



# **Government Submission**

## **Response to the Working with Children Bill 2005 Discussion Paper and Exposure Draft**

**February 2005**



Criminal Law Policy  
Department of Justice  
55 St Andrews Place  
MELBOURNE, 3002

24<sup>th</sup> February 2005

To Whom It May Concern:

Attached is a response to the Working with Children Bill 2005 Discussion Paper and Exposure Draft compiled by VicSport on behalf of the Victorian sport and recreation industry.

The response includes:

1. Overview
2. Discussion Paper
3. Summary
4. Attachment A - Case Studies

We look forward to taking the opportunity to discuss the concerns of our industry with the Department and working together to make modifications we believe will not only be of significant benefit to our industry, they will improve the Working With Children legislation overall.

Yours Sincerely

A handwritten signature in black ink, appearing to read "Kate Roffey".

Kate Roffey  
CEO  
VicSport



## **Response to the Working with Children Bill 2005 Discussion Paper and Exposure Draft.**

### **1. Overview**

As the peak body representing the Victorian sport and recreation industry VicSport offers this comprehensive response to the *Working with Children Bill 2005 Discussion Paper and Exposure Draft* on behalf of our Sport and Recreation organisations.

The Victorian sport and recreation industry supports every effort to protect all children who take part in our activities. We acknowledge the overall intentions of this proposed legislation to reduce the risk of sexual or physical harm to children are worthy, and commend the Government for initiating changes in this area.

We believe however there are elements of the draft Bill that place unnecessary financial and administrative burdens on organisations, while doing little to help achieve the overall aim of the legislation.

Already organisations and employers in the sport and recreation sector have over the past few years, been faced with additional financial and administrative burdens. An example includes the Public Liability Insurance crisis, which dramatically impacted on the viability and sustainability of many of our organisations.

Our industry does not have the resources, financial or administrative, to bear the costs of further unnecessary burdens.

There are a number of modifications and exemptions the Sport and Recreation industry believes must be made to ensure our organisations survive. These changes and exemptions will in no way detract from the legislation's overall aim to make children's activities safer.

In fact we believe these modifications will lead to a more concisely targeted approach that will be much more effective in achieving the aims of this legislation.

Areas we believe require reconsideration include:

i. Working With Children

Clarification around the concept of “working with children” as opposed to “participating” with children is required.

Without clarification of the concept of working with children, senior players who play on the same team as youth aged Under 18 would be subject to the Working With Children Check (WWCC).

ii. Defining the term “significant child membership or involvement”

The Working with Children Exposure Draft’s failure to offer a clear definition of the term “significant child membership or involvement” has created confusion and has left many organisations unsure of their status as a child-related employer.

The term “significant” requires clarification before the true impacts on our industry can be estimated.

iii. Defining “Contact”

The definition of “contact” as it is presented in the Exposure Draft is much broader than is necessary to achieve the aim of reducing the risk of sexual or physical harm to children.

“Contact” should be redefined to reflect the more appropriate definition of “direct and unsupervised contact”.

iv. The Financial Costs

The Draft Exposure indicates that, based on preliminary costings of the check, the fee for employees could range from \$50 to \$120, with a significantly reduced fee for volunteers.

For many sport and recreation organisations, any additional costs are costs they cannot bear. Increased costs will impact on our sectors ability to offer affordable participation opportunities for Victorians.

v. The Administrative Costs

The additional administrative burdens sport and recreation organisations, many of them volunteer based, will have to absorb simply to comply with this legislation will also cost our sector dearly.

vi. Protecting our Volunteers

The Exposure Draft identifies encouraging volunteers as a key competing policy interest.

We contend the legislation in its current form places significant burdens, many of them unnecessary, on volunteers. This will lead to a further draining away of this precious resource from our sector.

vii. Exemptions

The exemptions outlined in the Working With Children Draft Legislation may be beneficial to large professional organisations, however they must be redefined if they are to offer any genuine benefit to the sport and recreation sector.

Ironically, the exemption of greatest benefit to our sector has not been extended to include sport and recreation clubs.

Under Section 32 – exemption for Children, provision has been made to exempt children engaged in child-related work in their own school.

Given sport and recreation clubs, like schools, often use older children to help coach or act as role models and mentors for those younger than them, it is a matter of concern this exemption has not been extended to include our industry.

viii. The Application Process

Serious consideration must be given to ensuring the WWCC application process does not create obstacles for those who live in rural and remote areas, or who do not have access to the Internet.

Consideration should also be given to the impact on volunteers if they are required to travel to a specified location to apply in person and provide proof of identity.

ix. Other Criminal History Checks

Many sport and recreation organisations already carry out some form of police check as part of their current employment procedures, be they paid or volunteer staff.

Meeting the costs of these checks is a burden many organisations already struggle with.

Ideally the agency responsible for conducting the WWCC must be given the scope to complete extended background checks as required.

At the very least, fees should be waived if additional information is required via a police check.

x. The Broader Context

As the Draft Exposure itself emphasises, this legislation is not the definitive answer, but merely one in a number of steps that must be undertaken to reduce the risk of harm to children.

The Government must be prepared to provide the financial and administrative support required across all sectors to implement the strategies that will best help protect our children.

These issues will be discussed in greater details in the following Discussion Paper.

It must be noted the issues outlined above may not be the only issues identified by the sport and recreation industry. A major concern expressed across our industry has been the lack of consultation during the development of this draft legislation.

To our knowledge sport and recreation industry groups were at no time approached to offer input into the development of this draft legislation. Such consultation would without doubt have highlighted the concerns now being raised in retrospect. This is a grave concern given the importance of this Bill and the potentially enormous impact it will have on sport and recreation groups.

The very short period of time we, as an industry, have been given to respond to this legislation has meant the information gathering process has not been as broad and encompassing as we would have wished.

As a result groups who submit individual responses to the Draft Exposure may identify other concerns, which have not been expressed in this paper. This in no way signifies these concerns are of lesser importance to our industry.

## **2. Discussion Paper**

### **i. Working With Children**

Under the broad definition of “contact” offered in the Draft Exposure, potentially senior players who play in the same team as youth aged Under 18 would be subject to a WWCC.

These players however are not “working” with children, they are “participating” with them, a significant difference.

It is quite common in sport to find players under the age of 18 competing with adults. In fact in many sports 15-18 year olds are considered seniors.

It is important the concept of “working with children” is clarified so adults who have contact with youth aged Under 18 in a participatory capacity are not captured by the broad definition of contact.

As an example Petanque Victoria and their associated clubs run events where children play in teams of 2 or 3 with and against adults. In many cases these adults are not related to the children.

Without clarification of the term “working” with children, potentially all people who play in a team or competition involving youth under the age of 18, will require a WWCC.

The requirements for hundreds of people in this situation to compete a WWCC would without doubt lead to clubs and organisations excluding youth under 18 from playing with seniors. This will have a serious impact on the development of juniors.

A clearly defined differentiation between someone “working” with children, and someone who “competes” or “participates” with or against children must be made.

### **ii. Defining Significance (S.9<sub>(2)</sub> (h))**

According to the definition of child-related work as set out in the Draft Exposure, sport and recreation organisations will be captured under the “clubs, associations or movements (including of a cultural, recreational or sporting nature) with significant child membership or involvement” clause.

The Exposure Draft has failed to clearly define what constitutes “significant child membership or involvement” and how this construct is to be measured. We do not know therefore which clubs and organisations will be required to carry out checks on those who work with children.

While the real impacts of this bill on our industry cannot be determined until such time as the term “significant child membership or involvement” is

defined, the initial impression is the majority of our organisations will be affected.

Typically, almost every sport and recreation club or organisation in Victoria has some programs, activities or competitions involving youth under the age of 18. The point of contention at the moment is at what level does junior involvement become significant?

Without a clear definition the interpretation of the term “significant” will vary greatly. As an example, under the current loose definition, the Victorian Little Athletics Association would be captured by this legislation as they run their programs solely for youth under the age of 18.

However, in the case of two community basketball clubs, one with 20 juniors out of a membership of 200, and another with 20 juniors out of a membership of 40, where is the line of “significance” drawn. To exclude one seems unfair as both involve the same number of junior players, yet to consider 20 juniors out of a membership of 200 a “significant” proportion is unrealistic.

The potential for unfair and inequitable outcomes due to misinterpretation of a term not clearly defined is enormous. Careful consideration needs to be given to the question of how “significant” should be defined.

Simply setting an arbitrary percentage may leave scope to overlook organisations who should be included as part of the legislation. Conversely, too broad a definition may lead to the capture of organisations whose inclusion of juniors is incidental only.

A great concern to our industry is the potential for the definition of “significant” membership to lead to clubs limiting their junior membership numbers or programs in order to remain below the arbitrary “significant” level. Such an outcome goes directly against the ethos of encouraging more active lifestyles for our youth through participation.

### **iii. Defining Contact (S.3 Definitions)**

The Draft Exposures defines contact as:

*“any form of contact between a person and a child and includes physical contact, any form of oral communication (whether face to face or by telephone) and any form of written communication, including electronic communication.”*

In its current form the definition of contact outlined in the Draft Exposure is overly broad and will require large numbers of people who have no direct contact with children to undergo an unnecessary check.

A case in point, under section 9(3) of the Bill, a person is engaged in child related work if he or she is a member of the committee or board of management of an association engaged in child-related work.

The rationale behind the inclusion of a board member, who has no direct contact with either the children involved in their organisation, or the activities their organisation runs for children, is unclear.

What is clear is the inclusion of such a clause in the Bill will require many people, most of them volunteers, to undergo an unnecessary check.

This places not only an unnecessarily onerous requirement on sport and recreation organisations and their staff and volunteers; it will also place additional unnecessary demands on the agency completing WWCC's.

It is recommended that, in the interests of placing as few unnecessary burdens on organisations as possible, this legislation adopts the more specific and appropriate definition of contact as "direct and unsupervised" contact.

This more appropriate definition of contact has been adopted in New South Wales for example.

Under the NSW Act, employers must seek a Prohibited Employment Declaration from anyone employed or seeking employment in a position that "primarily involves direct contact with children, where that contact is not directly supervised, in the areas of work identified in the Child Protection (Prohibited Employment) Act 1998.

This applies whether the person is seeking work in a paid or unpaid capacity. (Section 3.1 of the NSW Working With Children Check Guidelines – April 2004).

This definition achieves maximum impact in capturing those who work in situations conducive to risk where they have direct and unsupervised contact. It also avoids placing unnecessary burdens on individuals, organisations, and a Government agency trying to complete what it is assumed will be a very large volume of checks.

In fact, changing the definition of who is required to undergo a WWCC to "contact that is direct and unsupervised" could do away with need to include extensive exemptions. This would simplify the interpretation and application of the Bill overall.

#### **iv. The Financial Costs**

A major concern for our industry is who will meet the financial and administrative costs of complying with this new legislation.

The majority of our sport and recreation clubs, particularly those at the regional, local and grass roots level, are already stretched to capacity in making limited financial and human resources meet the costs of providing sport and recreation opportunities for our young people.

The reality is no matter how small the fee some clubs or groups will be forced to fold because they simply cannot cope with the added responsibilities that will come with the introduction of this legislation unless they are given substantial financial and administrative support.

According to the *Community Sport Counts* report published by Sport and Recreation Victoria, 53% of Victorian Sport and Recreation organisations have an annual income of less than \$25,000 per year. In addition 22% bring in less than \$25,000 to \$100,000 annually.

For many organisations, and in particular those small volunteer based organisations who will be hardest hit by these costs, another financial burden means another fundraising effort – and that usually requires more volunteers.

The draft legislation indicates, based on preliminary costings of the check, the fee for employees could range from \$50 to \$120, with a significantly reduced fee for volunteers.

A review of costs for similar checks to be conducted in other Australian states raises the question of why costs in Victoria are expected to be comparatively high.

Currently in New South Wales there is no cost for mandatory checks. In Western Australia, from January 2006, costs will be \$10 for volunteers and \$50 for those employed, while in Queensland a Blue Card check is free for volunteers, and costs \$40 for paid employees or those carrying on a regulated business.

It has to be assumed that if these states can conduct large numbers of checks for volunteers free of charge then our state can do likewise.

Even a small fee will be too great a cost for many organisations, particularly those relying heavily on volunteers.

As an example, Basketball Victoria, one of the State's stronger sport organisations, have indicated if this legislation passes without modification, it will be beyond their resources to meet the costs for all their paid and volunteer people who would require a check.

Basketball Victoria estimate under the legislation as it currently stands, they would be required to provide checks for around 250 paid and 20,000 volunteer people.

Even a fee of \$10 per application would potentially cost the organisation over \$200,000.

For most organisations, the only way possible to meet the extra costs associated with the WWCC will be to pass these costs on to the participant.

Serious consideration must be given to the proposal to keep WWCC's free for volunteers, and as low cost as possible for paid workers. Another financial burden will have a detrimental effect on the ability of the sport and recreation sector to offer participation activities at affordable prices.

Cost of participation in sports and recreation activities has already been identified in many studies as a major obstacle in preventing access to these activities. This is particularly the case in low socio-economic groups.

It follows that any increase in activity costs will have a negative impact on participation, and will have the greatest impact on those already struggling to meet the costs of participation. In effect these additional costs will impact worst on those who most need support.

The Exposure Draft has also failed to indicate what, if any, subsidies will be offered to not-for-profit or charity organisations. Many of these organisations have paid employees who work with children. However it would be inappropriate to consider charging these organisations at the same rate as a commercial profit making childcare centre for example.

Further consideration must be given to these factors when determining cost.

#### **v. The Administrative Costs**

Along with the financial costs associated with the implementation of this legislation will come a myriad of additional administrative costs. Organisations will be required to absorb these costs if they are to comply with new regulations and ensure they will not be subject to prosecution or the imposition of penalties for either knowingly or unknowingly failing to comply.

The nature of this legislation and the stringent penalties imposed for failing to comply will immediately place on employers an added responsibility to take greater precautions in screening potential employees or volunteers.

Organisations will have to keep records to ensure any person, paid or volunteer, who is required by legislation to undergo a check does so, to ensure checks remain current, and to ensure those who are exempt do not breach exemption regulations.

Maintaining such records may be achievable for large professional organisations such as a school or a childcare centre who have the capacity to employ paid staff rather than rely on volunteers.

Unfortunately most sport and recreation organisations do not have this luxury. Most still rely heavily on volunteers, and in many cases are administered by volunteers.

To cope with these requirements organisations will need to redirect a considerable amount of their very limited staff resources, be they paid or

volunteer, away from their primary activities to administration duties. In effect, many organisations will need to engage the services of another volunteer - just to keep track of volunteer records.

There is a genuine concern volunteers will be left to meet both the financial and administrative costs associated with this legislation.

A recent survey conducted on North East sporting organisations showed 34% of clubs indicated increased regulations and responsibilities are already having a significant impact on club operations.

The North East survey also showed recruitment and retention of volunteers was considered a significant concern in 59% of clubs. In essence, anything that increases the load volunteers must bear will impact negatively on volunteer numbers in the long run.

Volunteer numbers in sport and recreation are already declining as responsibilities accrue. These additional burdens have the potential to drive away many more volunteers.

While the real administrative costs will not be understood until such time as the compliance requirements of this legislations are disclosed, there is no doubt substantial support will be required from the government to help organisations meet these costs.

The reality for many sports and recreation organisations is they will struggle to meet costs associated with additional administrative requirements. This struggle will start without even beginning to consider the impacts of placing an application fee on a WWCC.

## **vi. Protecting Volunteers**

The Working with Children Exposure Draft quite rightly points out that volunteers are the lifeblood of a large number of Victoria's community organisations.

Volunteers make a vital contribution to Victoria's sports and recreation industry. Data indicates approximately 40% of all volunteers across Victoria work in the sport and recreation industry and around 75% of sporting organisations are volunteer based.

It is estimated within our industry around 80-90% of all activity is undertaken by volunteers. In fact the number of people employed or self-employed in the sport and recreation industry are in the minority, particularly at the community level where most junior sport occurs.

For the ongoing sustainability of our industry it is vital any potential legislation impacting on volunteers does not act as a disincentive to volunteering.

Typically, the rates of volunteering to paid staff are usually higher in smaller community based or regional organisations. Ironically those with the bigger volunteer bases are the groups who can least afford the additional administrative and financial burdens attached to this legislation.

While the draft legislation has identified encouraging volunteers as a key competing policy interest, we contend the legislation in its current form will place unnecessary burdens on many volunteers.

Evidence shows the burden of compliance is already having a detrimental effect on volunteer-based sport and recreation organisations. It is imperative therefore that new requirements under this proposed legislation are targeted to areas of real risk and are not overly broad so as to place unwarranted burdens on volunteers and organisations.

In the interest of decreasing the burdens on volunteers, while still maintaining the integrity of the legislative intention to protect children from harm we recommend:

- Contact be redefined more appropriately as “direct and unsupervised” contact.

This will ensure that all those who do work closely with children, particularly those who have direct and unsupervised contact will be required to pass a WWCC.

- Fees are waived for those volunteers who do require a WWCC.

As discussed previously, to avoid the creation of another disincentive to volunteering it is essential that fees are waived for volunteers who must complete a WWCC as is the case in NSW and Queensland.

- Volunteers who take on roles that do not require them to have direct and unsupervised contact with children be exempt from the WWCC.

To ask those who freely give up their time and other personal resources to complete a check when they have no direct and unsupervised contact with children is an unnecessary burden.

The recent parliamentary inquiry into Country Football in Victoria 2004 clearly outlined a number of issues that currently act as a disincentive to volunteering and offered a number of recommendations regarding volunteers. These recommendations include:

- The State Government undertake consultation with Volunteering Victoria or other appropriate bodies on any legislative proposal that is likely to have an effect on volunteer recruitment and retention

- When undertaking an assessment of proposed regulations through the Regulatory Impact Statement process, specific consideration should be given to the impact of those regulations on volunteers and voluntary organisations, and in particular, whether proposed regulations will have a detrimental effect on volunteer participation, recruitment, and retention
- The State Government develop and fund a multifaceted media campaign to encourage, recognise and promote the recruitment and involvement of volunteers in clubs and associations of all sports.
- In the order of \$2 million per annum over five years be made available by the State Government to develop and provide a comprehensive, integrated program to assist volunteers in community sport in the following areas:
  - (i) sports administration;
  - (ii) understanding and managing volunteer liability insurance issues;
  - (iii) alcohol and food handling competencies;
  - (iv) awareness of current grants and resources available to sports organisations;
  - (v) general sports administration and organisation skills acquisition;
  - and
- Programs should be run in rural and regional centres across Victoria to ensure reasonable access for all people

The parliamentary inquiry into Country Football clearly recommends the government give specific consideration to the impact of any new legislation on volunteers.

A genuine fear is that if some elements of the Working with Children Bill 2004 are not modified, the effect on volunteerism in Victoria will be enormous.

Volunteers are a precious commodity. We cannot risk losing those people who keep the sports and recreation industry healthy and active in Victoria. The reality is any cost to a volunteer, is potentially too great a cost.

## **Vii. Exemptions**

As the Draft Exposure paper itself points out, the proposed Working With Children Bill will “impose significant obligations and costs on employers and voluntary organisations”.

In an attempt to limit the impacts of this legislation a number of exemptions have been included.

Unfortunately without modification, these exemptions will not afford significant benefits to our industry.

a. *Section 29:*

*Exemptions for Volunteers whose child ordinarily participates in an activity.*

While the intention of this exemption is sound, in its current form it is too limited to be of genuine benefit.

Currently the exemption is limited to parents who are involved directly in their child's activity only, such as coaching a team their child is playing in, or being allowed to drive as part of the car pool only if their child is in their car.

Under these guidelines, a father who coaches the under 8's team in which his child plays will be exempt from the check. The same child's mother who coaches the under 9's team, in which their child does not play, will not be exempt.

In this form the exemption not only fails to capture the vast majority of parents who volunteer in the sport and recreation industry, it is an administrative nightmare.

Take the case of events run by the Victorian Little Athletics Association. The VLAA has 108 centres across Victoria and 20,400 juniors compete across those clubs.

The sport also has 123,500 ordinary members, 18,500 of which are parents, grandparents and other relatives who volunteer to act as coaches, officials and supervisors. It is estimated approximately 14,000 families are involved in the sport, many having more than one child involved at any one time.

VLAA run competitions usually include participation in a number of events such as shot put, high jump, sprints and long jump for example. Typically, volunteers who support each day's events will usually assist in the same activity all day, rather than rotating activities as their children will.

Under the narrow exemption offered by the draft legislation, this would mean these parents will all require a WWCC check as they will at some point in the day be involved in assisting in an event their child is not directly involved.

An obvious resolution to this problem would be to exempt parents who volunteer in an "activity" in which their child is involved, such as the Little Athletics meet, or the swimming carnival, rather than a specific event within this activity.

This would then exempt the vast majority of parents who volunteers at a club or organisation where their child participates, and who fill vital roles such as helping out in the canteen, cooking the BBQ each week, manning the scoreboard or raking the long jump pit.

While extending the limits of this exemption would offer greater assistance to sport, the reality is that many parents who do not have any genuinely direct or unsupervised contact with children will still be required to complete a check.

As has previously been recommended a better course of action will be to require all those people, parents included, who have direct and unsupervised contact with children to complete a WWCC, while those who have no direct contact or indirect contact in the presence of others will be exempt.

Parents will then be allowed to volunteer for general roles that do not require them to have direct and unsupervised contact with children. This will ensure a lot of the unnecessary administrative and financial burdens are circumvented and will cause the least unnecessary inconvenience to volunteers, while still considering protection of children as the ultimate aim.

b. Section 30:  
Person working with a closely related child

The logic behind this exemption must be questioned, especially in light of statistics, which indicate a large number of perpetrators, are those closely related to children.

To make an exemption on the basis that “there is little practical point in preventing family members from working with children, while they will still have many opportunities to spend time with those children outside the child-related work” seems to blatantly contradict the intent of the working with children check.

For many of the reasons outlined above, we argue the issue should not be the family relationship to a child; it should be the working relationship with a child.

Clearly a safer and more appropriate course of action will be to check all workers or volunteers who have direct and unsupervised contact with children, and exempt those who do come into contact with children only indirectly and in the presence of others.

c. Section 31:  
Volunteers with Limited Contact

The administrative burdens of keeping track of compliance with this exemption are potentially enormous.

It is questionable whether sports and recreation groups, particularly those smaller groups who rely heavily on volunteers to run in the first place, will have the capacity to meet the considerable administrative burden required to track the frequency of instances of volunteering on an irregular basis.

To ensure a volunteer qualifies for the limited contact exemption a club must:

- Keep track of the number of times a person volunteers to ensure they do not go over the limits of more than twice in one month and 4 times in one calendar year

- Ensure they are supervised at all times by a person who has passed a WWCC that is still current, and,
- Ensure the person will have no overnight contact with children.

This will require record keeping that is beyond the scope of many organisations.

Under the new legislation a breach of the Act, whether intentional or not, may expose the organisation to large monetary penalties and possible litigation from an aggrieved parent.

The increased risk of breaching the Act as a result of failing to keep adequate records may in the long run deter many groups from running events or activities requiring large numbers of volunteers.

While the intention of exempting people who volunteer less than four times per year will have benefits for those people who may only volunteer once per year at the annual school sports day, the reality is the restriction of 4 volunteering sessions per year and twice in one calendar month is of limited benefit to our sector.

Quite often, a large number of volunteers will be required for an event or competition running over the course of the week. In this situation all volunteers working over the course of the competition would require a WWCC as they will have exceeded the limits of volunteering twice in one month, or more than four times in one calendar year.

In these situations people whose only volunteering commitment may be for a single annual event will be required to go through the rigors of applying for a working with children check. This will impact significantly on the ability of groups to attract volunteers for these sorts of events.

It is also not clear if volunteering sessions count across sports and clubs, or within sports or clubs only. For example, if a person volunteers twice in one month at their daughters hockey club, and twice a month at their sons table tennis club, have they breached the limited contact exemption.

If the exemption applies to all volunteering sessions, keeping track of volunteering sessions across sports is an impossibility. Organisations struggle to keep records within their own organisation, let alone cross-referencing records across organisations. The potential complexities of administering compliance with this exemption are likely to outweigh any benefits that may come from its use.

Again it is suggested the better option would be to ensure all people who come into “direct and unsupervised” contact with children pass a WWCC, and those who do not have direct and unsupervised contact are exempt. This will be more effective in achieving the ultimate aim of protecting children from harm, and will be much easier to administer.

d. Section 32  
Exemption for Children

This exemption applies to children under the age of 14. It is suggested it would be very rare for a child under the age of 14 to be in a position to engage in child-related work and so this exemption will be of limited use.

The reality is that youth who would be engaged in assisting others younger than themselves would be aged between 14 and 18 years of age. The requirement for these people to undergo a WWCC will result in many of them opting out of roles in sports organisations.

Gymnastics Victoria are one organisation who believe the requirement for youth aged 15-18 working with children to complete a WWCC will drive potential coaches away from their sport.

In the sport of gymnastics, youth aged 15-18 who work on occasion coaching younger gymnasts earn between \$8-\$12 per hour and are paid to work for a few hours a week. Their annual income is usually around \$500 or less from this activity.

In order to assist with this coaching they are required to register with Gymnastics Australia, which costs around \$200 and includes professional indemnity insurance cover. In addition they have to gain and then maintain their qualification, which costs in the vicinity of \$100 per year.

These costs alone have already eaten away the majority of their income. While many young people want to be involved in coaching, and may look to their junior level coaching as a pathway to a career in this area, the additional cost and administrative burdens of completing a WWCC may drive them out of the coaching field.

The realisation that young people will not continue to help out if they are required to undergo a WWCC, and the acknowledgement of the important role they play in helping others younger than themselves has no doubt driven the special exemption that has been extended to school children working in their own school.

Under this exemption schools have been given special consideration to exempt children engaged in child-related work within their own school from the WWCC.

The rationale behind this is that “the Government does not want to regulate programs that schools may run that involve students helping each other.”

In sports organisations, like schools, older children are often involved in working with younger children, for example in assisting with coaching. Like schools, there is no link between these children other than the fact they are

members of a defined group, in one case a school, in the other a sport or recreation club or organisation.

In the interest of not impinging on programs sport and recreation clubs run which involve older children helping other younger than themselves, it is essential the Government at the least extend this exemption to the sport and recreation industry.

### **viii. Lodging an application**

As has already been highlighted the financial and administrative costs attached to this legislation will become important factors for people, particularly volunteers, making a decision to get involved in child-related activities.

Adding to this a process that is time consuming, difficult to understand, or requires people travelling to make an application in person will without doubt drive volunteers away from our industry.

While it is understood there is a need to provide proof of identity which adds some complexity to the application process, there must be some provision made for those who cannot make an in person application.

A large proportion of the people who work or volunteer in our industry are from regional and remote areas. A suitable application process must be available for these people to avoid adding yet another burden to an already costly venture.

### **ix. Other Police checks**

Many sports for a variety of reasons already conduct some form of police check.

Basketball Victoria for example utilise police checks as part of their stringent process of screening those who will be engaged in child-related work in their organisation.

Members participating in the shooting sports in Victoria already undergo extensive police checks prior to obtaining a firearms license in line with the Firearms Act 1996 and Softball Victoria also currently requires people who act as officials, including volunteers, to undergo a police check.

Requiring people, in particular volunteers, to complete and in many cases pay for two separate checks is out of the question.

Due to financial constraints Softball Victoria are already in the position of asking these people to pay for their own police checks. Softball Victoria has two paid staff members who run under 18 programs, which it is estimated

takes up around 50% of the organisations activities. The remaining support for their under 18 activities, and that is the vast majority, comes from hundreds of volunteers.

Softball Victoria believes requiring these people, plus the hundreds more who volunteer their time as base umpires, scoreboard operators and statisticians to pay for a WWCC will lead to their vital volunteer support base practically disappearing.

It is recommended the Victorian Government take steps to incorporate a criminal history check in to the working with children checking process in a similar way to that which operates in Queensland. Under the Queensland scheme an extended criminal history check can be requested and is incorporated into the Blue Card Check.

At worst, if a person is required to complete the WWCC and also provide supporting evidence of no other criminal history, this additional background check should be free of charge.

Currently in NSW, employees, volunteers and students on placements can obtain a criminal history check for free by making a Freedom of Information application to the NSW police.

#### **x. The Broader context**

As the Draft Exposure has clearly pointed out this legislation is not the solution to the child protection issue.

In fact, it must be considered that without significant public education and awareness raising around the introduction of this legislation, many volunteers will simply react negatively to being asked to submit to a police check, as well as paying for it.

More importantly however, we must be aware the WWCC will only detect those persons who have been, or are subject to criminal or certain professional disciplinary proceedings. According to information provided by the Australian Sports Commission child abuse is significantly under reported with only an estimated 10% of abusers appearing in court.

This indicates any kind of checking of criminal history will fail to identify the majority of perpetrators as the majority of cases are either never reported or if reported fail to reach the stage of any disciplinary action. Clearly other support mechanisms are as important, if not more so, in achieving the aim of protecting our children.

If a genuine effort is to be made to protect our children the Government will be required to provide additional policies and support strategies for all industries involved in child-related work throughout Victoria.

A number of strategies have already been implemented in an ad-hoc manner which we believe, with the right Government backing and industry coordination, will offer immense support to this initiative to protect children from harm.

Some of these strategies include:

- Development and implementation of child protection regulations across all organisations. These regulations will clearly show child abuse is not acceptable and will outline procedures for enforcing these policies and dealing with offences.
- Developing codes of conduct for all staff, volunteers, parents and others associated with children's activities that convey a clear message about the importance of child protection to the people involved in your organisation, and encourage acceptance of positive behaviours in sport.
- Developing procedural policies to ensure the times when an adult may have direct and unsupervised contact with children are kept to a minimum.
- Appointing and appropriately training member protection officers within organisations to ensure children, staff and volunteers have someone to turn to should they have a concern about or need information pertaining to child protection issues.

In conclusion for this legislation to have any impact a variety of comprehensive supporting strategies must be put in place. It is imperative it is understood our industry will not be able to meet the financial and administrative costs required to develop and implement these strategies.

If we are to make some serious efforts to prevent harm to children the Government must be prepared to provide substantial financial and administrative support.

### **3. Recommendations:**

In conclusion we make the following recommendations:

- A clear differentiation between the concept of “working” with children as opposed to “participating” with youth under the age of 18 is made.
- The term “significant” child membership or involvement is defined.
- A clear and acceptable measure of “significant’ be defined.
- “Contact” be redefined as “direct and unsupervised contact”.
- WWCC fees are free for volunteers.
- Consideration be given to providing free or heavily subsidised fees for paid employees of volunteer and charity organisations.
- Government support is given to help organisations put in place administrative processes required for compliance.
- Exemptions be reconsidered in the light of contact being redefined to the more appropriate “direct and unsupervised” contact. A redefining of contact in this way will negate the need for the majority of these exemptions.
- The exemption for school children engaging in child-related work within their school be extended to sport and recreation clubs and organisations so children engaged in child-related work within their club or organisation are exempt.
- Serious consideration be given to the practicalities of the application lodgement process, particularly in relation to in-person application.
- The agency responsible for completing WWCC’s is given the capacity to conduct extended criminal history checks free of charge as required.
- The Government make a commitment to providing the financial and administrative resources necessary to implement complementary strategies required to truly protect our children from harm.

## **4. Attachment A - Case Studies**

This section presents four case studies, which provide real life examples of the potential impact the Working with Children Bill 2005 will have on sport and recreation clubs in Victoria. The case studies profile sports with high junior participation numbers and a high percentage of volunteers.

### **Case Study 1: Victorian Little Athletics Association**

#### ***The Organisation***

The Victorian Little Athletics Association (VLAA) is an incorporated association with a management committee of six volunteer directors and six full time staff. The VLAA has 108 affiliated centres (clubs) in Victoria with 20,400 “competitive” members (juniors). Approximately 14,000 families are involved in the sport with multiple children involved in competition at any one time.

The sport also has 18,500 “ordinary” members who are volunteer coaches, officials or supervisors. These volunteers assist in the organisation of events and are the parents, relatives, and grandparents of the junior participants.

#### ***Current Practices***

Currently the VLAA recommends people involved in children’s activities undergo police checks. While the VLAA distributes the necessary forms to each centre, it is up to the Committee of each centre to determine who should undergo a police check.

Once police check applications have been filled out the centre returns the forms to the VLAA who submits it to the police. The results of the police check are returned to the VLAA where a copy is made, and the original is forwarded to the individual being checked. A notice of acceptance is then sent to the Centre management to which the individual is associated.

#### ***Potential Impact***

This process places an administrative and financial burden on the Association. The introduction of the Working with Children Check (WWCC) would place an unworkable administrative and financial burden on the sport, as the Association would have to screen greater numbers of volunteers.

The VLAA has a turnover of 9000 children in the sport each year, with a total of 4000 new families introduced annually. A regular competition day involves children competing in a number of athletic events including shot put, high jump, and running for example.

Parents who volunteer to assist in competition days, typically remain at one activity whilst their children rotate and compete in a number of events. Due to

the fact parents do not always directly look after their own child's specific activity this would mean 4000 new parents would be required to take a WWCC each year.

The VLAA estimates if the Check was to cost each volunteer \$20, a total annual outlay of \$80,000 would have to be covered by individual centres and/or the Association. In addition an **initial** expense of approximately \$360,000 would have to be outlaid for volunteers currently involved in the sport (figure taken from the 18,500 "ordinary" membership category).

This would place huge financial burdens on the Association and its centres. If the cost of the Check were forced onto the volunteer base, it is estimated a high percentage of volunteers would be lost and consequently junior competitors.

### ***Recommendations***

The VLAA recommend –

- Relevant exemptions for parents be introduced to the Bill;
- Clear definitions of "activity" and "contact" are presented; and
- An actual cost for the check estimated.

The VLAA strongly feels the Bill in its current form would have a devastating affect on the sport and would place unworkable financial and administrative burdens on the sport and its volunteer and participation base.

## **Case Study 2: Maffra Gymnastics Club Incorporated**

### ***The Organisation***

Maffra Gymnastics Club Inc. (MGC) located in East Gippsland, is one of the largest gymnastics clubs in Victoria with over 300 people participating on a weekly basis. The MGC has 320 members of which 310 are under 18 years old. Of these juniors, 65% are female participants.

The MGC is a not-for-profit organisation governed by a 5-member volunteer board and a 10-member volunteer committee of management. The MGC engage volunteers in activities vital for the Club's viability, such as coaching and judging. Parents or past-participants generally fill these positions.

### ***Current Practices***

In 1992 MGC introduced a Police check required for all coaches and committee members. It is renewed/reviewed every 3 years. Currently the club pays for the majority of these checks, which is a financial burden in itself.

The MGC have a Member Protection policy in place and are working with Gymnastics Victoria to implement discrimination, harassment, and child protection club policies. In addition Gymnastics Australia provides a risk management program that includes a checklist of risk management items for each club to complete.

### ***Potential Impact***

The MGC believe the impact of the WWCC on volunteers will depend greatly on the fees associated. If a broader police check is required in addition to the WWCC, the MGC believes the administrative and financial burden will be too high.

MGC support the "spirit" of the child protection legislation, highlighted by the child protection strategies already in existence at the Club. The MGC believe any additional financial and administrative burdens will have a negative impact on club future viability.

### ***Recommendations***

The MGC request the Government make the WWCC free to volunteers, and support is provided for the administrative and financial compliance requirements.

## **Case Study 3: Victorian Aquatics Industry Council**

### ***The Organisation***

The Victorian Aquatics Industry Council (VAIC) is the peak body for the aquatics industry. The VAICs role is to represent, promote, support and liaise with the Victorian aquatic industry whose members include:

- Swimming pools and Swim schools;
- Aquatic and recreation facilities;
- Management agencies;
- Local government;
- Aquatic industry professionals; and
- Suppliers to the industry.

The VAIC is a not-for-profit organisation that generates revenue through business activities, and government, corporate and community funding sources.

### ***Potential Impact***

The VAIC believes if the WWCC Bill is approved in its current form it will have a catastrophic affect on the aquatic and sport industry as a whole. The VAICs main area of concern is the impact this legislation will have on the Vic Swim program conducted in January, July and September each year.

Vic Swim involves approximately 19,000 junior participants over 200 locations statewide. VAIC employs 700 swim teachers to carry out the Vic Swim program, the majority of these employees being university students.

The VAIC currently complete random police checks each year. If there was a requirement to complete the WWCC on each employee the costs enormously. In order to cover these costs the VAIC would have to increase the price of participation.

Approximately 85% of those employed at VAICs facilities are employed on a casual basis. With high staff turnover, the associated costs and the administration required to comply with the legislation would place an extremely large burden on potentially 450 facilities.

### ***Recommendations***

To limit the negative impacts on the aquatics industry, the VAIC recommend a tighter definition of contact such as those people “directly involved with or supervise” children should be included. Rather than those who have no direct contact with children such as committee members or board directors.

The VAIC feel the potential financial and administrative requirements of the Bill will negatively affect the aquatics industry, particularly the volunteers and individuals who participate in its activities.

## **Case Study 4: Equestrian Federation of Australia - Victorian Branch**

### ***The Organisation***

The Equestrian Federation of Australia – Victorian Branch (EFAV) is an aggregate of incorporated bodies that assists in the running of a number of equestrian events for juniors and adults. These events include dressage, eventing, and showjumping. The EFAV have a board consisting of eight volunteer directors, and an annual turnover of approximately \$2 million.

The EFAV has 4500 members of whom 25% are juniors. EFAV has at least 250 volunteers that work with children at any one time. Volunteer roles include coaching, management and administration.

### ***Potential Impact***

According to EFAV the WWC legislation will impact on the older volunteers, the board and senior management who may not want to undertake a Check, nor physically submit an assessment, due to their rural residential location.

### ***Recommendations***

The EFAV claim they would potentially need to employ a person to administer the volunteer database required to comply with the legislation. The EFAV felt it was imperative the Government provide support and guidance on the administrative requirements associated with the legislation.