



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

Discussion Paper

Released for public consultation by:

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*This paper includes material prepared by the Australian
Capital Territory's Department of Disability, Housing
and Community Services as part of its implementation
of a screening program*

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HOW TO LODGE A SUBMISSION

Interested parties can download electronic copies of this discussion paper at:

www.dhhs.tas.gov.au

Further background information and reference material is also contained on the website.

Submissions may be lodged at:

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Or

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SUBMISSIONS ARE TO BE LODGED BY 5.00PM FRIDAY 12 March 2010.

All submissions received in response to this discussion paper will be made available on the DHHS website unless otherwise requested.

ACKNOWLEDGEMENT

I would like to thank Katy Gallagher MLA, the Australian Capital Territory's Minister for Community Services and the Department of Disability, Housing and Community Services (ACT) for granting permission to use material prepared as part of the ACT's process of establishing a similar system.

This paper substantially reflects the content of the ACT paper and builds on the analysis and research undertaken within the ACT. The Tasmanian government fully acknowledges the work undertaken by the ACT Department of Disability, Housing and Community Services that has substantially informed this paper.



Lin Thorp, MLC
Minister for Human Services

FOREWORD

The Tasmanian Government is committed to the support and protection of vulnerable people in the Tasmania. As part of this commitment, the Tasmanian Government will establish a centralised background checking and risk assessment system for people working with vulnerable people to reduce the risk of sexual, physical, emotional or financial harm or neglect.

In line with obligations under the *National Framework for Creating Child Safe Environments – Organisations, Employees and Volunteers*, checking systems for people working with children have been established or are currently under development in all Australian jurisdictions. Given the similarities in the risk of harm faced by children and vulnerable adults, Tasmania is considering extending the checking system to include people working with vulnerable adults.

Many organisations in the Tasmanian community already recognise that background checking of employees or volunteers who are in contact with vulnerable people is an important part of creating a safe working environment. Currently each organisation is subject to the costs and liabilities of individual checking decisions.

Centralisation of checking has benefits for both organisations and individuals. Under the proposed Working with Children and Vulnerable People (WWCVP) Checking System, the Tasmanian Government will set minimum and compulsory checking standards and will apply a consistent risk assessment framework and decision making process. The costs to employees and volunteers who will require a Working with Children and Vulnerable People Check are still to be determined and this is an issue for discussion in this paper. However, any costs will be based on comparisons with other jurisdictions and be fair and equitable and not present a barrier for employment.

The WWCVP Checking System will be structured around the principles of natural justice and include review and appeal mechanisms for applicants.

This discussion paper presents options and proposals for the establishment of a WWCVP Checking System in Tasmania. I encourage you to consider the issues raised in the discussion paper and invite you to lodge a written submission expressing your views on a WWCVP Checking System in Tasmania that best meets the needs of vulnerable people and the people providing services.



Lin Thorp MLC

Minister for Human Services

EXECUTIVE SUMMARY

It is proposed that a Working with Children and Vulnerable People (WWCVP) Screening Unit will be established within the Department of Health and Human Services (DHHS). The unit will operate similarly to those established in Victoria, Western Australia and Queensland for working with children checks.

People seeking to work with vulnerable people in Tasmania will be required to apply to be registered with the WWCVP Screening Unit before commencing work¹. Provision will be made for people already working with vulnerable people when the new WWCVP Checking System is phased in.

Subject to certain exemptions, unregistered people will generally be ineligible to work with vulnerable people.

The WWCVP Screening Unit will be responsible for background checking and risk assessment for applicants and registered people. Screening will include a national criminal history check and possibly other forms of checking to the extent allowable in Tasmania. Applicants will be required to consent for checks to take place.

Risk assessments will occur under prescribed guidelines by trained assessors. People deemed to pose an unacceptable risk will not be registered and will be prohibited from working with vulnerable people. People may also be deregistered if new information indicates an unacceptable risk to vulnerable people.

Successful applicants will be registered with the WWCVP Screening Unit for up to five years and will be permitted to work with vulnerable people for the period of registration. Rechecking will not be required when registered people change employers or positions.

A WWCVP card with a unique identification number will be issued to registered people. Employers and organisations will be required to validate the card holder's registration status via an online or telephone validation service prior to engaging that employee.

In limited circumstances, and with the support of an employer or organisation, unsuccessful applicants may make a further application for a position-based assessment. This type of assessment will take into account the specific nature of a particular position as well as any risk management strategies proposed by the employer or organisation. After consideration of this information, the WWCVP Screening Unit may approve an applicant to work in a specific position. A WWCVP Card will not be issued and the applicant may not change position or employers without further assessment.

The WWCVP Checking System will comply with principles of natural justice and the *National Framework for Creating Safe Environments for Children*. Applicants will be informed of the reasons for decisions taken by the WWCVP Screening Unit, may make their own submissions to the WWCVP Screening unit and may correct information they believe to be inaccurate. Information concerning applicants or registered people will be held securely by the WWCVP Screening Unit in accordance with privacy legislation and will not be disclosed to employers.

Unsuccessful applicants will be able request an internal review of WWCVP Screening Unit decisions or be able to lodge an external appeal through a mechanism such as the Administrative Appeals Division of the Tasmanian Magistrates Court.

It is estimated that up to 10% of the Tasmanian adult population (or 37,500 people²) will be subject to background checking, with a rejection rate of around 0.2%.

¹ For the purposes of this document, reference to vulnerable people should be read as including children and other vulnerable members of society, including people with disabilities and the elderly.

² Australian Bureau of Statistics: 3101.0 Australian Demographic Statistics – March 2009

SUMMARY OF QUESTIONS

8.0 VULNERABLE PEOPLE IN THE TASMANIA

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

9.0 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?

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?

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

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

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

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

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?

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?

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?

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

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

10.0 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?

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

11.0 WHAT WILL BE CHECKED?

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?

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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?

12.0 RISK ASSESSMENT PROCESS

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

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

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

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

13.0 ASSESSMENT OUTCOMES

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

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?

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?

14.0 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?

15.0 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?

16.0 PENALTIES

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

17.0 COMPLIANCE CHECKS

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

18.0 THE WWCVP SCREENING UNIT

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

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

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

21.0 IMPLEMENTATION PLAN

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

22.0 ACCOUNTABILITY

Q32) Are there any other mechanisms to improve accountability that should be considered in this section or elsewhere in this discussion paper?

23.0 ADDITIONAL QUESTIONS

Q33) Are there any other issues you wish to raise that have not been addressed in this discussion paper?

23.1 Vulnerable People and the Community

Q34) Do you have any specific comments which you wish to raise about the proposed checking system?

23.2 Employees and Volunteers

Q35) Do you have any specific comments which you wish to raise about the proposed checking system?

23.3 Employers and Organisations

Q36) Do you have any specific comments on the proposed role of employers or organisations in the application process?

PART 1 - BACKGROUND

I. INTRODUCTION

The Tasmanian Government supports and is participating in a National Framework for the exchange of criminal history information on people working with children. In support of this commitment the Government is developing and introducing a checking system to screen people who are working with children. It is also considering the possibility of extending this to include people who work with vulnerable adults³ in our community.

The aim of the WWCVP Checking System will be to reduce the incidence of sexual, physical, emotional or financial harm or neglect of vulnerable people in Tasmania. Vulnerable people should expect to be safe within the Tasmanian community, especially when receiving services that are required to relieve any relative disadvantage they may experience.

In January 2005, the (then) Commissioner for Children, Mr David Fanning, released a consultation paper entitled *Screening of Individuals who Work with Children in Tasmania*. The Commissioner's paper proposed the design of a system for screening individuals in Tasmania that would build upon practices already implemented by many organisations. The proposed screening process included all people who work with children in a volunteer and paid capacity in both the public and private sectors. The Commissioner also recommended the establishment of a Central Screening Agency, supported by legislation, to manage the screening process.

The introduction of the WWCVP Checking System will address these recommendations and will also address obligations arising for Tasmania under the *National Framework for Creating Child Safe Environments – Organisations, Employees and Volunteers*. Tasmania has also committed, through the Council of Australian Governments, to establishing a unit and legislation to screen people working with children and participate in a national exchange of criminal history information on people working with children.

The checking system will require employees and volunteers who work with vulnerable people to undergo periodic background checking and risk assessment. Individuals deemed to pose an unacceptable risk will be ineligible to work with vulnerable people.

If the scope of the program in Tasmania is implemented as proposed, Tasmania will be one of the first Australian jurisdictions (along with the ACT) to establish a checking system that applies to people working with children and to people working with vulnerable adults.

³ The definition of 'vulnerable' adults is discussed in section 7.

2. THE RATIONALE OF BACKGROUND CHECKING

The basic premise of background checking is that the past behaviour of an individual provides an indication of the possible future behaviour of that individual⁴. Examples or patterns of abusive or inappropriate behaviour can sometimes be evident in information available for assessment such as an individual's criminal record or employment history.

There have been documented cases in which a person with a history of abusive behaviour has gained access to vulnerable people because their previous history was not known to their employer or other vetting agency⁵. In the worst cases, these people have gone on to commit further abuse. Evidence suggests that around half of sex offenders gain access to their victims through children's organisations⁶.

An important element of background checking involves risk assessment. Risk assessment describes the process of evaluating available information to reach a conclusion about the risk of harm a person may pose to vulnerable people. A rigorous and transparent risk assessment process must form part of the background checking process to ensure that exclusion decisions are both proper and defensible.

The exclusion of people with a known history of certain behaviour is a fundamental part of creating safe working environments for vulnerable people. Background checking and risk assessment should however also be complemented by other organisation-based risk reduction activities such as codes of conduct and risk management plans to help lower the overall risk of harm.

⁴ Creating Safe Environments for Children – Organisations, Employees and Volunteers National Framework. Schedule: An Evidence Based Guide for Risk Assessment and Decision-Making when Undertaking Background Checking, June 2006, p2

⁵ Birchard, M. (2004). Birchard Inquiry. London: Home Office.

⁶ Statistics from the Victorian Child Exploitation Squad indicate that between 1988-1996, 43% of offenders gained access to child victims through children's organisations. Petratis, V and O'Connor, C, Rockspider: The Danger of Paedophiles – Untold Stories, Hybrid Publishers, Ormand, Victoria, 1999

3. CHECKS IN OTHER JURISDICTIONS

All other Australian States and Territories have established or are in the process of developing centralised checking systems for people working with children. Operational systems have been established in NSW, Qld, WA, Vic, and most recently, NT. A centralised checking system has also been introduced in the UK.

Essentially, there are two types of systems in operation: position-based systems and registration-based systems.

Position-based systems, such as that employed in NSW, assess the suitability of an applicant for a specific child-related position. The risk assessment process considers information concerning the history of the applicant as well as the specific risks inherent in a particular position. Applicants may only be approved to work in the specific position against which the assessment has taken place and must generally reapply for a check if moving to a new position or employer.

Registration systems, such as those in operation in Qld, WA, Vic and the UK, assess the suitability of an applicant to work in child related employment more broadly i.e. there is no assessment of suitability against a specific position. Successful applicants are registered with the checking unit and may change positions or employers without being rechecked during the period of registration.

There is no mutual recognition of checking outcomes across jurisdictions. While there are similarities across all checking systems, there are also fundamental differences relating to the definition of child related work, scope of people subject to checking, range of information considered as part of the assessment process, duration of approval notices and the level of fees charged to undertake an assessment.

As it is believed that “[w]here persons may be excluded from child related employment/volunteering in one State or Territory or particular organisations within a jurisdiction, they may gravitate towards other jurisdictions and agencies with less stringent screening provisions”⁷, it is important to consider the checking requirements in other Australian jurisdictions when developing a WWCVS Checking System for Tasmania.

4. WHAT CHECKS ARE CURRENTLY IN PLACE IN TASMANIA?

No broad legislative framework exists within Tasmania for WWCVS checks. Government and non-government organisational policies vary regarding employee criminal history record checks.

Routine screening does take place within a number of professions and organisations. These checks usually involve a National Police Criminal History Check (NPCHC) through CrimTrac, which is processed by the Department of Police and Emergency Management (DPEM). The NPCHC currently only involves court outcome information; no circumstantial or pending charges are included.

A number of Tasmanian Government agencies screen applicants prior to employment in high risk occupations, some of which involve work with children and other vulnerable people. These checks may involve an identity check, checks on any relevant disciplinary action in previous employment and a NPCHC. In order to conduct such checks, a request must be made by the Agency and then approved in relation to a particular position or class of

⁷ CSMAC Agenda paper Item 2.2, 7 October 2004. p2

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positions by the State Service Commissioner. Prior permission is sought from the applicant. Not all agencies conduct ongoing screening of State Service employees once they are employed. It is important to note that under current Tasmanian arrangements the assessment and decision for employment are made by the employer.

Staff working in the areas of child protection and youth justice are screened prior to employment in these services. Applicants provide permission for checks to be conducted as part of the application process. This screening process involves the following checks.

- (1) A conviction check in the areas of:-
 - a) Crimes of violence;
 - b) Sex related offences;
 - c) Serious drug offences; and
 - d) Crimes of dishonesty.
- (2) Identification check.
- (3) Disciplinary action in previous employment check.

These checks must be renewed every 3 years, which allows for further scrutiny after the initial pre-employment check.

This process is currently being extended to staff who work in the area of disability services.

Service funding agreements applicable to service providers (including Disability Services providers) funded by the Department of Health and Human Services (DHHS) include requirements to ensure that all people engaged by the organisation to work with vulnerable people are fit and proper people. Organisations are required to obtain a police check and personal references when engaging employees, volunteers or contractors who will, or will be likely to, have contact with vulnerable people.

DPEM screens all police applicants prior to employment. Applicants provide permission for checks to be conducted as part of the application process. Checks conducted include Tasmanian records of spent and non-conviction charges, police intelligence holdings, psychological screening, full history checks in other jurisdictions and, where a person has immigrated from overseas, information is sought from the Australian Immigration Service. This process includes checks from other agencies, both local and federal as required, and each applicant is visited at their residence by a senior police officer to assess their character and home environment, as well as referees providing reports and being interviewed.

Teachers are screened by the Teachers Registration Board (TRB), pursuant to the requirements set out in the *Teachers Registration Act 2000* and must be of 'good character' to be registered. This is determined through a Good Character Check Form, which involves a NPCHC and previous employment history check. The Act states that previous convictions must be considered by the registering board. To obtain these details, permission is obtained from the applicant before the check is undertaken. If the applicant is unwilling to consent to a Good Character Check, then the processing of his or her application for registration ceases. Registration must be renewed every 3 years.

The Department of Education (DoE) requires that all school-based employees and specified school-based volunteers undergo a Good Character Check. All Library and On-Line Access Centre employees and volunteers are also required to undergo a Good Character Check. DoE recognises that a registered teacher has met the requirements of a NPCHC, but currently requires additional checks of identity and previous employment to be satisfied before employing the person.

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School-based volunteers involved in identified high-risk areas, such as those on overnight camps and unsupervised activities, are required to have a Good Character Check. All other volunteer activities are subject (on the basis of DoE policy) to a formal risk assessment by the Principal to determine if a Good Character Check will be required. Checking of volunteers is not subject to any approval of, or limitations by, the State Service Commissioner.

Childcare services must be licensed as required by the *Child Care Act 2001*. That Act requires that people who have contact with children in care are fit and proper persons. These checks involve a NPCHC and may include checks with current and previous employers. Again, permission is required from the applicant.

The Commonwealth Government has introduced checks for certain people working in the aged care sector under the *Aged Care Act 1997*. Under Part 4.4 of the *Accountability Principles 1998* a person cannot be engaged in aged care as a staff member or volunteer, if they have been convicted of murder or sexual assault or convicted of, and sentenced to imprisonment for, any other form of assault.

Newly developed National Health Practitioner Regulations⁸ applies to all health professionals and require an individual to be a 'suitable person' prior to registration with a National Board⁹. Each National Board is required to develop registration standards which include matters about the criminal history of applicants for registration in the profession, and registered health practitioners and students registered by the Board, including, the matters to be considered in deciding whether an individual's criminal history is relevant to the practice of the profession¹⁰.

Any criminal history check to the extent it is relevant to the individual's practice or profession can then be taken into account by the National Board in deciding an individual is not a suitable person. For the purpose of these provisions, criminal history includes: -

- every conviction of the person for an offence in Tasmania or interstate;
- every plea of guilty or finding of guilt by a court of the person for an offence in Tasmania or interstate regardless of the recording of a conviction for the offence; and
- every charge made against the person for an offence in Tasmania or interstate¹¹.

The National Regulations are in the process of being enacted in all States and Territories and a Bill to adopt the legislation will be considered by Tasmanian Parliament in 2010.

The Australian Index of Medical Practitioners, of which Tasmania is a member, currently flags misconduct complaints against medical doctors which may be used in assessing character. The usual process, if the applicant has been registered interstate, is to obtain a 'certificate of good standing' from the other jurisdiction. Some registration authorities seek clearance from all other interstate registering authorities as part of their checking process.

Local lawyers in Tasmania must be a 'fit and proper person' to be admitted to the legal profession¹². In determining this, the Supreme Court is required to take into account a number of 'suitability matters' which include: -

whether the person has been convicted of an offence in Australia or a foreign country, and, if so –

⁸ *Health Practitioner National Law Act 2009 (Qld)* in the process of being adopted in Tasmanian under the *Health Practitioners Regulation National Law (Tasmania) Bill 2009*.

⁹ The definition of National Board covers the range of health professional boards in medical and allied health *Health Practitioner National Law Act 2009 (Qld)* s31.

¹⁰ Section 38.

¹¹ Section 5.

¹² *Legal Profession Act 2007*, s26.

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- (i) the nature of the offence;
- (ii) how long ago the offence was committed; and
- (iii) the person's age when the offence was committed.¹³

Applicants are required to obtain and submit a police check in relation to the applicant's criminal record for all Australian jurisdictions.¹⁴

There is currently no legislation requiring organisations to screen volunteers in Tasmania. As part of their internal risk management strategies, several larger volunteer-dependent organisations such as Scouts, some school organisations and Police and Community Youth Clubs require volunteers to provide a NPCHC.

Many individual organisations in the Tasmanian community also recognise that background checking of employees or volunteers in contact with vulnerable people is an important part of creating a safe working environment. As checks are not mandatory, individual policies vary in terms of who is checked, what is checked, how often checks are conducted and what information will lead to an exclusionary decision. Any costs incurred to undertake background checks are either borne by the organisation or passed to the employee or volunteer. Organisations are of course also subject to the costs and liabilities that may arise from their individual checking decisions.

The Tasmanian Government recognises that it is vitally important that the new WWCVS Checking System does not unnecessarily increase financial costs, liabilities or administrative burdens on individuals or organisations. While the overall aim of the WWCVS Checking System will be to reduce the risk of harm to vulnerable people, this must be achieved without discouraging individuals or organisations from providing much needed services to vulnerable people in the Tasmanian community.

¹³ *Legal Profession Act 2007*, s9.

¹⁴ Supreme Court Rules 2000, s783AE, Form 57BB.

5. BENEFITS AND COSTS OF CENTRALISED BACKGROUND CHECKING

The introduction of a WWCVP Checking System in Tasmania will have many benefits for vulnerable people, employees, volunteers, organisations and employers.

The WWCVP Checking System will establish mandatory minimum checking standards that will apply across all regulated activities. Vulnerable people can be assured that all persons delivering vital services have been subject to a minimum level of checking. This is in contrast to the current system wherein decisions concerning whether or not checks should be conducted are left to individual service providers. Risk assessments conducted by the WWCVP Screening Unit will also be based on a broader range of information than checks currently able to be undertaken by individual service providers.

Under a centralised checking system, risk assessments and decision making processes will be more consistent and open to review and appeal. From the perspective of persons subject to checking, this will lead to more considered and reliable checking outcomes as opposed to the current situation wherein individual service providers may take a different view concerning the risks presented by individual employees or volunteers.

For the first time in Tasmania, registered persons will be able to move between employers or organisations without the need to be rechecked. This is of benefit to both registered persons and the employers or organisations with which they are engaged and will reduce duplication of the checking effort across the Tasmanian community.

There will however be some cost in centralising checking. Some persons or organisations will become subject to periodic checking for the first time and will therefore incur an increased administrative overhead. It is also likely that some persons who become subject to checking will be prevented from working with vulnerable people in the future. This is consistent with the stated aim of the reducing risks for vulnerable people. The costs to consumers are still to be determined, but will be based on comparisons with other jurisdictions, will be fair and equitable and not present a barrier for employment.

There is also a possibility that the introduction of checking requirements may deter some employees or volunteers from working with vulnerable people. On balance, the Tasmanian Government considers that centralised checking will at the same time improve service delivery to vulnerable people through offsetting benefits that reduce the cost and frequency of checking for many other persons. There will be a range of exemptions that aim to moderate the impact of checking in circumstances where checking may be of little net benefit.

6. TIMELINES

This discussion paper has been released for a consultation period beginning January 2010 and ending in March 2010.

It is anticipated that a consultation report will be released in April 2010 summarising the views expressed by stakeholders during the consultation period.

A WWCVP Policy will be finalised and submitted for the consideration of Government and it is anticipated that legislation will be introduced into the Tasmanian Parliament in late 2010.

It is expected that checking will be phased in over five years commencing in 2011.

PART 2 – POLICY DETAIL

7. VULNERABLE PEOPLE IN TASMANIA

It is proposed that the term ‘vulnerable people’ will include children and certain vulnerable adults.

7.1 Children

To promote consistency across Tasmanian legislation, it is proposed that the definition of ‘child’ applicable under WWCVPC legislation will refer to the definition of ‘child’ under the *Children, Young Person and Their Families Act 1997*.

The *Children, Young Person and Their Families Act 1997* provides the following definition:

- Child, means a person under 18 years old.

7.2 Vulnerable Adults

Given the similarities in the risk of harm faced by children and certain vulnerable adults, it is proposed that background screening will be extended to people working with vulnerable adults in Tasmania. As Tasmania will be one of the first Australian jurisdictions to establish checking for people working with vulnerable adults, a suitable definition of vulnerable adult must be developed.

The policy journal, *Health Affairs*, (2007) provides a broad definition of vulnerability:

- *“Vulnerability, the susceptibility to harm, results from an interaction between the resources available to individuals and communities and the life challenges they face. Vulnerability results from developmental problems, personal incapacities, disadvantaged social status, inadequacy of interpersonal networks and supports, degraded neighbourhoods and environments, and the complex interactions of these factors over the life course. The priority given to varying vulnerabilities, or their neglect, reflects social values”.*

While there is widespread usage of the term vulnerable person/adult in Australia and overseas, each definition reflects the different purpose for which it was initially drafted. A selection of these definitions is contained in Table I, below.

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Table 1: Existing definitions of “vulnerable persons/adults” in use in Australia and the UK.

Source	Definition
ACT Service Funding Agreement	For the purposes of this Item 2, “vulnerable adults” may include adults by reason of age, frailty and/or intellectual disability.
Spent Convictions Act 2000 (ACT)	This Act contains exclusions applicable to persons working with children, aged persons or people with a disability.
Vulnerable Persons Policy. QLD Department of Justice and Attorney-General	For the purposes of this policy the department has identified vulnerable people to include: <ul style="list-style-type: none"> • Aboriginal and Torres Strait Islander people; • Children, young people and their families; • People with a mental illness, intellectual disability, acquired brain injury, or cognitive impairment; • People who are affected by domestic or family violence; • People from culturally and linguistically diverse backgrounds and in particular people who have English as their second language; and • People who are homeless.
Criminal Procedure Amendment (Vulnerable Persons) Bill 2007 (NSW)	This Act relates to the giving of evidence by children and intellectually disabled persons. Intellectually impaired persons are defined as persons with: <ul style="list-style-type: none"> • an appreciably below average general intellectual function; • a cognitive impairment (including dementia or autism) arising from, or as a result of, and acquired brain injury, neurological disorder or a developmental disorder; or • any other intellectual disability.
Criminal Records (Spent Convictions) Act (NT)	“vulnerable persons” includes children, aged persons and persons with a physical or intellectual disability or mental illness.
Standard 3.3.1: Food Safety Programs for Food Service to Vulnerable Persons. Food Standards Australia New Zealand	Vulnerable person means a person who is in a care facility listed in the Schedule or a client of a delivered meals organisation.
No Secrets: Guidance on developing and implementing multi agency policies and procedures to protect vulnerable adults from abuse (2000). Department of Health and Home Office (UK)	People aged 18 and over who: <ul style="list-style-type: none"> • need community care services due to a mental disability, other disability, age or illness; and • may be unable to take care of themselves or protect themselves against serious harm or exploitation.
In Safe Hands: Implementing adult protection procedures in Wales (2000). National Assembly for Wales.	As above.
Department of Constitutional Affairs (UK)	As above.

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

Source	Definition
Safeguarding Vulnerable Groups Act 2006 (UK)	<ol style="list-style-type: none"> 1) is living in residential accommodation, such as a care home or a residential special school; 2) is living in sheltered housing; 3) is receiving domiciliary care in his or her own home; 4) is receiving any form of health care; 5) is detained in a prison, remand centre, young offender institution, secure training centre or attendance centre or under the powers of the Immigration and Asylum Act 1999; 6) is in contact with probation services; 7) is receiving a welfare service of a description to be prescribed in regulations; 8) is receiving a service or participating in an activity which is specifically targeted at people with age-related needs, disabilities or prescribed physical or mental health conditions or expectant or nursing mothers living in residential care (age-related needs includes needs associated with frailty, illness, disability or mental capacity); 9) is receiving direct payments from a local authority/HSS body in lieu of social care services; 10) requires assistance in the conduct of his or her own affairs.

One option for defining vulnerable adults in Tasmania would be to simply list broad categories of people who might generally be considered to be vulnerable, such as those listed under the Qld Department of Justice and Attorney-General, *Vulnerable People Policy* or the Northern Territory *Criminal Records (Spent Convictions) Act 2002*.

However, this style of definition is likely to be considered patronising or offensive to some people in Tasmania. For instance, many people may not consider themselves to be vulnerable simply because they have a physical disability or belong to a particular cultural group.

An alternative option would be to link extant vulnerability with the receipt of social services that are associated with alleviating any disadvantage or vulnerability. Under this type of definition, people would only be considered vulnerable upon the acceptance or use of such services. This type of definition also has the potential to establish a sound basis for the determination of the types of services or activities that might attract background checking.

Given the concerns raised above, a definition of vulnerable adult based upon the receipt of services that relieve disadvantage is preferred. Subject to further consultation, it is proposed that the following definition be used:

- “Vulnerable Adult” refers to people aged 18 or over that access services in Tasmania, as defined under Regulations, to alleviate the effects of physical, social, financial and/or psychological disadvantage.

The services to be ‘defined under Regulations’ are addressed later in this paper.

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

8 WHO WILL BE CHECKED?

8.1 Context

Initial consultations with community stakeholders have indicated that there is currently a range of approaches to determining who should be subject to background checking in any given organisation. Policies tend to reflect the specific nature of the work undertaken by the organisation and often specify the particular positions for which checking will apply. Conversely, in some cases, policies do not exist and screening decisions are taken on an ad hoc basis.

The WWCVCP Checking System must be generally applicable to all individuals and organisations in Tasmania. It will not be possible to simply list every position or circumstance in which checking should apply.

A generic framework is required to assist individuals and organisations with the criteria that could be considered in determining who should be subject to checking under the WWCVCP Checking System. It is proposed that checking will generally apply to:

1. certain 'regulated activities'; and
2. undertaken by certain 'regulated people / organisations'; and
3. subject to certain general or specific exemptions.

All of these criteria must be considered when making a determination about whether or not a person should be subject to checking. For this reason, stakeholders may wish to consider all of these criteria before responding to the questions listed under each section below.

To aid understanding of the determination process, a simple diagnostic tool is included as Table 2, below. This tool will be further developed to reflect the outcomes of the consultation process and will be made available to prospective applicants of the WWCVCP Checking System. Each of the considerations listed in Table 2 are addressed in the sections to follow.

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Table 2: Simple Diagnostic Tool for Determining if Checks are Required.

Question	Answer
<p>Q1. Do I participate in a regulated activity?</p> <p>Considerations:</p> <ul style="list-style-type: none"> • Regulated activities as listed in Annex A • Regulated activities as listed in Annex B 	<p>Yes - proceed to Question 2.</p> <p>No – check is not required.</p>
<p>Q2. Am I a regulated person?</p> <p>Considerations:</p> <ul style="list-style-type: none"> • Engagement type • Contact type • Supervision level (if applicable) 	<p>Yes - proceed to Question 3.</p> <p>No – check is not required.</p>
<p>Q3. Is there a general or specific exemption that applies to me?</p> <p>Considerations:</p> <ul style="list-style-type: none"> • Age • Duration and frequency of contact • Family relationships • Co-participants • Employers and supervisors (if applicable) • Specific exemptions 	<p>Yes – check is not required.</p> <p>No – check is required.</p>

8.2 Regulated Activities

The first step in determining whether or not an individual is subject to screening relates to 'Regulated Activities'. Regulated activities are the occupations or services that will attract screening, subject to other considerations.

The administrative and financial burden that would be incurred by simply including all instances where a person may have some contact with vulnerable people would be unsustainable. It is therefore prudent to ensure that limited screening resources are targeted towards the activities where the risk of harm to vulnerable people is greatest.

8.2.1 People in Contact with Children

It is proposed that regulated people who are in contact with children will be checked if they are involved in the provision of the regulated activities listed at Annex A.

To promote national consistency, Annex A has been developed with reference to the activities that currently attract checking in other Australian jurisdictions.

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?

8.2.2 People in Contact with Vulnerable Adults

Tasmania will potentially be one of the first Australian jurisdictions to extend checking to people working with vulnerable people. It has not been possible to develop a list of regulated activities based upon those that attract checking in other Australian jurisdictions.

Section 7.2 of this discussion paper proposes that the definition of vulnerable adult in Tasmania be linked to the receipt of services that relieve disadvantage. It naturally follows that activities related to the delivery of such services should be included in the checking system.

Only one other jurisdiction, the ACT, has proposed broadening the scope of the screening program to include vulnerable people generally. As part of the research informing the ACT discussion paper, the ACT Council of Social Service (ACTCOSS) was commissioned to identify non government organisations that provide services for disadvantaged people and those in poverty that do not receive any ACT Government funding.

In Tasmania, the recently released *Social Inclusion Strategy for Tasmania* provides a basis for considering disadvantage in Tasmania. As part of further developing the preferred model, consideration would be given to both the ACT report and the *Social Inclusion Strategy for Tasmania* to reflect an appropriate list of regulated activities for Tasmania.

In addition, the definition of vulnerable person used under the *Safeguarding Vulnerable Groups Act 2006* (United Kingdom) as contained in Table I has been referenced.

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?

8.3 Regulated People

The term 'regulated people' refers to the range of ways in which people may work with vulnerable people, including engagement type, contact type and supervision arrangements.

8.3.1 Engagement Type

Broadly speaking, there are two main groups that work with vulnerable people in Tasmania: employees and volunteers. However, the experience of other Australian screening jurisdictions is that it is necessary to specify a broader range of engagement types to remove any doubt about whether or not a particular individual should be subject to checking.

It is proposed that the following categories of engagement be included as part of the checking regime:

- employees;
- self-employed;
- contractors;
- sub-contactors;
- agents;
- religious officials;
- volunteers;
- the performance of unpaid community work after a court order;
- board members;
- students; and
- trainees.

The specification of these categories aims to lessen the chance that an individual can claim 'special status' and attempt to argue that they are neither an employee nor volunteer, and hence not subject to the WWCVP Checking System. Specification also allows for modification of the scope of checking in the future if circumstances dictate that this is necessary to protect vulnerable people, or remove unintended consequences.

An alternative option to listing each of the categories above would be to include all people and then develop a list of exclusions. This approach is likely to result in a large list of exclusions and would be inconsistent with practices in other Australian jurisdictions. In developing a preferred model, the Tasmanian Government seeks to specify inclusions and minimise the scope of exemptions (see Section 8.4 to follow).

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

8.3.2 Contact Type

One of the defining aspects of the WWCVP Checking System is that it will apply only to people who are in contact with vulnerable people.

There are two fundamental criteria associated with determining whether or not a person is in contact with vulnerable people that relate to the 'nature' of the contact and the 'regularity' of contact.

The key considerations in determining risks in the nature of contact is whether or not a person has an opportunity to directly harm an individual or influence a vulnerable person through building a relationship of trust or dependence. While there are obvious risks associated with direct physical contact, improvements in communication technologies have resulted in opportunities for relationships of trust and dependence to develop in the absence of any form of physical contact. There have been numerous instances reported in the media of people using communications technology to harm, or groom for harm, a vulnerable person.

Other forms of contact that may present some level of risk could involve having access to records concerning vulnerable people or making decisions that materially affect vulnerable people. While there may be no direct contact, there is the potential for the misuse of information or access gained while acting in these positions.

The WWCVP Checking System is not intended to apply where contact with vulnerable people is irregular and incidental to normal activities. An example of this type of contact would be a plumber who is engaged to carry out emergency repairs at a school.

It is proposed that checking will only apply in circumstances where contact with vulnerable people is 'regular and systematic' (i.e. contact can be expected as part of the position). An example of this type of contact would be a school janitor who routinely carries out duties on school premises at times when students are expected to be present.

In line with these considerations, it is proposed that people will be checked when 'contact' with vulnerable people is 'regular and systematic' and involves:

- any form of physical contact;
- any form of communication;
- working within close proximity to vulnerable people;
- working with records relating to vulnerable people; and/or
- the making of decisions affecting vulnerable people.

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

8.3.3 Supervision

There is a range of approaches in other screening jurisdictions on this matter. Some jurisdictions such as Victoria specify that checking should only apply to people working with children in an unsupervised capacity. Other jurisdictions are silent on the matter (having the effect that people are checked in both supervised and unsupervised positions), while in South Australia checking is specifically extended to those who supervise people in contact with vulnerable people.

It is important to ensure that this matter is carefully considered to avoid the possibility that organisations could use their organisational structure to avoid checking altogether. For instance, if checking applied only to people with unsupervised contact with vulnerable people, and mechanisms were in place such that supervisors themselves had no contact with vulnerable people, then checking might not apply even though the organisation was delivering services to vulnerable people.

The DHHS Service Funding Agreement which governs the delivery of services to the community by community sector organisations requires that:

“....the Organisation will determine if...there has been any of the following recorded against him/her –

- (a) Convictions in Australia or overseas of any offence involving children (including but not limited to child abuse, assault and neglect).

Notably, the Agreement does not specify that checks should only apply to people who are unsupervised, having the effect that people in both supervised and unsupervised positions must be checked.

To avoid doubt, it is proposed that checking will apply to:

- all people in contact with vulnerable people whether or not they are supervised; and
- people who are responsible for undertaking supervision of people in contact with vulnerable people.

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

8.4.1 General Exemptions

A range of exemptions are proposed to limit the scope of checking in some areas with the aim of ensuring that it does not apply where it may be considered insensitive or inappropriate.

8.4.1.1 Age

It would be improper to impose checking requirements on very young people who themselves might be considered vulnerable. However, there is some evidence that patterns of abusive behaviour can be evident before a person reaches adulthood and checking should perhaps be considered for people under the age of 18 in some circumstances.

There is a range of different approaches to age-related exemption thresholds in other Australian jurisdictions. Limited exemptions have been established for volunteers under the age of 18 in Queensland and Western Australia. In Victoria, a broad exemption to all people under the age of 18, while in the Northern Territory this threshold has been lowered to the age of 15 years.

It is proposed that in Tasmania checking should not be required for volunteers aged less than 18 years.

Employees under the age of 18 would be subject to checking, however it is expected that it would not be common for checking to apply to employees under the age of 15 years.

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

8.4.1.2 Duration and Frequency of Contact

The extension of checking to people who have infrequent or incidental contact with vulnerable people would impose a relatively high administrative burden on these people and could potentially result in unintended consequences, such as a decrease in the number of short-term volunteers or services available to assist vulnerable people. For instance, a person considering volunteering for a one-off event lasting an afternoon may be more likely to be deterred by the requirement for checking than a person who is a regular volunteer.

While other Australian jurisdictions have established exemptions for those in contact with vulnerable people for short periods only, a range of approaches have been taken, as illustrated in Table 3.

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Table 3: Summary of Exemptions for Limited Contact under other Registration Based Schemes in External Jurisdictions.

QLD	WA	VIC	UK
<p>An exemption applies if, over a 12 month period, contact occurs for less than:</p> <p>.. eight consecutive days; or</p> <p>.. once a week, each week, over four weeks; or</p> <p>.. once a fortnight, each fortnight, over eight weeks;</p> <p>or</p> <p>.. once a month, each month, over six months.</p>	<p>People who undertake child related work on no more than 5 days in a calendar year may choose not to apply for a WWC Check.</p> <p>Short term visitors to WA. Exemption applies for the first 2 weeks in any 12 month period.</p>	<p>An exemption applies to visiting workers who do not ordinarily live or perform child related work in Victoria.</p>	<p>An exemption applies where activities take place for less than 3 days in a 30 day period.</p>

Some jurisdictions such as Western Australia and Victoria also have specific exemptions for people who do not ordinarily perform work in the checking jurisdiction (i.e. interstate visitors). However, it is proposed that there will be no such distinction made between Tasmanian residents and those visiting from outside of the Tasmania.

The Tasmanian Government considers that it is preferable that any exemption be simple and practical. For this reason it is proposed that checking will not be required for people who undertake regulated activities in Tasmania on no more than 7 days in any 12 month period.

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?

8.4.1.3 Family Relationships

It is not intended that the WWCVP Checking System will apply to family relationships. It is therefore proposed that checking will not be required for:

- people who are 'closely related' to each (and every) vulnerable person they have contact with; and
- volunteers engaged in a regulated activity who are 'closely related' to a vulnerable person who ordinarily participates in that regulated activity.

For the purposes of the WWCVP Checking System, it is proposed that 'closely related' will include a parent, spouse, step-parent, mother-in-law or father-in-law, grandparent, uncle or aunt, brother or sister (including half-siblings and step siblings, brother-in-law or sister-in-law and de-facto relationships).

The exemption will not apply in formalised care arrangements, such as kinship carers.

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?

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?

8.4.1.4 Co-participants

There are situations where a person may be participating in an activity on the same basis as a vulnerable person. An example would be a soccer team with a mix of players aged between 16 and 18 years. Such a team would comprise both children and adults.

While it might be the case that persons such as the team coach would be subject to checking, it could be considered inappropriate to require that players be checked once they reach the age of 18 years simply to continue to participate in the activity with their teammates.

For this reason a general exemption is proposed for people who are participating in an activity on the same basis as a vulnerable person.

8.4.1.5 Employers and Supervisors

It is proposed that employers or supervisors of vulnerable people will be checked when participating in regulated activities (Section 8.2).

There are however other instances when a person may employ or supervise a vulnerable person to undertake activities that are not part of the proposed checking system. For example, a 17 year old working in a fast food restaurant.

While there may be inherent risks involved with this type of contact, extending checking into normal employee / employer relationships would greatly expand the scope of checking in Tasmania. Extension into this area may also act as an employment barrier for some vulnerable people. From the perspective of an employer, engaging one vulnerable person in a business would result in a need to be checked. Some employers might simply refuse to be checked and therefore make themselves ineligible to engage vulnerable people as employees or volunteers. This may result in a form of discrimination against vulnerable people and limit their employment opportunities.

In order to limit the scope of checking to regulated activities only and to avoid the possibility of introducing a form of discrimination against vulnerable people, it is proposed that checking will not apply to employers of vulnerable people or supervisors of volunteers who are vulnerable people, unless those people are also carrying out a regulated activity.

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

8.4.2 Specific Exemptions

There are some more specific persons or situations in respect of which checking may be inappropriate or unnecessary because other forms of checking are already in place or because checking might result in unintended consequences that limit opportunities for vulnerable people.

It is proposed that checks will not be required for:

- sworn police officers (who are not under suspension);
- secondary school students on work experience placements;
- people volunteering in State and National events; and
- other groups as specified under regulations.

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

9 APPLICATIONS

9.1 A New System

Currently, applicants for a national police check must submit forms to Tasmania Police along with an application fee. In many cases, checks are organised by an employer or volunteer organisation with the consent of the applicant.

The proposed WWCVP Checking System will involve changes to current practice. For instance, the onus for organising background checks will shift from the employer to the employee or volunteer, and successful applicants will be required to physically attend a Service Tasmania Outlet for a photo to be taken (Section 12.1). These changes are outlined in more detail in the sections below.

9.2 Timing

The Tasmanian Government is conscious that employers and organisations need to engage employees or volunteers in an efficient and timely manner. A key aim of the WWCVP Checking System will be to avoid introducing delays or unnecessary administrative burdens into the engagement process.

Registered people will be able to be engaged by employers immediately because a risk assessment will have already been undertaken by the WWCVP Screening Unit. Employers will however be required to verify the outcome of the check as outlined in Section 12.1.

It is proposed that unregistered people will be required to submit an application to the WWCVP Screening Unit prior to commencing duties. Applicants may work in a position pending the outcome of their application but must cease duties immediately if the WWCVP Screening Unit issues either a negative notice (Section 12.3) or an interim negative notice (Section 12.2).

An alternative position would be to require that the results of applications are known before an applicant may commence duties. This option is not preferred as it would delay the engagement process for some period depending upon the complexity of the application. However, in recognition that there is some inherent risk in engaging a person before the results of their application is known, individual employers and organisations will be free to require that results are known before a person may act in a position if this is considered appropriate.

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Applicants may withdraw an application at any time by notifying the WWCVS Screening Unit in writing.

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

9.3 Existing Employees or Volunteers

The checking system will impose a new obligation on some people who are already working with vulnerable people. In order to allow sufficient time for these people to comply with the new system, applications for registration will be required to be submitted on a date to be determined as part of a phased implementation of the system. While relatively long grace periods may apply in some cases, it is anticipated that checking will be fully phased in within five years of implementation.

9.4 Information Requirements

It will be necessary for applicants to supply sufficient information to the WWCVS Screening Unit for background checks to be undertaken. This information is likely to include:

- personal information (e.g. name, previous names);
- contact details, including previous addresses;
- sufficient proof of identity;
- employer details where applicable;
- consent for background checking and ongoing monitoring to be undertaken (if applicable);
- consent for the WWCVS Screening Unit to contact the applicant's employer in limited circumstances (e.g. if the application is withdrawn or unsuccessful); and
- a signature.

In addition, to limit the incidence of frivolous applications and to enable the WWCVS Screening Unit to contact employers or organisations in the event that an application is unsuccessful, information must also be provided by a prospective (or current) employer or organisation which includes:

- a declaration that the applicant has been offered, or is working in, a position which is likely to require that a check be undertaken;
- the contact details of the employer or organisation; and
- a signature of a responsible person in the organisation.

Depending upon the range of information that will ultimately become part of the risk assessment process, applicants may also be required to provide a declaration about whether or not they have previously been involved in certain conduct (e.g. overseas criminal history).

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

10 WHAT WILL BE CHECKED?

10.1. Australian Records

Checking will include a national criminal history check that will contain any disclosable information concerning convictions, findings of guilt, certain spent convictions (to the extent allowable under the Tasmanian *Annulled Convictions Act 2003* and similar legislation in other States and Territories), pending matters and limited other information (such as being listed on a register of sex offenders). This is the same information currently obtained by employers or organisations conducting their own background checks.

The information contained in a national criminal history check has been tested in a court of law (or is before a court of law).

There are other types of information available that may not have been tested in a court or similar but can nonetheless be useful in determining whether or not there is a risk that an individual may harm a vulnerable person. The Human Rights and Equal Opportunity (HREOC) publication *‘On the Record: guidelines for the prevention of discrimination in employment on the basis of criminal record’*, makes the point that:

“The more information available to the employer, the greater the likelihood that an employer can exercise reasonable judgment in assessing the connection between the criminal record and the inherent requirements of the job”.

It is important to be aware that the determinations of the WWCVP Screening Unit are concerned only with estimating risk and are not tantamount to a finding of guilt or innocence.

The establishment of a WWCVP Screening Unit will enable Tasmania to fully participate in the COAG *Inter-jurisdictional Exchange of Criminal History for People Working with Children* initiative. The initiative will allow Australian jurisdictions to exchange an enhanced range of criminal history information including that related to charges, acquittals and factual information concerning the circumstances of individual cases. However, under the current arrangements for the national exchange, the enhanced range of information can only be used for checks relating to children, not broader categories of vulnerable people.

There is also a range of other types of information that could potentially be useful in the assessment process, including Family Violence Orders, Child Protection Orders and past employment records. This type of information is currently not included a part to the COAG *Inter-jurisdictional Exchange of Criminal History for People Working with Children* initiative.

<p>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?</p>
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10.2. Overseas Records

The Tasmanian Government would prefer that overseas criminal history information is available for consideration. However, it is recognised that the inclusion of such information is often problematic and impractical. There can be long delays in obtaining overseas criminal history checks and offences in some countries are not necessarily equivalent to those in Australia.

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All persons entering Australia are subject to a character test by the Australian Department of Immigration and Citizenship. Applicants may be asked to provide police certificates for each country they have lived in for 12 months or more over the past 10 years since turning 16.

A person will fail the character test where:

- they have a substantial criminal record;
- they have, or have had, an association with an individual, group or organisation suspected of having been, or being, involved in criminal conduct;
- having regard to the person's past and present criminal conduct, the person is found not to be of good character;
- having regard to the person's past and present general conduct, the person is found to be not of good character; or
- there is a significant risk that the person will engage in criminal conduct in Australia, harass, molest, intimidate or stalk another person in Australia, vilify a segment of the Australian community, or incite discord in the Australian community or in a segment of that community, or represent a danger to the Australian community or a segment of that community.

Given the difficulty in obtaining criminal history information and the fact that checks are already undertaken by the Australian Government upon entry to Australia, it is proposed that:

- applicants will be required to provide a statutory declaration that they have not been convicted of certain types of offences outside of Australia; and
- individual employers or organisations may ask applicants to provide a police certificate from their country of origin, if concerns still exist.

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?

10.3. Self-disclosure and Ongoing Monitoring

Due to the periodic nature of background checking, there is some risk that a registered person may commit a relevant offence that does not become known to the WWCVP Screening Unit until renewal of the registration.

For this reason, it is proposed that registered people will be required by law to immediately self-disclose any relevant change in their criminal record to the WWCVP Screening Unit. Penalties for non-compliance would apply, including dismissal. Any notified change of significance would trigger a reassessment. People may be deregistered if a risk assessment based on the new information indicates an unacceptable risk to vulnerable people.

In the future, ongoing monitoring of criminal records could be introduced for registered people in Tasmania. This system would closely reflect current arrangements between the Queensland Commission for Children and Young People and Child Guardian and the Queensland Police Service that enable the exchange of limited information concerning criminal records. In effect, the Queensland Commission for Children and Young People and Child Guardian is automatically alerted by the Queensland Police Service to any substantial

change in the criminal record of registered persons held. The establishment of such a capability in Tasmania is a significant project and would take some years to develop. Establishment costs are estimated at some \$300 000 with additional operational costs of \$20 000 per annum.

II RISK ASSESSMENT PROCESS

Risk assessment describes the process of evaluating available information to reach a conclusion about the risk of harm a person may pose to vulnerable people. The basic premise of risk assessment is that past behaviour is a reasonable indicator of possible future behaviour. A rigorous and transparent risk assessment process must form part of the background checking process to ensure that exclusion decisions are both proper and defensible.

II.1. Risk Assessment Principles

There are a number of Schedules under the *National Framework for Creating Safe Environments for Children*, including 'An Evidence-based Guide for Risk Assessment and Decision Making when Undertaking Background Checking'. While the Schedule has been developed for the purpose of assessing risk for people working with children, the principles espoused are equally applicable for assessing people working with vulnerable adults.

In accordance with the Risk Assessment Schedule, it is proposed that the principles guiding risk assessment will include:

- the paramount consideration is the wellbeing of vulnerable people and their protection from harm;
- risk assessment will be conducted by people who are appropriately trained and properly supported;
- risk assessment will be recognised as one of a range of organisational strategies to protect vulnerable people;
- risk assessment will be evidence based, where evidence exists;
- in all situations risk assessment will be ethical and defensible;
- assessment and decision making processes will be efficient and timely;
- assessment and decision making processes will follow principles of natural justice and procedural fairness;
- the risk assessment procedure will be transparent, documented, and consistently applied;
- risk assessment processes will be accompanied by provisions for review and appeal against decisions; and
- the privacy of people will be strictly protected, and sensitive and personal information will be protected from inappropriate disclosure.

The risk assessment principles will guide the drafting of risk assessment manual for use by the Tasmanian WWCVP Screening Unit. The risk assessment manual will promote consistent risk assessment processes and decision making outcomes.

The Tasmanian Government has committed to the development of a risk assessment and decision making framework pertaining to child-related employment screening under the COAG *Inter-jurisdictional Exchange of Criminal History for People Working with Children* initiative.

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

11.2. Relevant Information

The aim of WWCV Checks is to reduce the incidence of sexual, physical, emotional or financial harm or neglect of vulnerable people.

In accordance with anti-discrimination principles, information about a person should only be considered by an employer where that information relates to the person's ability to undertake 'the inherent requirements' of the job. For this reason, it is proposed that only offences or information relevant to the likelihood of an applicant causing sexual, physical, emotional or financial harm or neglect of vulnerable people will be considered as part of the risk assessment process. Other information, such as an applicant's driving record for instance would not be considered.

In the context of criminal history information, it is proposed that relevant offences should include:

- sexual offences
- offences related to the making or possession of child abuse images;
- offences against a person;
- offences involving violence;
- offences involving dishonesty or fraud;
- offences relating to property;
- offences involving possession of, or trafficking in, a drug of dependence or controlled drug;
- arson or unlawfully setting fire to property;
- firearms offences;
- offences against an animal; and
- incitement, conspiracy or intent to commit any of the above offences.

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

11.3. Factors for Consideration

A very simple risk assessment system might involve checking for relevant information, and if any information was found (e.g. any sexual offence), applicants would be automatically deemed unsuitable. While this type of assessment would be quick and cheap, it would have little regard for the actual level of risk presented by the applicant.

It is proposed that risk assessment in Tasmania should involve a more thorough analysis of any background information obtained. The Schedule, *An Evidence-Based Guide to Risk Assessment and Decision Making When Undertaking Background Checking*, states that:

- "Natural justice and procedural fairness demand that there is a rationale for excluding persons from child-related employment/volunteering. Equally, organisations must be accountable for the decisions they make and good governance requires that there are policies and guidelines which provide clear foundations for decision making".

The Schedule also provides a list of questions that should be considered when assessing available information. In the context of WWCV Checks, these questions are:

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- What is the nature, gravity and circumstances (where known) of the offence or charge and how is this relevant to employment/volunteering with vulnerable people? (NOTE: It is proposed that seriousness of any particular offence will be determined based upon both the maximum penalty available and any penalty actually imposed).
- How long is it since an alleged offence occurred?
- What was the age of the victim of the offending behaviour?
- What was the age difference between the person and any victim?
- How serious is the applicant's criminal history based upon all the information available (for example, whether there is a pattern of offending)?
- Have the applicant's circumstances changed since an offence was committed?
- What is the attitude of the applicant to their previous offending behaviour, and what relevant information can be provided by the applicant?
- What are the findings of any assessment reports following attendance at treatment or intervention programs?
- Has the offence been decriminalised in Australia or was it an offence overseas but not in Australia?

In addition, if non-conviction charges or information are considered (for example, information obtained through participation in the *COAG Interjurisdictional Exchange of Criminal History for People Working with Children initiative*), guidelines concerning the relevance and standards of proof to be applied will need to be made in legislation so that the WWCVP Screening Unit can be satisfied about the truth or accuracy of this information. It is proposed that these considerations should include:

- The credibility of the person who made the original allegations or provided the original information;
- The scope and outcome of any investigation conducted;
- Views of officials who conducted the investigation;
- The answers (if any) of the person to police during interview, the formal statement (if any) to police and the evidence (if any) of the person in cross-examination;
- Whether the alleged conduct was a "one off" or part of a pattern; and
- Any other information which might point to good character or the fact the allegation or information is inaccurate or untrue.

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

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

11.4. Expert Advice

Particularly complex risk assessments may require a broad mix of knowledge, skills and experience in order to make a reasonable determination. The experience of other Australian jurisdictions indicates that input can sometimes be required from lawyers, criminologists, psychologists, sociologists and others with experience with particular vulnerable groups.

Given the likely small size of the WWCVP Screening Unit in Tasmania, these skills may need to be sourced across the Tasmanian Government or externally.

In order to ensure that required expertise is available, it is proposed that provision should be made in legislation to allow the WWCVP Screening Unit to seek confidential external advice from relevant experts. In practice, the WWCVP Screening Unit would assess and make decisions concerning the vast majority of applications. Advice could however be sought from experts in specialist areas in particularly complex cases. All expert advice would be considered by the WWCVP Screening Unit as part of the risk assessment process and the final determination would remain with the WWCVP Screening Unit.

11.5. Position Based Assessments

In some specific cases it may be considered beneficial for an employee or volunteer with a criminal history or a behavioural history to be registered to work with vulnerable people. For instance, some types of counsellors may have a behavioural history similar to which their clients are at risk.

The WWCVP Checks System is not intended to hinder the recruitment and retention of suitable employees or volunteers or to constrain the delivery of suitable services to vulnerable people.

For these reasons it is proposed that the registration system will be supported by an optional position based assessment system.

In practice, applicants who have been unsuccessful in becoming registered with the WWCVP Screening Unit will have the option of making a further application for a position based risk assessment. The position based assessment will not be available to all applicants and will be restricted to situations where:

- the applicant has the express written support of a prospective employer or organisation to be engaged in a particular position;
- the employer or organisation provides a thorough description of the proposed position including:
 - the risk to vulnerable people inherent in the employing organisation;
 - the risk inherent in the position being offered to the applicant; and
 - any risk management strategies in place;
- the applicant is able to demonstrate benefits for the applicant, the employer/organisation and vulnerable people if the WWCVP Screening Unit was to grant a specific approval to work in the particular position;
- the applicant consents to ongoing monitoring and compliance checks by the WWCVP Screening Unit; and
- the applicant and the employer or community organisation agree in writing that the applicant would not be moved to any other position or change the nature of their work within the organisation for the period of any approval granted by the WWCVP Screening Unit.

After an assessment of all required information, the WWCVP Screening Unit may make a determination concerning the suitability of the applicant to work in a specific position for a specific period (Section 12.4).

12 ASSESSMENT OUTCOMES

12.1. Positive Notices

In cases where there is little or no information indicating a risk to vulnerable people, applicants will be registered with the WWCVP Screening Unit. Registered people will be permitted to work or volunteer with vulnerable people for the duration of their registration and may move between employers or volunteer positions without being rechecked.

It is proposed that the WWCVP Screening Unit will write to successful applicants advising of a pending registration and request attendance at a Service Tasmania outlet for a WWCVP Card to be issued.

It is proposed that WWCVP Cards will provide employers and registered people with the following information:

- the name of the registered person;
- a photo of the registered person taken at the WWCVP Screening Unit immediately prior to the card being issued;
- the signature of the registered person;
- the date of registration expiry;
- information on steps to take if a card is lost/stolen or has been found;
- anti-counterfeit measures, such as a security imprint;
- a unique number to assist in card validation;
- information for employers or organisations concerning validation of WWCVP Cards; and
- the contact details of the WWCVP Screening Unit.

To guard against the improper use of WWCVP Cards, it is proposed that employers and organisations will be required to check the validity of WWCVP Cards prior to engaging a registered person. The WWCVP Screening Unit is likely to provide an online or telephone validation service to enable employers or organisations to use the unique number printed on each WWCVP Card to check that it remains valid.

Registrations cannot be maintained indefinitely as national police checks are specific events that attract a specific fee and are therefore only conducted at the time of registration. Periodic renewal of registration is required to ensure that any new offences which have not been self-disclosed by the applicant can be taken into account as soon as possible. Other benefits of periodic registration include:

- limiting the opportunity for fraud (i.e. approvals have a pre-determined expiry date);
- providing some certainty to employers and organisations that approval holders have been subject to a thorough assessment relatively recently;
- creating an opportunity to re-assess old information in light of new research; and
- creating an opportunity to remove approvals from persons who no longer require them, thereby reducing the number of registered people (e.g. short-term volunteers).

While shorter registration periods would reduce the risk of a person with a recent relevant criminal offence maintaining a registration, the length of validity of an approval impacts on the cost of operating the WWCVP Screening Unit and the administrative overhead applicable to registered people. There has been a trend towards extending the period of validity of registrations in other jurisdictions. Registrations in Qld, WA and Vic are valid for 2, 3 and 5 years respectively. It is proposed that registrations will remain valid for a period of five years in Tasmania. As proposed in Section 10.3, registered people will be required to self-disclose any new criminal offences to the WWCVP Screening Unit.

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

12.2. Interim Negative Notices

In cases where an initial assessment indicates a risk to vulnerable people, it is proposed that the WWCVP Screening Unit will issue an interim negative notice and advise the applicant in writing of a proposal to issue a negative notice. The advice will include the reasons for proposing the negative notice and require that the applicant immediately cease participation in all regulated activities pending a final determination.

People receiving an interim negative notice will have an opportunity to correct any information they believe to be incorrect and/or make a submission to the WWCVP Screening Unit providing any additional information that they believe to be relevant. The WWCVP Screening Unit will consider any additional information provided by the applicant and make a final determination to issue either a positive notice or a negative notice.

To reduce the risk of harm to vulnerable people, it is proposed that the WWCVP Screening Unit will inform the employer or organisation nominated on the application form of the proposal to issue a negative notice and advise that the applicant must be removed from all contact with vulnerable people pending a final determination. The WWCVP Screening Unit will also contact the employer if:

- there is some doubt as to whether or not the applicant has actually been offered a position;
- the application is withdrawn;
- the application is deemed withdrawn due to irregularities or lack of a response from the applicant;
- a negative notice is subsequently issued; or
- a positive notice is subsequently issued.

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?

12.3. Negative Notices

Background checking and risk assessment takes place within an exclusionary framework. Applicants deemed to pose an unacceptable risk of harm to vulnerable people will receive a negative notice and will not be registered with the WWCVP Screening Unit. It is proposed that the WWCVP Screening Unit will advise applicants of a negative notice in writing and provide a statement of reasons for issuing the negative notice.

The WWCVP Screening Unit will also provide information concerning the rights of the applicant to seek a review or to appeal the decision.

To limit the number of potentially frivolous applications, it is proposed that people who have received a negative notice will be prohibited from reapplying to the WWCVP Screening Unit for registration for a period of five years unless there has been a material change in the information upon which the negative notice was issued (e.g. a conviction has been quashed or pending charges have resulted in an acquittal).

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?

12.4. Position-Based Approvals

It is proposed that the process for issuing position-based approvals will be similar to those used for general registrations, except that a WWCVCP Card will not be issued and the applicant will not be permitted to change position or employers without making an application for a further assessment.

In summary:

- The WWCVCP Screening Unit will advise both the applicant and the supporting employer/organisation in writing of the outcome of a position-based assessment;
- In the event of a negative assessment, the WWCVCP will advise of the reasons for the determination and provide information concerning the rights of the applicant to seek a review or to appeal the decision;
- In the event of a positive determination, an approval will be granted for the applicant to work in a particular position for a particular period of time (up to five years); and
- Any approval issued by the WWCVCP Screening Unit may also include specific conditions which must be met by the parties (e.g. the employer may be required to conduct periodic audits against the proposed risk management plan and report outcomes to the WWCVCP Screening Unit).

13 PROHIBITED PEOPLE

One of the key aims of screening is to ensure that unsuitable people are not able to work with vulnerable people. Therefore, background checking and risk assessment must necessarily take place within an exclusionary framework.

As outlined in previous sections of this discussion paper, it is proposed that the exclusionary framework supporting the introduction of WWCVCP checks will be based on the following fundamental tenets:

- People seeking to work or volunteer with vulnerable people in specified positions must apply to be registered with the WWCP Screening Unit and undergo a risk assessment;
- People who have received an interim negative notice or negative notice from the WWCVCP Screening Unit, will not be registered and will be ineligible to work with vulnerable people; and
- People who have been issued a negative notice will be prohibited from reapplying for registration for a period of five years, unless there has been a material change in the information upon which the negative notice was issued (e.g. a conviction has been quashed or pending charges have resulted in an acquittal).

In addition, it is proposed that Tasmanian Courts should have powers to make orders barring people from applying for or holding an approval to work with vulnerable people for specified periods of time. The inclusion of this proposal will assist in reducing risks for vulnerable people by establishing a mechanism through which people who are a known risk to vulnerable people can be removed from participating in regulated activities as soon as possible. Courts will be required to inform the Screening Unit if such an order is made.

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?

I4 REVIEW AND APPEAL

The principles of procedural fairness and natural justice demand that the decisions of the WWCVP Screening Unit are open to independent scrutiny and review.

It is proposed that any decision made by the WWCVP Screening Unit may be subject to an internal review by the WWCVP Screening Unit or to merits review by Administrative Appeals Division (AAD) of the Tasmanian Magistrates Court (and ultimately judicial review in the Supreme Court) upon the request of the applicant.

It is proposed that the grounds for internal and merits review in AAD will include:

- inaccuracy of the information on which the WWCVP Screening Unit has relied;
- relevance of conviction information, non-conviction information or other information;
- the availability of new information that was not previously considered by the WWCVP Screening Unit; and
- whether the WWCVP Screening Unit decision is correct and preferable.

It is proposed that the procedure for review will include:

- a right of access to all information used by the WWVP Screening Unit, except in circumstances where, in AAD's view, disclosure would, or could be reasonably expected to, prejudice, an existing investigation of a breach of criminal law;
- a power of AAD to compel the production of information from the relevant law enforcement bodies or WWCVP Screening Unit;
- both rights above to extend to "circumstances" information and to relevant inter-jurisdictional bodies;
- a right for the applicant to independent representation; and
- a right of the applicant to supply additional information or witnesses to support their case.

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 AAD and the proposed grounds for merits review?

I5 PENALTIES

In line with other jurisdictions, it is proposed that the legislation for the WWCVS checking system will include specific penalties for certain matters that aim to protect the integrity of the checking system. These matters could include:

- forging or altering of a WWCVS Card;
- inappropriate use of a WWCVS Card (including using someone else's card or loaning a card to another person);
- failure by employer or organisation to validate WWCVS Card;
- providing false or misleading information to the WWCVS Screening Unit;
- making multiple and simultaneous applications for assessment;
- working with vulnerable people without a valid assessment notice (or without having applied for an assessment notice);
- failure to immediately cease working with vulnerable people after withdrawal of application, receipt of an interim negative notice, receipt of a negative notice or cancellation of registration;
- failure of employer or organisation to remove a person from working with vulnerable people if it is known that person has withdrawn an application, has been issued with an interim negative notice, issued with a negative notice or has had their registration cancelled; and failure of registered person to disclose a new criminal offence to the WWCVS Screening Unit.

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

I6 COMPLIANCE CHECKS

The WWCVS Screening Unit will be required to undertake a range of supporting activities in order to monitor and promote compliance with the WWCVS Checking System.

Proposed compliance activities include:

- sending letters to select employers/organisations seeking confirmation that:
 - all people that are required to have checks have been checked and approved;
 - people with negative notices are not employed; and
 - prohibited people are not employed.
- physical spot checks of select employers/organisation;
- investigating public complaints or information that allege a breach of WWCVS legislation; and
- referring breaches of WWCVS legislation for prosecution.

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

17 SUPPORTING SAFE ENVIRONMENTS FOR VULNERABLE PEOPLE

WWCVP checks are only one component of reducing the abuse of vulnerable people in Tasmania. A large part of the onus of supporting the creation of safe working environments rests with organisations and individuals who work with vulnerable people.

The *National Framework for Creating Safe Environments for Children* contains a specific Schedule on *Guidelines for Building Capacity of Child-Safe Organisations*. While the guidelines are specifically concerned with children, the principles contained in the guidelines are equally applicable to organisations working with vulnerable adults. The guidelines provide an overview of foundation practices and strategies that should be employed to support the creation of safe environments, including:

- systems to ensure adaptation, innovation and continuous improvement;
- governance and culture;
- participation and empowerment of vulnerable people;
- human resources management; and
- education and training.

It is proposed that the WWCVP Screening Unit will promote awareness of the National Framework in dealings with applicants and will support employers and organisations by entering into partnerships with interested bodies to:

- establish a web link to the National Framework;
- produce and distribute fact sheets concerning the National Framework;
- develop materials to assist individuals and workplaces to adhere to the National Framework; and
- monitor voluntary compliance with the National Framework.

If ongoing monitoring demonstrates that voluntary compliance with the National Framework is at an unacceptably low level, the WWCVP Screening Unit could consider a more active role in the future. This could include conducting training workshops or recommending that certain elements of the National Framework be mandated in Tasmania by law.

18 THE WWCVP SCREENING UNIT

18.1. Location

The location for the WWCVP Screening Unit is yet to be determined. The location of State/Territory units for screening people working with children has varied from jurisdiction to jurisdiction, with locations within Departments/Commissions of Justice, Families and Communities, Child Protection and Police.

There are legitimate reasons for locating the Unit within an independent Office that is outside the direct line management authority of the public service or Minister. The Office of the Commissioner for Children may provide a suitable location although the extension of checks to people working with vulnerable adults (as well as children) could make this location inappropriate.

Alternatively, the Office could be independently established and located while still being administratively within a government agency. For example, the process for reviewing and determining claims under the Adults Abused as Children in Care process is administratively within the DHHS. However, the office is located at an independent site and claims are determined by an independent Assessor.

A further option is to engage a screening unit in another state to manage the screening process for Tasmanian employees and volunteers who have contact with children and

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vulnerable adults. This option could result in savings especially establishment costs. This option would require a small unit in Tasmania to manage any policy issues and to promote the requirements for WWCVP checks.

Q.) 28 Do you have a view of where the WWCVP unit should be located?

18.2. Number of Checks

Based on checks undertaken in comparable Australian jurisdictions, it is estimated that around 7% of the Tasmanian population works with children in a capacity that may attract screening.

As Tasmania will be one of the first jurisdictions to check people who work with vulnerable adults, it is more difficult to estimate the number of people that work with vulnerable adults who will be subject to screening. Pending the outcome of consultations and finalisation of a WWCVP Policy, it is currently assumed that a further 3% of the Tasmanian population will be screened.

In total, it is estimated that around 10% of the Tasmanian adult population (or approximately 37,500 people) will be subject to background checking, with a rejection rate of around 0.2%.

Assuming that approvals will be valid for a period of up to 5 years, the WWCVP Screening Unit will be required to process approximately 7,500 applications annually.

18.3. Costs

In addition to the administrative costs to manage National Police Criminal History Check (NPCHC) there are standard fees charged by the Department of Police and Emergency Management (DPEM) to conduct the national police check.

It is estimated that on average it will cost \$100 for a central agency to screen an individual as a suitable person to work with children or vulnerable others. In some jurisdictions, the screening unit charge individuals who require a good character check a fee to undertake the check. In many jurisdictions, volunteers are not charged a fee or the fee is substantially reduced.

If there are different costs/subsidies for people in paid employment and volunteer work, transferability of registration will be more administratively cumbersome.

Q 29) Do you have any comments on employees or volunteers being charged a fee for a WWCVP check and the impact of costs on employment and participation of volunteers?

18.4. Processing Times

Based on data obtained from comparable screening jurisdictions, it is currently anticipated that:

- 87% of applicants will have no criminal history. These applications will be processed within 2 days from the date of receipt by the WWCVP Screening Unit – however total turnaround time will be subject to the time taken to receive the national criminal history check;

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- 12% of applicants will have a minor offence recorded. These applications will be processed within 5 days - however total turnaround time will be subject to the time taken to receive the national criminal history check;
- 1% of applicants will have a significant criminal history which may require a complex risk analysis. In these cases, assessments may take up to 28 days to be completed.

Processing times will be greatly influenced by the time taken to acquire relevant information, the complexity of the risk analysis and whether or not certain review or right of reply options are exercised by applicants. Processing times may therefore be significantly longer in some cases.

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

18.5. Record Keeping

Records will be held securely within the WWCVP Screening Unit in compliance with privacy legislation and *Tasmanian Archives Act 1983* and will not be made available to employers.

Applicants will have a right to request access to their own information used by the WWCVP Screening Unit as part of the risk assessment process.

19 COMPATIBILITY WITH OTHER TASMANIAN LEGISLATION

The WWCVP Checking System will need to operate in the context of other applicable legislation already in place in Tasmania and nationally. The checking system will therefore be compliant with other applicable Tasmanian and Australian legislation including:

- *Anti Discrimination Act 1998*;
- *Personal Information Protection Act 2004*;
- *Privacy Act 2000 (Cwth)*;
- *State Service Act 2000*;
- *Annulled Convictions Act 2003*;
- *Archives Act 1983*;
- *Personal Information Protection Act 2004*; and
- *Freedom of Information Act 1991*.

20 IMPLEMENTATION PLAN

It will not be possible to conduct all checks in the first year of operation of the WWCVP Screening Unit. Checks will therefore need to be phased in over a reasonable period to avoid capacity constraints that might lead to delays in checks being conducted. It is proposed that the WWCVP Checking System will be implemented in a number of phases over 5 years having regard for the:

- categories of people and activities regulated under legislation;
- risk of harm to vulnerable people;
- level of checking already undertaken (if any); and
- operational capacity of the WWCVP Screening Unit.

As mentioned in Section 9.3, a grand-parenting clause will be included as part of the legislation to allow people already working with vulnerable people to prepare for background checking.

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

21 ACCOUNTABILITY

As with all public regulatory activities, it is important to ensure that operations are transparent and open to public scrutiny.

The WWCVP Screening Unit will be required to report annually as part of the DHHS Annual Report. The report will include data relating to the number of checks conducted, rejection rates, reviews and appeals as well as the outcomes of any reviews or appeals.

It is proposed that a review of the operation of the WWCVP Screening Unit will be undertaken three years after the commencement of operation, and periodically thereafter.

Q32) Are there any other mechanisms to improve accountability that should be considered in this section or elsewhere in this discussion paper?

22 ADDITIONAL QUESTIONS

Q33) Are there any other issues you wish to raise that have not been addressed in this discussion paper?

22.1. Vulnerable People and the Community

Q34) Do you have any specific comments which you wish to raise about the proposed checking system?

22.2. Employees and Volunteers

Q35) Do you have any specific comments which you wish to raise about the proposed checking system?

22.3. Employers and Organisations

Q36) Do you have any specific comments on the proposed role of employers or organisations in the application process?

PROPOSED REGULATED ACTIVITIES: PEOPLE WORKING WITH CHILDREN

Category	Proposed Regulated Activities
Child Protection and Community Services	<p>Child protection services, community services or accommodation provided for children or young people under the Children, and Young Persons and Their Families Act 1997.</p> <p>Including, for example:</p> <ul style="list-style-type: none"> • Member of Children and Young Persons Advisory Council; • Family group conference facilitator; • Kinship carers (the family relationship exemption will not apply to kinship carers); • Foster carers; • Residential care service; • Therapeutic care; • Researchers; • Assessors; • Performance of duties by officers of the Tasmanian Government.
Youth Justice	<p>Youth justice places or services, including for example:</p> <ul style="list-style-type: none"> • Remand centres; • Detention centres; • Transfer of detainees; • Youth residential centres; • Youth supervision centres; • Youth detention officers; • Health service appointments; • Probation services.
Child Care Services	<p>Child care services defined under the Child Care Act 2001, including:</p> <ul style="list-style-type: none"> • Child care; • Family day care schemes. <p>Commercial baby sitting or child minding (not including an informal arrangement entered into for private or domestic purposes).</p>
Educational Institutions	<p>Educational institutions for children, specifically:</p> <ul style="list-style-type: none"> • Pre-schools; • Public schools; • Non-government schools; • Other institutions providing secondary

	<p>school subjects;</p> <ul style="list-style-type: none"> • Other institutions providing children's study or training programs; • Other registered training organisations.
Accommodation Services	<p>All forms of residential accommodation, including for instance:</p> <ul style="list-style-type: none"> • Social housing; • Homestays (e.g. student exchange); • School boarding houses; • Refuges; • Hostels; • Respite services; and • Supported accommodation.
Health	Health services as prescribed by the Minister for Health.
Clubs, Associations or Movements	Clubs, associations or movements (including cultural, recreational, sporting) that provide services or activities for, or directed at, children or whose membership mainly comprises children. Includes cadet programs.
Religious Services & Representatives	Religious organisations
Transport Services	<p>Publically funded or commercial transport services specifically for, or that may be used by, children.</p> <p>Includes driving instructors</p>
Coaching and Tuition of Any Kind	Commercial coaching or tuition services of any kind for children (not including an informal arrangement entered into for private or domestic purposes)
Counselling and Support Services	Counselling or support services for children
Overnight Camps	All overnight camps for children
School Crossing Services	School crossing services
Commercial Entertainment or Party Services Specifically for Children	Providing commercial entertainment or party services for children that are not merely incidental to, or in support of, other business activities
Commercial Gym or Play Facilities	Providing commercial gym or play facilities for children that are not merely incidental to, or in

Specifically for Children	support of, other business activities
Commercial Photography Services Specifically for Children	Providing commercial photography services specifically for children that are not merely incidental to, or in support of, other business activities
Commercial Talent or Beauty Competitions Specifically for Children	Commercial talent or beauty competitions for children that are not merely incidental to, or in support of, other business activities.
Other	Any other contact prescribed by regulation. Administration of the Act supporting the establishment of Working with Vulnerable People Checks.

PROPOSED REGULATED ACTIVITIES: PEOPLE WORKING WITH VULNERABLE ADULTS

CATEGORY	PROPOSED REGULATED ACTIVITIES
Homelessness	<p>Services provided to persons who are homeless, including:</p> <ul style="list-style-type: none"> • Crisis accommodation; • Short/Medium term accommodation; • Accommodation support; • Provision of transport; • Provision of food; • Drop in centre; and • Support/coordination/brokerage/referral.
Home and Community Care	<p>Services provided to enhance the independence of persons and to avoid their premature admission to long term residential care, including:</p> <ul style="list-style-type: none"> • Domestic assistance • Social support; • Nursing care; • Allied health care; • Personal care; • Centre-based day care; • Provision of food; • Case management; • Case planning, review and co-ordination; and • Transport counselling, information and support.
Disability Services	<p>Services provided to disabled persons, including:</p> <ul style="list-style-type: none"> • Accommodation support; • Community support; and • Community access/advocacy information and print disability information and other services.
Housing	<p>Housing services, including:</p> <ul style="list-style-type: none"> • Public housing (including tenancy management, asset management, administration of housing assistance); • Community housing; • Advice/advocacy; and • Community linkages and support.
Family Services	<p>Community services delivered to families in need of assistance, including:</p> <ul style="list-style-type: none"> • Provision of support;

CATEGORY	PROPOSED REGULATED ACTIVITIES
	<ul style="list-style-type: none"> • Assessment/counselling; • Network development; • Crisis intervention; • Provision of information and advice; • Provision of emergency relief; • Parenting skills; and • Foster care.
Alcohol and other Drug Treatments	<p>Services delivered as part of alcohol or drug treatments:</p> <ul style="list-style-type: none"> • Residential services; • Needle and syringe projects; • Healthcare; • Counselling/methadone treatment/withdrawal services; and • Detox support.
Mental Health	<p>Mental health services, including:</p> <ul style="list-style-type: none"> • Assessment/treatment/care; • Support/assistance; • Supported accommodation; • Crisis assessment; • Respite; • Rehabilitation; • Residential support; • Information/referral; • Education/training; • Enhance mental health capabilities; • Social/recreation; • Suicide awareness; • Counselling/advocacy; • Early intervention; • Health care; • Self help; and • Representation service.
Vocational Education and Training	<p>Vocational education and training (VET) for persons with special needs, including:</p> <ul style="list-style-type: none"> • Pathways to employment; • Adult English Language, Literacy and Numeracy Service; and • Industry Training Service. <p>Does not include VET services accessible to all Tasmanian residents.</p>
<p>Older Persons</p> <p>Services provided to persons with age related needs involving a level of care, assistance or dependency.</p>	<p>Does not include services covered by the <i>Commonwealth Aged Care Act 1997</i>.</p>

CATEGORY	PROPOSED REGULATED ACTIVITIES
Health	Health service as prescribed by the Minister for Health.
Youth at Risk	Services for persons aged 10 -17 that aim to reduce the likelihood of involvement in crime.
Respite	All respite services.
Coaching and Tuition of Any Kind	Commercial coaching or tuition services of any kind for, or directed at, persons who have special needs (not including an informal arrangement entered into for private or domestic purposes).
Adult Justice	<p>Services delivered in adult justice places, including:</p> <ul style="list-style-type: none"> • prison; • remand centre; • young offender institution; • secure training centre; • detention centre; and • probation services.
Clubs, Associations or Movements	Clubs, associations or movements (including cultural, recreational, sporting) that provide services for persons with special needs or whose membership mainly comprises persons who have special needs.
Community Services	<p>General services provided to relieve disadvantage, including:</p> <ul style="list-style-type: none"> • Advocacy; • Counselling; • Facilitation of community links; • Support; • Education; • Information; • Financial relief; and • Refugee assistance.
Emergency Services	Emergency services personnel.