

SUBMISSION TO

Working with Vulnerable People
(Background Checking) Bill 2013

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Executive Summary and Recommendations

Executive Summary

Anglicare welcomes the opportunity to participate in this consultation. We support the legislation and the introduction of a centralised checking system.

Based on our experiences of service delivery to vulnerable people, Anglicare supports a legislative framework for implementing an efficient and fair checking system. However, the Bill as currently drafted would put in place risk assessment and decision-making processes which may limit the opportunities for people with lived experience to access pathways to paid employment and volunteering. Anglicare has concerns about the proposed fee structure and its impact on individuals and organisations. It also raises concerns about the development of the Regulations and the schedules for incorporating regulated activities into the registration process.

Recommendations

1. That as part of the introduction and implementation of the Act there is an explicit acknowledgement that some individuals have valuable lived experience to share with vulnerable people accessing a regulated activity or service and that people are capable of change in their lives.
2. That the Tasmanian Government ensure that the costs associated with undertaking checks be borne by government, not by individuals or organisations.
3. That the Tasmanian Government includes details of the risk assessment framework and decision-making process within the draft Bill.
4. That the Tasmanian Government makes a substantial investment in promoting the purpose and operation of the checking system for Tasmania to counter any risk of it operating as a deterrent to employment and volunteering in the community.
5. That the Tasmanian Government ensure that any application of the new system to consumer groups and other primarily volunteer self-managed groups be undertaken as late as possible into the phase-in process when the purpose and processes have become widely known.
6. That the Tasmanian Government ensures that future reviews allocate more time for the consultation process to ensure that community service organisations have the capacity to respond.

About Anglicare Tasmania

Anglicare Tasmania welcomes the opportunity to provide a submission to the Working with Vulnerable People (Background Checking) Bill 2013. This response follows our original submission to the discussion paper about A Working with Children and other Vulnerable People Checking System for Tasmania (DHHS 2010) submitted in March 2010 (Anglicare 2010).

Anglicare Tasmania is the largest community service organisation in Tasmania, with offices in Hobart, Glenorchy, Launceston, St Helens, Devonport and Burnie and a range of outreach programs in rural areas. Anglicare's services include emergency relief and crisis services, counselling and family support, accommodation support, mental health services, acquired injury, disability and aged care services and alcohol and other drug services. In addition, Anglicare's Social Action and Research Centre conducts research, policy and advocacy work with a focus on the needs and concerns of Tasmanians on low incomes. In offering a broad range of services we are subject to a variety of accreditation, standards and checking systems and employ staff who are often working for multiple organisations.

Anglicare is particularly interested in making a submission as the consultation relates to many areas of our service delivery and has implications for our longstanding commitment to social justice issues and to working with vulnerable people.

In order to provide a commentary on specific consultation questions we have canvassed views from across the organization. We do not necessarily comment on all the questions but only those where we feel our service delivery experience can be valuable.

The Draft Bill: General Comments

Anglicare fully supports the introduction of a centralised screening system and the establishment of mandatory minimum checking standards which apply across all regulated activities. We are also pleased to note that the draft Bill provides for:

- a three year registration period;
- registration that will be transferable across volunteering and employment activities;
- an appropriate definition of 'vulnerable adult';
- an application for conditional or role-based registration. This means that applicants will not have to fail a general assessment in order to be registered;
- the ability to apply a broader range of information during risk assessments than is currently available to individual service providers; and
- a comprehensive review at 4 years to assess the scheme's effectiveness and identify gaps and improvements.

Although Anglicare is satisfied with the proposed exemptions and feels that they are appropriate and sufficient, our original submission in 2010 did urge the Tasmanian Government to work with the Australian Government to harmonise the requirements for checking systems. This would reduce duplication of effort where staff and volunteers work across different program areas with different checking systems and different time cycles and reduce the expense, confusion and intrusiveness of these processes. Of particular relevance to our services is the exemption of staff employed by approved providers under the Aged Care Act. They will be excluded from the checking system.

Anglicare would also like to comment on the short time period for this consultation. This has followed a silence of two and a half years from Government since the discussion document on introducing a centralised screening system in March 2010. More time would assist community service organisations in preparing and presenting a submission to consultations and be in line with the development of a Tasmanian Government framework for community engagement (Tasmania Government 2013).

Implementation

Anglicare would like to comment on three aspects of the implementation of a centralised checking system as it is currently outlined in the draft Bill: the lived experience, assessing risk and the decision-making process and costs.

Lived experience

Anglicare has a long standing interest in the support and empowerment of consumers of health and community services. We have a particular interest in ensuring that opportunities exist for service users to grow and develop and to possibly become service providers themselves. In some cases this would be as part of a consumer workforce in a paid or voluntary capacity. We believe that all people require opportunities to be appropriately involved in paid and volunteer work. This is especially important in the mental health and alcohol and drug services sector where frequently the best person to provide a service is someone who has lived experience and who can establish and maintain a good rapport with clients. A number of our services engage peer support workers and/or employ workers with lived experience.

Anglicare is concerned about the potentially negative impact of the proposed legislation on employment options for people with lived experience and/or offending histories. We believe that people have the capacity to learn, change and grow. We do not wish the new system to unnecessarily remove opportunities for people to change their lives, nor reduce the role of organisations to be able to offer opportunities. It is critical that individuals have the right to have their unique circumstances taken into consideration. For example a history of criminal behaviour may reflect experience of adversity or a lack of maturity rather than indicating a risk of harm to vulnerable people. There are concerns that peer workers and consumer applicants with negative histories but who have grown and changed will be deterred from being registered.

We therefore support the proposal that conditional and role-based registrations are available for people who may otherwise have a history that excludes them from being granted a positive assessment.

Assessing risk and the decision-making process

The risk assessment process is critical to the proposed system. Its adequacy and integrity will rest on the quality and capacity of those who conduct the decision-making, the range of information considered when determining the level of risk, and on the system's transparency and fairness. Anglicare currently has concerns about the robustness of the decision making process to determine whether an applicant is registered. It welcomes the proposal to conduct further consultations on risk assessment tools which will form the basis of the checking system.

In the current draft Bill, risk is assessed by the Registrar (with the possibility of assistance from an Advisory Committee) to determine whether a person's background represents an unacceptable risk of harm to a vulnerable person or a child if they are engaged in paid or voluntary positions in a regulated activity. We consider that Part 5 of the Bill does not currently adequately describe the approach that will be taken to assess the nature and level of risk and that the criteria for refusing registration is not outlined in the Bill. Anglicare is unable to endorse a draft Bill when it is not clarified how past criminal and/or offence backgrounds will be assessed. Anglicare asks for clearly enunciated principles about the exercising of discretion in complex applications.

Anglicare would like to ensure that the treatment, rehabilitation and reintegration into the workplace of people who use services is appropriately considered in the risk assessment process and that all relevant information is taken into account before a final decision is made. It is essential that positive supporting evidence be used in the early stages of the decision-making process alongside any offending history. This should allow the applicant to demonstrate whether they have a genuine commitment and skills in their work and have made positive changes in their life through their employment.

The Minister has the ability to appoint an Advisory Committee to advise the Registrar and/or the Minister in relation to administration of the Act. It is assumed that this will include decisions about more complex or contentious registrations. Anglicare would like more clarity about the proposed membership of such an Advisory Committee and what is considered appropriate training and support for members. We would like to see the membership include as a minimum representatives from the Aboriginal and Torres Strait Islander and refugee/migrant communities and from people who have used disability, mental health and drug and alcohol services.

The appeals process as outlined means that applicants can appeal a negative decision. It should allow for organisations to present information on behalf of their employees or volunteers and enable appeals to be assessed on an individual basis, taking into account environmental and historical factors. However, although the screening unit will inform the employer that the employee or volunteer has been issued with a negative risk assessment, they will not be provided with information about the rationale that supported that determination. This is of concern as if there is no rationale the employer will be unable to properly consider the outcome. The relationship services build up with individuals allows them to get a clear idea of the risk factors. For example, Anglicare services have employed workers with convictions because they have been able to use their discretion and knowledge of the applicant to make a decision about the risk of harm, accompanied by ongoing monitoring and risk management approaches. This kind of information should be available early on in any decision-making process and particularly for conditional and role-based registrations. Organisations will also need to have plans in place for those employees or volunteers who are refused registration.

As part of the introduction and implementation of Act Anglicare would like to see an explicit acknowledgement that some individuals have valuable lived experience to share with vulnerable people accessing a regulated activity or service and that people are capable of change in their lives.

Cost of registration

The costs of registration are still to be determined once the operational costs of the screening unit are known and demand modeling is completed. However it is proposed that costs range from \$30-40 for volunteers to \$125-150 for employees (DHHS 2013).

These costs are a substantial increase on amounts currently spent on checking. We argue that organisations providing services should not be required to fund these additional costs from existing resources. Nor should a student or unemployed person trying to enter the employment market or looking to volunteer as a way of building work skills and confidence be liable for these costs. There are concerns that charging volunteers may lead to discrimination, with people on low incomes being excluded or deterred from the opportunities and rewards of volunteering. All state government funding streams would need to be increased to cover the additional costs for average turnover during the life of a program. However this will not address the financial demands that introduction of the new system will place on smaller, primarily volunteer-involving, organisations that may not receive specific funding for their activities. These include arts and recreational groups which provide valuable pathways for social participation for vulnerable and disadvantaged people. They might have to resort to asking volunteers to pay for their own checks while bigger organisations could afford to shoulder some or all of the costs. The introduction of the system of the imposition of high registration fees, unless it is managed very carefully, may mean a drift away from voluntary work in regulated activities and have a significant impact on staff and volunteer recruitment and retention in the sector.

There is also a question of who pays. How will it be decided which organisation should pay for the renewal of an individual's registration for those with multiple roles; for example staff working for more than one organisation and/or working in a voluntary capacity or as a Board member for another organisation? This complexity supports the argument that the costs of any checking system should be borne by government at a central level. It is noted that having a centralised system will have the advantage of reducing the number of checks for such people.

Anglicare would like to see the Tasmanian Government determine a level of investment which supports a cost structure which at a minimum would register volunteers for free and only impose a nominal fee on paid employees who cover the cost themselves or who are paid for by their employers.

Development of Regulations

The details outlined in the regulations are critical to the effective operation of any centralised checking system. Commentary has already been provided on a number of issues which will be subject to Regulations in this submission. Anglicare supports the staged introduction of regulated activities requiring registration over a six year time frame with a review period at four years. We are also glad to hear that there will be further opportunities to provide input about regulated activities and the order in which they are implemented under the system. Here Anglicare would like to emphasise two issues relating to the suggested schedule for requiring registration for Regulated Activities.

Firstly it is proposed that 'clubs, associations and movements' be incorporated into the new system in the third year. There are concerns that a new system may impact negatively on this group; for example volunteers in an association of people with special needs like a self-managed mental health support group, AA members or consumer self-help groups. Here, if all or most members play an active role as volunteers providing care, support and advocacy to other members a requirement for them to be checked could be seen as intrusive and destructive of esprit de corps. If such groups are to be included this should be as late as possible in the phase-in process after there has been time to widely promote the concept of the checking system and to allay fears about its purposes.

Secondly establishing a system requires a significant investment over a number of years in education and community engagement processes and in promoting the system in the wider community. This is especially important in order to ensure potential volunteers and employees are not dissuaded from becoming appropriately involved. Creating a culture of safety for vulnerable people, staff and volunteers is essential. We would encourage any new checking system to also involve promotion of training, information dissemination and other methods of developing a safety promoting environment.

References

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Tasmanian Government 2013, *A Tasmanian Government Framework for Community Engagement*. Tasmanian Government.