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16 October, 2001

The Hon Carmel Tebbutt MLC  
Minister for Juvenile Justice  
Minister Assisting the Premier on Youth  
Level 31, Governor Macquarie Tower  
1 Farrer Place  
SYDNEY NSW 2000

Dear Minister,

CONCERNS REGARDING THE CHILD PROTECTION  
(PROHIBITED EMPLOYMENT) ACT (1998)

I am writing on behalf of Scouts Australia (NSW) to urgently request a meeting to discuss our inability to fully comply with the Child Protection (Prohibited Employment) Act 1998.

As you may be aware Scouts Australia (NSW) has undertaken a major program to ensure our full compliance with all aspects of the Act, as advised to us over the last 18 months by the Commission for Children and Young People and the Department of Sport and Recreation.

This has required an exhaustive process requiring the signing of Prohibited Employment Declarations (PEDs) by over 6500 adult volunteers in more than 600 locations across New South Wales, and the suspension of a small number who have not signed a PED, despite having no criminal record. The cost to the organisation has been well in excess of \$15000, money that had to be drawn directly from the provision of services to our youth members.

Unfortunately, we must advise that a recent interpretation of the Act, which requires children as well as adults in direct unsupervised contact with children to sign a PED, is unworkable and impossible for youth groups and sporting bodies to fully comply with.

The advice is from the Commission for Children and Young People. Children, with no minimum age restriction, are now required to sign a PED if, as an unpaid employee or volunteer, they will be in direct unsupervised contact with other youth.

If a youth worker, teacher, coach, or other leader requests a child to do something with other children they become, according to the Commission, unpaid employees and must conform to the Act. The teacher, or other, is required to explain the PED to the child so that the child understands and then have the child consider signing the form. Should the child choose not to sign, the failure to remove them from contact with other children may be in breach of the Act.

As you are aware, determining a young person's decision-making capabilities and their ability to assess culpability can be a complex matter, often raising ethical and legal issues. Whilst each case must be treated individually we believe that the average volunteer youth leader would lack the skills to accurately and legally make such an assessment.

Juvenile sex offenders do exist but the new requirements are unlikely to minimise any risk from them for several reasons:

- Young people are usually even more reluctant than adults to admit to a criminal record.
- The likelihood of fully comprehending the penalties involved in non-compliance is limited, especially in younger age groups (in our case, ranging down to the age of six).
- Most young leaders at school, sporting teams and youth groups are chosen by popular vote.

Another concern is that there would be many occasions when a parent could not be consulted before a child was required, by law, to consider signing a PED. Many parents would consider it inappropriate or unacceptable to have sexual or violent offences described to their child, or to have their child sign a formal declaration.

Scouts Australia (NSW) fully supports any step that will reduce the risk of child abuse. Despite the fact that for many years all our Leaders have been the subject of rigorous police and reference checks that would reveal any previous criminality, we have fully conformed to the new Act as I mentioned above.

It is the belief of Scouts Australia (NSW) that this latest interpretation of the Child Protection (Prohibited Employment) Act, requiring children of all ages to sign PEDs, is a retrograde step with which it is virtually impossible to fully comply.

We request an urgent meeting with you and appropriate departmental officers to clarify the interpretation of the Act and ensure that this organisation and others are not left in breach of a legal requirement which is divorced from reality.

Yours sincerely

pb.

**Peter Olah**  
Chief Executive

cc: The Hon Bob Carr MP  
Premier, Minister for the Arts, and Minister for Citizenship  
Level 40, Governor Macquarie Tower, 1 Farrer Place,  
Sydney NSW 2000

Mrs Kerry Chikarovski MP  
Leader of the Opposition, Shadow Minister for the Arts,  
Ethnic Affairs and Women  
Suite 3, 230 Victoria Road,  
Gladesville NSW 2111

Mr John Brogden MP  
Shadow Minister for Urban Affairs and Planning, Shadow Minister for  
Sydney Water, Shadow Minister for Youth Affairs  
1725 Pittwater Road,  
Mona Vale NSW 2103