

**The response of the State of NSW to questions taken on notice  
during the hearing for case study 51**

***By Andrew Cappie-Wood, Secretary of the NSW Department of Justice***

**Civil Litigation – 7 March 2017**

**Question**

***Mr Cappie-Wood, are there discussions between you and Victoria about this matter? (T26332: 1-2)  
Mr Cappie-Wood stated there had not been discussions at his level, but indicated he would confirm  
if there had been discussions at officer level (T26332:4-5).***

**Response**

- Further to transcript T26332 lines 4-5, the Department of Justice confirms that there have been officer-level discussions between the NSW Department of Justice and the Victorian Department of Justice and Regulation about the Royal Commission's civil litigation recommendations, including identification of a proper defendant.

**The response of the State of NSW to questions taken on notice  
during the hearing for case study 51**

***By Michael Coutts-Trotter, Secretary of the NSW Department of Family and  
Community Services***

**Working with Children Checks – 7 March 2017**

**Question**

***The outcome of a trial in 2009 for the national exchange of criminal history information for people working with children (T26349:13 - 29) and whether anything changed in respect of the Working with Children Check (WWCC) framework during the period 2005 – 2009 (T26350:36 – 26351:24).***

**Response**

- On 13 April 2007 COAG agreed in principle to a framework for exchanging criminal history information between all Australian governments for WWCCs. The National Exchange of Criminal History Information for People Working with Children (**ECHIPWC**) aimed to facilitate the sharing of a greater range of criminal history information across jurisdictions.
- On 29 November 2008, COAG agreed to establish an inter-jurisdictional exchange of criminal history information for people working with children, commencing with a 12 month trial.
- On 30 November 2009 a Memorandum of Understanding between the Commonwealth, States and Territories commenced, establishing arrangements for the trial.
- In March 2011 an independent evaluation of the trial was completed. It recommended the permanent continuation of the ECHIPWC.
- In 2013, COAG agreed to permanently continue the arrangements under the ECHIPWC, the agreement commenced which:
  - applies to screening units authorised by law to participate in the Exchange, which includes the NSW Children’s Guardian; and
  - includes strict conditions on the receipt, use, storage and destruction of the expanded criminal history information (**WEB.0197.001.0001**).

## The response of the State of NSW to questions taken on notice during the hearing for case study 51

Working with Children Checks – 7 March 2017

### Question

*Mr Coutts-Trotter agreed to speak with the Department of Premier and Cabinet and provide advice to the Commission about the best way to frame recommendations to achieve progress on recommendations that have national implications (T26390:3-34)*

### Response

- To better facilitate national progress on its recommendations, the Royal Commission could specify that the Council of Australian Governments (**COAG**) be tasked with responding to recommendations of national significance. This puts the onus on the Commonwealth and all States and Territories as members of COAG to commit to action. COAG is well placed to determine which Ministerial Councils should be tasked with examining issues in detail and setting timeframes for report-backs to COAG for decision. This approach has more recently been used to achieve national progress on complex issues related to domestic and family violence which cut across a number of policy and service delivery areas.

## The response of the State of NSW to questions taken on notice during the hearing for case study 51

### Mandatory reporting – 8 March 2017

#### Question

*Has NSW considered the clergy as mandatory reporters at all, particularly in the last few years (T26399:14 – 20)? Mr Coutts-Trotter agreed to see if this has been looked at as a policy question (T26399.20).*

#### Response

- Specific professions and occupations are not named as mandatory reporters in the *Children and Young Persons (Care and Protection) Act 1998* (**the Care Act**). Whether a member of the clergy is a mandatory reporter is based on whether he or she delivers the types of services set out in section 27 of the Care Act. Section 27 of the Care Act provides that a mandatory reporter is anyone who in the course of their **professional work or paid employment** delivers **health care, welfare, education, children’s services, residential services, disability services or law enforcement** wholly or partly to children (or who holds a management position in an organisation the duties of which include direct responsibility for, or supervision of, the provision of such services). Mandatory reporters must make a report if they have reasonable grounds to suspect that a child is at risk of significant harm and those grounds arise during the course of or from the person’s work.
- For example, a member of the clergy who manages an organisation that provides welfare services to children will be a mandatory reporter.
- In August 2012 NSW considered the advantages and disadvantages of amending the Care Act to specifically require persons who work in religious organisations to make reports. This issue was not pursued after the announcement of the Royal Commission in November 2012.
- Prior to the Care Act the *Children (Care and Protection) Act 1987* was in place. Sections 22(2) and 22(3) of the *Children (Care and Protection) Act 1987* provided that a person who was a minister of religion was exempt from mandatory reporting obligations. This was not carried forward into the Care Act.

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### Mandatory reporting – 8 March 2017

#### Question

*Is the fear of being insufficiently protected from reprisals an issue in over-reporting to external authorities as opposed to internal authorities (T26416:18)?*

#### Response

- NSW does not hold any evidence to suggest that mandatory reporters make reports to the Department of Family and Community Services (**FACS**) due to fear of reprisals within their own work place.
- The FACS Behavioural Insights Unit has undertaken research with respect to mandatory reporters across NSW to investigate mandatory reporting behaviour.
- The findings to date establish that mandatory reporters often want to pass on risk to FACS. Mandatory reporters can be fearful of future liability if they do not report a child they suspect to be at risk of harm. However, the research did not suggest that reports were made due to fear of reprisals.
- FACS is conducting further research into the behaviour of mandatory reporters which is expected to be completed by the end of 2017.

## The response of the State of NSW to questions taken on notice during the hearing for case study 51

### Mandatory reporting - 8 March 2017

#### Question

*Can NSW provide the Royal Commission with information about whether psychologists or counsellors are amongst voluntary reporters? Mr Coutts-Trotter agreed to look at the data to see if FACS could disaggregate it to identify the occupation of reporters (T26400.17).*

#### Response

- FACS can confirm that psychologists and counsellors are represented in the group of reporters to the NSW Child Protection Helpline who are not mandatory reporters. This includes psychologists and counsellors employed by both government and non-government organisations. It should be noted that some psychologists and counsellors are mandatory reporters as they deliver services of the kind defined in section 27 of the Care Act, such as health care.

Relevant data for 2014/15 and 2015/16 are as follows:

<i>Occupation</i>	<i>Total child and young person concern reports<sup>1</sup></i>		<i>Change (%)</i>
	<i>2014/15</i>	<i>2015/16</i>	
Counsellors	3,958	4,578	15.7%
Psychologists	5,958	6,730	13.0%

<sup>1</sup>A child and young person concern report relates to the initial contact made via the Child Protection Helpline from mandatory and non-mandatory reporters who have reasonable grounds to suspect a child or young person is at risk of significant harm and has current concerns about the safety, welfare or wellbeing of the child or young person. Child and young person concern reports are then assessed to determine whether the threshold of risk of significant harm is reached. A child may be subject to multiple concern reports.

## The response of the State of NSW to questions taken on notice during the hearing for case study 51

### Reportable Conduct – 8 March 2017

#### Question

***Does the reportable conduct scheme in NSW include disability services for children provided by the government and non-government organisations (T26427:22-33) ?***

#### Response

- Parts 3A and 3C of the *Ombudsman Act 1974* (NSW) (**the Act**) extend the NSW reportable conduct scheme to certain disability services provided to children<sup>2</sup>.

#### **Disability services captured under Part 3C of the Act – Protection of people with disability**

Under Part 3C, the reportable conduct scheme applies to:

- FACS supported group accommodation<sup>3</sup> services for children and/or adults with disability.
- Non-government services that are funded by FACS and which provide supported group accommodation services to children and/or adults with disability.
- Day program and other services for children and /or adults with disability who live in supported group accommodation.
- Non- government services that are funded by FACS to provide day program and other services to children and adults with disability who live in supported group accommodation.

#### **Disability services captured under Part 3A of the Act – Child Protection**

The list of agencies captured under the Part 3A scheme is outlined in section 25A of the Act under the description of ‘designated government and non-government agency.’ In terms of disability services for children there is a **potential** overlap with the Part 3C scheme. The following types of organisations are potentially covered by both schemes:

- Any disability service that is a ‘designated agency’ within the meaning of the *Children and Young Persons (Care and Protection) Act 1998* that provides court ordered out of home care.
- Any disability service, which provides ‘substitute residential care to children’ e.g. voluntary out of home care.

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<sup>2</sup> Allegations under Part 3C of the Act are referred to as “reportable incidents” within the Act, however in this document they are referred to as ‘reportable conduct’

<sup>3</sup> ‘Supported group accommodation’ is defined by the *Disability Inclusion Act 2014* and includes any accommodation where at least two people with a disability are living together and support is provided on-site, with some exceptions e.g. assisted boarding houses are not considered supported group accommodation.

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- It might also be the case that certain disability providers delivering 'approved education and care services' (i.e. centre-based pre-schools, out of school hours services, day care programs) are covered by both schemes. However, for these services to be covered by both schemes they must be funded by FACS to provide supported group accommodation and the relevant children must also live in supported group accommodation.

## The response of the State of NSW to questions taken on notice during the hearing for case study 51

**Child safe standards – 8 March 2017**

### Question

***Are the draft guidelines being prepared by the Children’s Guardian the same or do they build upon the 2013 Children’s Guardian’s guidelines (T26476.46-26477.07)?***

### Response

- The NSW Children’s Guardian has prepared draft Principles for Child Safe Organisations (**NSW Principles**), informed by the 2013 *Australian Children’s Commissioners and Guardians Principles for Child Safety in Organisations (ACCG Principles)* and research and findings of the Royal Commission into Institutional Responses to Child Sexual Abuse (**Royal Commission**).
- The NSW Principles do not duplicate or replace the Royal Commission’s child safe elements. The NSW Principles draw directly from the Royal Commission’s findings regarding the elements of child safe institutions and incorporate the ACCG Principles. They have been developed to support the Office of the Children’s Guardian’s (**OCG’s**) child safe organisations program and underpin the OCG’s training and resource development in this area.
- The OCG undertook a series of consultations with child-related sectors in 2016 to assist in the development of an enhanced child safe organisations program. The consultation included discussion with organisations regarding the ten elements identified by the Royal Commission and strategies to assist organisations to implement these elements. Feedback from organisations indicated that resources and training must be simple and practical and draw a clear link between child safe strategies and children’s safety. Based on this feedback, the OCG has translated the elements identified by the Royal Commission, and the ACCG Principles, into four child-focused principles (contained in the NSW Principles). The purpose of the four principles is to simplify and consolidate existing material in a manner that is child-focused and accessible to all child related organisations, particularly those organisations in the volunteer sector.