



A Working with Children and other
Vulnerable People Checking System for
Tasmania:

Submission in response to the discussion
paper

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1. Overview

Anglicare is pleased to have the opportunity to respond to the *Discussion Paper on A Working with Children and other Vulnerable People Checking System for Tasmania*.

Anglicare is interested in making a submission because of our longstanding commitment to vulnerable people. Anglicare works for social justice in Tasmania through the provision of preventive and early, crisis, transitional and long term intervention services. Anglicare is the largest state-wide community service organisation in Tasmania. It has offices in Hobart, Glenorchy, Sorell, Brighton, Launceston, St Helens, Devonport and Burnie and provides a range of services including emergency relief, accommodation, counselling, employment and mental health services, acquired injury support services, alcohol and other drug services, parenting support programs and outreach services to rural areas.

Anglicare welcomes the move to introduce a Working with Children and other Vulnerable People Checking System. In particular, we welcome the inclusion of vulnerable adults as a group of service receivers, which the new system will benefit.

We recognise that a system based on rigorous standardised procedures could bring benefits to children and other vulnerable people receiving services, and to the organisations that deliver such services and are eager to ensure that they employ staff, or involve volunteers, of high quality.

We note that the proposed costs are a substantial increase on amounts currently spent on checking and we argue that organisations providing services should not be required to fund these additional costs from existing resources. We urge that the costs of this new system be borne by government. All state government funding streams would need to be increased to cover the additional costs of the new checking system for average turnover during the life of a program. However, this will not address the financial demands that the introduction of the new system will place on smaller primarily volunteer-involving organisations that may not receive specific funding for their activities. While not being considered as specifically working with those groups, many of these bodies, such as arts and recreational groups, provide valuable means towards social participation for vulnerable and disadvantaged people. Within a culture of inclusion, this mainstreaming approach is to be very much supported. We would be concerned that the introduction of a new system, unless managed exceptionally carefully, may have a similar effect to the public liability insurance difficulties of a few years ago, when much voluntary effort ceased because of the inability to cover increased insurance costs.

However, Anglicare has a particular interest in the involvement of consumers as volunteers and as paid workers, in the planning, delivery and management of services and notes the difficulties that may be created for this group with the creation of the new system. Examples where there are questions about whether they would be encompassed by the proposed checking system would be volunteers within an association of people with special needs such as a self-managed mental health support group, or members of Alcoholics Anonymous.

Further, our concern extends beyond consumer self-help type groups to encompass general health and community services which increasingly are seeking to improve their responsiveness to clients by employing (or involving as volunteers) workers with lived experience of particular issues. We are also concerned about workers who have lived experience of say, mental illness or drug and alcohol problems but are not being employed specifically because of that experience. At the heart of Anglicare's mission is the belief that people have the capacity to learn, change and grow. We need to feel confident that any new system established for working with children and other vulnerable people does not unnecessarily remove opportunities for people to change their lives, nor reduce the role of organisations to offer such opportunities.

We have some concerns that the proposed system is not sufficiently harmonised with existing accreditation and standards systems and that this needs to change to ensure that time and money is not wasted in conducting checks under different regimes for different systems. For example, various Australian Government programs for older people require that police checks be undertaken every three years. The Safeguarding Children accreditation system to which Anglicare has committed itself requires regular renewal of criminal history checks - Anglicare has been operating on a recommended three year renewal. The proposed new system proposes checks every five years.

It would be onerous and unnecessarily expensive to have different systems operating for different programs within one organisation and could increase the likelihood of error. We are of the view that, if the financial concerns can be resolved, then three years is an appropriate length of time for the check to last.

We believe that a strong investment in promoting the new checking system is required so that the wider community will become aware of its aims and procedures. This will be particularly important to ensure that potential volunteers are not dissuaded from becoming appropriately involved.

2. Recommendations

1. We recommend that the definition of 'vulnerable adult' cover a person over the age of 18 who uses services to alleviate the effects of ill-health or physical, social, financial and/or psychological disadvantage.
2. That provision be made for a wider range of activities to be conducted on a private and domestic basis, without being covered by the Working with Children and other Vulnerable People Checking System.
3. That the forms of contact covered specifically include the making of decisions about who can work with children and other vulnerable people, and the provision of expert advice in this process.
4. That the length of a Working with Children and other Vulnerable People Check be three years.
5. That the costs associated with undertaking checks be borne by government, not by individuals or organisations.
6. That an exemption not apply to volunteers where vulnerable people other than the volunteer's relative are involved in a program.
7. That systems be introduced to ensure that all people have opportunities to be appropriately involved in paid and volunteer work.
8. That employers not be granted a right to require overseas police checks on an individual basis.
9. That consumer self help and other volunteer groups be subject to the introduction of any new system, in as much as it may apply to them, later in the implementation process.
10. That there be substantial investment in promoting the purpose and operation of a Working with Children and other Vulnerable People Checking System for Tasmania and in promotion of the review processes.

3. Responses to questions raised in the Discussion Paper

Section 7.0 VULNERABLE PEOPLE IN TASMANIA

Q1) Do you support the proposed definition of vulnerable adult? Are there any other types of definition that should be considered?

Anglicare commends the inclusion of vulnerable adults within a checking system. We recommend that the definition of 'vulnerable adult' cover a person over the age of 18 who uses services to alleviate the effects of ill-health or physical, social, financial and/or psychological disadvantage.

Section 8.0 WHO WILL BE CHECKED?

Q2) Are there any activities that should be included or excluded from Annex A? Do you have any comments specific to any of the listed categories?

This list seems adequate.

Q3) Are there any activities that should be included or excluded from Annex B? Do you have any comments specific to any of the listed categories?

In considering the proposed regulated activities for people working with vulnerable adults we note that services covered by the Commonwealth *Aged Care Act 1997* are specifically excluded. This could lead to difficulties for organisations, such as Anglicare, that offer a range of services, some covered by that Act and others not. Where staff or volunteers work across different program areas there may be duplication of checking systems and different time cycles. This could be expensive, confusing, and intrusive. We urge the Tasmanian Government to work with the Australian Government to harmonise the requirements for checking systems.

Anglicare has a particular interest in the involvement of consumers in the planning, delivery and management of services and notes the difficulties that may be created for consumers with the creation of the new system. We note that the inclusion of Clubs, Associations or Movements primarily focussed on people with special needs may highlight some difficulties. Examples could be the self help movements of people living with a mental illness, Alcoholics Anonymous or a seniors club where all or most members play an active role as volunteers in providing care, support, information, counselling and advocacy to other members. We envisage that a requirement for all or most members of such groups to be checked could be seen as very intrusive, and be destructive of esprit de corps. If such groups are to be included, we recommend that they be included as late as possible in the phase-in process, after there has been time to widely promote the concept of a Working with Children and other Vulnerable People Checking System for Tasmania, and to allay fears about its purposes. We have concerns that such a provision may prevent

people with criminal histories from participating in rehabilitation activities such as self-help, and from taking on roles of responsibility.

We note that section 8.4.1.4 of the Discussion Paper proposes a general exemption for co-participants in activities. Is it proposed that this provision would provide for self-help groups?

We do note that given that the proposed system applies to volunteers as well as paid staff, some confusion could arise where people are involved in informal volunteering, such as support to neighbours. While the proposed list of activities specifies the exclusion of coaching and tutoring and child minding where there are informal arrangements entered into for private or domestic purposes, there are a number of other areas where informal volunteer arrangements are made, benefitting all parties and the wider community. Examples would be where people provide services that might otherwise be included as 'Home and Community Care' to elderly or disabled neighbours, or where members of a mental health self help group provided support to each other. It would be appropriate to apply the same 'informal arrangement entered into for private or domestic purposes' exclusion to these activities.

Q4) Are there any engagement types that should be added or removed from the proposed list?

The list of engagement types appears adequate. We note that many people will have more than one role at any one time – they will be a staff member for one organisation, a volunteer in another and a Board member of yet another. Or a person may volunteer for more than one group. How will it be decided which organisation should pay for the renewal of that person's check? This would appear to provide further support to the argument that the costs of the checking system should be borne by government at a central level. We note that having a centralised system will have the advantage of reducing the number of checks for such people. Currently they may have a number of criminal history checks each covering a different time frame.

Q5) Are there any other forms of contact that should be included?

Anglicare recommends that the types of contact covered specifically include the making of decisions about who can work with children and other vulnerable people. This would include people who work within the proposed Working with Children and other Vulnerable People Checking System and people who may be asked to provide expert advice in the process of making determinations.

Q6) Do you have any comments on the checks that will be applied to supervision?

Anglicare supports the proposal that checking will apply to all people in contact with vulnerable people whether or not they are supervised and that people responsible for the supervision will also be subject to checking.

Q7) Do you have comments on the general exemption for age?

We note that it is proposed that people under 18 will not be subject to checking, although in some jurisdictions people aged 15 and over are checked, and support this proposal.

Q8) Do you support the application of an exemption for people in contact with vulnerable people for infrequent or short periods? Do you support the proposed threshold of 7 days in any 12 month period?

Anglicare is of the view that the proposed threshold of seven days in any 12 month period is too broad and that the seven days should be specified as non-consecutive days.

Q9) Do you support the application of an exemption for people who are 'closely related' to each (and every) vulnerable person they have contact with?

We note that a considerable amount of abuse, both of children and of vulnerable adults, occurs within families. We are not sure whether exemptions are appropriate in a setting that is a structured service program, under the auspices of an organisation.

Q10) Do you support the application of an exemption for volunteers engaged in a regulated activity who are 'closely related' to a vulnerable person who ordinarily participates in that regulated activity?

Anglicare is of the view that, where vulnerable people other than the volunteer's relative are involved in a program then that volunteer should be subject to checking. Participation in regulated activities will expose volunteers to other vulnerable people to whom they are not related.

Q11) Do you have any comments on excluding normal employee / employer relationships?

The Discussion Paper rightly highlights the risk of discrimination against vulnerable people should such a proposal be introduced. Anglicare works with people who have had criminal histories which fall into the categories outlines in the Discussion

Paper. Broadening the checking system to all employee/employer relationships would limit the possibility of employment for people with criminal histories where such employment does not carry risk to vulnerable people or children. Anglicare's view is that this reduces the opportunities for rehabilitation with no commensurate increase in protection for children or vulnerable adults.

In Anglicare's case, because of the nature of our work, virtually all staff would be encompassed by the proposed scheme.

Q12) Are there any other exemptions that should be considered?

No comment

Section 9.0 : APPLICATIONS

Q13) Do you have any comments on the proposal that unregistered persons can be engaged in a position pending the outcome of their application?

This would appear to be essential to support business continuation and is consistent with much current practice where engagements are made on the basis of being 'subject to a satisfactory criminal history check'. However, because of the likely delays in processing applications, based on current experience with national criminal history checks, this can pose a risk. We recommend that the Tasmanian government work with other jurisdictions to ensure that exchange of relevant information happen quickly.

Q14) Do you have any comments on the involvement of employers or organisations in the application process?

We note with some surprise the concern to limit the incidence of 'frivolous' applications. While we acknowledge that there is a public policy benefit in not having cards circulating unnecessarily, there would appear to be the danger of discrimination against new entrants into the community service field, where people who have worked before and have a current check may be preferred to say, new graduates seeking their first position, if they are not able to obtain a check independently. Other groups for whom this approach may be disadvantageous would be people returning to the workforce after illness, caring responsibilities or long-term unemployment. Being able to obtain the check before securing employment may be significant step in a person's path to employment in terms of increasing their confidence and self belief.

We further note that people working in a freelance or consulting capacity may need to initially acquire a current card independently of an employment situation.

Section : 10.0 WHAT WILL BE CHECKED?

Anglicare would urge the Tasmanian government to work with other jurisdictions involved in the COAG *Inter-jurisdictional Exchange of Criminal History for People Working with Children* towards the inclusion of broader categories of vulnerable people.

Q15) Do you have any comment on the inclusion of other types of information such as Family Violence Orders, Child Protection Orders and past employment records in the checking process?

Anglicare has some concerns about the inclusion of employment records in the checking process. It is unclear what employment records would be available – would this be a record of service or more detailed information? Would legislation require employers to provide such information to the Checking Unit? We have concerns that this could expose an organisation such as Anglicare to the risk of litigation, if a person's application were unsuccessful on the basis of information included in Anglicare's employment record. We also have concerns that the quality of employment records in the wide range of employing organisations is extremely variable and that there are no established ways of ensuring the accuracy or general quality of these records. Further, to ensure equity and a rigorous system, if employment records were to be included, then volunteer service records should also be. Volunteer records are even more likely to be inadequate.

The reliability of some other types of information, if they have not reached a formal stage of charges, may be dubious. While on the one hand the inclusion of such information may give an opportunity for the quality of the information to be tested and corrected if appropriate.

Anglicare's principal concern in this area is the reliability of information available and the robustness of the decision-making processes. In particular we would look to very clearly enunciated principles for exercising discretion.

Q16) Do you have any comments on the proposal that applicants be required to provide a statutory declaration that they have not been convicted of certain types of offences outside of Australia?

We presume that this requirement would be applied to all people, not just those born overseas, as it would otherwise be seen as discriminatory. For example, Australian born people could have committed offences while travelling overseas.

A statutory declaration would appear to be a comparatively simple additional documentation requirement, although unlikely to deter a determined abuser. As noted in the Discussion Paper the Australian government will have carried out a character check on all people who have been granted a visa to stay and work in Australia.

We have concerns that allowing individual employers or organisations to require a police certificate from a person's country of origin, 'where concerns still exist', is a dangerous step which could give play to racist or other prejudices.

Further, if the specialist checking agency has been unable to identify a significant risk in the particular circumstances, it would appear that there could be no grounds for an individual employer to develop concerns. If a potential employer has a suspicion or some evidence that would warrant further exploration, then this information should be provided to the checking agency. We recommend against the inclusion of this provision.

Section 11.0 RISK ASSESSMENT PROCESS

Q17) Are there any additional risk assessment principles that should be applied?

Anglicare considers the risk assessment process to be critical to the proposed system and that the integrity of the system will rest both on the quality and capacity of the people who conduct the decision-making and on the system's transparency and fairness. We would seek more information from government on what is considered to be appropriate training and support for such a panel.

We further note that the primary tools to reduce the risk of harm to children and other vulnerable people involve creating a culture of awareness, and developing organisations in which training and quality improvement are central.

Q18) Do you have comments on the proposed list of relevant criminal offences?

The question of how to balance offences that occurred overseas that are not considered criminal activity in Australia raises issues around crimes connected with telecommunications where legislation struggles to keep pace with social trends. For example, it is not currently an offence in Australia to take photographs or video of a nude adult and distribute them electronically, but such behaviour from an employee or volunteer working with a vulnerable adult may be thought to be of such gravity as to be considered in the risk assessment process.

Anglicare disagrees with the exclusion of driving record from the list of relevant offences. Disregard for the law and public safety demonstrated by a pattern of driving offences should be considered.

Q19) Do you have any comments on the list of questions to be considered as part of the risk assessment process?

We note that this is a preliminary list and that a more detailed decision making manual is proposed.

Q20) Do you support the additional considerations applicable to non-conviction information? Are there any other considerations that should be included?

These questions would appear to be the minimum required to make a wise and just assessment of non-conviction charges or information. We suggest that additional relevant questions to be asked should include the applicant's information and views on the circumstances of the charges or information and the age of the applicant at the time of the alleged offences.

Section 11.5 Position Based Assessments

Anglicare has a longstanding interest in the support and empowerment of consumers of health and community services, and has undertaken research and program development in this area. Thus we have a particular interest in ensuring that opportunities exist for service users to grow and develop and to possibly become service providers themselves, including as part of a consumer workforce, either paid or voluntary.

We therefore support the proposal that there be available pathways into specific positions for people who may otherwise have a history that excludes them from being granted a positive assessment.

However, we disagree that applicants for a position based assessment be required to fail a general assessment first. This seems unnecessarily humiliating and possibly costly (if a separate charge were made for the general and the specific assessment). We suggest that the position based assessment approach could be taken as a first step. An applicant for a position such as a drug counsellor may be well aware that their criminal history would make them unlikely to receive a positive notice. They may not have an interest in obtaining a general registration, rather they may be interested in working in a particular role, based on their specific experience, and thus elect to seek only a position based assessment.

We would be keen to ensure that as wide a field as possible of consumers be given opportunities to be involved in service delivery. We envisage that the job advertisements for positions that particularly seek to recruit consumers would include wording to the effect that 'Applicants for this position may obtain a specific position based assessment under the Working with Children and other Vulnerable People Checking System.'

We are of the view that it would be a responsibility of the organisation that is employing workers or recruiting volunteers to devise ongoing monitoring and risk management approaches, and therefore the organisation would also need to consent to any additional monitoring and compliance checks deemed necessary.

Research currently being undertaken by Anglicare has found that in the United Kingdom the Independent Safeguarding Authority (ISA), established in 2009, is introducing a new vetting and barring scheme designed to ensure that no one who poses a risk to children or vulnerable adults can work with them. The scheme is a coalition of previous schemes and broadens them to include a wider range of jobs and voluntary activities than before and including those with a history of acquisitive crime, fraud, addictive behaviour or persistent offending. There are currently concerns that the employment of current or former drug users in services as either volunteers or paid employees will be seriously impeded by the establishment of the scheme. Volunteering is a key area of service user involvement work and such histories are common among drug users who might be employed in peer support or voluntary work. As the alcohol and drug sector is the sector most likely to employ current and ex drug users there are also fears that this will decimate the workforce and have dramatic implications for voluntary work. Currently who gets involved can be determined by services and is based on the relationship they have built up with individuals which allows them to get a clear idea of the risk factors. Potentially the new regulations could have a major impact on their ability to assist people to move on. (Hinton (forthcoming) on implementing engagement of drug and alcohol consumers).

We note that the Discussion Paper appears to exclude the idea of position based assessments for working with children.

Section 12.0 ASSESSMENT OUTCOMES

Q21) Do you have any comments on the proposed registration period of five years?

Anglicare is of the view that five years is too long a period and is inconsistent with other checking and accreditation systems.

The proposed system is not sufficiently harmonised with existing accreditation and standards systems and that this needs to change to ensure that time and money is not wasted in conducting checks under different regimes for different systems. For example, various Australian Government programs for older people require that police checks be undertaken every three years. The Safeguarding Children accreditation system to which Anglicare has committed itself requires regular renewal of criminal history checks - Anglicare has been operating on a recommended three year renewal.

It would be onerous and unnecessarily expensive to have different systems operating for different programs within the one organisation and could increase the likelihood of error. We are of the view that, if the financial concerns can be resolved, then three years is an appropriate length of time for the check to last. We note that in some specific fields checks are required even more frequently.

Q22) Do you support the proposal for the WWCVP Screening Unit to contact the employer or organisation to advise of the issuance of an interim negative notice or in the other circumstances proposed?

This would appear to be consistent with the proposed system.

Q23) Do you support the application of a five year prohibition on re-applying for a WWCVP Check unless there has been a material change in the information upon which the negative notice was issued? If not, why not?

The time period should be consistent with the period of renewal for checks. As noted above, we are of the view that five years is too long and that three years is preferable.

Section 13.0 PROHIBITED PEOPLE

Q24) Do you have any comments on the inclusion of a mechanism for courts to make orders barring people from applying for or holding an approval to work with vulnerable people for specified periods of time?

No comment.

Section 14.0 REVIEW AND APPEAL

Q25) Do you have any comments on the proposed right of internal review by the WWCVP Screening Unit and the right of external merits review by the Administrative Appeals Division of the Magistrates Court and the proposed grounds for merits review?

A rigorous review process is essential to the good functioning of the proposed system. We urge that the opportunities for review, both internal and external, be prominently promoted. There should be no costs associated with a request for internal review and if an internal review were unsuccessful then information should be provided about how to seek external review. .

Section 15.0 PENALTIES

Q26) Do you have any comments on the proposed list of offences and the application of penalties for the proposed offences?

We propose an additional requirement that a cancelled WWCVP card must be returned to the Checking Unit within a short specified time.

As mentioned above in respect of the list of regulated activities, we note that there may be some areas where there is confusion about whether a volunteer activity is an informal arrangement for private or domestic purposes.

Section 16.0 COMPLIANCE CHECKS

Q27) Do you have any comments on the proposed compliance activities?

No comment

Section 17.0 SUPPORTING SAFE ENVIRONMENTS FOR VULNERABLE PEOPLE

Anglicare firmly believes that creating a culture of safety for vulnerable people, staff and volunteers is essential. We would encourage that any new checking system also involve promotion of training, information dissemination and other methods of developing a safety promoting environment. There is a need for adequate funding for these activities.

Section 18.0 THE WWCVP SCREENING UNIT

Q28) Do you have a view of where the WWCVP unit should be located?

We do not have a strong view on this matter, noting that there may be cost savings in locating the processing interstate, as well as some increased perception of independence and privacy. A location within the Office of the Commissioner for Children would not be appropriate given that the proposed checking system has the wider mandate of covering other vulnerable people as well as children.

Q29) Do you have any comments on employees or volunteers being charged a fee for a WWCVP check?

Anglicare's view is that any increased fees or charges should be borne by government. The Checking System itself should be funded at the level required to undertake its work.

Community organisations delivering services are not in a position to carry additional costs.

A student or unemployed person trying to enter the employment market, or looking to volunteer as a way of building work skills and confidence may not be in a position to pay a fee for a WWCVP check.

We would be concerned that charging volunteers for their checking would lead to discrimination in that wealthy people or people volunteering for well-funded organisations would have the opportunity to be involved in the rewards of volunteering, and people on low incomes would be deterred and excluded from these opportunities to contribute to their community. It would also have the potential to impact negatively on socio-economically disadvantaged communities, where community groups and their volunteers may not have the additional financial resources. Smaller volunteer-involving organisations with limited funding would be disadvantaged as they would have to ask volunteers to pay for their own checks while bigger organisations could afford to shoulder some/all of the cost.

Q30) Do you have any comments on the estimated processing times for the risk assessment process?

We note that the Working with Children and other Vulnerable People Checking Unit estimates short turn-around times for processing most applications, with the proviso that the national criminal history check may make for a slower turn around. Our experience has been that the criminal history check takes at least four weeks. We urge the Tasmanian Government to work with other jurisdictions to speed this process. While, in order to ensure business continuity, we support the proposal that people be permitted to work while awaiting the result of a check, this does pose an inherent risk in the system. The faster the checking turn around time, the more this risk would be mitigated.

Section 18.5 Record keeping

We urge that the right of applicants to have access to their own information be very clearly advertised in all application documentation.

Section 20.0 IMPLEMENTATION PLAN

Q31) Are there other factors that should be considered when determining the priority in which checks are phased in?

As noted above, we recommend that any application of the new system to consumer groups, and other primarily volunteer self managed groups be undertaken after there has been time for the purposes and way of working of the system to become widely known.

References;

Hinton, T (forthcoming) research on international best practice in implementing the engagement of drug and alcohol consumers, Anglicare, Hobart