by another person. It was also noted that in the example given in the legislation, the requirement for supervision was still met even if the supervisor had to leave the room to take a phone call for a short period of time. However the import of that example was that periods of absence longer than a short phone call might not meet the definition of supervision.

NFP A admitted that there had been times when the teacher had had to leave the room for a period of time. To avoid a long debate about what a 'short period of time' meant, the PilchConnect lawyer advised NFP A that in these circumstances it was possible that the supervision requirement was not being met and the volunteers were engaged in child-related. It was recommended that, to avoid all doubt, it is advisable to have volunteers obtain a WWCC, to ensure compliance by both NFP A and their volunteers.

NFP B: misunderstanding of 'defence' related to allowing a person to engage in child-related work before their check is finalised.

In a legal seminar involving representatives from approximately 50 NFPs that engage volunteers to work with members of the public, the PilchConnect trainer posed the question of whether the *Working with Children Act 2005* (Vic) allowed a NFP to start a volunteer in child-related work, before their WWCC clearance was received. Approximately half the room said yes and the other half said no.

One participant, NFP B, was adamant that the legislation allowed it. It was clarified that the Act allowed a defence to the offence of engaging a volunteer in child-related work without a WWCC only where the NFP had evidence that the application had been submitted (and not withdrawn etc.) and the NFP did not know or ought reasonably to have known that the applicant had committed a relevant offence.

As a result of this information about what the law said, NFP B decided to change its practice of letting applicants work before their WWCC check was received.

NFP C: uncertainty over NFP WWCC obligations in agency situations

NFP C, a neighbourhood community centre, contacted PilchConnect to ask for advice on Victoria's WWCC regime. NFP C was concerned that they owed a duty of care to the children who attended their premises, and were confused as to whether they were responsible for ensuring that all persons who hired the hall had a WWCC for child-related activities.

NFP C advised they had sub-let their premises to a sporting group to run classes, and that some of the students in the class were children. NFP C wanted to know whether they had any legal responsibility to ensure that the sporting group's instructors had a WWCC. NFP C had been anecdotally advised that one of the sporting group's instructors was not an appropriate person to work with children.

PilchConnect advised that NFP C was unlikely to have committed an offence under the *Working with Children Act 2005* (Vic). This is because they did not directly engage the sports instructors (or their volunteers), nor did they directly facilitate or procure work on behalf of the sports group (so did not have an 'agency' relationship at law).

However, we advised NFP C they still had a broad duty to ensure they maintain a safe environment for all users of the community centre. We recommended it would be appropriate for NFP C to immediately implement a policy or contractual obligation which required that groups wanting to hire their premises for 'child-related work' show evidence they are complying with the *Working with Children Act 2005* (Vic) in order to continue to hire the premises.

NFP D: lack of clarity about WWCC legal obligations in agency situations

NFP D, a tutoring peak body, sought advice from PilchConnect on whether it was in an 'agency' relationship under the *Working with Children Act 2005* (Vic) in order to work out whether it was responsible for monitoring if its members hold a WWCC.

NFP D had over time developed a searchable online database of tutors. The peak body was not sure if this meant that they were an organisation that had, in accordance with s 3(2) of the *Working with Children's Act 2005* (Vic), entered into an agreement with members to procure child related work for them. The issue was whether compiling a database of tutors was enough to establish an 'agency' relationship or whether there was a difference between 'providing contact details' and 'procuring child-related work'.

Given the particular circumstances NFP D, it was determined that the listing was not procurement of child-related work, however NFP D was advised to put a clear statement on their website to:

- make it clear that the inclusion of a tutor on the database did not imply a recommendation by NFP D;
- explain the obligations under the *Working with Children Act 2005* (Vic) and to recommend that all prospective students ask tutors to produce a valid WWCC;
- state that NFP D has asked tutor members to submit a copy of their WWCC – and if they have, this is noted in their listing; and
- make it clear that NFP D undertakes to keep the information on the site as up to date as possible.