



Working with Children and Vulnerable People Discussion Paper

HOW TO USE THIS FEEDBACK FORM

The question numbers below relate to those in the Discussion Paper. Please include your response in the area relevant to your question.

Any or all of the questions can be answered.

If you decide not to use this form, please include the number of the question you are answering, as it appears in the discussion paper in your submission.

SUBMISSION OF RESPONSES

Responses can be emailed to wwwcvpconsultation@dhhs.tas.gov.au or posted to the following address: -

**WWCVP Consultation
Department of Health and Human Services
GPO Box 125
HOBART TAS 7001**

Any telephone enquiries about the review can be made to Bruce Kemp on 6233 2259 during office hours.

Deadline for submissions:

Please provide all submissions by close of business Friday 12 March 2010.

FEEDBACK AFTER CONSULTATION AND USE OF INFORMATION

A paper will be published and available on the DHHS website which will provide an overview of the feedback received through consultation. If you would like to place your name on a register to receive a copy of the feedback paper please complete the form below.

The use of personal information

The personal information you provide will be used for the purpose of notifying you when the public feedback paper (prepared after the close of the consultation period) is available.

De-identified information may be used in an analysis of all responses, eg, the geographical area from where responses are received.

The use of comments you provide

The comments you provide in response to the paper will be used to inform the Legislative reform required to support the establishment Screening Unit. **Quotes from your submission may be used in public documents however no identifying details will be associated with the quotations.**

The Freedom of Information Act 1991

Your submissions may be accessible under normal FOI provisions.

Full name	Michael Cordover
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	Chairperson, TYGA
Date	12 March 2010
Company name/organisation (if applicable):	Tasmanian Youth Government Association Incorporated
Address	PO Box 5004 University of Tasmania PLO SANDY BAY
Postcode	7005

**Section
PEOPLE IN THE TASMANIA**

8.0 VULNERABLE

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

Comment:

Section 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?

Comment:

The activities list seems appropriately comprehensive.

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?

Comment:

The “Youth at Risk” category would seemingly be covered by Annex A.

The “...membership mainly consists of people who have special needs” clause in the Clubs, Associations or Movements category is probably not appropriate given the desire to avoid inappropriately placing people within the definition of “vulnerable”. The mere existence of a group with this membership category doesn’t imply that activities related to it will involve the types of contact intended to be covered by the checks.

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

Comment:

The engagement list seems appropriately comprehensive.

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

Comment:

Given the short-term contact exemption below this is appropriately comprehensive..

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

Comment:

It is important that as a rule any person in contact with or supervising contact with vulnerable people is regulated. This seems appropriate.

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

Comment:

Many by-youth, for-youth organisations including the Tasmanian Youth Government Association have volunteers under 18 in supervisory roles. We do not believe that the mere age of a person will impact upon their suitability for a role. Instead we feel the role itself should determine whether checking is appropriate. It is the nature of the relationship between the volunteer (or employee) and their client that affects whether the relationship is one of vulnerability.

In our experience, peer-based programs have a significant risk attached because of the closeness in age of the worker and the client. Inappropriate and harmful activities are more likely because of the peer relationship. While it is unlikely that checks conducted on volunteers under 18 would expose significant concerns, it would emphasise the serious nature of the work and ensure that organisations have appropriate risk management strategies in place. It will also emphasise to the volunteer the importance of maintaining only an appropriate relationship.

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?

Comment:

The short period exemption would be dangerous. While in principle we support a short-term exemption, certain activities should require checks regardless of duration. For example, TYGA operates the Youth Parliament program, a six-day residential program run entirely by volunteers. Under this exemption an entire supervisory team could be exempted from checks. This is an unacceptable risk.

This exemption should be limited based on one or more of the following categories, perhaps being mixed:

- *Maximum consecutive number of days/hours worked, being significantly fewer*
- *Only applying to work supervised by someone who has undergone a check*
- *The exemption as stated but no applying to certain “high-risk” activities like overnight camps*

Our preferred position would be application only to work supervised by another and in addition to any “high risk” activities.

In addition some exemption for people who are working temporarily here would be beneficial, even if it were only for people who had already undertaken such checks in another state. While this may be considered under the “State & National events” exemption in 8.4.2, supervisors at a national conference hosted in Hobart may satisfy the requirements of their home state. This would impose significant additional burdens on organisers.

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?

Comment:

Yes. This seems essential to avoid over-regulation.

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?

Comment:

Yes. This seems essential to avoid over-regulation.

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

Comment:

This seems appropriate in order to avoid over-regulation.

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

Comment:

More clarity is required on what constitutes a “state or national” event.

Section 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?

Comment:

The ability of a particular organisation to deem it necessary to require results prior to starting work seems to strike an appropriate balance.

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

Comment:

In combination with the capacity to begin work pending the result of an application, this is appropriate.

Section : 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?

Comment:

These seem appropriate, although care must be taken to ensure that a previous poor employment history does not unfairly increase the chance of a negative result. Only relevant matters from previous employment (e.g. evidence of improper conduct of a type that would increase the risk to a vulnerable person) should be considered. In particular, unverified allegations of improper conduct, poor on-the-job performance and irrelevant improper conduct (e.g. falsified leave records) should not be considered as they are not relevant to the question of risk to a vulnerable person.

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?

Comment:

This seems reasonable.

Section 12.0 RISK ASSESSMENT PROCESS

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

Comment:

The principles listed seem sound.

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

Comment:

The list seems appropriately comprehensive.

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

Comment:

The list of questions seems appropriate. Care must be taken to ensure that rehabilitation is given appropriate weight.

It may be reasonable to provide an opportunity for the person being checked to make a statement about particular matters where the person conducting the risk assessment deems it appropriate.

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

Comment:

It is necessary to ensure that the person being assessed has an opportunity to respond to non-conviction allegations appropriately. This may be matters which are on record or may involve the person being invited to make a statement about the matter in question. It would fit with the principles of natural justice that a person be given the right to answer any charge against them prior to a judgement being made as to its impact on a risk assessment.

Section 13.0 ASSESSMENT OUTCOMES

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

Comment:

Given the self-disclosure requirements this period seems appropriate.

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?

Comment:

This seems reasonable.

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

Comment:

While it is appropriate to prohibit re-application for some period, there may be circumstances where a rehabilitation period, or time after which a re-application would be successful, would be under five years. We would suggest that this period be at the discretion of the WWCVCP screening unit but should not exceed five years. As a matter of unit policy the period may be five years unless a lesser period is deemed appropriate.

Section 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?

Comment:

This seems appropriate.

Section 15.0 REVIEW AND APPEAL

Q25) Do you have any comments on the proposed right of internal review by the WWCVCP 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?

Comment:

This seems appropriate.

Section 16.0 PENALTIES

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

Comment:

This seems appropriate.

Section 17.0 COMPLIANCE CHECKS

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

Comment:

This seems appropriate.

Section 18.0 THE WWCVP SCREENING UNIT

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

Comment:

There may be significant advantages in positioning the unit interstate, both in terms of cost and reducing the capacity for conflicts of interest. This is especially true given the relatively small number of people “in the sector” in Tasmania. Given the objective nature of the test, we cannot see any disadvantage to an interstate assessment.

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

Comment:

Care must be taken to ensure that this fee does not impose an undue burden on individuals or organisations working with vulnerable people. In particular, imposing a fee on volunteers to do volunteer work is poor practice. In many cases we would anticipate that this cost would be covered by the employer or organisation.

A similar fee scheme as currently applies to NPCHC would be appropriate. A fee of around \$100 for an employee is probably a reasonable on-cost that could be absorbed by the organisation and indeed most organisations would already spend similar amounts on appropriate risk assessment.

The NPCHC also offers a discounted fee (\$5) to volunteers working for organisations registered with them. Such a nominal fee, or the absence of a fee, is essential to ensuring that small volunteer-based organisations can continue to operate in compliance with the law.

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

Comment:

These processing times seem reasonable.

Section 21.0 IMPLEMENTATION PLAN

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

Comment:

The factors listed seem appropriate.

Section 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?

It is essential that information considered by the assessment is made available to the person being assessed. This should be available free of charge to ensure transparency.

23.0 ADDITIONAL QUESTIONS

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

Comment:

23.1 Vulnerable People and the Community

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

Comment:

23.2 Employees and Volunteers

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

Comment:

23.3 Employers and Organisations

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

Comment:

Department of Health and Human Services

