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p (03) 8601 5884 f (03) 8601 5877

Level 20 / 570 Bourke Street, Melbourne 3000

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BY:

Justice Peter McClellan AM
Chair
Royal Commission into Institutional Responses to Child Sexual Abuse
GPO Box 5283,
Sydney NSW 2001

Dear Justice McClellan

Thank you for the opportunity to contribute to the discussion arising from *Issues Paper 1 – Working with Children Check* as released by the Royal Commission into Institutional Responses to Child Sexual Abuse. I would like to focus on a number of the items raised by the Royal Commission that have particular relevance for the Victorian Commission for Children and Young People.

The *Commission for Children and Young People Act 2012* provides the legislative mandate for the Victorian Commission for Children and Young People (CCYP). The objective of the Commission is to promote continuous improvement and innovation in policies and practices relating to the safety and wellbeing of vulnerable children and young persons and children and young persons generally; and in the provision of out of home care services. The Victorian Commission is the only jurisdiction in Australia to have a dedicated Commissioner for Aboriginal children and young people.

Functions of the CCYP include promoting child-safe and child-friendly practices in the Victorian community; reviewing the administration of the *Working with Children Act 2005* and, in consultation with the Secretary to the Department of Justice, to educate and inform the community about that Act.

National progress to date

Since 2005, there has been national agreement and commitment at Ministerial level for the development of a comprehensive national approach for increasing the safety of children in their dealings with community service organisations. This aspiration is documented in the *Creating Safe Environments For Children – Organisations, Employees and Volunteers – National Framework*, which was released by the Community and Disability Services Ministers' Conference in July 2005. A copy of the Framework is attached for your information. The specific guidelines incorporated in this Framework are:

- Guidelines for Building the capacity of Child-Safe Organisations
- An Evidence-Based Guide for Risk Assessment and Decision-Making when Undertaking Background Checking
- Guidelines for Exclusion of Persons from Employment/Volunteering in Child-Related Areas
- Guidelines for Information Sharing across Jurisdictions

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Over a number of years, through the work of cross jurisdictional working groups, there has been progress across jurisdictions to harmonise Working with Children Check processes and to collaborate in the exchange of criminal history information. These have been positive steps however, work in this area appears to have slowed and would benefit greatly from stronger leadership from the Australian Government Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA). I believe that a nationally consistent approach to Working with Children Checks (WWCC) is a realistic goal and is one that is in the best interests of children and young people.

WWCCs form one part of a child-safe organisation

Consistent with my submission to the Victorian Inquiry by the Family and Community Development Committee into processes by which religious organisations and other non-government organisations respond to the criminal abuse of children by personnel within their organisations, I strongly wish to promote Working with Children Checks (WWCC) as only one part of creating a child-safe organisation and that a WWCC in and of itself, does not mean employees or volunteers are 'safe' people to work with children. Robust staff selection, background checking, supervision and management are equally vital elements that comprise a child-safe organisation.

I am of the view that resources are most appropriately targeted at minimising risk, via focusing on child-safe practices, not managing risks once they have been realised. It must be remembered that a Working with Children Check is only able to identify relevant criminal records – that is, identify a perpetrator once abuse has taken place. It is well understood that abuse against children in particular is under reported and can be difficult to prosecute; therefore criminal history records in this area are likely to be the tip of the iceberg. As the Royal Commission is investigating institutional responses to child sexual abuse, it is likely that much of the focus will be on undetected and unreported abuse. It is unlikely that criminal history record checks will feature strongly as protective measures.

Proactive approaches are required to reduce the risk of child abuse occurring within organisations. The principles of creating a child-safe organisation are well described in a range of resources. For example, based on the National Framework, the Victorian CCYP has produced and widely distributed (both in hard copy and online) *A Guide for Creating a Child-safe Organisation*. The central premise of the Guide is that:

All children have the right to feel safe and to be safe all of the time. A child-safe organisation acknowledges that safety does not just happen. A child-safe organisation takes action to protect children from physical, sexual, emotional, psychological and cultural abuse and from neglect. In a child-safe organisation, this commitment to protecting children is embedded in the organisation's culture and responsibility for taking action is understood and accepted at all levels of the organisation.

The Guide encourages organisations to consider how well they:

- welcome children and their families/carers
- recognise that children are vulnerable
- recognise and respond to children with special needs, including a disability
- actively encourage the participation of Aboriginal children
- recognise and respond to the particular needs of children from diverse cultural, linguistic and religious backgrounds
- encourage children to participate in making decisions
- recruit and manage staff and volunteers
- ensure the commitment to child safety is clear and shared by all; and
- educate staff and volunteers about child safety.

The CCYP has also produced and distributed several resources for parents and carers to better equip them to assess how "child-safe" an activity, service or organisation is for their children. These resources promote the need for a child-safe and child-friendly organisation to have a range of child-safe policies in place, including robust measures to ensure staff who are required have a Working with Children Check and that the validity of the check is routinely monitored. In particular we have produced:

- a booklet entitled Information for parents - Things to look at when selecting child-safe activities or services for your child; and
- a DVD and fact sheets entitled Wise choices: Safe children (which includes information in English, Arabic, Cantonese, Dinka, Farsi, Mandarin, Somali and Vietnamese).

Copies of the three CCYP resources are attached for your consideration. The CCYP is aware that there are also a range of resources produced by other organisations which are also designed to provide guidance to organisations, as well as to parents.

The current Victorian parent exemption

Given Working with Children Checks form part of developing a child-safe organisation, I do not support the current exemption of parent volunteers that is in existence in Victoria pursuant to Section 27 of the *Working with Children Act 2005*. This Section provides that a "parent engaging in work as a volunteer in relation to an activity in which his or her child is participating or ordinarily participates is exempt from a Working with Children Check in respect of that activity." If the primary objective of the legislation is to keep unsuitable people from working with children, then this exemption seems inconsistent with achieving this objective. The fact that a person is a parent does not guarantee that they are suitable to work with children.

As I submitted to the Victorian inquiry by the Family and Community Development Committee into the processes by which religious and other non-government organisations respond to the criminal abuse of children by personnel within their organisations, some of the decisions published by the Victorian Civil and Administrative Tribunal (VCAT) on the WWC check illustrate the anomaly of the exemption for parents. In a number of cases, VCAT has upheld the decision of the Secretary of the Department of Justice to refuse to give an applicant a Working with Children Card. In some cases, the applicant who has been refused a card is a parent and indicated that they wished to volunteer in activities in which their children were involved. In such cases, it appears the organisations for which they wished to volunteer may have been requiring more than the minimum required under the WWC Act 2005, but of course not all organisations will do this. It is arguably therefore open to people who have been or would be found unsuitable to have a Working with Children Card to still have regular, direct and unsupervised contact with children within religious or other non-government organisations. The person could be a volunteer in a leadership position within an organisation, provided their own child as regular participant.

In our experience, many organisations do ask that even parents who might otherwise fall within the parental exemption undertake a WWC Check. Similarly, we have found many parents assume that organisations would screen all volunteers who regularly work with children, and would not be aware that parent volunteers may not have been required to have a WWC check, giving them a false sense of security. Furthermore, research and clinical practice demonstrates that those who present a risk of harm to children will seek ready accessibility to children, including peers of their own children.

Removing the exemption for parents would ensure that the law matched the expectations of the community, better protected children and ensured all organisations adopted a consistent practice in relation to parents who have regular, direct and unsupervised contact with children. If the exemption were to be removed, it would also be important to ensure that organisations and the broader community understood that in the current Victorian context, only those who had regular, direct and unsupervised contact with children would

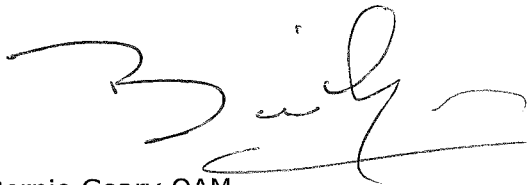
be required to have a check. Thus for example, a parent who was the head coach of a team would be required to have a check, not every parent who occasionally helped out at practice.

In conclusion, I would like to reiterate that Working with Children Checks are only one of a suite of child-safe tools that must be incorporated into the policy and practice of organisations that have regular direct contact with children involving paid or voluntary workers. I believe that harmonisation of individual checking programs across jurisdictions is a viable way forward and significant traction has been gained to date, however, greater leadership from FaHCSIA is required to achieve optimal outcomes.

In addition to this written submission, I would be pleased to answer any questions the Commission has, or to provide any further information you may require.

If you would like to discuss any of these issues in more detail, please contact myself on tel: (03) 8601 5886 or at Bernie.Geary@CCYP.vic.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Bernie Geary', with a stylized flourish at the end.

Bernie Geary OAM
Principal Commissioner

Attachments: *Creating Safe Environments For Children – Organisations, Employees and Volunteers – National Framework*

A Guide for Creating a Child-safe Organisation

Information for parents - Things to look at when selecting child-safe activities or services for your child

Wise choices: Safe children