

25th February 2005

Criminal Law Policy
Department of Justice
55 St Andrews Pl
MELBOURNE VIC 3002

Dear Sir/Madam,

Re: Working with Children Bill 2005

Liberty Victoria, (the Victorian Council for Civil Liberties Inc) is an independent non-government organisation that traces its history back to 1936. Liberty Victoria is committed to the defence and extension of human rights and civil liberties. It seeks to promote Australia's [compliance with the major human rights instruments](#) set out in international law.

Much of our work is directed toward educating the community about the importance of civil liberties and human rights. Liberty's work involves liaison with government, police and regulatory authorities to prevent erosion of rights and freedoms or to enhance their protection. This includes making submissions, conducting law reform campaigns and meeting with members of parliament. Accordingly Liberty Victoria is mindful of the need to protect children and the provisions of the *International Convention on the Rights of the Child* and its provisions around the need to protect children from harm. It is also conscious of other requirements needed for the protection of human rights and the protection of liberties. It is in this context that Liberty writes a submission in response to the Discussion Paper of December 2004 and the proposed Bill, *Working with Children*.

Liberty agrees with the comments in the Discussion paper that there are a number of competing policy considerations in any proposal for a Working with Children check, but it is concerned that some of these competing considerations have been subordinated more than is necessary. Whilst the discussion paper states that the information proposed to be collected under the scheme is "sensitive and should be treated with respect", Liberty holds concerns that in practice, and without proper safeguards, the check may not result in such an outcome. It has been demonstrated recently in some highly publicised court cases involving teachers that the media can sensationalise and distort cases where sexual activity involving young people is alleged. This must be a major concern for individuals who are under investigation and who are found not to pose a risk to children. In the meantime their character can be placed under undue scrutiny and the after-effects of the media scrutiny can harm lives on an ongoing basis even though the initial concern may have been unfounded.

Liberty Victoria wishes to make the following comments on the proposed Bill:

1. The protection of children from predatory practices is absolutely critical.
2. No such protection will be absolute, and the proposed measures only provide very limited protection. In particular, the bill cannot protect children from close family and friends, the usual perpetrators of sexual exploitation of children.

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3. The proposed measures impose a significant administrative and financial burden on community groups and individuals.
4. It is harmful to children, and illusory, to pretend that we can remove all elements of risk from their world.
5. Community concern about child sex offences is quite legitimate. However, clear-minded concern for the welfare of children, and not response to media hysteria, should guide deliberations on the topic.
6. Only those individuals that have actually been found guilty of relevant offences through proper legal processes should be contemplated as not being issued with a favourable assessment notice.
7. Many of the proposed processes are predicated on the assumption that people cannot reform. In addition, the process rules out a review mechanism in cases of criminal offence, despite the fact that some offences, on their face suggesting that a child was placed at risk, may on proper inquiry show that no child was at risk. The removal of the discretion of review in such cases is flawed and damaging to respect for the rule of law. The right to work and earn an income is important and where a person poses no risk to children they should not be excluded from such work.
8. If the Government is to introduce such a Check system it should be prepared to fund it out of government revenue. To place the burden on employees individually to pay the assessment fee is unfair. Equally, volunteers should not be expected to bear the cost even at a reduced rate and often the organisations that they work for would be unable to afford the fee. This in itself could negatively affect the volunteer sector. In addition, for someone who has been out of work for some time and is trying to secure work it is unfair to impose this financial burden. If the Government insists on passing the financial burden of this system to individuals then perhaps a waiver system could be considered in special circumstances. The principle remains though, that it seems unfair to transfer costs of the program to individuals, which by far the majority of whom there will be no concern about.
9. The time it will take to process the applications and assess the notice status of a person will cause undue delay in the employment of persons and in the placement of volunteers which could have a significant affect on staffing levels and on community organisations who rely on volunteers. More thought needs to be given to the time it will take to process the applications and the uncertainty this may create particularly as many applicants will have no record of conviction, pending charges or disciplinary proceedings. For instance, there is a period of 28 days for the Secretary to notify a person to supply necessary information. All of this adds time onto a person's certainty about their work. People working as volunteers or taking up positions in emergencies at schools and eventually at health centres will be hindered. Someone taking on the role of coaching in a school situation may find the season half over by the time approval is given. The process is made more cumbersome by the fact that people need to reapply every five years.
10. It is good to see parents involved in their own children's activities but the provisions have gone overboard in requiring parents who coach other children on another team to require checks. It is not uncommon for a parent at a school to coach other teams. It is already quite difficult to encourage people to volunteer to coach and given the minimal risk with other parents around and other children in team sports the requirements seem excessive and likely to discourage volunteers.

11. The proposal that a person who has failed a working with children check in the past should not be able to work with children (page 11) regardless of the exemption is flawed and contrary to the principles of administrative law. There should be a right of review. Such matters as demonstrated reform or rehabilitation should be factors to be weighed in any such review. This provision implies that once a person has done something bad they will always do something bad and denies people a chance of demonstrating that they should be able to be redeemed.
12. Liberty Victoria retains the services of many volunteers. The requirement (page 12) that volunteer organisations will need to keep records on how often people work with children is an additional burden requirement which smaller agencies may struggle with. This will affect Liberty directly, and many other organisations as well.
13. It is sensible that parents engaged in child-related work within their own school should not be required to apply for the check (page 13). To do so would discourage parental involvement in schools and with their own children and would run counter to the *Convention on the Rights of the Child*.
14. Liberty is concerned about the lack of discretion to re-examine the position of people listed on the Sex Offenders register. For instance, what if someone has been incorrectly placed on the register or the information on the register is incorrect? Anyone subject to inclusion in such a register should be entitled to review that status.
15. The Working with Children Check seems to be based on the presumption that all people wanting to work with children are past offenders and the only way to prove otherwise is to submit hundreds of thousands of innocent people to an assessment. Given recent negative examples in Queensland surrounding their similar assessment system, perhaps the Government should completely re-think this approach to ensure that all this time and money is actually put to working in the best interests of children and society.
16. The Working with Children Check is proposed to be conducted on all people (bearing in mind the intended exemptions) down to the age of 14 years. There are varying legal opinions for enforcing such a system onto people so young. Liberty has grave concerns over the government interfering with the lives of people so young, by way of assessing them and placing their details onto a government database and continuously cross-referenced with police records. The age of enforcement of the Working with Children Check should not be less than 18 years of age, when it is generally accepted that people become adults in our society.
17. There seem to be some inconsistencies in the approach taken to sanctions. For example, on page 28 it is suggested that people with a negative notice or who are on the Sex Offenders register commit a criminal offence by merely applying for child related work. Yet on page 27 a scenario is raised where a person may apply for work and not realise that there is a substantial child membership.

In conclusion, Liberty Victoria whilst noting that the task being undertaken is not an easy one, believes that in a number of areas the Discussion paper has not appropriately met the balance of competing concerns it has outlined on page 3. We are concerned at the effect the proposals will have on the volunteer sector which often does not have significant resources

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and the risk of stigma being attached to people where there is in reality nothing of concern or which poses a risk to children. The transfer of costs of the program to individuals in the community, the cumbersome nature of the process and the likely delays it will cause in practice are all matter to be re-examined in this worthwhile exercise in trying to protect children, who by virtue of their age and maturity levels, are vulnerable.

The actual protection achieved by these extensive measures is likely to be limited.

Yours sincerely,

Brian Walters SC
President, Liberty Victoria