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Director, Working with Children Check Unit
Department of Justice & Regulation
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By email: wwccris@justice.vic.gov.au

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Dear Mr Bentincontri

Working with Children Regulations 2016 – Regulatory Impact Statement

We welcome the opportunity to comment on the Regulatory Impact Statement (RIS) for the *Working with Children Regulations 2016*, prepared for the Department of Justice & Regulation in December 2015.

[Not-for-profit Law \(NFP Law\)](#) (previously PilchConnect) is a program of Justice Connect, providing free and low cost legal help to small-to-medium not-for-profit community organisations (NFPs) primarily across Victoria and NSW. We ‘help the helpers’ by providing tailored legal advice, information and training to NFPs - by relieving NFPs of the burden of legal issues, we allow them to better focus their time and energy on achieving their mission. We are committed to improving access to quality legal help for Victorian NFPs, and on improving the legal landscape in which they operate.

NFP Law regularly receives queries from small Victorian NFP organisations about the operation of, and compliance with, the Working with Children Check (**WWC Check**) regime. We also regularly conduct legal training on the topic of ‘Legal issues in managing volunteers’, which includes a detailed section on volunteer screening and specifically on WWC Checks.

Many of the NFPs we work with engage both volunteers and employees to provide crucial services and support to children. In some cases, NFPs struggle to meet the complex demands of ensuring their organisation is compliant with relevant child protection and worker screening legislation, including the *Working with Children Act 2005* (Vic). We think it is important that the WWC Check scheme, including its fee structure, remains accessible and appropriate, particularly for workers within small volunteer-reliant NFPs.

This submission addresses issues raised by the RIS. Our key points are summarised below.

SUMMARY OF KEY POINTS

1. We query the policy rationale of setting the fee structure on a ‘cost recovery’ basis (ie recovering costs from individuals required to have a WWC Check, or as is often the practice, organisations on their behalf), given the strong public interest in the WWC Check scheme (and the predominance of not-for-profit community organisations in many occupational fields covered by the scheme).
2. We welcome the Government’s commitment to retention of free WWC Checks for volunteers, and for recognising (in its preferred Option 4) that full cost recovery from individuals is unwarranted.
3. Of the four options proposed:
 - ‘Option 1’ is preferred, as it appropriately shares costs between taxpayers and workers
 - ‘Option 4’ is acceptable

4. Consideration should be given to further reform of the WWC Check scheme, including a nationally consistent approach to WWC Checks in line with recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse. Such reforms would affect the operational costs of the WWC Check Scheme and the problem sought to be addressed by the restructuring of fees.

Lack of sound policy rationale for full recovery of costs from individuals applying for or renewing WWC Checks

Children are the key beneficiaries of the WWC Checks scheme

The RIS states that the new fee options have been identified so as to achieve the Government's key objectives (ie. not discouraging volunteers and raising around \$11 million p/a in fee revenue), as well as compliance with the Victorian Guide to Regulation, including the requirement that:

'where possible, regulatory fees should be set to fully recover costs to ensure both efficiency and equity objectives are met, particularly where the fee reflects a service or benefit that is captured by the individual paying the fee' (p 6, emphasis added).

We note here the RIS emphasises the private benefits of obtaining a WWC Check to an individual worker, over the public benefits of the scheme for the protection of welfare of children (although it seems the RIS is more willing to acknowledge public benefits in relation to the child-related work of volunteers).

While we acknowledge that a person applying for a WWC Check receives a service that gives rise to a personal benefit (ie. by being authorised to work in child-related settings), we submit the real 'beneficiary' of the WWC Check 'service' is not the individual worker, but the children with whom that person works – and by extension, the broader community. This is different to seeing WWC Checks primarily as a fee-based service for individuals who 'capture' the 'benefit' of the scheme.

If WWC Checks are providing a significant public benefit (as we submit it is), the rationale for requiring full cost recovery from individuals working with children is unclear (also, in reality, we understand organisations typically cover the cost of their employees' WWC Checks). Fees for WWC Checks impose a financial burden only on those working in occupational fields covered by the Act – many of which are dominated by community service organisations operating on a not-for-profit or charitable basis¹ (eg. community-based childcare centres, kindergartens, youth services, out-of-home care, sporting and cultural associations etc).

We do not see why individuals working in these fields should bear the full cost of administration of the WWC Check scheme.² We submit it is appropriate that at least some of the cost of the scheme is covered by taxpayer revenue.

Impact on the NFP sector?

The Victorian Guide to Regulation states that in order to assess any regulatory proposal, a careful examination and scrutiny of its costs and benefits must be undertaken:

"This requires analysis of the impacts for different groups within the community (e.g. business, the not-for-profit sector, consumers, governments), as well as impacts for the community as a whole..."³

¹ The Australian Charities and Not-for-profit Commission (ACNC) recently published a report which contains information about the characteristics, activities and purposes of Australian charities in 2014 (based on data submitted by approximately 37,798 organisations). The report concludes that:

- over two thirds of Australia's charities are small – with an income of less than \$250,000
- almost half of the reporting charities have both paid employees and volunteers
- charities that reported their numbers of paid employees, together employed over 1 million paid workers in 2014, and
- organisations whose beneficiaries were children comprised 37.6% of the total number of reporting charities.

See Cortis, N., Lee, I., Simnett, R. and Reeve, R. (2015) Australian Charities Reporting 2014. Centre for Social Impact and Social Policy Research Centre, UNSW Australia.

² The majority of those working in these occupational fields are women and underpaid. This was recognised by the Fair Work Commission in its Equal Remuneration Order of June 2012. The Commission ordered that wages of a large number of community sector workers should increase by between 19 and 41 per cent over an eight year period.

³ Emphasis added. Victorian Guide to Regulation, December 2014, Department of Treasury and Finance, see section 2.3 <http://www.dtf.vic.gov.au/publications/victoria-economy-publications/victorian-guide-to-regulation>

We note that the RIS does not specifically consider the impacts of the proposed regulations on the NFP sector (in contrast, it refers several times to impact on small business). The NFP sector has its own unique position, needs and challenges – including operating in a complex regulatory environment often with limited resources and relying on a mix of volunteer and paid staff. In line with the Victorian Guide to Regulation, an analysis of the impacts on the sector, including its workforce, ought to have been undertaken in the RIS.

Option 1 is our preferred model

Of the four options presented in the RIS, NFP Law's preference is for 'Option 1', as this results in no increase in the fees for employee WWC Check applications and renewals, and retains free volunteer WWC Checks:

“Partial cost recovery – full cost recovery of employee new application/renewal and card replacement costs from employees, with volunteer costs funded from general tax revenue.”

We applaud the Government's commitment to funding the scheme in a way that does not discourage volunteers in this option (and also Options 2 and 4).

Further to our submissions on the policy rationale for cost recovery from individuals above, we submit that:

- the requirement to obtain a WWC Check has been imposed by the Government to protect children, so it is fair that the Government pay for at least partial cost of this requirement,
- Option 1 recovers employee-related costs of the scheme from employees but does not require them to pay more than their cost share (ie. to cross-subsidise volunteers' checks) which is appropriate, and
- Option 1 ensures that the Government's key objective to fund the scheme in a way that does not discourage volunteers is upheld.

Option 4 is an acceptable model

If Option 1 is not implemented, we consider Option 4 to be an acceptable course of action, especially given the proposed decreases in fees for renewals and replacements of cards.

As noted above, we query the cross-subsidisation of volunteers' WWC Checks costs by individual employees working with children (hence our preference for Option 1). We submit that:

- There is no strong policy reason why employees should pay more than cost recovery of their own cost share of the WWC Check scheme, especially as many employees who require a WWC Check work for community-based organisations that provide services to children on a not-for-profit basis (and often the costs of employee WWC Checks are picked up by the employee's organisation).
- Consideration should be given to the equity of an increase of the application fees for people who work on a part-time or occasional basis.

Nevertheless, we are heartened that Option 4 commits to funding part of the cost of the scheme through government revenue, as well as retaining free WWC Checks for volunteers.

Further reforms of the WWC Check Scheme ought to be considered, including consideration of a nationally consistent approach, in line with recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse

Finally, we note that the Royal Commission into Institutional Responses to Child Sexual Abuse released its report on Working with Children Checks (**WWCC Report**) on 17 August 2015. The recommendations in the WWCC Report aim to strengthen the protection children receive through WWC Checks and will, in the

Commission's view, deliver a range of economic savings.⁴ While it is outside the scope of our response to this RIS to consider the Commission's recommendations (including moving towards a nationally consistent scheme) and how future implementation might affect the operational costs of the Victorian WWC Check scheme, we note that the problem sought to be addressed by the RIS (ie. costs and benefits of the scheme) could be usefully explored further in a Government response to the Royal Commission's WWCC Report and recommendations.

Thank you for the opportunity to comment on the RIS and please contact us should you wish to discuss this submission.

Yours sincerely,

The image shows two handwritten signatures in blue ink. The signature on the left is 'Juanita Pope' and the signature on the right is 'Kaela Snibson'.

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⁴ The Commission has stated that its recommendations should be implemented within 12 to 18 months of its publication. See Royal Commission into Institutional Responses to Child Sexual Abuse, Working with Children Check Report, 17 August 2015, see Part IV, section 8.1

<https://www.childabuseroyalcommission.gov.au/policy-and-research/working-with-children-checks/working-with-children-checks-report>