Anglican Church Diocese of Sydney

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Dear Ms Niles

Submission on the Office of the Children's Guardian's Statutory Review of the *Child Protection (Working With Children) Act 2012 (NSW)*

This submission in relation to the operation of the *Child Protection (Working with Children) Act 2012* (the "Act") is made on behalf of the Anglican Church Diocese of Sydney.

The submission only responds to a small range of the matters raised in the Discussion Paper published by the Office of the Children's Guardian.

The people who should be covered by the WWCC

We support amendments to the definition of child-related work (and the wording of the exemptions therefrom) which remove ambiguity.

Our experience is that unless an employer can be absolutely certain that a person is not required to obtain a WWCC clearance, they will require one in the interests of child safety and to ensure absolute compliance with their regulatory obligations.

We support the Royal Commission's recommendation that reference to child-related roles and sectors be removed from the Act.

In the church context, a WWCC is presently required if the –

(a) The work is for a religious organisation and involves physical or face-to-face contact with children.
(b) Children form part of the congregation or organisation.
(c) The person is a minister etc or a like religious or spiritual leader or the person is in another role that involves activities primarily related to children.

The exemptions then need to considered to determine if there is a valid basis for not requiring a WWCC notwithstanding that the criteria in (a) to (c) apply.

This is a multi-faceted test. It can be a complex process for a church that has a large number of volunteer workers and a wide range of activities involving children, to consider whether each worker requires a WWCC in their particular circumstances.

The recommendations of the Royal Commission, if adopted, will lead to a simpler test. This being whether a person will have direct contact with children (as defined), that is a usual part of and more than incidental to child-related work as a religious leader, officer or personnel of a religious organisation.

In practice, the new definition it is unlikely to change the scope of workers that churches require to obtain WWCC clearances. The present ambiguity means that churches typically apply a wider test that is along the lines of that recommended by the Royal Commission in any case.

If there are additional roles that fall outside the definition, such as management roles and school cleaners, but which expose children to risk, we support these being prescribed by regulation.

Dealing with applications from people who do not need to be checked

One difficulty with the Act is that it applies a single WWCC system to organisations and activities that may share nothing in common except that they all involve children. This means that there may be some circumstances where a WWCC is required but the risks are low and there may be other circumstances where it is not required but the risks are high. A capacity to prescribe particular roles assists with this difficulty to some degree, but not completely.

One of the examples given on page 13 of the Discussion Paper of an organisation requiring a WWCC where there is no legislative requirement, is parents volunteering to coach at a sporting clubs that involve their children. From a sporting club's point of view, a parent coach may be high risk. The coach will often have unsupervised contact with children, possibly in contexts where children are changing clothes or being touched while receiving treatment for an injury and so forth. It is quite reasonable for a sporting club to view the WWCC is one part of a comprehensive approach to child protection risk in this context.

We do not support the "front-end changes" or the "penalties" options set out on pages 14 and 15 of the Discussion Paper.

We consider that there should be scope for employers to have discretion to require other persons to obtain a WWCC where the employer considers that the role or function is of sufficient risk to warrant it. There may be different ways in which this could be achieved. It could mean no change to the present arrangement, since any person can presently apply for a WWCC. Alternatively, it could involve the legislation restricting who can apply for a WWCC, but including a person who is nominated by an employer whose business or undertaking includes contact with children. This person might then be deemed to be in child-related work with that employer.

We do not support imposing a fee on volunteers for a WWCC. The Discussion Paper cites South Australia and Western Australia as examples of where fees for volunteers apply. It should be noted that no fee applies to volunteer checks in Victoria, Queensland, or the Australian Capital Territory and that the fee for volunteers in Western Australia, Tasmania and the Northern Territory is relatively nominal. Only South Australia imposes a substantial fee.

Many volunteers who work with children are university students, retired or unemployed. The fee for a WWCC may be a considerable expense for such a person, especially for a role they are performing altruistically. The cost is likely to dissuade some people from child-related work who may otherwise be suited to helpfully and appropriately engage in such work. The fee will not be tax deductible for a volunteer. A paid worker will be able to claim a tax deduction for the expense or may be able to claim it as a reimbursement from their employer. The community receives considerable benefits from volunteers who generously give of their time and abilities in working with children. It is appropriate that the cost of a WWCC for a volunteer be met by the Government.

We do not support the penalties option for the reasons set out in the Discussion Paper. In addition, the ambiguity (noted above) in relation to who is in child-related work or who qualifies for exemption means that there would be considerable unfairness in penalising employers who require a WWCC in good faith in a circumstance where they cannot be certain the worker is not in child-related work. It is better to have a system where employers err in requiring a WWCC when it is not required, than to have a system where employers err in not requiring one out of concern about being penalised.

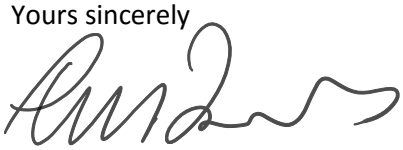
We support the "no change" option. It may be that the resource difficulties in relation to demand could be assisted by the application process seeking more information from applicants to enable the system to discriminate between applications on the basis of priority.

The jurisdiction of the NSW Ombudsman in relation to reportable conduct

We acknowledge that this matter may not be within the scope of the present review. Nonetheless we wish to take the opportunity to suggest that the jurisdiction of the NSW Ombudsman in relation to 'reportable conduct' under the *Ombudsman Act 2016* be made coextensive with the reporting framework in the *Child Protection (Working with Children) Act 2012*. In general, churches are only required to report conduct to the Ombudsman if they provide "substitute residential care to children". We understand this may depend on how many overnight camps a particular church runs for children in a given year. In our view, it would be far preferable if the Ombudsman's jurisdiction over churches was made definitive by including the bodies that have been prescribed in Regulation 25 of the *Child Protection (Working with Children) Regulation 2013,* being bodies that are required to report conduct to the Office of the Children's Guardian under section 35 of the Act.

We thank you for the opportunity to provide this submission and look forward to the results of the review.

Yours sincerely



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