Statement in the matter of: Royal Commission into Institutional Responses to Child Sexual Abuse

Place: Sydney

Date: 2 February 2016

Name: Kerryn Boland

STATEMENTS:

1. This statement made by me accurately sets out the answers to the matters in Annexure A of the letter dated 8 January 2016 from the Solicitor Assisting the Royal Commission into Institutional Responses to the Child Sexual Abuse ("the Royal Commission"). The statement is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

2. I am over 16 years of age.

Matters raised in Annexure A of the Royal Commission letter

3. I address the questions as raised in Annexure A of the Royal Commission's letter of 8 January 2016 in this statement.

Role of the Children's Guardian

4. I am the NSW Children's Guardian and have held the position since October 2005. Prior to this, I held various Senior Executive roles in the then Department of Community Services ("DoCS").

5. From 23 March 2013 until 8 January 2015, I was also the Acting Commissioner of the Commission for Children and Young People ("CCYP"), a statutory corporation established by the Commission for Children and Young People Act 1998 ("the CCYP Act").

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6. The Children's Guardian is an independent statutory office, established under section 178 of the Children and Young Persons (Care and Protection) Act 1998 ("the Care Act"). The Children's Guardian is the Head of agency of the Office of the Children's Guardian ("OCG").

7. The OCG was first established as a government agency in December 2000. Between 3 April 2006 and 1 July 2009, OCG was merged with CCYP to form the Office for Children (OFC), with the Director-General of the Department of Premier and Cabinet in the role of Chief Executive of the OFC. That merger was progressed to provide more efficient shared administrative and financial support for both organisations - the statutory functions of, and enabling legislation for, the Children's Guardian, CCYP and CCYP Commissioner did not change. From 1 July 2009 to 17 May 2013, the OCG was a division of Communities NSW and then the Department of Education and Communities ("DEC").

8. As of May 2013 the OCG has been a separate agency under Part 3 of Schedule 1 to the Government Sector Employment Act 2013 and supports the Children's Guardian in the exercise of the Children's Guardian's functions.

9. Until 15 June 2013, the principal functions of the Children's Guardian under the Care Act related to children and young people in both statutory and voluntary out of home care (OOHC) accrediting designated agencies to provide statutory OOHC and non-government adoptions service providers under the Adoption Act 2000 and authorising employers in relation to the paid employment of children in the entertainment industry. There was no overlap of the Children's Guardian and CCYP functions or work programs, except for the Children's Guardian's limited compliance monitoring of WWCC requirements at the time organisations seek accreditation as a designated agency or adoption service provider.

10. From 15 June 2013, the principal functions of the Children's Guardian, as set out at section 181 of the Care Act, are:

(a) to exercise functions relating to persons engaged in child-related work, including working with children check clearances, under the Child Protection (Working with Children) Act 2012 ("the WWC Act");

(b) to promote the best interests of all children and young persons in OOHC;

(c) to ensure that the rights of all children and young persons in OOHC are safeguarded and promoted;

(d) to establish a register for the purpose of the authorisation of individuals as authorised carers, and to maintain that register, in accordance with the regulations;
(e) to accredit designated agencies (i.e. agencies that arrange the provision of statutory and supported OOHC) and to monitor their responsibilities under the Care and Protection Act and the regulations;

(f) to register organisations that provide or arrange voluntary OOHC and to monitor their responsibilities under the Care and Protection Act and the regulations;

(g) to exercise functions relating to the employment of children, including the making and revocation of exemptions from the requirement to hold an employer's authority;

(h) to develop and administer a voluntary accreditation scheme for persons working with persons who have committed sexual offences against children;

(i) to develop and administer a voluntary accreditation scheme for programs for persons who have committed sexual offences against children;

(j) to encourage organisations to develop their capacity to be safe for children as referred to in section 38 of the WWC Act.

11. The functions referred to in sub-paragraphs 7(a) and (h)-(j) of this statement were transferred from the CCYP to the Children's Guardian on 15 June 2013 by the Child Protection Legislation Amendment (Children's Guardian) Act 2013. One of the principal purposes of that Act was to separate advocacy functions, vested in CCYP, from regulatory functions, vested in the Children's Guardian. DEC staff who performed the transferred regulatory functions on behalf of CCYP were transferred to OCG on 1 July 2013.

12. The Children's Guardian reports to the Minister for Family and Community Services and to the Parliament of New South Wales. The exercise of the Children's Guardian's functions under the WWC Act is monitored and reviewed by the Parliamentary Joint Committee on Children and Young People.

Overview of the Commission for Children and Young People and its responsibilities

13. The CCYP was first established as a government agency in July 2000 following the Royal Commission Into the NSW Police Service May 1967. It had a role in ensuring the safety, wellbeing and welfare of children and young people through being an advocate for children and young people and screening people who wish to be involved in child-related services. Between 3 July 2000 and 14 June 2013, working with children screening was conducted by the CCYP and other approved screening agencies.

14. The principal functions of the CCYP, as set out at section 11 of the now repealed CCYP Act, were:

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(a) to promote the participation of children in the making of decisions that affect their lives and to encourage government and non-government agencies to seek the participation of children appropriate to their age and maturity,

(b) to promote and monitor the overall safety, welfare and well-being of children in the community and to monitor the trends in complaints made by or on behalf of children,

(c) to conduct special inquiries under Part 4 into issues affecting children,

(d) to make recommendations to government and non-government agencies on legislation, policies, practices and services affecting children,

(e) to promote the provision of information and advice to assist children,

(f) to conduct, promote and monitor training on issues affecting children,

(g) to conduct, promote and monitor public awareness activities on issues affecting children,

(h) to conduct, promote and monitor research into issues affecting children,

(h1) to determine or intervene in review applications concerning prohibited persons,

(i) to participate in and monitor background checking under and in accordance with Division 3 of Part 7,

(j) to develop and administer a voluntary accreditation scheme for persons working with persons who have committed sexual offences against children,

(k) (Repealed)

(l) to encourage organisations to develop their capacity to be safe and friendly for children,

(m) to develop and administer a voluntary accreditation scheme for programs for persons who have committed sexual offences against children.

15. Under section 36 of the CCYP Act, the CCYP could exercise the following functions with respect to background checking:

(a) collecting and maintaining (including updating and correcting) a database of relevant apprehended violence orders against any person, child protection prohibition orders made against any person and relevant employment proceedings that have been completed against any person,

(b) giving access to information on that database for the purposes of background checking by employers (or employer-related bodies) who have entered into a memorandum of understanding with the Commission on such access and the use of the information obtained,
conducting background checking on behalf of employers for whom the Commission has agreed to conduct any such checking,

(d) making recommendations to the Minister on appropriate procedures and standards for background checking,

(e) promoting public awareness and providing training and advice on appropriate procedures and standards for background checking,

(f) monitoring and auditing compliance with the procedures and standards for background checking.

16. In addition, under section 33S of the CCYP Act, the CCYP could monitor and audit compliance with requirements and procedures relating to prohibited persons.

17. The Minister could give the CCYP a written direction on the exercise of its functions under sections 33S and 36, and it was to comply with the direction. The CCYP was to include any such direction in its annual report.

18. The CCYP Commissioner reported to the Minister for Citizenship and Communities and to the Parliament of New South Wales. The exercise of CCYP’s functions was monitored and reviewed by the Parliamentary Joint Committee on Children and Young People.

19. From 15 June 2013, with the commencement of the VWVC Act and the repeal of Part 7 of the CCYP Act, the CCYP’s role in prohibiting certain persons from child related employment and background checking ceased.

20. The CCYP Act has since been repealed with the CCYP’s remaining advocacy functions being transferred to the Advocate for Children and Young People with effect from 9 January 2015.

Contextual Background

21. In relation to RG Dance and compliance with the Working with Children Check (WWCC), it is important to note that the contact CCYP, and subsequently the OCG, had with RG Dance was under the two different legislative schemes (ie under Part 7 of the CCYP Act from 3 July 2000 to 14 June 2015 and the VWCC Act from 15 June 2013 to date). It may assist the Commission if I outline the contextual differences between these schemes.
The scheme under Part 7 of the CCYP Act

22. The focus of Part 7 of the CCYP Act was to protect children by prohibiting certain persons from child related employment and by means of background checking administered by the CCYP. Accordingly, under section 33C of the CCYP Act persons convicted of certain offences were prohibited from being employed in child related employment.

23. Being a pre-employment check only, under section 37 of the CCYP Act, prospective employers were required to apply to the CCYP or an Approved Screening Agency (ASA) for a WWCC and the ASA would either issue an unqualified clearance or conduct a risk assessment, having regard to relevant information about the prospective employee and the characteristics of the particular workplace. There was no requirement on employers to submit background checks on behalf of existing employees. Rather, employers were only required to register with the CCYP or an ASA for the purpose of submitting future applications for prospective employees. The risk assessment would result in a prospective employer being provided with a risk assessment rating (high, medium, and low) but the information that underpinned the risk assessment was not provided to the prospective employer. A new WWCC was required each time a person took a new child related job which resulted in multiple WWCCs for those who changed jobs frequently and no checks for people who remained in the same job.

24. Self-employed people were not covered by the standard WWCC. The Certificate for Self Employed Persons ("CSEP") was introduced in 2009 and from May 2011, it became a compulsory scheme. The Certificate could not be used for child related employment where they were not self-employed.

25. Child related employment was statutorily defined (section 33 of the CCYP Act) as employment primarily involving direct, unsupervised contact with children in listed workplaces. In addition, certain roles were defined as child related employment. Under section 330 of the CCYP Act all employees, students on placement and volunteers in child related employment were required to sign a formal declaration that they were not a prohibited person with each new placement requiring a new declaration to be signed.

26. Police released “relevant” national criminal records for the WWCC, ie charges and convictions (including spent convictions) for crimes involving sex or violence towards children. However other criminal history was not disclosed.

27. An employer who failed to ascertain whether a person was a prohibited person before employing the person would be liable for a maximum penalty of 20 penalty units in the case of a corporation and 10 penalty units in any other case (section 33D of the CCYP Act). An employer also had the duty to conduct back ground checking procedures (section 37 of the CCYP Act). Failure to do so could have resulted in a written notice requiring compliance
and failure to comply with such a notice could result in a maximum of penalty of 50 penalty units or imprisonment for 6 months or both (section 41 of the CCYP Act). Any alleged breaches were referred to NSW Police for investigation.

28. The CCYP had the function of monitoring and auditing compliance with the procedures and standards for background checking and the procedures relating to prohibited persons (sections 33S and 36(1) (f) of the CCYP Act). However, there were no powers, such as the power to compel information, to assist in the exercise of such functions.

The scheme under the WWC Act

29. In contrast, the WWC Act requires individuals in child related work, rather than employers, to apply for a Working with Children Check clearance ("WWCC clearance") (section 6). The WWCC clearance, if granted, is not specific to particular types of child related work. Rather, it is portable and can be used in any child related work for a period of 5 years, unless subsequently surrendered or cancelled. Child related work is defined to mean direct contact with children (i.e., physical or face to face contact), in defined settings and includes certain specified roles (section 6).

30. All new employees are required to apply to the OCG (not to ASAs as was the case previously) for a WWCC clearance prior to commencing employment (section 8). Existing employees, self-employed persons, members of governing bodies of certain agencies, principal officers of registered agencies and volunteers in child related work are required to apply for a WWCC clearance in accordance with a phase in schedule as set out in Schedule 1 of the Child Protection (Working with Children) Regulation 2013 ("the WWC Regulation").

31. The phase in schedule in the WWC Regulation makes provision for the staged application of the WWC Act to existing workers and others by reference to various sectors (Schedule 1 clause 2 WWC Regulation). The phase in period for the various sectors was informed by industry risk analysis. For example, authorised carers were determined to be a high risk category and hence were phased in in the first compliance period from 15 June 2013 to 31 March 2014 (Schedule 1 clause 2 (3)). Clubs and other bodies providing services for children (including bodies of a cultural, recreational or sporting nature) which the dance sector falls within, are required to comply with the WWC Act requirements between 1 April 2015 and 31 March 2016 (Schedule 1 clause 2 (5)). The industry phase in period that applies to private tutors and coaches is April 2016 to March 2017 (Schedule 1 clause 2(6) (d)). The Children's Guardian is also empowered to direct any of the above workers to apply for a WWCC clearance prior to the date otherwise specified in the WWC Regulation in accordance with clauses 5 and 5A of Schedule 1 of the WWC Regulation.
32. In addition, an employer may require a worker who does not ordinarily require a WWCC to obtain a WWCC clearance if the worker has access to confidential records or information about children. However, an employer may only make such a requirement with the approval of the Children’s Guardian in accordance with section 7 of the WWC Act.

33. All applicants for a WWCC clearance are either cleared to work with children or barred from working with children because they have been refused a clearance (section 18). This is based on whether or not a person has a disqualifying offence under Schedule 2 of the WWC Act, or an offence that gives rise to the requirement for a risk assessment under Schedule 1 of the Act, or based on other available information that causes the Children’s Guardian to be satisfied that the person poses a risk to the safety of children. As part of the assessment process the OCG is also able to consider certain offences that indicate a pattern of behaviour that may cause a risk to the safety of children.

34. An individual is allowed to commence child related work once they have made an application for a WWCC clearance. The Children’s Guardian may, at any time after an application is made, impose an interim bar (section 17) if there is a likelihood that the individual may pose a potential risk to the safety of children if the applicant or holder engages in child related work pending the final determination of their application or assessment.

35. The WWC Act does not provide for conditional clearances to be granted, nor does it afford discretion to employers whether or not to employ a barred/interim barred person, as was the case under the previous CCYP regime. It is as much an offence for a barred or interim barred person to engage in child related work as it is for an employer to commence or continue employing such a person. The maximum penalty for an offending employer is 100 penalty units in the case of a corporation or 50 penalty units in any other case (section 9) and for a person who engages in child related work without a valid WWCC application or clearance, the maximum penalty is 100 penalty units or 2 years imprisonment or both (section 8). An employer must also ensure that the employee’s WWCC status is verified online as this enables the OCG to provide up to date information about the employee’s WWCC status to the employer, should the employee’s WWCC be cancelled at a later time (section 9A).

36. Cleared applicants are also subject to ongoing monitoring for relevant new records in NSW for the five year life of the clearance. Some continuous check events will trigger a risk assessment by the OCG, which may lead to the clearance being revoked as a result of the risk assessment. A person who is barred may appeal to the NSW Civil and Administrative Tribunal Act (NCAT) for review of the OCG’s decision except in certain specified circumstances (section 26).
37. Further, under sections 39 and 40 of the WWCC Act, the OCG has a compliance role in monitoring and auditing compliance with the legislation and is empowered to compel the production of information for monitoring or auditing purposes. The compliance role requires monitoring and auditing of all persons in child related work in the industry sectors covered by the legislation. To inform the OCG's WWCC compliance and monitoring program, the OCG has developed a Community Engagement Plan that outlines how the OCG engages with the community to ensure they understand and are educated on the requirements of the WWCC scheme. The Plan considers each sector and the levels of engagement within that sector. This information is used to inform future training initiatives and target groups as well as informs our compliance and monitoring programs. Where non-compliance with WWCC requirements has been identified, the local area command of the NSW Police is informed. The first matter of non-compliance with the WWCC Act was prosecuted by the Police in February 2015 and has resulted in a successful outcome. It is anticipated that other prosecutions will occur.

38. While the WWCC clearance is a requirement for all those employed or volunteering in child related work, it should only be one of a range of responses to managing risk in the workplace.

39. The OCG strongly encourages and facilitates the implementation of child safe practices and strategies as a necessary adjunct to the WWCC scheme in ensuring a child safe environment in every workplace. To this end, the OCG has established a Child Safe Directorate to assist organisations in implementing effective child safe policies and conducts child safe training seminars and workshops for staff that work with children and young people.

40. The current WWCC framework addresses many of the gaps that existed under the previous scheme and offers better protection to children. It also provides greater scope for increased compliance by virtue of the power to compel information for monitoring and auditing purposes. The improved WWCC scheme is the result of the operational experience of the previous legislation and recommendations of two significant independent reviews in 2010 and 2011. The CCYP committed much of its resources in 2012 to advising employers of the new scheme and the additional protection it was to provide. The new scheme commenced on 15 June 2013.
An overview of RG Dance (BN 978531587) and their compliance with the WWCC scheme from commencement in 2001 to 2010.

41. In response to the issues raised by the Royal Commission in relation to RG Dance, I have caused a search of the records management system. Officers of the organisations who had previous dealings with RG Dance staff have also provided copies of emails and other correspondence. The following information has been derived from these records and my understanding of the operational procedures of the CCYP and OCG.

42. I caused a search of the following data: an archived version of the Employment Screening System (ESS) which was operated by the Commission for Children and Young People (CCYP) for the purposes of recording details of all persons checked under the previous WWCC scheme; the ESS system also holds registration details of employers who have conducted the WCCC on behalf of their potential employee; an archived version of the Certificate for Self Employed Persons (CSEP) database containing details of persons who had applied to NSW Police for a Certificate indicating they did not have criminal convictions preventing them from working with children; the WWCC system which refers to the information technology system for the new WWCC that records details of all applicants for the new WWCC, their criminal history if any, case management notes and any attachments.

43. A search of the ESS and WWCC databases as at 20 November 2015, did not reveal any records under the name RG Dance (BN 97853157). This suggests RG Dance had not registered as a child-related employer and had not submitted any background checks on behalf of their employees.

44. A search of the Certificate for Self-Employed Person (CSEP) database does not return a match for Rebecca Elizabeth Davies or Grant William Davies, the registered owners of RG Dance.

45. The ESS database, records 3 entries for Grant William Davies (Dob REDACTED 1974) submitted by the following employers; Wenona School Pty Ltd dated 27 May 2004; Cathedral School dated 2002 and Macarthur Regional Anglican Church dated 2001. The ESS records indicate Mr Davies did not have a criminal history and was cleared to work with children on those dates. The ESS database revealed one record check submitted for Rebecca Elizabeth Davies (Dob REDACTED 1977) by the NSW Department of Juvenile Justice on 16 November 2005. The ESS record check indicated Ms Davies had a clear result and did not have a criminal history.

46. Ms Davies’ check under the new WWCC system was completed on 18 June 2013 and a clearance was issued.

I PRODUCE A PRINTOUT OF THE ESS DATABASE
DEMONSTRATING THE WWCC REQUESTS FOR GRANT DAVIES

Witness: [Signature: K.B.]
d.o.b. REDACTED 1974 AND REBECCA DAVIES d.o.b. REDACTED 1977
marked NSW.0104.001.0109 and NSW.0099.001.0037

NSW Office of the Children's Guardian and CCYP's contact with RG Dance including any disclosures, allegations or complaints received.

47. From records held by the CCYP, RG Dance came to the attention of the compliance team as a result of the 2011/12 proactive compliance program into tutors providing services to children, which was the relevant child related work sector applicable the dance sector under section 33 of the now repealed CCYP Act.

48. I am informed the compliance program for tutors commenced in late 2011 and continued until the commencement of the new WWC Act in June 2013.

49. The program was aimed at identifying employers in child-related work who were not known to the CCYP. This was achieved through searches of the internet, local newspapers, parent forums, local knowledge and information provided by the general public. The objective was to contact these employers and advise that new legislative requirements were coming into effect in relation to conducting VWCCs and to educate them on their obligations.

50. Creative Dance Company - a studio selected at random to participate in the program – made an allegation to an OCG Compliance officer that an entity was not complying with the requirements of the CCYP Act. The entity the subject of the allegation was RG Dance.

51. On 22 May 2012, the OCG's compliance officer John Williams e-mailed and posted correspondence to RG Dance, in the name of his current Manager Lisa Purves. This letter required the company to respond to an allegation of non-compliance with the WWCC.

52. On 22 May 2012 Rebecca Davies of RG Dance spoke with Mr Williams advising she would register RG Dance as a child-related employer. Records indicate that later that day she sent a follow-up email to confirm her intention to do so.

I PRODUCE A COPY OF THE LETTER AND EMAIL ISSUED TO RG DANCE DATED 22 MAY 2012 marked NSW.0099.001.0042 and NSW.0099.001.0040

53. As a child related employer, RG Dance was required to register as an employer and submit background checks on behalf of prospective child-related employees.

Witness: [Signature]

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54. Under section 37(2) of the CCYP Act, there was a duty on an employer to carry out all the relevant procedures of background checking of the preferred applicant before employing the preferred applicant in a child related role. Registering as an employer with the CCYP for the purposes of conducting a WWCC is taken to be a procedure of background checking as set out in the WWCC Employer Guidelines published under section 35 of the CCYP Act.

55. However, as the old WWCC was a pre-employment check only, and in 2012 both Grant Davies and Rebecca Davies were believed to be existing employees, RG Dance was not required to submit background checks on their behalf and therefore were only required to register as an employer for the purposes of submitting future applications for prospective employees. In this situation, the CCYP could not compel RG Dance to register as an employer nor could they conduct a background check on their existing employees. It should be noted that even if Mr Davies had a WWCC at that time, he would have received a clearance outcome in the absence of any relevant records preventing him from working with children.

NSW Office of Children’s Guardian’s response to and steps taken in relation to information received about RG Dance

56. I am informed by officers of the OCG, that sometime in May 2013 - shortly after the arrest of Mr Grant Davies - a number of concerned industry professionals and parents contacted the CCYP for assistance, including Ms Tracey-Marie Seipel and Mr Peter Oxford. As the functions relating to Child Safe Organisations transferred to the OCG with the transfer of the WWCC in June 2013, officers of the OCG subsequently collaborated with both Ms Seipel and Mr Oxford to deliver a number of Child Safe Organisations seminars tailored for the dance sector.

57. While I am informed Child Safe Organisations training workshops had previously been attended by representatives from the dance sector, this tailored series of workshops were developed directly in response to the arrest of Mr Davies and the identified need to provide additional advice to this sector.

58. On 22 May 2013 Ms Seipel brought to the attention of the WWCC Compliance and Child Safe Organisations manager, Lisa Purves, an account on social media site (Instagram) that included photographs of children who attended RG Dance. I am advised Ms Seipel asked that the CCYP close the account, due to the negative impact it may have on the children pictured within the account. Ms Purves attempted to contact Ms Rebecca Davies and on 24 May 2013, e-mailed Ms Davies to request she deactivate the account. The CCYP had no authority to deactivate the social media account. It is my understanding Ms Davies voluntarily deactivated the account the same day.

Witness: [Signature]

Signature: [Signature]
Legislative reviews and subsequent reforms to the Commission for Children and Young People Act 1998 over the past decade relevant to the dance sector, including but not limited to private tuition requirements to comply by April 2016

59. The CCYP Act was amended several times since its enactment. Some of these amendments were the direct result of independent reviews (L'Orange Auditor General and Eyres Report) that were conducted over the years. The CCYP responded to the Eyers Report (2011) proposing a new scheme for the WWCC.

I PRODUCE A COPY OF THE L'ORANGE REPORT (2004) WHICH IS ATTACHED AND MARKED NSW.0104.001.0113

I PRODUCE A COPY OF THE AUDITOR-GENERAL REPORT (2010) WHICH IS ATTACHED AND MARKED NSW.0104.001.001

I PRODUCE A COPY OF THE EYRES REPORT (2011) WHICH IS ATTACHED AND MARKED NSW.0104.001.0075

60. The recommendations of the L'Orange Report following the 5 year review of the CCYP Act conducted by Ms Helen L'Orange, were incorporated into the CCYP Act by the Commission for Children and Young People Amendment Act 2005. The amendments included the repeal of the Child Protection (Prohibited Employment) Act 1988 amalgamating all provisions relating to WWCC screening into the CCYP Act, conferring monitoring and audit powers (which came into effect on 16 June 2006) and strengthening the penalty provisions for non-compliance.

61. Another notable amendment was enabling regulations to be made to establish a scheme that would require self-employed persons to obtain, display and produce certificates that they are not prohibited persons. Accordingly, the Commission for Children and Young People Regulation 2009 provided for the application and issue of a child related employment certificate and other related matters stating that a person must not engage in child related employment as a self-employed person unless the person holds a child related employment certificate. The Regulation was subsequently amended and eventually repealed with effect from 1 September 2014.

62. The findings of the Auditor General's Report identified several gaps in the CCYP checking process. In relation to the CCYP's compliance activities, the report recommended that the CCYP undertake regular audits to ensure all employers who were required to request the check in fact were doing so and

Witness: [Signature]
that the CCYP ensure that organisations and parents check that self-employed people have current certificates.

63. The main finding of the Eyers Report was that while the policy objectives were generally valid, aspects of the WWCC were unsatisfactory and that a new system to carry out a reconfigured check should be considered. The model now adopted under the WWCC Act was informed by the findings of the Auditor General's Report and the Eyers Report, though not specifically related to the dance sector.

Efforts made by the CCYP to increase compliance with the WWCC in the dance sector over the past decade, including education and guidance on child safe standards and procedures.

64. I understand around April 2011, Ms Purves was appointed Manager, Child Safe Organisations at the CCYP. This was a newly formed position that oversaw a small compliance team formed in response to the recommendations by the Auditor-General in his review of the WWCC in 2010. One of the recommendations to improve compliance with the WWCC was to undertake regular audits to ensure all employers who are required to request the check, are in fact doing so. I am advised no formal compliance or audit program of employers was in place prior to that date. Rather, audits were undertaken in response to certain issues. Ms Purves role was to devise and implement compliance programs which identified and monitored employers' responsibilities under and compliance with the old WWCC scheme.

65. A compliance program was developed in 2011 consisting of a number of audit projects in response to the Auditor General's Report. In particular the audit program focussed on employers' awareness of their responsibilities under the CCYP Act. Employers were targeted based on perceptions of risk associated with their particular industry. The program concentrated on child related sectors which were not covered by the other approved screening agencies whose role was to oversight the industries of health, education and Catholic education agencies. The industries identified for the initial audit program were babysitting/nanny agencies, employers in the tutoring and recreation sectors primarily because they were usually small business enterprises and may not have been aware of their WWCC obligations. Other industries targeted for subsequent audit programs were religious, disability respite, family mentoring services to ascertain their understanding/compliance with the WWCC.

66. The 2011/2012 private tuition compliance program was to identify organisations providing private tuition to children, in particular the dance and similar extra-curricular tuition services aimed at children. Most of the organisations that provided these services were unaffiliated with a peak industry body or were not regulated by government as an industry. A random check of a few of the websites compared with the ESS system found a high level of staff not having WWCCs. The agencies audited under this program
came from 6 different advertising sources; Bub hub; yellow pages; true local; kids spot; Australian Tutoring Association and various personal ad’s (such as local newspapers). In total 326 businesses were contacted and 24 of these businesses provided dance tuition. The audit program therefore sought to educate these industries on their legislative requirements.

67. The audit identified that a gap existed in small business’ knowledge about the WVCC.

68. At the conclusion of the program, those who had not registered as employers or obtained CSEPs were sent follow up letters to inform them of their legislative obligations. A further follow up regime was put in place to ensure compliance. The results of these audit programs informed the future community engagement plan for the new WVCC and influenced the prioritising of the employment sectors to be phased in under the new legislation.

69. Since the new WVCC Act was enacted, the OCG has received several requests for training on child safe organisations to be delivered to the dance sector. In response, the OCG developed materials and adapted the training program to address the needs of the dance sector.

70. During the period 28 May 2013 – 11 September 2015 the OCG delivered 18 Child Safe Organisations seminars to 428 members of the dance sector.

I PRODUCE A SUMMARY OF CHILD SAFE ORGANISATIONS SEMINARS PROVIDED TO THE PERFORMING ARTS SECTOR FROM RECORDS HELD BY THE OCG marked NSW.0104.001.0112

Understanding of peak or industry body for the dance sector and efforts being made at present to establish such a peak or industry body or introduce self-regulation in this sector

71. It is my understanding that there is no peak body for the dance sector. Officers of the OCG have, in discussions with the dance sector, provided general guidance on child safe practices and risk management strategies that a peak body could require from its members. [See also response below].
Challenges the NSW Office of the Children’s Guardian faces in educating, monitoring and ensuring compliance with WWCC in the dance sector.

72. The OCG delivers Child Safe Organisations workshops to a range of children’s services. The program is aimed at the managerial level, as personnel at this level are considered best placed to affect change in the organisation. The training is offered throughout regional and metropolitan NSW and is free of charge. The OCG encourages organisations to attend training or to use the resources and templates developed by the Office to protect children from harm in the workplace.

73. The nature of the dance industry, particularly in the elite levels, may result in the best interests of children being compromised, particularly an elite competition environment. For example: a peak body could have significant influence in setting child safe criteria for entry and participation into dance competitions.

74. Prior to the introduction of the new WWC Act the OCG Compliance Team undertook an Industry Risk Analysis to inform the development of an intelligence driven compliance program. The industry risk analysis considered each child related sector and the inherent risks of non-compliance and the level of risk posed to children.

75. The analysis considered risks according to the activity, the typical age of the child in that sector, the capability of the child, the typical sex of the workforce, supervision of the workforce and the casual nature of the workforce.

76. It is recognised the level of risk increases where there is a single adult in a position of authority over a child, and the nature of the work is unsupervised direct face-to-face, with the child. It is understood these risk factors are common in the dance sector.

77. Inherent risks in the dance sector include, parents often leave their child under the supervision of the adult provider; the provider may not have an awareness of child protection issues; the child’s talent could be exploited by the adult in order to achieve success; the child’s overall well-being could be at risk because of a desire to win by the parent or the teacher.

78. The Industry Risk Analysis also considered the Governance Risks which included the engagement of the sector previously and the level of regulation governing the sector.

79. The lack of a peak body or government regulation and the transient nature of dance schools can result in a lack of governance with some smaller, less
established schools, which often lack appropriate resources to effectively manage administrative processes.

80. Further consideration informing the OCG risk analysis is the Logistical Risk which considered the size of the industry and the disparity across NSW.

81. In considering the Logistical Risk the current Community Engagement Plan for the dance sector relies on the data collected from a number of sources including; the 2011/12/13 compliance plan for private tuition; the information held on the CCYP, CSEP and the new WWCC database; the distribution of information at dance festivals, conferences, and community events; the distribution of information to parents through Parent and Citizen Association newsletters and searches of internet and local media.

82. I understand the dance sector is one of the more difficult sectors to engage due to the lack of a central register or peak group which would identify all dance schools within NSW (see paragraph 87). To assist in engaging with this sector and as part of our community engagement plan, OCG have provided an article for Dance Train, a dance industry magazine.

83. Under the new legislation the dance sector is considered in the child related sector, ‘clubs and other bodies including bodies of a cultural, recreational, sporting or community service nature’.

84. The phase-in period for all existing workers in the dance sector to obtain a WWCC clearance under the new scheme ends on 31 March 2016. The compliance program will commence at the end of this phase in period.

85. The compliance and monitoring program is multi-faceted in that it consists of a number of different audit programs to ensure all employers required to comply with the WWC scheme do in fact comply with and understand their responsibilities. These audit programs are as follows:

   a. Identifying employers who registered as operating within the dance sector and have not verified any employees;

   b. Identifying employers who are recorded in the WWC system within the dance sector and currently verifying employees to ensure all relevant employees are checked and the employer understands their responsibilities should an employee receive a refusal of a WWCC clearance; and

   c. Identifying employers who are operating within the dance sector and are not currently registered in the WWCC system.

86. Identifying the category of employers at (c) above would be assisted by a central register of dance schools which we could use to match against the
employer data held in the WWCC system. This would ensure we had a complete list of dance schools which would be subject to the WWCC requirements.

87. Alternatively, the existing WWCC system holds information on employers who have registered in the system for the purposes of verifying employees in child related employment. Consideration is being given to making the existing process of registration compulsory for all child related employers. This approach would require some amendment to the OCG Information system, but would not increase the administrative burden on organisations.

88. The establishment of a peak body for the dance industry would also assist the OCG in disseminating information on child safe organisations in an efficient manner. A peak body could also identify systemic issues in the sector and promote standards within the industry. Parents and guardians also play a key role in keeping children safe while engaging in activities such as dance. Parents need to be aware of what a child safe organisation should look like and have a key role in influencing the sector.

Legislative reforms for the future that may assist OCG in ensuring compliance with the WWCC in the dance sector (or for music, drama or performing arts tuition for children) including but not limited to a national standard to WWCC

89. Since the new WWCC came into operation in 2013, there have been several amendments to the legislation (and the legislative amendment process is ongoing) to improve and refine the operation of the scheme as a whole, not specifically to the dance sector.

90. The OCG is considering a range of options for regulating child related organisations including dance schools. There are various regulatory methods ranging from self-regulation to imposing an authorisational regulatory approach such as a licensing regime with minimum standards. The approach adopted should be proportionate to the risks and also consider the consequences of imposing additional regulatory burdens on the sector. Participants in the dance sector may not be able to continue to deliver services to children if the requirements are disproportionately onerous. This may in turn disadvantage children, particularly in smaller communities.

91. As stated above, the OCG believes child related organisations should also do more than just ensure their employees and volunteers have WWCC. The OCG has a legislative mandate to promote child safe practices. However, it is not mandatory for organisations to implement policies and procedures which are centred around children's rights, participation and risk management strategies. Child Safe Principles, reflected in guidance material, resources and training, are promoted to organisations within NSW by the OCG. The OCG's Child Safe program currently provides training, resources and templates to assist organisations to be child safe. The OCG is currently
examining other measures to ensure children involved with their organisations are protected from harm.

92. Future legislative reforms which may assist compliance with the VWVCC framework could also consider improving information sharing protocols between states to ensure each application for a VWVCC is determined in light of all available relevant information. This would assist the dance sector as well as many other sectors which operate across state borders and whose participants may come from different states or territories.