



**Submission in response to the Victorian Department of
Justice's discussion paper:**

'Working with Children Bill 2005'

February 2005

About Volunteering Australia

Volunteering Australia is the national peak body for volunteering in Australia. Its mission is to represent the diverse views and needs of the volunteer movement while promoting the activity of volunteering as one of enduring social, cultural and economic value.

Volunteering Australia receives funding from the Commonwealth Department of Family and Community Services (FACS) under the National Secretariat Program (NSP) to represent the interests of volunteers and volunteer involving organisations.

Volunteering Australia's member organisations consist of the state and territory volunteering peak bodies, which in turn represent volunteer-involving organisations and interested individuals. Volunteering Australia works closely with a large network of regional volunteer resource centres (VRC's), other peaks and not-for-profit organisations across all sectors.

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2. Overview of our position

Below is a brief summary of the main points Volunteering Australia wishes to make regarding the discussion paper. These are expanded on in further sections.

- Volunteering Australia supports the broad aims of protecting children.
- Volunteering Australia is supportive of the broad trend towards more consistent practices around background checking for volunteers. If a workable system can be introduced, an extension of the scheme to volunteers working with other vulnerable populations would be welcomed, as any scheme protecting a vulnerable client group should.
- Consistent procedures in line with the requirements for paid employees mean volunteers can pursue their activities free from suspicion. Such procedures also endorse volunteering as a valued, legitimate activity.
- The term 'assessment notice' adequately reflects that background checks do not guarantee children's safety.
- The scheme will benefit from a community education program that promotes pre-recruitment screening and the adoption of practices that minimise risk as complementary measures to Working with Children Checks (WWCC's).
- The exemptions to the WWCC will entail significant financial and administrative costs for organisations that involve volunteers in Victoria.
- Because of the onus on individuals to apply and obtain WWCC's, volunteer-involving organisations may increasingly decline to cover the costs of checks (organisations currently initiate police checks), creating a barrier to volunteering.
- The discussion paper is not clear as to whether the definition of 'parent' as any person with custody of a child, applies to non-custodial parents.
- Volunteering Australia seeks to clarify the process by which organisations can verify the validity of a prospective volunteer's assessment notice without compromising the privacy of volunteers.
- **Volunteering Australia advocates the state government covers the costs of WWCC's for volunteers so that they are free of charge.**

Volunteering Australia suggests a single exemption be made for all volunteers who do not have direct or unsupervised contact with children, and that clear and precise definitions and guidelines are developed to support this.

2. Introduction

In forming a response to the discussion paper for the proposed Working with Children Check (WWCC), Volunteering Australia attempted the difficult task of balancing the need to protect Victorian children against the important goal of encouraging and facilitating volunteering.

While Volunteering Australia supports the broad aims of the WWCC, there are some aspects of the bill that we seek to change, and others we wish to clarify. These are outlined in this submission.

We are pleased that the proposal includes a community education campaign that encompasses risk management and risk avoidance themes. The community must be educated to know that WWCC's do not guarantee the safety of children. This has been highlighted by the recent arrests of 8 suitability card holders in Queensland on charges of possessing child pornography¹.

The chief concern of Volunteering Australia is to ensure that the interests of volunteers are protected and to minimise barriers to volunteering in our society.

The impacts of public policy on volunteering can be felt at a number of levels. The impact can be felt by individual volunteers, by organisations who work with volunteers, and by Volunteer Resource Centre's (VRC's) and peak bodies. Effort has been made in this submission to show how the impacts of the proposed scheme are felt at the various levels.

It is especially important to clarify the role of VRC's from the outset.

The role of Volunteer Resource Centre's (VRC's)

There are around 100 Volunteer Resource Centre's (VRC's) in Australia. Volunteering Australia provides funding to 70 of them under the Voluntary Work Initiative (VWI).

VRC's provide information to both volunteers and organisations seeking to involve volunteers. They act as a conduit, allowing potential volunteers to match their skills with organisations seeking volunteers.

VRC's have a key role in promoting and supporting best practice in volunteer involvement and management through the provision of tools, resources and training for volunteer-involving organisations.

¹ Australian Broadcasting Corporation (ABC) website from 12/2/2005, accessed 24/5/2005
<http://www.abc.net.au/brisbane/news/200502/s1301301.htm>

These are some of the ways that VRC's contribute to the development of volunteering as a means for meeting human, social and environmental needs.

However, VRC's do not actively place volunteers in organisations, as an employment agency might. The responsibility for establishing whether prospective volunteers hold or have applied for an assessment notice properly rests with the organisation who engages the volunteer in work.

3. Volunteering in Australia

Volunteering is a diverse activity that delivers significant economic and social benefits. As such every effort needs to be made to develop policies that work only to facilitate and sustain volunteering.

3.1 Participation in volunteering

The most recent statistics available from the ABS indicate that 34.4 per cent of the Australian population volunteered within the previous 12 months². Surveys into participation rates of volunteering have consistently shown increases in the rate of volunteering in Australia over the past decade.

3.2 Value of volunteering

Various estimates (using different methodologies) measure the economic value of volunteering in the tens of billions. Duncan Ironmonger estimates that Australian volunteers perform \$42 billion of unpaid labour each year³. The Australian Bureau of Statistics (ABS) has estimated the value of Australians' volunteer activity at up to \$31 billion per annum⁴.

In Victoria, the economic value of volunteering has been estimated at \$10 billion each year⁵.

The benefits of volunteering are of course not confined to its economic value. Volunteering is an important contributor to social capital, the measure of the connectedness and functionality of our communities.

Volunteering activity tends to peak in the age cohorts when people have dependant children, as volunteering is closely related to children's and family activities⁶. This has important implications for the exemptions proposed for the Working with Children Check (WWCC). These implications are discussed in Section 7.

² ABS (2002) *General Social Survey*, pg 15

³ Ironmonger, D. (2000) 'Measuring volunteering in economic terms', pg 56

⁴ Australian Bureau of Statistics (ABS) (2000) 'Unpaid work and the Australian economy', pg 43

⁵ Ironmonger, D. & Soupourmas, F. (2002) *Giving time: The economic and social value of volunteering in Victoria*, pg 29

⁶ ABS (2001) *Voluntary Work Survey*, pg 3

3.3 Definition of formal volunteering

Volunteering Australia makes a distinction between formal and informal volunteering.

Formal volunteering in Australia is defined as an activity which takes place through not for profit organisations or projects and is undertaken:

- To be of benefit to the community;
- Of the volunteer's own free will and without coercion;
- For no financial payment; and
- In designated volunteer positions only.⁷

The elements of the definition make volunteering a unique activity that is distinguishable from a number of forms of unpaid work, such as caring, work experience and community service orders.

⁷ Definition of *Formal Volunteering* was developed by Volunteering Australia in 1997 through consultation with the volunteer sector, the unions and government.

4. Current situation

Presently no consistent minimum standard exists in Victoria for checking volunteers for offences against children. Currently many organisations working with vulnerable populations conduct police checks.

Many volunteers are currently required by organisations to undergo police or suitability checks for one or more of the following reasons:

- Duty of care. Organisations need to do all that is reasonable to avoid harm to clients, volunteers and the organisation. Failure to do so results in liability for any harm caused.
- Funding requirement. Some government departments require volunteers to undergo police checks to satisfy conditions for funding organisations.
- Some insurers require police checks for staff and volunteers as a condition of providing insurance.

The question of whether to conduct police checks has presented volunteer-involving organisations with considerable confusion and difficulty. Organisations that involve volunteers have also shouldered the administrative burden of initiating police checks and very frequently the cost of the checks.

For volunteers the lack of transferability of police checks is a frustration and a disincentive to volunteering. Volunteers are sometimes compelled to cover the cost of their own police checks.

Volunteering Australia is supportive of the broad trend towards a more consistent practice with respect to Working with Children Checks (WWCC) in various states. However we would welcome the extension of these schemes to also cover work with other vulnerable populations. Schemes of this type can also work to benefit volunteering – screening and requiring checks of volunteers in positions of trust endorses volunteering as a valued, legitimate activity and allows volunteers to pursue their work with the confidence of others.

5. Risk avoidance and background checking for volunteers

Police and other checks cannot guarantee abuse will not occur. This is, in part, due to the widely accepted likelihood of perpetrators not being charged or convicted and the general underreporting of these offences⁸.

Volunteering Australia is appreciative of the use of the term 'assessment' rather than 'positive' or 'suitability' notice.

'An assessment notice is not a guarantee that a person is 'safe'. Instead, it is merely a declaration that the person has been assessed and has been declared eligible on the basis of their criminal, or professional disciplinary, history.'⁹

The discussion paper picks up on another theme that Volunteering Australia has promoted for some time in publications concerning risk management – that is risk avoidance, the practice of arranging activities and functions in a way that minimises opportunities for abuse to occur.

It will still be the responsibility of employers and volunteer organisations to determine whether someone is suitable for their role. This includes conducting referee checks and general character assessments, as well as ensuring that the business or organisation adopts practices that help protect children from harm'¹⁰

The most effective approaches to minimizing the risk of harm to children combine this type of risk avoidance with Working with Children Checks (WWCC) or police checks to create an environment that is not conducive for pedophiles to deal inappropriately with children. Volunteering Australia is supportive of the community education proposed to communicate these ideas to the community.

The WWCC system will represent a significant improvement on the current situation in volunteering in terms of the transferability of the checks, as well as the continual updating of current charges and convictions against database of people holding assessment notices, provided this system works as intended.

⁸ Australian Institute of Family Studies (National Child Protection Clearinghouse) (2005), Resource Sheet, *Who abuses children?* (resource sheet)

⁹ Victorian Department of Justice, *Working with Children Bill 2005* (discussion paper), December 2005, page 3

¹⁰ *ibid.*

6. Impacts on volunteers and volunteer involving organisations

6.1 Administrative impacts

6.1.1 Volunteers

Volunteers who have never been asked to undergo a police check will be required to themselves apply for the Working with Children Check (WWCC) under the new system. Such requirements do make it more difficult to volunteer, however Volunteering Australia recognizes the WWCC is an important development that should, where the requirements are reasonable, be accommodated in the interests of protecting children.

Volunteers who have been subject to police checks previously may experience more administrative tasks than before, as the onus is on individuals to apply for the WWCC.

Conversely, the notices will be valid for five years and if they move between a range of volunteer roles, they will not be asked to fill out a consent form for a police check on each occasion.

6.1.2 Organisations who involve volunteers

Exemptions from the WWCC aside, the proposed system should alleviate some of the administrative burden on conducting police checks from volunteer organisations.

An exception of this will be the need for volunteer-involving organisations to administer reimbursements to volunteers who have paid for WWCC's.

The 5 years validity of checks means that regular re-checking will not be required, and organisations will no longer need to request the checks from local police stations.

Some of the exemptions promise a significant negative impact on the administration and capacity of organisations that involve volunteers. It is not unimaginable that these form a disincentive to involving volunteers, or to continuing to work with children as a client group.

A more detailed discussion of Volunteering Australia's concerns regarding the proposed exemptions to the WWCC can be found in Section 7 of this submission.

6.1.3 Volunteer Resource Centre's (VRC's)

VRC's, in providing volunteers and volunteer-involving organisations with information and referrals, do not have a formal role to play in the process of checking assessment notices. The responsibility for establishing whether prospective volunteers hold an assessment notice or have applied for an assessment notice rests with the organisation who engages the volunteer in work.

The VRC's however, may have a role in reinforcing this message to organisations that involve volunteers who may be legally required to undergo the WWCC. Government should ensure ongoing and regular communication with VRC's is entered into to ensure correct information is disseminated to volunteer organisations.

6.2 Financial impact

6.2.1 Volunteers

The discussion paper does not make clear what the cost of volunteer working with children checks will be.

The costs suggested for paid employees are extremely high compared to other states and for criminal records checks generally.

Volunteering too often comes at a financial cost to volunteers. Concerns about what costs are involved form a significant major barrier to people volunteering. One of stated key considerations behind the scheme is to encourage volunteering. If this is to be achieved there should be no cost to volunteers.

Currently the costs of police checks are often picked up by the organisation they are working with. Volunteering Australia considers this the more acceptable outcome and this is facilitated by the practice of organisations requesting police checks.

As individuals are required to apply for the WWCC themselves, organisations may increasingly absolve themselves of the responsibility for covering the up-front costs for volunteers seeking WWCC's, leaving the cost burden with the volunteer. The up-front nature of the cost, even with the promise of reimbursement, may be a significant disincentive to volunteering for low income earners or income support recipients.

We advocate the Victorian Government should cover the costs of the WWCC for volunteers. Such a move would not be without precedent. The 'blue card' system is provided free of charge to volunteers in Queensland. Similarly, the

South Australian government has moved to cover the costs of police checks for volunteers.

6.2.2 Volunteer involving organisations

Unless the cost of the WWCC is free to volunteers, volunteer organisations will be adversely financially impacted by the WWCC scheme. For some organisations, any such cost undermines the sustainability of the activity.

The financial impact on volunteer involving organisations will be felt through the costs of complying with the exemptions to the scheme. Additional volunteer or paid staff will often be required to deal with the extra administrative requirements, and in some cases compliance will necessitate upgrading internal systems. All of these possibilities engender further costs.

An alternate scenario might see some organisations scaling back their involvement with children as a client group to avoid the difficulties and costs of compliance.

6.2.3 Volunteer Resource Centre's (VRC's)

The financial impact on VRC's will be relatively low, although it would be expected that VRC's, as recognized support bodies for organisations, may experience additional demand on their resources in responding to queries.

Any impact will relate to any resources directed to communicating to organisations their responsibility to ensure volunteers hold or apply for an assessment notice prior to engaging them in volunteer work.

7. Exemptions

While Volunteering Australia is supportive of the Working with Children Check (WWCC), the proposed exemptions will present the volunteering sector with considerable challenges. The effect of this is likely to undermine some aspects of the volunteering sector in Victoria, and undermine the willingness of some organisations to provide services for children.

The exemptions outlined in sections 29, 30 and 31 are all of significant concern to the volunteering sector in terms of the workability of the check for volunteers and organisations that involve volunteers.

The concerns raised by each exemption are outlined in turn below, followed by an alternative suggestion for exemptions to the WWCC.

7.1 Section 29 – A volunteer whose child ordinarily participates in the activity

Empirical evidence supports the idea that child sexual abuse is usually perpetrated by someone known to the victim, often a close or extended family member or another known adult in a position of trust¹¹. Other research has found that a majority of perpetrators of child sexual abuse who abuse within their families also abuse children outside the family¹².

Volunteering activity tends to peak in the age cohorts when people have dependant children, as volunteering is closely related to their children's and family activities¹³.

These findings support the idea that the exemptions of parents under Section 29 could expose children to abuse and undermine the aims of the WWCC.

Aside from the risks to children inherent in this exemption, the administration of this exemption will prove difficult in practice for volunteer-involving organisations.

As the proposed exemption only applies to a parent volunteering in an activity in which their child takes part, the parent will be required to undergo a WWCC if the parent undertakes the same activity in the same organisation for a different group of children. Attempting to keep tabs on these sorts of issues creates a compliance burden that some organisations are unlikely to be able to address satisfactorily.

¹¹ Australian Institute of Family Studies (National Child Protection Clearinghouse) (2005), Resource Sheet, *Who abuses children?* (resource sheet)

¹² Victorian Department of Human Services (1997) *You and your child: for parents of children who have been sexually abused* (information booklet)

¹³ ABS (2001) *Voluntary Work Survey*, pg 3

Volunteers, including parents, often find themselves under pressure to help out if another volunteer pulls out of the activity at the last minute. Under the proposal outlined in the discussion paper, parents may find themselves in the invidious position of having to decide whether to adhere to the laws around the WWCC or to proceed with volunteering and commit an offence under the Act. It is not clear whether the exemption under Section 31 will apply in this case.

Under Section 29 organisations will need to monitor when children cease an activity to alert parents who may continue their involvement that they need to undergo a WWCC.

The discussion paper defines a 'parent' as including any person who has the custody of a child. Volunteering Australia would like to clarify whether this includes non-custodial parents with access rights where parents are separated. If a non-custodial parent is required to undergo a WWCC to be involved in their children's activities where the custodial parent does not, this creates a double standard that undermines the benefits of volunteering that accrue to the community.

7.2 Section 30 – Person working with closely related child

This exemption is subject to the same concerns around who perpetrates child sexual abuse as outlined under Section 29 above. Additionally, the example used of an aunt teaching her niece the piano is not an example of volunteering. Instead it is simply an example of an informal activity that occurs among family and friends. If the WWCC were to apply in this instance it would be an interference in the normal activities of a private homes.

7.3 Section 31 – Volunteers with limited contact

The bill has created an exemption from the WWCC for volunteers who, although performing child-related work, have limited contact with children.

A volunteer who:

- Volunteers less than 4 times over 12 months and no more than twice in one month; and
- Is supervised at all times by a person who has passed a Working with Children Check; and
- Does not have overnight contact with children

does not need to pass a working with children check¹⁴.

Volunteer organisations may find the requirement to track volunteers' involvements in this way requires them to employ additional paid or volunteer staff. For some organisations complying with this exemption may necessitate upgrades to administrative systems.

7.4 Section 32 – Exemption for children

Volunteering Australia is concerned that this exemption does not cover children under the age of 18 more generally. Some schools run community service programs as part of their curriculums, requiring children to volunteer outside their schools. Such programs play an important role in promoting volunteering to young people.

An increase in costs and administration associated may discourage schools from participating in volunteer programs which undermines the longer term prospects for volunteering.

If WWCC are to apply to children aged over 14 the system needs to ensure that any cost burdens do not fall on children as this could prove a powerful deterrent to them volunteering.

7.5 An alternative exemption

Volunteering Australia would prefer to see that the WWCC apply only to volunteers who work unsupervised and in direct contact with children. Parents and relatives should be required to undergo checks if their volunteer work is unsupervised and in direct contact with children other than their own.

Clear definitions of 'direct contact' and 'unsupervised contact' would need to be created and communicated effectively to the volunteering sector. A definition accompanied by clear and precise guidelines, as well as examples showing who might be subject to checks, would require development.

While any exemption creates administrative tasks, this exemption provides a more logically coherent basis for organisations to approach the task than do the proposed exemptions.

Such an exemption, in conjunction with sound risk management practices, would serve to protect the children most at risk from abuse from adults in positions of trust.

¹⁴ Victorian Department of Justice, *Working with Children Bill 2005* (discussion paper), December 2005, page 12

8. Proof of identity and privacy

8.1 Proof of identity

Volunteering Australia is eager to see that rural and regional volunteers are not disadvantaged by a system that requires them to apply for Working with Children Checks (WWCC) in person, especially where opportunities to do so are limited. Even in Melbourne, a requirement to apply in person in the central business district creates a significant barrier to volunteers, given the nature of our cities' urban sprawl and the fact that some metropolitan residents live a full hour's drive from the city centre.

However, it seems to Volunteering Australia there is perhaps increased scope for fraud within a system where information can be mailed. The discussion paper alludes to concerns about identity fraud; we look forward to hearing more about how this risk will be minimised.

8.2 Privacy

The discussion paper does not explicitly address how organisations can verify the validity of a prospective volunteer's assessment notice. The paper is suggestive of a system where an individual can, upon request, provide an organisation with their card number and password so that they may check the status of the individual.

Volunteering Australia is keen to ensure that the privacy of volunteers is protected, that the database cannot be accessed where consent is not given.

The discussion paper does not explicitly address how organisations can verify the validity of a prospective volunteer's assessment notice. The paper is suggestive of a system where an individual can, upon request, provide an organisation with their card number and password so that they may check the status of the individual. Volunteering Australia supports a system containing a mechanism for organisations to verify a prospective volunteers' assessment notice with the volunteers consent and without compromising the volunteers' privacy.

9. References

Australian Bureau of Statistics (2000) *Unpaid work and the Australian economy*

Australian Bureau of Statistics (2001) *Voluntary Work Survey*

Australian Bureau of Statistics (2002) *General Social Survey*

Australian Institute of Family Studies (National Child Protection Clearinghouse) (2005), Resource Sheet, *Who abuses children?*

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