

The logo features a red trapezoidal shape with a white horizontal line across its upper portion. The text 'youth coalition' is written in white lowercase letters on the white background, while 'of the ACT' is written in a smaller, green lowercase font on the red background. A thin green vertical line is on the left, and a thin black horizontal line is on the right, both intersecting the red shape.

youth coalition

of the ACT

**Submission to *A Working With Vulnerable People Checking System for the ACT*
Discussion Paper**

October 2009

www.youthcoalition.net

The Youth Coalition of the ACT acknowledges the Ngunnawal people as the traditional owners and continuing custodians of the lands of the ACT and we pay our respects to the Elders, families and ancestors.

We acknowledge that the effect of forced removal of Indigenous children from their families as well as past racist policies and actions continues today.

We acknowledge that the Indigenous people hold distinctive rights as the original people of modern day Australia including the right to a distinct status and culture, self-determination and land. The Youth Coalition of the ACT celebrates Indigenous cultures and the invaluable contribution they make to our community.

Submission to the *to A Working With Vulnerable People Checking System for the ACT Discussion Paper*

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October 2009

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2. Introduction

Section 2 of this submission provides an overview of the Youth Coalition of the ACT and its process for developing this submission, and an introduction to young people in the ACT.

2.1 Youth Coalition of the ACT

The Youth Coalition of the ACT is the peak youth affairs body in the ACT. Comprised of 90 members, programs, and individuals the Youth Coalition is responsible for representing and promoting the human rights, interests and wellbeing of people aged between 12 and 25 years and those who work with them.

The Youth Coalition is represented on many ACT Government Advisory structures and provides advice to the ACT Government on youth issues as well as providing information to youth services about policy and program matters.

A key role of the Youth Coalition is the development and analysis of ACT social policy and program decisions for young people and youth services. The Youth Coalition facilitates the development of strong linkages and promotes collaboration between the community, government and private sectors to achieve better outcomes for young people in the ACT.

2.2 Process for Developing this Submission

The Youth Coalition welcomes the opportunity to contribute to the development of the *ACT Working With Vulnerable People Checking System for the ACT* (the Checking System). We would like to congratulate the ACT Government on its commitment to progressing support of vulnerable people through the development of the Checking System.

This submission is one of many made over a ten year period by the Youth Coalition, and is based on the following:

- The priority areas highlighted in the *Youth Coalition Strategic Plan 2007-10*;
- The policy positions outlined in the *Youth Coalition Policy Platform*;
- The views of participants of the Youth Coalition's Biennial Policy Forum;
- A stakeholder survey on the *ACT Young People's Plan 2009 – 2014 Discussion Paper* (survey);
- A stakeholder forum on the *ACT Young People's Plan 2009 – 2014 Discussion Paper* (forum);
- One-on-one consultations with member services and organisations;
- Current and topical research on youth affairs; and,
- Attendance at the ACT Council of Social Service Forum.

This submission has been divided into 5 sections, which include the following:

1. Table of Contents
2. Introduction (this section)
3. Summary of Recommendations
4. Response to the Questions

5. Conclusion

This submission represents an opportunity for the Youth Coalition and stakeholders to identify and advise ACT Government of emerging issues, areas in need of additional resources and collaboratively develop social policy in the ACT.

2.3 Young People in the ACT

Young people contribute vitality, honesty, innovative thinking, cultural expression and critical perspectives to the communities in which we live. Communities should honour and respect these contributions. Although their voices are often unheard, young people have the right to be involved. We all have a responsibility to ensure that young people have full membership in our community. This is a matter of social justice.

Our community has a responsibility to provide the resources and opportunities that young people need in order to build their lives. As the cliché goes, young people will create the society of the future – but let us not forget they contribute to our society now.

At present, the necessary resources and opportunities are not provided equitably, leaving many young people struggling to create a place for themselves in an often-hostile world. Community and government must work together to address these issues.

On the whole, young people overcome the considerable challenges they face with admirable resilience and integrity. However, young people need support and encouragement to meet these challenges.

Children and young people (up to the age of 18) are considered vulnerable by reason of their age.¹ Our community has a responsibility to provide a safe and harm free environment, especially when young people receiving services that are required to relieve any relative disadvantage they may experience.

2.4 Significance of Working with Vulnerable People

It is a sad, but very real fact that there are some people who will seek to work with vulnerable people simply in order to abuse them. The significance of working with vulnerable people is that it provides opportunities to establish rapport. Many perpetrators of abuse spend significant periods of time setting up the circumstances for abuse; however it is important to recognise that the 'grooming' process can be just as damaging as the actual offence.² Working with children, young people and vulnerable adults may provide the particular circumstances where people who engage in those specific behaviours can establish that pattern.

¹ Simon Payne (2009) *The Protection of Children and Vulnerable Adults*: Presentation for Church Wardens, http://www.lincoln.anglican.org/pdf_view.php?id=452 as at 10 October 2009.

² NSW Rape Crisis Centre (2009) *Working Against Sexual Violence* <http://www.nswrapecrisis.com.au/Information%20Sheets/Understanding-perpetrator-tactics.htm> as at 10 October 2009.

At present, current mechanisms seek to address and minimise the risk of sexual, physical, emotional or financial harm or neglect of children in the ACT, through the Working With Children Check. In this context of all vulnerable people, it is imperative that a solid framework is in place to reduce the incidence of sexual, physical, emotional or financial harm or neglect against them. The proposed Checking System is one essential component of this.

2.5 Summary of Comments on the Working With Vulnerable People Checking System for the ACT Discussion Paper

The Youth Coalition welcomes the opportunity to comment on the proposed Checking System. The Youth Coalition supports the ACT Government's vision to ensure the safety of vulnerable people in the ACT and commends the ACT Government for taking leadership in the Australian community in extending Working with Children Checking Systems to include vulnerable people as a cohort and for the commitment by the ACT Government to developing a system based upon consultation, key stakeholder feedback and an evidence base.

In her foreword to the Discussion Paper: A Working With Vulnerable People Checking System for the ACT (Discussion Paper), the ACT Minister for Community Services states that through A Working with Vulnerable People Checking System (the Checking System), a minimum and compulsory checking standard will be set, along with the application of a consistent risk assessment framework and decision making process.

The Youth Coalition recognises that the Checking System will provide a common framework for background checking, in line with obligations under the *National Framework for Creating Child Safe Environments* and the *Human Rights Act 2004*, as well as linking in with the *Canberra Plan 2008 – Towards Our Second Century*.³

These are important strengths of the document and the development of the Checking System in the ACT. However, we believe that there are a number of areas that lack the level of detail essential in ensuring that the Checking System does provide the solid framework required for protecting the interests of children, young people and vulnerable adults in the ACT Region. In light of this, this submission has been based on how this detail can be built upon to ensure that Checking System is effective and meets the diverse and unique needs of all vulnerable people in the region. This submission also identifies existing gaps, and emerging issues, that should be reflected in the Checking System.

³ ACT Government (2009), Discussion Paper: A Working With Vulnerable People Checking System for the ACT, Department of Disability, Housing and Community Services; ACT.
Youth Coalition Submission to *A Working With Vulnerable People Checking System for the ACT* Discussion Paper
October 2009

3. Summary of Recommendations

Section 3 of this submission outlines the Youth Coalition's recommendations relating to the further development and implementation of a Working With Vulnerable People Checking System for the ACT.

Recommendation 1

That in its definition of 'vulnerable,' the ACT Working With Vulnerable People Checking System replaces the phrase "that access" with "might access," to extend its applicability.

Recommendation 2

That the ACT Government applies a consistent definition of the term 'vulnerable' when describing people across Departments, Services and Policy Frameworks.

Recommendation 3

That the ACT Working With Vulnerable People Checking System aligns its definition of 'child' in accordance with the definition contained in the *Children and Young People's Act 2008* and extends this definition to include 'young person'.

Recommendation 4

That Annex A of the ACT Working With Vulnerable People Checking System specifies youth services and lists youth centres and Government youth services as examples.

Recommendation 5

That Annex B of the ACT Working With Vulnerable People Checking System includes youth services.

Recommendation 6

That Annex B of the ACT Working With Vulnerable People Checking System expands its definition of 'youth at risk'.

Recommendation 7

That the ACT Government considers the long-term financial sustainability of the ACT Working With Vulnerable People Checking System and develops mechanisms in place to support this process.

Recommendation 8

That the list of forms of contacts contained in the ACT Working With Vulnerable People Checking System provides examples.

Recommendation 9

That in the application of the ACT Working With Vulnerable People Checking System consideration to checking employees and volunteers at all levels of organisation is given.

Recommendation 10

That the ACT Working With Vulnerable People Checking System includes a definition of supervision.

Recommendation 11

That the ACT Working With Vulnerable People Checking System is only one part of a continuum of strategies to prevent the abuse of children, young people and vulnerable adults.

Recommendation 12

That the ACT Working With Vulnerable People Checking System is consistent with the legal environment and community standards in regard to young people's records and rights.

Recommendation 13

That the ACT Government provides further clarification on the general exemption for age for the purposes of the ACT Working With Vulnerable People Checking System, including:

- Whether the implementation of the checking system will consider young people's developmental stages and capacity;
- Whether juvenile records will be accessed, both from the ACT and other jurisdictions, by the administering body; and,
- Whether juvenile records will be considered for young people (including young people between 18 and 25 years of age).

Recommendation 14

That the ACT Working With Vulnerable People Checking System checks apply to both young employees and young volunteers.

Recommendation 15

That the exemptions which apply to the ACT Working With Vulnerable People Checking System are restricted to supervised activities and that some activities are not exempt, for example counselling, residential activities, one on one support and week long programs.

Recommendation 16

That the ACT Working With Vulnerable People Checking System develops mechanisms to qualify and monitor extended family relationships.

Recommendation 17

That the ACT Working With Vulnerable People Checking System includes checks to volunteers engaged in a regulated activity who are 'closely related' to a vulnerable person who ordinarily participates in that regulated activity.

Recommendation 18

That 'Specific Exemptions' in the ACT Working With Vulnerable People Checking System require State and National Events to be risk assessed prior to exemption and that a register of State and National Events that have been granted exemption is developed and maintained.

Recommendation 19

That the ACT Working With Vulnerable People Checking System includes an implementation plan and information sheets which stipulate timelines and monitoring processes.

Recommendation 20

That the ACT Working With Vulnerable People Checking System stipulates that any contact with vulnerable people pending the outcome of an application is to be done under supervision.

Recommendation 21

That the ACT Working With Vulnerable People Checking System includes support tools and mechanisms for employers to engage in the application process.

Recommendation 22

That, in consultation with the community sector, guidelines be developed for checking other types of information for the purposes of the ACT Working With Vulnerable People Checking System, including a checklist.

Recommendation 23

That the checking of juvenile records for the purposes of the ACT Working With Vulnerable People Checking System is done in the appropriate context, including consideration of young people's developmental stages, and applied as such.

Recommendation 24

That information regarding the what types of convictions outside of Australia need to be declared is listed in the documentation for individuals applying for a check under the ACT Working With Vulnerable People Checking System.

Recommendation 25

That the ACT Government develops and makes available information sheets about the risk assessment principles of the ACT Working With Vulnerable People Checking System and how they will be applied.

Recommendation 26

That the list of relevant criminal offences for the ACT Working With Vulnerable People Checking System includes examples of what these offences involve.

Recommendation 27

That the ACT Working With Vulnerable People Checking System includes information on how risk assessment considerations will be applied and how their application will be monitored.

Recommendation 28

That the ACT Working With Vulnerable People Checking System includes guidelines on how non-conviction information will be considered and applied and how its application will be monitored.

Recommendation 29

That the ACT Working With Vulnerable People Checking System registration period is reduced from five years down to three years.

Recommendation 30

That the ACT Government provides clarification on the proposed registration period for the Working With Vulnerable People Checking System, including how changes in ACT licensing and proposed National Accreditation Levels will be monitored within the registration period and how organisations will be supported to meet these Levels.

Recommendation 31

That the ACT Government considers the long-term implications of checks after time

limitations on offences have passed and include mechanisms in the ACT Working With Vulnerable People Checking System to minimise the impact.

Recommendation 32

That prohibition periods for re-application for the purposes of the ACT Working With Vulnerable People Checking System are determined and applied on a case-by-case basis.

Recommendation 33

That the ACT Working With Vulnerable People Checking System contains a transparent and well-defined court mechanism to bar people from applying for a working with vulnerable people approval.

Recommendation 34

That the ACT Working With Vulnerable People Checking System contains information, tools and support mechanisms for individuals choosing to utilise the review process.

Recommendation 35

That information pertaining to offences and penalties is listed in the documentation for individuals applying for a check under the ACT Working With Vulnerable People Checking System.

Recommendation 36

That the ACT Working With Vulnerable People Checking System contains a timeline for compliance checking.

Recommendation 37

That tools and support mechanisms are developed for and available to assist small organisations in phasing in the ACT Working With Vulnerable People Checking System.

Recommendation 38

That the ACT Working With Vulnerable People Checking System includes accountability mechanisms for the first three years, including a data-base of current activity that can generate data.

Recommendation 39

That the ACT Government considers the impact that the ACT Working With Vulnerable People Checking System will have on Aboriginal and Torres Strait Islander individuals, and develops and implements additional strategies and supports to encourage and support Aboriginal and Torres Strait Islander individuals to participate in the Checking System and working with children, young people and vulnerable adults.

Recommendation 40

That the Act Government detail how 'lived experience' will be viewed for the purposes of the ACT Working With Vulnerable People Checking System and how this will impact the workforce.

Recommendation 41

That the ACT Working With Vulnerable People Checking System includes tools and mechanisms to support organisations in the transition process, and that these tools reflect the various sub-sectors working with children, young people and vulnerable adults.

Recommendation 42

That the ACT Working With Vulnerable People Checking System includes tools and mechanisms that support organisations in ensuring that service users and the community

Recommendation 43

That the ACT Working With Vulnerable People Checking System includes tools and mechanisms that support organisations in ensuring that service users and the community have access to reliable information about the Checking System.

Recommendation 44

That employers and organisations are provided with ongoing training, supports and information regarding the processes, standards of, changes to and application of the ACT Working With Vulnerable People Checking System.

4. Response to the Questions

Section 4 of this submission outlines the Youth Coalition's response to the questions posed in the Discussion Paper

4.1 Response

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

"Vulnerable Adult" refers to people aged 18 or over that access services in the ACT, as defined under Regulations, to alleviate the effects of physical, social, financial and/or psychological disadvantage.

The Youth Coalition believes that the definition of 'vulnerable' is appropriate in the context of the Checking System; however we do not believe it appropriately describes a cohort of people. The definition coined for the purposes of the Checking System dismisses individuals who may not be currently accessing a service, but may still be considered 'vulnerable'. The Youth Coalition suggests that by replacing the phrase 'that access' to "might access" acknowledges that the Checking System has capacity to extend into the future and is not solely for individuals currently accessing services.

Recommendation 1

That in its definition of 'vulnerable,' the ACT Working With Vulnerable People Checking System replaces the phrase "that access" with "might access," to extend its applicability.

The draft *ACT Young People's Plan 2009 - 14* used the term vulnerable to describe a cohort of young members of the ACT Community. The Youth Coalition is concerned that the Government may apply different definitions of the term 'vulnerable' in different contexts, causing inconsistency in application and confusion amongst service providers. The Youth Coalition believes that it is important that there is a common definition across Government Policy and Services to ensure that there is consistency in the use of the term 'vulnerable' across different contexts.

Recommendation 2

That the ACT Government applies a consistent definition of the term 'vulnerable' (when describing people) across Departments, Services and Policy Frameworks.

The Youth Coalition is also concerned that the definition of child used in the discussion paper is from the *Legislation Act 2001* and stipulates that a child is an individual who is under the age of 18 years. Reiterating the relevance of consistency across Government agencies, the Youth Coalition calls for the ACT Government to replace this definition with the definition used in the *Draft Young People's Plan 2009 – 2014*, based on that of the *Children and Young People's Act 2008*.⁴ This definition states that a child means an individual who is

⁴ *Children and Young People's Act 2008* s11 and s12.

under 12 years old, a young person means a person who is 12 years old or older but not yet an adult. This then is supported by the definition of adult in the *Legislation Act 2001*,⁵ which states that an adult is an individual who is at least 18 years of age.

Recommendation 3

That the ACT Working With Vulnerable People Checking System aligns its definition of 'child' in accordance with the definition contained in the Children and Young People's Act 2008 and extends this definition to include 'young person'.

4.1.2 Are there any activities that should be included or excluded from Annex A? Do you have any comments specific to any of the listed categories?

The Youth Coalition commends the ACT Government on developing a thorough list of activities in Annex A. The Youth Coalition is concerned that youth services are not specified, as these services provide generalist support for young people aged 12 – 18, as well as vulnerable adults aged 18 – 25. We suggest that community youth services are included in Annex A and that youth centres and Government youth services are listed therein.

Recommendation 4

That Annex A of the ACT Working With Vulnerable People Checking System specifies youth services and lists youth centres and Government youth services as examples.

4.1.3 Are there any activities that should be included or excluded from Annex B? Do you have any comments specific to any of the listed categories?

The Youth Coalition recognises the broad range of services included in Annex B. However, we are concerned that community youth services are not included in Annex B, as it is important to note that these services work with 12 – 25 year olds, which includes children, young people and vulnerable adults.

Recommendation 5

That Annex B of the ACT Working With Vulnerable People Checking System includes youth services.

The Youth Coalition believes that the definition of 'youth at risk' contained in the Discussion paper does not provide an account of young people 'at risk' in the ACT region. The Youth Coalition calls for the ACT Government to expand the definition of 'youth at risk' contained in Annex B of the Discussion Paper. This definition should include, but not be limited to:

- Aboriginal and Torres Strait Islander young people;
- Young people experiencing or at risk of experiencing homelessness;
- Young people affected by alcohol and other drugs;
- Young people affected by mental health issues;
- Young people with disabilities;
- Young people who identify as gay, lesbian, bisexual, transgender or intersex;
- Multicultural young people;
- Newly arrived or refugee young people;
- Young carers;

⁵ *Legislation Act 2001*, Part 1 Notes, Dictionary.

- Young parents;
- Young people in care or who have been in care; and,
- Young people in the criminal justice system.

Recommendation 6

That Annex B of the ACT Working With Vulnerable People Checking System expands its definition of 'youth at risk'.

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

The Youth Coalition supports the proposed engagement types. As the list is a substantial one, we urge the ACT Government to consider the long-term financial sustainability of the project in particular in the context of court orders, to ensure that decision-making processes don't create a prohibitive environment. We also believe it is important for mechanisms to be developed to support this process.

Recommendation 7

That the ACT Government considers the long-term financial sustainability of the ACT Working With Vulnerable People Checking System and develops mechanisms in place to support this process.

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

The Youth Coalition commends the ACT Government on considering the impact of the current era of technology. The Youth Coalition believes it is vital to safe guard vulnerable people in situations involving such forms of communication as listed on section 8.3.2 of the Discussion Paper. As information contained on databases, mail out lists and in program planning may be of a personal and sensitive nature, we believe that it is important to provide examples to support this list, including, for example, Information Technology (IT) Departments and the outsourcing of IT tasks.

Recommendation 8

That the list of forms of contacts contained in the ACT Working With Vulnerable People Checking System provides examples.

The Youth Coalition advocates youth and consumer participation at all levels, including the governance of organisations, and as such believe that consideration to checking employees and volunteers at all levels of organisation should be given. If the services have young people and/or consumers on their boards, advising structures or participating in other activities then it is essential that individuals who may have contact with these people or may influence decisions affecting them, have been checked.

Example

A service that is part of a large organisation that provides supports in a range of programs from childcare through to aged-care. This service has a Youth Advisory Committee that meets with the Chief Executive Officer (CEO) sporadically to provide input into service delivery, but receive their support from a youth manager. It is important to recognise that whilst the Youth Advisory Council may not have 'regular and systemic' contact with the CEO,

the nature of the contact and the access to information and influence of the manager in decision making processes provides enough of a link to require checking.

Recommendation 9

That in the application of the ACT Working With Vulnerable People Checking System consideration to checking employees and volunteers at all levels of organisation is given.

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

The Youth Coalition is pleased that checking will apply in situations of supervised support, in order to minimise opportunities for organisations or individuals to avoid checking. We also commend the ACT Government on including individuals responsible for the supervision of people in contact with vulnerable people; however we are concerned that there is not a definition of supervision included and that forms of supervision are not stipulated.

Example

An external supervisor who is supporting an individual who works with vulnerable people, providing support around an incident involving a vulnerable person, may have significant influence over or impact on that worker's future conduct, and, as such should be considered for checking.

Recommendation 10

That the ACT Working With Vulnerable People Checking System includes a definition of supervision.

4.1.7 Do you have comments on the general exemption for age?

The Youth Coalition acknowledges the importance of this Checking System however, we emphasise that it is essential that this Checking System is only one part of a continuum of strategies to prevent the abuse of children young people and vulnerable adults.

Recommendation 11

That the ACT Working With Vulnerable People Checking System is only one part of a continuum of strategies to prevent the abuse of children, young people and vulnerable adults..

The Youth Coalition acknowledges the Checking System operates within a wider legal framework and community standards. The Youth Coalition calls for the Checking System to consistent with the legal environment and community standards in regard to young people's records and rights.

Recommendation 12

That the ACT Working With Vulnerable People Checking System is consistent with the legal environment and community standards in regard to young people's records and rights.

The Youth Coalition also acknowledges community standards and trends evolve, and we highlight recent discussions regarding changes to the definition of juveniles in the context of the legal system in the Northern Territory and Queensland. The Youth Coalition believes that the extensive research base on the developmental stages of young people⁶ needs to be considered and incorporated in designing any system. The Youth Coalition is concerned that the application of the Checking System for young people who are not exempt needs to gauge the risk relative to young people's capacity in relation to offences.

The Youth Coalition calls for further clarification on the general exemption for age including:

- Whether the implementation of the checking system will consider young people's developmental stages and capacity;
- Whether juvenile records will be accessed, both from the ACT and other jurisdictions, by the administering body; and,
- Whether juvenile records will be considered for young people (including young people between 18 and 25 years of age).

Recommendation 13

That the ACT Government provides further clarification on the general exemption for age for the purposes of the ACT Working With Vulnerable People Checking System, including:
-Whether the implementation of the checking system will consider young people's developmental stages and capacity;
-whether juvenile records will be accessed, both from the ACT and other jurisdictions, by the administering body; and,
-Whether juvenile records will be considered for young people (including young people between 18 and 25 years of age).

Although we understand the challenges around assessing all volunteers the Youth Coalition acknowledges that many of the same risk factors exist for young employees and young volunteers working with vulnerable young people and believes that it would be ideal for checks to apply to both young employees and young volunteers.

Recommendation 14

That the ACT Working With Vulnerable People Checking System checks apply to both young employees and young volunteers.

4.1.8 Do you support the application of an exemption for people in contact with vulnerable people for infrequent or short periods? Do you support the proposed threshold of 7 days in any 12 month period?

The Youth Coalition supports the application of an exemption for people in contact with vulnerable people for infrequent or short periods and is satisfied with the proposed threshold of seven days in a 12 month period. However, the Youth Coalition stresses that there needs to be a consideration of the activity that is being undertaken during this threshold period. Such an exemption would not be appropriate to, for example, counselling, residential activities, one on one support or 1 week school holiday programs, as these activities provide environments in which there is opportunity to harm an individual or influence a vulnerable person through building a relationship of trust or dependence. In the case of counselling, having access to a vulnerable person for seven separate sessions in a one on one

⁶ Michael Carr Greg, <http://www.michaelcarr-gregg.com.au/index.shtml>.

environment poses a significant threat. In addition to this, we believe that if this exemption is to work in the best interest of vulnerable people, then such contact needs to be supervised.

Recommendation 15

That the exemptions which apply to the ACT Working With Vulnerable People Checking System are restricted to supervised activities and that some activities are not exempt, for example counselling, residential activities, one on one support and week long programs.

4.1.9 Do you support the application of an exemption for people who are 'closely related' to each (and every) vulnerable person they have contact with?

The Youth Coalition recognises the role that family plays in the support of a vulnerable person in their family team and supports the application of an exemption for people who are closely related to each and every vulnerable person they are in contact with. The Discussion Paper does not stipulate the process by which the relationships listed will be qualified or whether there will be any monitoring system in place.

Recommendation 16

That the ACT Working With Vulnerable People Checking System develops mechanisms to qualify and monitor extended family relationships.

4.1.10 Do you support the application of an exemption for volunteers engaged in a regulated activity who are 'closely related' to a vulnerable person who ordinarily participates in that regulated activity?

While the Youth Coalition recognises the valuable role that 'closely related' people play in participating as volunteers for regulated activities; in which a 'closely related' vulnerable person also participates, we are apprehensive to support this exemption. This is largely due to the fact that a 'close relation' to one vulnerable person participating in the regulated activity, does not eliminate the risk of harm to other participants who are not 'closely related' to that individual. The Youth Coalition recommends that checks are applicable to volunteers engaged in a regulated activity who are 'closely related' to a vulnerable person who ordinarily participates in that regulated activity.

Example

In the case of a parent volunteering as a coach for their child's sporting team or as a leader for their child's group, that parent has contact with a large number of vulnerable people. We do not believe that an exemption in this context would be appropriate.

Recommendation 17

That the ACT Working With Vulnerable People Checking System includes checks to volunteers engaged in a regulated activity who are 'closely related' to a vulnerable person who ordinarily participates in that regulated activity.

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

The Youth Coalition supports reducing opportunities for discrimination against vulnerable people in the context of employment.

Employment in Australian society has significant cultural and economic importance and as such, vulnerable people require access to decent employment in order to achieve individual autonomy, social connection, and a reasonable standard of living.

Young people, as vulnerable individuals, face significant hardship in the employment arena. The national unemployment rate risen over the past year and is likely to continue rising to 7.5%⁷. The Australian Bureau of Statistics (ABS) recently reported youth unemployment to be over 12% nationally⁸. In general young people are at a disproportionate level of the unemployed (19% of the population yet 40% of unemployment is young people aged under 25 years).⁹

As such, the Youth Coalition supports the exclusion of normal employee/employer relationships.

4.1.12 Are there any other exemptions that should be considered?

The Youth Coalition acknowledges the need to have exemptions in place for the Checking System; however we have some concerns in relation to the broad exemption proposed in the Discussion Paper to apply to State and National events. Caution should be applied in grouping all State and National Events under one banner. The Youth Coalition questions how risk will be monitored for these events and we suggest that before events can be listed under this exemption they need to be risk assessed. In addition to this, the Youth Coalition calls for a register of exempt State and National Events to be developed and maintained.

Recommendation 18

That 'Specific Exemptions' in the ACT Working With Vulnerable People Checking System require State and National Events to be risk assessed prior to exemption and that a register of State and National Events that have been granted exemption is developed and maintained.

4.1.13 Do you have any comments on the proposal that unregistered persons can be engaged in a position pending the outcome of their application?

The Youth Coalition supports the proposal to allow unregistered persons to be engaged in a position pending the outcome of their application, to ensure that people are not denied employment opportunities and/or are not deterred from applying for positions. However, there needs to be a guarantee regarding the processing timelines for checks in order for this process to be inline with the best interests of children, young people and vulnerable adults in the ACT. The Youth Coalition calls for the development and publication of an implementation plan that stipulates expected timelines and monitoring and which accounts for the general employment of new people. Further to this, the Youth Coalition believes that it is essential that any contact with vulnerable people during this interim period be conducted under supervision.

⁷ ABS 2009 Unemployment

⁸ ABS 2009 Unemployment

⁹ Mission Australia 2005 *Youth Employment The Facts*

Recommendation 19

That the ACT Working With Vulnerable People Checking System includes an implementation plan and information sheets which stipulate timelines and monitoring processes.

Recommendation 20

That the ACT Working With Vulnerable People Checking System stipulates that any contact with vulnerable people pending the outcome of an application is to be done under supervision.

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

The Youth Coalition believes it is important and supports engaging employers in the application process, as long as there are tools, mechanisms and resources put in place to support employers to engage in this process. Further to this, the Youth Coalition believes that to be effective, the Checking System must replace current checking systems, rather than add to organisations' current checking systems. The danger of duplication and additional use of time and resources is a significant threat to the proposed Checking System, which must meet the current needs of organisations' screening processes. In addition to this, the Youth Coalition believes that it would be prudent to explore the option of an online database or system to support employers.

Recommendation 21

That the ACT Working With Vulnerable People Checking System includes support tools and mechanisms for employers to engage in the application process.

4.1.15 Do you have any comment on the inclusion of other types of information such as Apprehended Violence Orders, Child Protection Orders and past employment records in the checking process?

The Youth Coalition recognises the value of obtaining various types of information to ensure that individuals receiving clearance to work with vulnerable people are appropriate. However, it is important to consider what information is relevant to know and what should be considered to be well in the past and irrelevant. Further to this, some organisations may have some information differently to others. The Youth Coalition calls for the ACT Government to provide an outline of how this information will be viewed and the benchmarks that will be applied, as well as a limit on how far back information will be sought.

The Youth Coalition also believes that if juvenile records are going to be considered, that it is essential that they will be considered in the appropriate context and applied as such.

Recommendation 22

That, in consultation with the community sector, guidelines will be developed for checking other types of information for the purposes of the ACT Working With Vulnerable People Checking System, including a checklist.

Recommendation 23

That the checking of juvenile records for the purposes of the ACT Working With Vulnerable People Checking System is done in the appropriate context, including consideration of young people's developmental stages, and applied as such.

4.1.16 Do you have any comments on the proposal that applicants be required to provide a statutory declaration that they have not been convicted of certain types of offences outside of Australia?

The Youth Coalition supports the use of statutory declarations in the current processes undertaken by the Department of Immigration, to confirm that individuals have not been convicted of certain types of offences outside of Australia. The Youth Coalition believes it is important to acknowledge the differing way in which certain behaviours or activities are viewed in international jurisdictions and urges the ACT Government to consider this when applying this provision. Further to this, it is important that a list of the offences is provided in the documentation for individuals applying for a check.

Recommendation 24

That information regarding what types of convictions outside of Australia need to be declared is listed in the documentation for individuals applying for a check under the ACT Working With Vulnerable People Checking System.

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

The Youth Coalition commends the ACT Government on the extensive list of risk assessment principles collated for the purposes of the Checking System. The Youth Coalition believes that it is important to provide organisations and individuals with information sheets about the risk assessment principles and how these principles will be applied.

Recommendation 25

That the ACT Government develops and makes available information sheets about the risk assessment principles of the ACT Working With Vulnerable People Checking System and how they will be applied.

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

In general, the Youth Coalition supports the proposed list of offences, however, we believe that it is important for more information to be provided regarding this list, clarifying what these offences involve (for example, what an offence against a person is).

Recommendation 26

That the list of relevant criminal offences for the ACT Working With Vulnerable People Checking System includes examples of what these offences involve.

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

The Youth Coalition believes that it is vital to have a list of considerations accompanying the risk assessment process and is pleased with the proposed list contained in the Discussion Paper. The Youth Coalition would like more information on how these considerations will be applied and how their application will be monitored.

Recommendation 27

That the ACT Working With Vulnerable People Checking System includes information on how risk assessment considerations will be applied and how their application will be monitored.

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

The Youth Coalition supports the additional considerations applicable to non-conviction information and, as above, calls for the inclusion of guidelines on how this information will be considered and applied and how its application will be monitored.

Recommendation 28

That the ACT Working With Vulnerable People Checking System includes guidelines on how non-conviction information will be considered and applied and how its application will be monitored.

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

The Youth Coalition has reservations about the proposed registration period of five years and considers this period to be too long, believing it may lead to excessive risk within the Checking System. We suggest that a registration period of three years is more appropriate for the Checking System. The Youth Coalition notes that further clarification of the proposed registration period is necessary, including how changes in ACT licensing and proposed National Accreditation Levels will be monitored within the registration period and how organisations will be supported to meet these Levels.

Recommendation 29

That the ACT Working With Vulnerable People Checking System registration period is reduced from five years down to three years.

Recommendation 30

That the ACT Government provides clarification on the proposed registration period for the Working With Vulnerable People Checking System, including how changes in ACT licensing and proposed National Accreditation Levels will be monitored within the registration period and how organisations will be supported to meet these Levels.

4.1.22 Do you support the proposal for the WWVP Screening Unit to contact the employer or organisation to advise of the issuance of an interim negative notice or in the other circumstances proposed?

The Youth Coalition supports this action, as it will provide opportunities for employers and individuals to be proactive about obtaining a positive check. The Youth Coalition has concerns and questions about the long-term implications of checks after time limitations on offences have passed and how past offences may affect future applications. We call for the ACT Government to consider the impact of these long-term implications and include mechanisms in the Checking System to minimise the impact.

Recommendation 31

That the ACT Government considers the long-term implications of checks after time limitations on offences have passed and include mechanisms in the ACT Working With Vulnerable People Checking System to minimise the impact.

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

The Youth Coalition queries the relevance of a five-year prohibition period. The Youth Coalition acknowledges that an arbitrary length of time limitation on re-application is problematic and may clash with time limitations on relevance of particular crimes. Hence the Youth Coalition does not support the introduction of a five-year prohibition on re-applying for a check. The Youth Coalition suggests that the application of prohibition periods is done on a case by case basis, with consideration to relevant timelines and restrictions.

Recommendation 32

That prohibition periods for re-application for the purposes of the ACT Working With Vulnerable People Checking System are determined and applied on a case-by-case basis.

4.1.24 Do you have any comments on the inclusion of a mechanism for courts to make orders barring people from applying for or holding an approval to work with vulnerable people for specified periods of time?

The Youth Coalition acknowledges that a court mechanism may provide clarity, act as a preventative measure to protect vulnerable people and may limit wasting of resources checking inappropriate applicants. We also recognise that such a mechanism may ensure some applicants are aware of their inability to work with vulnerable people. The Youth Coalition calls for a transparent and well defined court mechanism that ensures potential applicants with charges or histories that are not relevant to specific work or organisations are not excluded from the application and checking process.

Recommendation 33

That the ACT Working With Vulnerable People Checking System contains a transparent and well-defined court mechanism to bar people from applying for a working with vulnerable people approval.

4.1.25 Do you have any comments on the proposed right of internal review by the WWVP Screening Unit and the right of external merits review by ACAT and the proposed grounds for merits review?

The Youth Coalition believes the right to review is vital to ensure accountability and procedural fairness and calls for information, tools and support mechanisms to be developed, implemented and evaluated for individuals choosing to utilise the review process.

Recommendation 34

That the ACT Working With Vulnerable People Checking System contains information, tools and support mechanisms for individuals choosing to utilise the review process.

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

The Youth Coalition supports the proposed application of penalties for offences, however, we are concerned as to how these will be determined and applied. The Youth Coalition calls for the list of offences and relevant penalties to be listed in the documentation for individuals applying for a check.

Recommendation 35

That information pertaining to offences and penalties is listed in the documentation for individuals applying for a check under the ACT Working With Vulnerable People Checking System.

4.1.27 Do you have any comments on the proposed compliance activities?

The Youth Coalition acknowledges the importance of the proposed compliance activities and commends the ACT Government on implementing accountability mechanisms within the Checking System. However, we are unsure how the capacity of a team of five will sustain timely checking and compliance activities. As such, the Youth Coalition calls for the development of a timeline for compliance checking.

Recommendation 36

That the ACT Working With Vulnerable People Checking System contains a timeline for compliance checking.

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

The Youth Coalition recognises that there are a number of factors that may influence processing times and in general supports the proposed processing times. We highlight that timely processing of risk assessments is crucial for applicants and organisations, as well as for the vulnerable people they are working with. We believe that it is vital that risk assessments are completed thoroughly to ensure that individuals are not receiving negative checks due to rushed processing or processing error. As above, the Youth Coalition is concerned about the capacity necessary to provide timely processing. The Youth Coalition calls for an implementation plan and information sheets regarding estimated processing times to be developed.

Recommendation 19

That the ACT Working With Vulnerable People Checking System includes an implementation plan and information sheets which stipulate timelines and monitoring processes.

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

The Youth Coalition highlights the limitations of small organisations to implement new systems and gain awareness of new system requirements. The Youth Coalition calls for tools and support mechanisms to be developed for and available to assist smaller organisations.

Recommendation 37

That tools and support mechanisms are developed for and available to assist small organisations in phasing in the ACT Working With Vulnerable People Checking System.

4.1.30 Are there any other mechanisms to improve accountability that should be considered in this section or elsewhere in this discussion paper?

The Youth Coalition commends the ACT Government for recognising the value of and need for strong accountability mechanisms. However, we are concerned that no accountability mechanisms have been established for the first three years of the Checking System. The Youth Coalition calls for accountability mechanisms to be developed and implemented for the first three years, including a data-base of current activity to generate data.

Recommendation 38

That the ACT Working With Vulnerable People Checking System includes accountability mechanisms for the first three years, including a data-base of current activity that can generate statistics.

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

The Youth Coalition recognises the systemic discrimination experienced by Aboriginal and Torres Strait Islander individuals, particularly in that Aboriginal and Torres Strait Islander young people are over represented in contact with police, are over represented in the court system and are over represented in detention.

The Youth Coalition believes that it is vital for the ACT Government to consider the impact that this Checking System will have on Aboriginal and Torres Strait Islander individuals and the risk that they may be discouraged from applying for work in the community sector, due to its restrictive nature. The Youth Coalition calls for additional strategies and supports to be developed as part of the Checking System to encourage and support Aboriginal and Torres Strait Islander individuals to participate in the Checking System process and working with children, young people and vulnerable adults.

Recommendation 39

That the ACT Government considers the impact that the ACT Working With Vulnerable People Checking System will have on Aboriginal and Torres Strait Islander individuals, and to develop and implement additional strategies and supports to encourage and support Aboriginal and Torres Strait Islander individuals to participate in the Checking System working with children, young people and vulnerable adults.

The Youth Coalition is concerned that employers will lose all discretion in terms of who they employ, especially in the context of employing people with 'lived experience.' The Youth Coalition is concerned that the Discussion Paper has not appropriately considered or discussed 'lived experiences' in the context of working with children, young people and vulnerable adults and the fact that many organisations value 'lived experience' in their employees. The Youth Coalition calls for the ACT Government to consider how 'lived experience' will be viewed for the purposes of the Checking System and how this may impact the workforce.

Recommendation 40

That the ACT Government detail how 'lived experience' will be viewed for the purposes of the ACT Working With Vulnerable People Checking System and how this will impact the workforce.

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

The Youth Coalition commends the ACT Government for committing to fund the Checking System. The Youth Coalition calls for more information regarding the limitations of this funding and how application of this funding will be determined (for example, if funding is exceeded due to an underestimation in costing, how will the application of funding be determined?).

Recommendation 41

That the ACT Working With Vulnerable People Checking System includes information regarding the limitations of Government funding and how application of this funding will be determined.

The Youth Coalition notes that any process of change may cause some level of discomfort and uncertainty and calls for the Checking System to have strong tools and mechanisms available to support organisations in a smooth transition. Further to this, the tools developed for this system need to reflect the various sub-sectors that will be using them (for example, the Alcohol and Other Drug Sector; the Aged Care Sector and the Child Care Sector).

Recommendation 42

That the ACT Working With Vulnerable People Checking System includes tools and mechanisms to support organisations in the transition process, and that these tools reflect the various sectors working with children young people and vulnerable adults.

As with any change process, it is vital that service users and the community are kept up to date and informed on the process. The Youth Coalition believes it is important for tools and support mechanisms to be developed and in place, which support organisations in ensuring that their service users and the community are informed.

The Youth Coalition would like the ACT Government to consider the value of ongoing monitoring from the instigation of the Checking System in reducing the frequency of checks.

Recommendation 43

That the ACT Working With Vulnerable People Checking System includes tools and mechanisms that support organisations in ensuring that service users and the community have access to reliable information about the Checking System.

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

The Youth Coalition has a number of concerns regarding the proposed role of employers or organisations in the application process.

The number and range of services that work with children, young people and vulnerable adults crosses over a number of sub-sectors including, but not limited to, child care, alcohol and other drugs, aged care, youth, mental health and justice. A major challenge will be the establishment of baseline standards that will meet the requirements of and be applicable across these sectors. Subsequently, how these standards are then applied, evaluated and assessed will also prove challenging.

While it is vital that the Checking System is part of a continuum of supports established to ensure the best interests and safety of children, young people and vulnerable people in the ACT, in order for the Checking System to be productive, effective and outcomes based, it is imperative that the Checking System is strong and stable enough that duplication of its processes will be unnecessary for employers and organisations. This will allow employers and organisations to consider, develop and implement other strategies relevant to the continuum of supports needed.

The move to a regulatory body that oversees the checking process will produce a significant reduction in the level of discretion which employers or organisations possess in their recruitment processes through to the appointment of positions and implementation of appropriate supports. The Youth Coalition believes that the establishment and maintenance of the relationship between the regulatory body and employers and organisations needs to be a key consideration in the context of transitioning to and ongoing life of the Checking System.

Example

The regulating body has identified a risk or offence in relation to an individual however, this risk is deemed low by the assessor and the individual receives clearance for working with vulnerable people. If the organisation was aware of this risk or offence, they would put supports in place to minimise the risk, however, as they are not intimately involved in the checking process this opportunity does not arise.

The Youth Coalition believes that it is important for organisations and employers to be provided with ongoing training, support, information regarding the processes, standards of, changes to and application of the Checking System.

Recommendation 44

That employers and organisations are provided with ongoing training, supports and information regarding the processes, standards of, changes to and application of the ACT Working With Vulnerable People Checking System.

5. Conclusion

The Youth Coalition would like to thank the ACT Government for providing this opportunity to contribute to the discussion on the development of the ACT Working With Vulnerable People Checking System. We commend the commitment by the ACT Government to developing a Checking System based upon consultation, key stakeholder feedback and an evidence base.

The Youth Coalition acknowledges the significant amount of work has gone into the development of the Plan by the Department of Disability, Housing and Community Services. However, in this submission we identify many opportunities by which the ACT Government can build upon the existing strengths, provide additional information and further progress the Checking System for the ACT.

The Youth Coalition believes that much of the detail of how the Checking System will work in practice is still to be provided and advocates that this is done in close consultation with the community.

In order to establish a viable, useful and robust Checking System as part of a broader strategy to protect children, young people and vulnerable adults, the Youth Coalition believes expertise of the community sector is an essential consideration.

The Youth Coalition looks forward to continuing dialogue with the ACT Government regarding the establishment of *A Working With Vulnerable People Checking System for the ACT*.