



Submission to Draft Heads of the National Vetting Bill

National Youth Council of Ireland

October 2011

NYCI Submission on the National Substance Misuse Strategy

Introduction

The National Youth Council of Ireland (NYCI) is the representative body for over 50 voluntary youth organisations in Ireland. NYCI functions to represent the interests of young people and youth organisations. NYCI's role is recognised in legislation (Youth Work Act) and as a social partner. The NYCI aims through its member organisations and its representative role to empower young people to participate in society as fulfilled confident individuals. The work of the Youth Council is based on principles of equality, social justice and equal participation for all. In achieving these aims the NYCI seeks the emergence of a society in which young people are valued citizens who can make a meaningful contribution to their community.

NYCI Role in Garda Vetting for the Youth Work Sector

The Child Protection Programme (formerly known as the Child Protection Unit) was established in late 2004 as part of the implementation of the National Youth Work Development Plan.

The Child Protection Programme works primarily with youth work organisations and with others in assessing and addressing the child protection needs of the youth work sector. The programme plays a hugely important role for the youth work sector in advocating and lobbying on child protection issues, including Garda vetting.

Since September 2009 the voluntary, community and youth sectors have carried out vetting on employees and volunteers in addition to other forms of recruitment and selection criteria, such as references, conducting interviews and pre-training of personnel.

The National Youth Council of Ireland operates a vetting service on behalf of youth organisations through The Youth Work Garda Vetting Consortium. A Garda Vetting Consortium operates on behalf of other organisations which do not have access to an Authorised Signatory within their own organisation or through another Consortium Group.

Currently 102 organisations are in membership of NYCI's Youth Work Garda Vetting Consortium. During 2010 we processed 2496 applications. As at September 2011 we have processed almost 1800 applications. Our turn-round time is currently 8 to 9 weeks. This is all achieved with a part-time administrator working 2 days/week processing the applications.

Background

NYCI welcomes the opportunity to respond to the draft heads of the National Vetting Bill. We have campaigned for many years for the introduction of mandatory vetting of all those working with children and young people. It is an important and necessary step in ensuring children and young people are fully and properly protected.

NYCI Commentary

NYCI welcomes many of the provisions in the legislation. However in the interests of brevity and clarity we restrict our comments to those sections of the draft heads where we seek clarification, amendment or additions.

Part 1 Section 2 Interpretation

- To ensure consistency we propose that the definition of *“child”* should be consistent with the definition in the Child Care Act 1991 and the Children First National Guidance which is *“any person under 18 years other than a person who is or has been married”*
- In light of the fact that some placements are work experience and would not be considered either *“professional training or other educational course”* we propose that the definition is expanded to include work placements/internships.
- The definition of employment should be expanded and make explicit reference to self employed persons who are contracted by organisations to work with young people on an occasional yet regular basis. This may include for example artists or sport coaches who are contracted to run particular sessions or programmes with young people by organisations.

Part 1 Section 4 Expenses

- There are in excess of 40,000 volunteers working with children and young people in voluntary youth organisations in Ireland. Irish Government policy has long espoused the value of volunteering and sought to further promote and support it. 2012 is the European Year of Volunteering. We strongly urge the Government to make a commitment and make explicit in the legislation that no charge will be applied with respect to the vet of a volunteer.

Part 2 Section 5 Persons required to submit vetting disclosure applications

- We are concerned about the reference to *“employment working with children or vulnerable adults”* in 5 (1d). This could in our view undermine the existing good practice in the youth sector where all those with access to children and young people are vetted. As currently drafted a range of personnel such as caretakers, administrative staff, etc who may not be directly working with children and young people but could still gain access to them would no longer be vetted. We believe this text should be changed *“other employment where there is access to children and vulnerable adults”*
- We are also concerned about the reference to *“regular or unsupervised contact with children or vulnerable adults”* in 5 (1d). This terminology is also used in later sections (sections 17/18/20). This would appear to suggest that regular and unsupervised contact with children is appropriate. NYCI and the youth sector would be opposed to

enshrining such a perception in this important piece of legislation. We believe the reference to “*unsupervised contact*” should be removed.

Part 2 Section 6 Employment Positions Excluded from this Act

- We find the reference in 6(c) to “*persons assisting on an occasional, ad-hoc, voluntary basis in sports or community or other organisations*” very problematic. We understand the intent of the wording, but it has the potential to create a lot of confusion and inconsistency. It is also unclear from a legal point of view if occasional, ad-hoc and voluntary are to be interpreted together or separately. For example does the proposed Act only exclude volunteers (voluntary) who assist in an occasional and ad-hoc manner but not paid staff?
- At present organisations in the youth sector adhere to good practice where all those in contact with children and young people are vetted. We would be opposed to vague legislation which has the potential to weaken the current protections in place.
- We would propose alternative wording such as “*once off time limited activities*” where the persons do not have regular or unsupervised contact.

Part 3 Section 7 National Vetting Bureau

- We wish to acknowledge the excellent work of the current Garda Vetting Bureau. In that context we welcome the establishment of the new National Vetting Bureau (NVB) which will largely be a new title for the existing organisation. It is important however in light of the new statutory powers given to the NVB that they have the resources required to ensure an expeditious processing of vets.

Part 4 Section 11 Register of Organisations applying to have persons vetted

- The legislation is silent concerning the role of consortia. NYCI currently submits vets for our own staff and on behalf of a range of organisations in the Child Protection Programme Consortium. As we vet our own staff we are a registered organisation and would be covered by the draft heads of bill. However it is possible that an organisation could administer vets on behalf of other organisations/consortium but may not submit vets in respect its own staff. As currently drafted the legislation appears to exclude such entities and therefore they may not be subject to the requirements of the legislation, e.g. abide by directions of compliance officers. Therefore it is important that the definition of registered organisation includes those organisations who may solely administer vets on behalf of other organisations or on behalf of a consortium.

Part 4 Section 15 Organisations Required to Report Relevant Information to the Bureau

- We support this section, however it is important that the Schedule 2 accompanying the Act names organisations rather than referring to sectors. For examples the

explanatory notes refer to “religious” bodies. Some youth organisations still fall under the auspices of particular dioceses and/or religious bodies, although they may have limited interaction with the parent body. Therefore vague references to religious bodies in the schedule has the potential to create doubt and confusion and that is why we suggest specific references to all those organisations and or their affiliates to whom this section applies.

Part 4 Section 20 Use of relevant information for vetting purposes

- We support this section; however it raises a number of issues. We acknowledge the requirement for natural justice, but the section as drafted appears to suggest only “relevant information” will be disclosed by the National Vetting Bureau following a vetting request.
- As defined by this legislation a person could be employed by a number of organisations (as a paid worker/volunteer). It is possible that an individual who is employed by organisation A gets a clear vet. The individual may also be employed by organisation B and that individual is investigated by organisation B and “relevant information” comes to light which is as required disclosed to the NVB. As currently drafted the NVB is only required to disclose “relevant information” if a subsequent vet is requested by for example an organisation C. However organisation A may be permitting the individual to have access to children or vulnerable adults oblivious to the existence of “relevant information”
- We believe there should be a provision in the legislation requiring the NVB subject to all the provisions in section 20 to inform other organisations who may have vetted any individual subject to verified “relevant information”
- This issue also applies to vets (hard information). A person could be vetted and then subsequently convicted of a crime and their existing employers may not be aware of the conviction. Therefore it is important that the legislation provides for the disclosure of new information to organisations with safeguards if the NVB establish that the person is still in the employment of the organisation.

Part 5 Section 23 Liability

- The issue of liability for any offences under section 23 is clear in the context of incorporated organisations with boards of directors. However many activities are carried out by small, voluntary organisations which are not incorporated and therefore it is unclear who is liable for prosecution in these circumstances. Would the Chairman/Secretary of a group or indeed the organiser of an informal activity potentially be personally responsible for any offences committed? We would welcome clarification on this, if not in the legislation itself but from the Department directly.

Other Issues Electronic processing of Garda Vetting

- We would propose that the proposed legislation would facilitate and support the electronic processing of Garda vetting applications. We believe a secure and safe electronic system would reduce paperwork and workload and reduce the waiting period for vets. One of the current difficulties relates to individuals not properly completing vetting forms which then have to be returned and resubmitted. If the application process were online it would be possible to reject applications until such time as all the relevant information/fields were completed. In particular the draft legislation should provide for the use and acceptance of electronic signatures.