



Mr Tony Giugni
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Dear Mr Giugni

I refer to the proceedings of the Royal Commission on the afternoon of Thursday 10 March, 2016 in relation to Case Study 37, and in particular to one of the questions posed by the Presiding Member to Ms Deidre Mulkerin, Deputy Secretary, NSW Department of Family and Community Services (FACS), during her witness examination.

The question was whether, apart from the police, there was any other department or government agency that has responsibility in this area for monitoring what might be happening in an institutional setting. The Children's Guardian's has responsibilities in this area, specifically with regard to administering the Working with Children Check.

It should be noted that the legislative environment is now very different to what it was in 2007. Should the unfortunate events of 2007 occur today, the improved legislative framework under the Care Act and the WWC Act provide greater protections to children. I refer in particular to the information sharing provisions in the Care Act and the range of options statutorily available to the Office of the Children's Guardian under the new WWC Act. The legislation allows for immediate protective action to be taken by the Children's Guardian provided information is made available.

By way of background, the object of the *Child Protection (Working with Children) Act 2012* (WWC Act) which came into operation on 15 June 2013 is to protect children by not permitting certain persons to engage in child related work and by requiring persons engaged in child related work to have working with children check clearances.

The Children's Guardian implements the objects of the WWC Act by disqualifying persons who have certain records listed in Schedule 2 of the WWC Act and by risk assessing persons who may be subject to an assessment requirement as set out in Schedule 1 of the Act in accordance with the provisions of the WWC Act.

However, the circumstances in which the Children's Guardian may conduct a risk assessment of an applicant or a holder of a clearance are not limited to the above as set out in section 15(3) of the WWC Act. Rather, a risk assessment may be conducted if the Children's Guardian becomes aware of other concerning information. i.e: Information that, for whatever reason, cannot be acted upon by FACS or Police.

Relevantly, Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (Care Act) which came into operation on 30 October 2009, makes provision for agencies that have child protection responsibilities to provide and receive information that promotes the safety, welfare or well being of children and young persons. The Department of Family and Community Services or Police via JIRT can now share such information with the Office of the Children's Guardian (OCG). When such information is shared with the OCG under Chapter 16A, the Children's Guardian may conduct a risk assessment in pursuance of section 15(3) of the WWC Act.

On conducting a risk assessment, if the Children's Guardian is of the opinion that it is likely there is a risk to the safety of children if the applicant or holder engages in child related work pending the determination of the application or assessment, the Children's Guardian may, under section 17 of the WWC Act, determine that the person be subject to an interim bar on engaging in child related work.

The effect of an interim bar is that the person cannot engage in child related work for the duration of the interim bar. Also, an interim barred person may not appeal against the imposition of the interim bar to the NSW Civil and Administrative Tribunal for a period of six months from the date of the interim bar. This ensures that, where there is a risk to the safety of children, immediate action can be taken to mitigate the risk, pending the final determination by the Children's Guardian.

Further, section 39 of the WWC Act provides the Children's Guardian with compliance functions to monitor and audit compliance with the requirements of the WWC Act. The Children's Guardian's compliance functions are multi-faceted to ensure that the legislation is complied with. Should the Children's Guardian become aware that an interim barred or barred person engages in child related work at any time that they are subject to an interim bar or otherwise refused a clearance, the OCG will provide the relevant information to the NSW Police to initiate prosecution of the breach of the WWC Act. The NSW Police have already successfully prosecuted a worker who breached the WWC Act by engaging in child related work while being barred and more prosecutions are likely to follow.

As part of the OCG's compliance activities, the OCG may also notify parents of the action taken to ensure that they are made aware of the risks to the safety of children.

Under Clauses 5 and 5A of the Child Protection (Working with Children) Regulation 2013, the Children's Guardian may also require persons engaged in child related work (including volunteers and self-employed persons) who are ordinarily subject to the phase in period (and therefore not required to comply with the requirements of the WWC Act till their particular phase in period) to comply with the requirements of the WWC Act immediately, should there be a concern about the person. The phase in period set out in the WWC Regulation provides set periods of time within which workers in specified sectors are required to comply with the WWC Act. This provision is another example of the Children's Guardian's capacity to act immediately should the OCG become aware of concerns through the OCG's compliance and monitoring role or via other information that is made available to the OCG.

I trust that the above information is of assistance to the Royal Commission. Please do not hesitate to contact me on REDACTED should you wish to discuss any aspect of the above or if you require further information.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'K Boland', written in a cursive style.

Kerryn Boland
Children's Guardian
11 March 2016