



Inquiry into Victoria's Regulatory Framework

vicsport submission

September 2010



Executive Summary

As the peak body for 16,000 not-for-profit sporting organisations in Victoria, **vicsport** seeks to find workable ideas and solutions to advance the sector. Community sport plays an integral role in health, well-being and social development. Volunteers are the backbone of sporting organisations, helping to deliver these important outcomes.

Burdensome regulation has an adverse affect on sporting clubs and organisations, with the loss of volunteers being the first symptoms of overwhelming red-tape. Streamlining and reducing the burden should be paramount in order to protect the investment made in these community groups by volunteers and to ensure the delivery of important social outcomes that are consistent with Government objectives.

Specifically this submission focuses on:

- The Associations Incorporations Act should be unified into one coherent piece of government legislation. Short of that a reworking of the current Act is necessary in order for it be a simpler and easier piece of legislation for sporting clubs and organisations to follow and understand.
- Liquor licensing regulatory framework needs to better reflect the risk profile of sporting groups so as to reduce the financial burden on these clubs who adequately comply.
- Food handling regulation needs to be simplified, in order for sporting community groups to be better able to comply with health and safety standards. The classification of food risk categories needs reforming so as to reflect the risk-profile of the organisation.
- Working with Children and police checks are duplicative in nature. A converging of the best features of these two checks would provide a comprehensive safety measure without any element of confusion or duplication.
- A nationalisation of fundraising legislation needs to be undertaken in order to make it easier for sporting clubs and organisations to better raise much needed funds. This would bring legislation up to date with current cyber fundraising trends.

1.0 vicsport

vicsport is the peak body representing Victoria's sport and active recreation sector. Our Mission is to lead the sport, active recreation and associated health agendas into the future. As an independent member based organisation, **vicsport** represents the needs and concerns of over 170 member groups including State Sporting Associations (SSA), Regional Sport Assemblies (RSA), Local Government Authorities (LGA), active recreation organisations, University, TAFE and school sport groups, as well as organisations representing specific sub-groups of the sector such as the Victorian Council on the Ageing, ACHPER Victoria, Aquatics and Recreation Victoria and the Australian Drug Foundation. Through our extensive network **vicsport** supports over 16,000 clubs and associations, and over 1.8 million participants, workers and volunteers in the sport and active recreation sector across Victoria. The activities these organisations offer play a vital role in promoting better physical and mental health outcomes for Victorians, as well as creating vital capacity within metropolitan and regional communities.

2.0 Not-for-Profit and Community Sports

The discussion points within this submission centre on the link between the not-for-profit (NFP) sector and community sporting clubs and organisations. NFP organisations are defined as, 'organisations that operate for social or community purposes, do not distribute profits to members, are self-governing and independent of government'¹.

The community sport and active recreation sector in Victoria is made up of approximately 16,000 NFP organisations that are owned and managed by their members, and are registered as either independent self-governed incorporated associations, or companies limited by guarantee. These organisations are funded primarily via income from membership fees with additional support coming from government grants, fundraising and sponsorship. As NFP organisations, any profits made are invested back into the organisation for further capacity building rather than distributed to members.

3.0 Burden of Regulation

The following submission is a direct response to the Issues Paper released by the Victorian Competition and Efficiency Commission (VCEC), which discusses Victoria's regulatory framework and investigates whether there are

¹ 'vicsport Response to the Review of Not-For-Profit Regulation', **vicsport**, Government Submission, May 2007, pg 3

any possible reforms made to reduce 'specific areas of Victoria's regulation which are unnecessarily burdensome, complex, redundant or duplicative'².

vicsport contends that there are specific areas of Victoria's framework, which are genuinely in need of reform in order to reduce the burden on community sporting clubs and organisations that provide physical activity for around 1.8 million Victorians. It is difficult to place a cost on the burden on a financial basis, however the cost comes in the loss of volunteers, which when manifested fully, undermines the capacity of community sport to deliver important social outcomes for the community.

As a sector that is community focused the administrative duties of clubs are undertaken by volunteers. Volunteers are central to the provision of sporting opportunities within the community. According to a recent submission created and submitted by **vicsport** in 2007 'the burden created by compliance requirements has an impact at all levels'³. One of the key reasons as to why many volunteers discontinue service is due to the 'increasing administrative burden and potential personal liability'⁴.

3.1 Nature of Community Sport

The *Community Sport Counts*⁵ report published by Sport and Recreation Victoria indicated 75% of Victoria's sport and recreation organisations are voluntary in nature. It is estimated within the sport and active recreation sector, around 80 to 90% of all activity is undertaken by volunteers and approximately 40% of all volunteers across Victoria work in the sport and active recreation industry. ABS statistics released in August of 2006⁶ showed 62% of the total number of people who held recognised roles within sport and physical recreation organisations volunteered their time. Therefore taking volunteers into consideration when undertaking regulatory reform is extremely important.

Secondly, in terms of size, the majority of Victoria's sport and active recreation organisations are small community-focused organisations. According to the *Community Sport Counts*⁷ report, 53% of Victorian sport and recreation organisations have an annual income of less than \$25,000 per year. An additional 22% of the sector turnover between \$25,000 to \$100,000

² Issues Paper: Inquiry into Victoria's Regulatory Framework, Victorian Competition and Efficiency Commission, July 2010, v

³ '**vicsport** Response to the Review of Not-For-Profit Regulation', **vicsport** Government Submission, May 2007, pg 5

⁴ *ibid.*

⁵ 'Community Sport Counts: Local Sport and Recreation in Victoria', Regional Survey Summary Report 1, Department for Victorian Communities/Sport and Recreation Victoria, 2004

⁶ Australian Bureau of Statistics, Sports and Physical Recreation Services, 2006.

⁷ 'Community Sport Counts: Local Sport and Recreation in Victoria', Regional Survey Summary Report 1, Department for Victorian Communities/Sport and Recreation Victoria, 2004

annually. 2006 ABS statistics showed across Australia the average sports club or team organisation was found to have 4 employees and an income of \$325,300⁸. This again adds extra impetus to the argument that regulatory red-tape needs to be reduced in order to make the operational environment much easier for these groups.

3.2 Importance of Community Sport

The community sport and recreation sector can make a positive contribution to individuals and society-at-large. The importance of this contribution needs to be taken in to account when evaluating this submission and the requests being made therein. Sport and recreation plays a valuable role in delivering health outcomes, social capital growth and to help specific social groups that see sport as a way of interaction and development.

3.2.1 Health Outcomes

Community sport and active recreation is at the forefront of the fight against lifestyle related diseases. The World Health Organisation estimates throughout the world there are at least 1.9 million deaths among people aged 15 years and over which are directly attributable to physical inactivity⁹. In 1991, Australia's first burden of disease study attributed 13,000 deaths per year to physical inactivity¹⁰. In addition, physical inactivity was estimated to be responsible for 6.6% of the total burden of disease and injury in Australia in 2003¹¹.

In financial terms, the total costs attributable to the burden of lifestyle diseases in Australia are estimated to be \$3.7 billion annually; high costs for what are in many cases 'preventable' diseases¹².

The community sport and active recreation network is capable of providing physical activity opportunities at all levels in the community. Conservative estimates indicate Australia would save \$8 million annually for every 1% increase in the proportion of Australians achieving a sufficient level of physical

⁸ 'Sports and Physical Recreation Services', Australian Bureau of Statistics, 2006.

⁹ 'The World Health Report 2002- Reducing risks, promoting healthy life', World Health Organisation, <http://www.who.int/whr/2002/en/>, accessed 17th September 2010

¹⁰ S. Begg, T. Vos, B. Barker, C. Stevenson, L. Stanley, & A. Lopez, 'The Burden of Disease and Injury in Australia 2003'. Australian Institute of Health and Welfare, <http://www.aihw.gov.au/publications/index.cfm/title/10317>, accessed 17th September 2010

¹¹ *ibid.*

¹² J. Stephenson, A. Bauman, T. Armstrong & B Smith, 'The Costs of Illness Attributable to Physical Inactivity in Australia: A Preliminary Study', Australian Government Department of Health and Ageing, [http://www.health.gov.au/internet/wcms/Publishing.nsf/Content/health-pubhlth-publicat-document-phys_costofillness-cnt.htm/\\$FILE/phys_costofillness.pdf](http://www.health.gov.au/internet/wcms/Publishing.nsf/Content/health-pubhlth-publicat-document-phys_costofillness-cnt.htm/$FILE/phys_costofillness.pdf), accessed 17th September 2010, 2002



activity for health¹³. Regulatory reform is one factor that can be addressed to assist grass-roots sports clubs and organisations to make significant improvements to the health of all Australians.

3.2.2 Social Capital

In a report on Social Capital and Social Wellbeing, the Australian Bureau of Statistics indicated participation in community sport and active recreation helps to develop the community networks and bonds important for social cohesion. Participation in culture and leisure activities also provides individuals with a sense of belonging, support and social interaction. Some studies suggest a potential link between participation in sport and recreation and a reduction in crime and other anti-social activities. In addition, in both suburban and rural areas, sport, recreation and cultural activities provide a strong community focal point.¹⁴

A recent report from the London School of Economics' Centre for Civil Society described the positive contribution sport makes to the success of democracy through the creation of voluntary associations and strengthening communities. Furthermore, the report concludes that as the links between participation in sport and social and political trust and levels of social engagement are so strong, sport can be a useful tool in building stronger community networks¹⁵.

Sport and recreation activities are also well recognised as being vital elements of rural community structure. For many regional communities, local sporting events provide a rare opportunity for locals to gather, or in the case of larger events against regional rivals, for neighbouring townships to interact. These gatherings are about people and communities coming together; to play, to talk and to share stories¹⁶.

The duplicative, burdensome, complex and redundant regulations have adverse effects on these positive social outcomes that are derived from direct sporting participation in community sporting clubs.

3.2.3 Specific Social Groups

Community based sporting organisations are able provide the structures for addressing many of the social issues facing Australia. Issues such as racial vilification, equity, and diversity, access for people with a disability, Indigenous Australians, new arrivals, cultural and linguistically diverse populations, older

¹³ *ibid.*

¹⁴ 'Social Capital and Social Wellbeing', Australian Bureau of Statistics, 2002

¹⁵ S. Daly, 'Social Capital and the Cultural Sector', Literature Review prepared for the Department of Culture, Media and Sport, Centre for Civil Society: London School of Economics, 2005

¹⁶ K. Driscoll & L. Wood, 'Sporting Capital; Changes and Challenges for Rural Communities in Victoria', Centre for Applied Research, RMIT, 1999

aged participants and young people for example can all be addressed by community clubs, organisations and associations in a positive manner.

The 16,000 community sport and active recreation bodies in Victoria provide many opportunities for members of our society to meet, interact, develop and grow. Young people, people from culturally and linguistically diverse backgrounds and Indigenous Australians face additional challenges in their developmental pathway that makes them vulnerable to social and structural disconnection. In these cases sport and recreation can provide an increased range of opportunities to connect with the community¹⁷.

In terms of the make-up of the Australian population, the Australian community is one of the most diverse in the world. With continued growth it has been acknowledged in order for migration to be successful in both policy and practice, the settlement policy for migrants needs to provide opportunities to not only adjust to Australian life but for migrants to become active and vital participants in the community. Opportunities for newly arrived young people to participate in social and recreational activities with their peers are therefore critically important¹⁸. VicHealth has recognized that sporting and athletic environments are a critical component to the settling of young migrants and refugees¹⁹.

A previous report from **vicsport** has outlined that 'the ATSIIC report to Government outlines the range of benefits sport and recreation programs offer Indigenous communities. These include; a very significant and positive-contribution to long-term health; a cost effective method to help combat substance abuse, cardiac disease, diabetes and obesity; a considerable impact on mental health disorders; and an effective element in diversionary schemes for youth. ATSIIC also point out sport often provides the first opportunity for shared experiences between indigenous and non-indigenous Australians and for recognition of indigenous achievement'²⁰.

It is therefore vital that the regulatory framework that surrounds sporting clubs and organisations enables them to continue to make the above positive contributions.

¹⁷ 'Sport and Recreation 2005-2010: A Discussion Paper', Department for Victorian Communities, 2004

¹⁸ 'Recreation and Sport', Centre for Multicultural Youth Issues, 2005

¹⁹ 'Promoting the Mental Health and Wellbeing of New Arrival Communities: Learning's and Promising Practices', Victorian Health Promotion Foundation, 1999

²⁰ 'Recognition rights and Reform: A Report to government on Native Title Social Measures', Aboriginal and Torres Strait Islander Commission, 1995



4.0 Proposed Regulatory Reform

4.1 Associations Incorporations Act

Issues surrounding the *Associations Incorporations Act 1981 (Vic)* can also be discussed as an area where regulatory reform can be implemented.

Currently the *Associations Incorporations Act 1981 (Vic)* is the legislative framing that regulates the incorporation and internal governance of associations that are not-for-profit and have embraced incorporated status. Many Victorian sporting clubs and associations fall under this categorisation. Of the 35,915 incorporated associations on the register of incorporated associations approximately 16,000 are sporting clubs and organisations. Not-for-profit sporting clubs and associations choose to incorporate due to the perceived advantages of holding corporate status, including limited liability, and to enable the body to have a legal identity (includes the ability to sue and be sued, to hold land and enter into contractual agreements).

The incorporated associations' regime was intended to be 'a simple and inexpensive means of incorporation for non-profit associations of widely varying kinds'²¹. As mentioned by Morgan and Woodward, this was confirmed when the original Associations Incorporations Bill was introduced into Parliament in 1981, and as evidenced by the Second Reading Speech, the purpose of the legislation was to 'provide a simple and inexpensive means by which incorporated non-profit associations may obtain corporate status'²². The central reason why the act was introduced in the 1980s was because it was thought that the Corporations Act was far too complex.

Due to the fact that a significant amount of volunteers help to administer sporting clubs and organisations throughout Victoria, many officials do not have the legal expertise to untangle the complicated wording of the Associations Incorporations Act from the regulatory relevance. Not-for-profit sporting clubs should not be in a position where legal advice needs to be considered when the task is merely applying and reading relevant sections of the Act. Therefore **vicsport** supports a restructuring of the Act. This would include a more logical outline and easier language. Areas of the legislation that reference back to the *Corporations Act 2001* should be contained in one divisible Part of the Act in order to make it much easier to navigate.

These relatively short-term solutions should be developed in order to accommodate discussion at the Council of Australian Governments (COAG) of a possible longer-term centralising of the various State Incorporation Acts into a coherent piece of Commonwealth law. **vicsport** supports a uniform incorporation structure. At this present stage the Associations Incorporations

²¹ Sue Woodward & Liz Morgan, 'Submission to Consumer Affairs Victoria on the Associations Incorporation Amendment Bill 2010', Public Interest Law Clearing House, 30 March 2010, pg 4

²² Victorian Parliament Hansard, 4 December 1981, p 4285

Act is a piece of Victorian legislation, which hinders associations that want to operate in more than one State. Currently, incorporated associations operating on a national basis have to deal with a multitude of state-based legislation if they want to take advantage of the supposed efficiency and cost-saving measures associated with incorporation. According to Woodward 'this will involve duplicating of fees, on-going paperwork and complexity because of a need to appreciate and keep abreast of the variations (even if only minor detail) between legislation in the respective States and Territories'²³. Woodward denotes that the only other option that bodies like this have is to incorporate under the current framework that is regulated by the Corporations Act, which is not conducive to many of the austerity measures that are prevalent. Also, it coerces these bodies to deal with the Australian and Securities and Investments Commission (ASIC), which traditionally has a very small role to play when it comes to regulating not-for-profit organisations.

vicsport supports the notion of a uniform Commonwealth statutory framework for not-for-profit organisations as espoused by Woodward in her submission for the University of Melbourne's Centre for Corporate Law and Securities Legislation. This framework has many advantages including the creation of a specialist unit of ASIC to meet the particular needs of not-for-profit bodies. Furthermore it can 'facilitate the introduction of a specialist form of corporate structure available only to NFP organisations'²⁴. This can include a plain language guide to the Corporations Act, very similar to the Small Business Guide, relevant to not-for-profit organisations. Furthermore a slight modification of the Replaceable Rules within the Corporations Act can act as a nationalised structure of the Model Rules system that is currently in place through State and Territory framework²⁵.

Finally, **vicsport** views the progress made in the United Kingdom as something that could be explored in Australia. The relatively recent development of a new form of incorporated entity called the Community Interest Company is something that should be considered as an option in Australia as a method to protect those companies that invest in social enterprise. The concept of a social enterprise is a business with social objectives whose surpluses are reinvested for the primary purposes of the business or into the relevant surrounding community. This has allowed the ability to have streamlined and precise regulation on a national scale and if explored in Australia, will lead to major benefits and could be a real alternative for sporting clubs and organisations who wish to take advantage of the benefits of incorporation.

²³ Susan Woodward, 'Submission: Review of the Associations Incorporations Act 1981 Vic', Centre for Corporate Law and Securities Regulation: University of Melbourne, May 2004, pg 6

²⁴ *ibid*, pg 3

²⁵ Woodward notes that currently some replaceable rules are only mandatory for public companies (e.g. section 249X). A similar system can be established for not-for-profit incorporated bodies whereby some replaceable rules will only be applicable and mandatory for them ensuring it picks 'up the best of the incorporated associations model rules framework'. *Ibid*.

The above recommendations are also put forward by various sporting bodies including Bicycle Victoria²⁶.

4.2 Liquor Licensing

Announced on 2 May 2008, the Premier launched a five-year \$37.2 million regulatory program, which altered the way in which liquor licences were administered and regulated throughout Victoria. The *Restoring the Balance-Victoria's Alcohol Action Plan 2008-2013* introduced a risk-based structure to the licensing process within Victoria, which also allowed costs involved in regulating sectors to be recouped through more severe and stringent punishments to those licensees who present the most alcohol-related risk to society at large²⁷.

In making an assessment of the adequacy of the Regulatory Impact Statement on the proposed *Liquor Control Reform Regulations 2009* the Victorian Competition & Efficiency Commission (VCEC) on 11 August 2009 highlighted many of the benefits associated with the new government policy. One of which was the recouping of the costs associated with regulating the associated sectors and the encouragement of licensees to adopt practices that reduced their level of risk through negative financial incentives²⁸.

However, the main issue with this approach are the 'data limitations'. As expressed by the VCEC, 'these data limitations and the approach taken in the analysis mean that the fees for different liquor groups licence categories may not precisely reflect the actual risks imposed by particular groups of licensees'²⁹. This therefore manifests in to an inaccurate categorisation of risk.

vicsport believes that 16,000 sporting clubs and associations are unfairly captured in the categorisation of risk, imposing unnecessary costs on community sporting organisations.

'Liquor licence fee anger brewing among Melbourne clubs'³⁰ highlights the plight of many sporting clubs under this risk-based approach. Many reported a 700% increase in fees, as clubs, which realistically present a much lower-risk to other licensee categories, are being lumped-in unfairly with higher-risk

²⁶ 'The case for a national not-for-profit regime: A response to the Review of the Associations Incorporation Act- Consumer Affairs Victoria Interim Report', Bicycle Victoria, pg 2

²⁷ 'Risk-Based Fee Structure as of 1 January 2010', Victorian Government: Department of Justice Website,

<http://www.justice.vic.gov.au/wps/wcm/connect/justlib/doj+internet/home/alcohol/about+liquor+licensing/reviews+and+consultations/justice+-+alcohol+-+risk-based+fee+structure+as+of+1+january+2010+%28pdf%29>, accessed 19th August 2010

²⁸ 'Liquor Control Reform Regulations: Regulatory Impact Statement', Victorian Competition and Efficiency Commission, 11 August 2009

²⁹ Julianne Brennan, 'Assessment of Regulatory Impact Statement', Letter, Victorian Competition and Efficiency Commission, 11th August 2009

³⁰ Wes Hosking, 'Liquor Licence Fee Anger Brewing Among Melbourne Clubs', 17 June 2010 <http://mordialloc-chelsea-leader.whereilive.com.au/news/story/fee-anger-brewing/>



licensed venues. Bowls Victoria is quoted as saying that 200 bowls clubs within Victoria have 70 or fewer members and even minor cost increases, which have occurred due to this broad risk categorisation, will have a major impact³¹.

At the present stage most sporting clubs fall under the Restricted Club category, which has an annual renewal fee of \$405.80 plus a one-off application fee of \$387.70³². One local not-for-profit sporting club stressed that the costs of the liquor licensing has increased from 'around \$90 to \$390', and that all clubs in the local municipal area were completely dissatisfied with the cost increases. This club, Peninsula Strikers FC, are holders of a Restricted Club Licence with alcohol being consumed on a maximum of three days per week, often only two. The cost increases which affect clubs such as the Peninsula Strikers are not consistent with the rise in risk that these clubs pertain. In most cases, there has been little rise in risk, but a significant increase in fees.

Even though there is a mechanism for appealing fee increases this process requires clubs to present audited financial data, which can cost between \$2000-\$8000. This is a completely unreasonable expectation of not-for-profit sporting clubs.

An alternative to this approach and one, which could eradicate the broad categorisation of licences, is a policy initiative suggested by the State Opposition. The policy, which was released in 2009, highlights the fact that of the 19,000 liquor licences that are presently in operation in Victoria, many of those are small business and community groups (not-for-profit sporting clubs), which do not pose a threat or a risk in terms of alcohol-related problems. Under the proposed scheme, the good behaviour licensees would receive discounts on their liquor licence fee where they had two or more consecutive years without incurring relevant infringements. The rating system proposed by the Opposition is a revenue neutral proposition that 'uses fee increases attributable to infringements to provide discounted renewal fees for 4 and 5 star venues'³³. New applicants would commence on the 3-star level, which would be the standard liquor licence fee for that licence type. This approach would be more consistent and a much truer risk-based approach to liquor licensing.

RATING	CRITERIA
1 Star	3 or more infringements in previous 12 months
2 Star	1-2 infringements in previous 12 months

³¹ *ibid.*

³² 'Liquor Control Reform Regulations: Regulatory Impact Statement', Victorian Competition and Efficiency Commission, 11 August 2009

³³ 'Good Liquor Licenses to be rewarded under 5 star rating system', Press Release, Liberal Party of Victoria, 29 November 2009



3 Star	No infringements in previous 12 months
4 Star	No infringements in previous 24 months
5 Star	No infringements in previous 36 months

Source: 'Good Liquor Licences to be rewarded under 5 star rating system' Liberal Party of Victoria, 2009

4.3 Food Handling Regulation

Food handling regulation is another area in which a reformation of the current framework could prove to be a significant aid to the sporting and recreation sector. **vicsport** references the report from the Victorian Competition and Efficiency Commission (VCEC) *Simplifying the Menu: food regulation in Victoria*, released in 2007³⁴.

The report contends that the community sector and the not-for-profit organisations therein need to be protected due to the major role they play in terms of investment in social capital. Not-for-profit sporting clubs and organisations are volunteer run and the report denotes that the fixed costs of meeting food regulations can make these sporting bodies very sensitive to poor regulation.

The current food handling regulation in Victoria places a significant administrative burden on the 16,000 community sporting groups throughout Victoria. Clubs and organisations are confused at the current classification of the risk-based structure that is being implemented. There is very little consistency in the classification of community groups within the food regulation framework. Generally, community sporting clubs and organisation fall under the same regulation that is relevant to food businesses, and thus have a stringent set of requirements placed upon them.

Based on the report from the VCEC most community sporting groups would be classed at a low-risk class-2 food environment. This requires these clubs to have:

- a food safety supervisor (FSS)
- a food safety program: retail and sale template (R&FS)
- Inspections by the local council
- a registration fee paid in full

Brimbank City Council explicitly state that 'the burden on these groups in compliance...exceeds by far the risk of the activity causing a food safety issue'³⁵. The report mentions an online survey completed by representatives of community groups and included in the VCEC report. The survey shows that

³⁴ 'Simplifying the Menu: food regulation in Victoria: a draft report for further consultation and input', Victorian Competition and Efficiency Commission, April 2007.

³⁵ *ibid*, 339



most groups spend between \$101-\$750 just to comply with food regulation³⁶. Most respondents to the survey stated that the Victorian regulation was excessively burdensome, and as such a staggering 59% of the respondents want regulation for community groups to be completely removed³⁷.

A more central issue are the costs associated with this poor regime. The central theme of the Issues paper is to reduce burden, and given that the VCEC estimated that the costs to Victorian community groups due to the current food regulation regime are estimated at \$5.6-\$13.1 million per year, then there is a strong case for reform³⁸. Further to these financial costs, due to the burdensome nature of the regulation many not-for-profit sporting groups will simply 'ignore the regulatory requirements'³⁹ if it is judged as being a low-risk strategy. This is an indirect cost of poor regulation. The time of volunteers is increasingly being spent completing administrative paperwork, instead of focusing on the tasks that are central to the organisation⁴⁰. To alleviate the frustration that is evident amongst volunteers⁴¹, reform needs to be explored.

vicsport proposes a risk-based food regulatory framework similar to the model put forward by the VCEC in 2007. The framework would encompass and focus specifically on the community sector, and the risks associated with certain food handling environments would flow into the appropriate regulation.

Basically, low risk environments, in which sporting clubs and organisations operate, would be subject to less stringent regulation, whilst other community groups and organisations that operate in higher risk areas would not be. The table set out in the draft report from the VCEC is a policy alternative that **vicsport** endorses.

<i>Instruments</i>	<i>Class 1 food premises</i>	<i>Class 2 food premises</i>	<i>Class 3 food premises</i>
<i>Food Safety Risk</i>	High	Medium	Low
<i>Examples</i>	Hospitals, aged care facilities, child care centres	Food festivals	Cake stalls, sausage sizzles, school fêtes, school canteens, sporting clubs
<i>Registration</i>	Yes, but with simply paperwork	Yes, but with simple paperwork	Yes, but with simple

³⁶ *ibid*, 337

³⁷ *ibid*.

³⁸ *ibid*, 35

³⁹ *ibid*.

⁴⁰ *ibid*, 293

⁴¹ *ibid*, 294



			paperwork
<i>FSP</i>	Yes, customised	Yes, simple templates	Certification
<i>FSS</i>	No	No	No
<i>Training for Food Handlers</i>	Councils can impose training orders	Councils can impose training orders.	Councils can impose training orders
<i>Third Party Audit</i>	(Compulsory) Performance based	No	No
<i>Food Sampling</i>	High frequency	Moderate frequency	Very low frequency
<i>Information and Education</i>	Basic	Event specific resources	Basic safe food handling information

Source: 'Simplifying the Menu: food regulation in Victoria: a draft report for further consultation and input', Victorian Competition and Efficiency Commission, April 2007, pg 297

Sporting clubs would be classed as Class 3 food premises, which contains the less stringent regulatory framework. This would ensure that the obligations placed on these sporting clubs and organisation that wants to serve food is parallel with the low-risk that **vicsport** views as prevalent amongst these bodies.

4.4 Working with Children Checks & Police Checks

The VCEC intends to identify duplicative regulation; that is similar regulation implemented by the Victorian government that is intended to deliver the same results. **vicsport** has identified the concurrent regime of Working with Children (WWC) and police checks as examples of regulation designed to meet the same ends through different means.

Police checks are completed by Victoria Police for employers and volunteers in order to satisfy licensing and/or other requirements. A National Police Certificate costs \$32.50 to complete and \$15 for volunteer organisations that are registered with the Victoria Police. According to Volunteering Australia, once a certificate has been applied for it will be checked against all criminal records in Australia. They are usually used by organisations to try and avoid harm to both clients and themselves by mitigating any potential risks that arise with employees or volunteers. Furthermore, many organisations are mandated to complete police checks to satisfy criteria that ensures funding.



Volunteering Australia notes that only current 'unspent'⁴² convictions appear on a National Police Certificate.

The Working with Children Check deviates slightly from the processes associated with a regular police check. According to the Department of Justice, the WWC check applies to those who are engaged in 'child-related work' as defined in section 9 of the *Working with Children Act 2005*.

On the base level the Working with Children Check includes⁴³:

1. a national police records check
2. a review of relevant findings from prescribed professional disciplinary bodies (currently only the Victorian Institute of Teaching and the out of home care Suitability Panel but other professional bodies may be included in the future).

A critical point to the WWC checks are the offenses, which are linked to the categorisation of the applicant. Even though a broad national police record check is incorporated into the process, the Act specifically defines categorisation of offenders based on specific offences, usually being offences linked to sexual, violent and other crimes that are relevant. Other convicted offences are included within the check but are not held in to account when granting permission to work with children. Finally, the WWC check can also include any 'spent' convictions that were held against a person, a point of difference with a procedural National Police Certificate.⁴⁴

Furthermore, the WWC also incorporates a mechanism by which the Department and relevant authorities take part in ongoing checking of the applicant and if the status of the applicant changes whilst employed, then the host organisation is notified.

Both checks do not include information of charges that were held without a conviction.

vicsport notes that both checks have their advantages. There are elements to each check that can be implemented to streamline the framework and rid any duplicative measures that could act as a hindrance to Victoria's 16,000 not-for-profit sporting groups. **vicsport** endorses any such measures, which can incorporate the beneficial features of each of these systems in to one process.

Currently some sporting clubs and organisations already undertake police checks for volunteers and employers. According to the Regulatory Impact Statement released by the Department of Justice in January 2006, Netball

⁴² 'Police checks and volunteers', Volunteering Australia Information Sheet, September 2006, pg 1

⁴³ 'Working with Children Check', Victorian Government: Department of Justice Website, <http://www.justice.vic.gov.au/workingwithchildren>, accessed 22nd August 2010

⁴⁴ 'Police checks and volunteers', Volunteering Australia Information Sheet, September 2006, pg 2

Victoria undertakes extensive police checks and those who have been convicted of serious offences relating to sexual assault or violence are prohibited from undertaking work with the organisation and affiliated clubs⁴⁵. In order for some coaches to work with children Netball Victoria would have to require these personnel to have a WWC check as a requirement for all employers. Therefore two checks, all with the same ends, are potentially being completed.

Furthermore as identified by **vicsport** in February 2006, those participating in shooting sports undergo extensive police checks that are consistent with the *Firearms Act 1996*⁴⁶. If the need arises whereby a coach or volunteer needs to undertake a WWC check as well as the police, then it is quite obviously a superfluous situation, which creates an unfair and unrealistic burden on the applicant.

vicsport fully supports any method by which the Victorian government can harmonise this process and to consolidate these two separate checks into one easy to understand process. This will remove the likelihood of potential volunteers having to apply for two checks that are a means to the same end.

Proposals for reform should be explored by the relevant bodies. One proposal would be that if it is already an explicit association policy for a national police checks to be undertaken, then specific elements of the Working with Children Check could be incorporated in to the process, instead of a completely different check. Elements that could be incorporated include the 'live system' whereby future offences are flagged. Finally changes to the check itself can include a more extensive check which includes information about charges held without a conviction, something that is prevalent in the much more extensive Blue Card system administered by the Queensland State Commission for Children and Young People and Child Guardian⁴⁷.

4.5 Fundraising

The Victorian regulation surrounding fundraising for sporting clubs and organisations is quite fair however there is an issue with the different regulatory environments in separate Australian jurisdictions. These differences do not help not-for-profit sporting organisations that are based in one jurisdiction yet have to operate on a national basis. Furthermore, fundraising over the Internet can lead to problems with clashes between legislation from different jurisdictions.

⁴⁵ 'Regulatory Impact Statement for the proposed Working With Children Regulations 2006', Department of Justice, January 2006, pg 66

⁴⁶ 'Working with Children Check: Response to the Regulatory Impact Statement', Government Submission: **vicsport**, February 2006, pg 6

⁴⁷ 'Blue Card', Commission for Children and Young People and Child Guardian, <http://www.ccypcg.qld.gov.au/employment/whats-new.html>, accessed 15th August 2010



The following table outlines the difference between the fundraising laws that currently exist:

Jurisdiction	Relevant Legislation	Regulating Bodies
Australian Capital Territory	<ul style="list-style-type: none"> • Lotteries Act 1964 • Charitable Collections Act 2003 	<ul style="list-style-type: none"> • ACT Gambling and Racing Commission • Office of Regulatory Services • ACT Department of Justice and Community Safety
New South Wales	<ul style="list-style-type: none"> • Charitable Fundraising Act 1991 • Lotteries and Art Unions Act 1901 	<ul style="list-style-type: none"> • NSW Office of Liquor, Gaming and Racing • Department of the Arts, Sport and Recreation
Northern Territory	<ul style="list-style-type: none"> • Gaming Control Act 	<ul style="list-style-type: none"> • Licensing and Regulation Division • NT Department of Justice
Queensland	<ul style="list-style-type: none"> • Collections Act 1966 • Charitable and Non-Profit Gaming Act 1999 	<ul style="list-style-type: none"> • Department of Justice and Attorney-General • Queensland Office of Gaming Regulation
South Australia	<ul style="list-style-type: none"> • Collections for Charitable Purposes Act 1939 (CCP Act) • Collections for Charitable Purposes Act 1939 – Code of Practice • Lottery and Gaming Act 1936 (LG Act) • Lottery and Gaming Regulations 1993 (LG Regulations) 	<ul style="list-style-type: none"> • Office of the Liquor and Gambling Commissioner



Tasmania	<ul style="list-style-type: none"> Gaming Control Act 1993 	<ul style="list-style-type: none"> Liquor and Gaming Branch, representing the Tasmanian Gaming Commission
Victoria	<ul style="list-style-type: none"> Fundraising Appeals Act (Vic) 1998 (Fundraising Act) Gambling Regulation Act 2003 (Gaming Act) 	<ul style="list-style-type: none"> Consumer Affairs Victoria Department of Justice Victorian Commission for Gambling Regulation
Western Australia	<ul style="list-style-type: none"> Charitable Collections Act 1946 Gaming and Wagering Commission Act 1987 	<ul style="list-style-type: none"> Department of Consumer and Employment Protection Department of Racing, Gaming and Liquor

Source: Australian Taxation Office, 2008

vicsport takes the view that was put forward by the Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs. The departmental report denotes that not-for-profit fundraising efforts are being hindered by the burden of the duplicate regulation that includes, 'different definitions, governance, reporting depending on their State jurisdictions'⁴⁸. Therefore it is imperative that options of harmonisation are being explored in order to facilitate easier fundraising for not-for-profit sporting clubs and organisations, which in most cases, is the largest revenue source.

5.0 Conclusion

As the peak body for sport in Victoria, **vicsport** sees regulatory reform as a way in which to enhance the operations of 16,000 not-for-profit sporting organisations. A poor regulatory framework impacts on volunteers and their capacity to deliver social outcomes that are important to the community. **vicsport** contends that workable solutions to the issues identified in this report should be explored in order to protect a vital community investment. **vicsport** welcomes the opportunity for any further input or discussion.

⁴⁸ 'Accountability and Regulatory Environment', Department of Families, Housing, Community Services and Indigenous Affairs, http://www.fahcsia.gov.au/sa/communities/pubs/documents/relationship_matters/p7.htm#2, 15th August 2010



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