RCNI Supplementary Submission

On the Draft Heads of the

National Vetting Bureau Bill 2011

September 2011

1.0 Introduction

Rape Crisis Network Ireland welcomes this opportunity to provide a supplementary submission to the **Joint Oireachtas Committee on Justice, Equality and Defence** on the General Scheme of the National Vetting Bureau Bill 2011, in addition to its original submission dated 15th August 2011.

1.2 Rape Crisis Network Ireland

As already indicated, RCNI is the national representative body for the rape crisis sector. It is a specialist information and resource centre on rape and all forms of sexual violence. The RCNI role includes the development and coordination of national projects including expert data collection, supporting Rape Crisis Centres to reach best practice standards, and using our expertise to influence national policy and social change**.** We are the representative, umbrella body for our member Rape Crisis Centres who provide free advice, counselling and support for survivors of sexual abuse in Ireland, **including a growing number between the ages of 14 and 18**.

RCNI supports the development of more comprehensive vetting through our policy work and through interagency partnerships. RCNI also houses a Garda-trained Authorised Signatory to facilitate vetting of staff and volunteers.

1.3 The Forthcoming National Vetting Bureau Bill 2011: RCNI General Position

As already indicated, RCNI advocates the enactment of more comprehensive Vetting provisions as recommended by **the Joint Oireachtas Committee on the Constitutional Amendment on Children** in its interim report (September 2008), and the RCNI welcomes the advent of this Bill, in particular the Section on "relevant information". This Bill will now provide a statutory framework for the disclosure of new categories of information and the enhancement of our current vetting arrangements. We look forward to its speedy implementation.

1.4 The Forthcoming National Vetting Bureau Bill 2011: RCNI Specific Observations

RCNI wishes to add the following supplementary observations on the forthcoming Bill, using the same Section numbers and headings as those in the Draft Heads document, for convenience:

1.4.1 Section 5(1)(d) under "Persons required to submit vetting disclosure applications".

With regard to the phrase "regular or ongoing unsupervised contact with children or vulnerable adults", RCNI are concerned that this wording would exclude several categories of employee whose work **places them in settings where they would have irregular, sporadic and unsupervised contact with young people or vulnerable adults.** This contact

could provide such employees with opportunities to build relationships with children and/or vulnerable adults, which could then be exploited later for their own sexual gratification. Examples would include school domestic staff, and school caretakers and gardeners, among others. We submit that the proposed vetting obligations need to include all those employees whose work places them in settings where there are children with whom they could come into contact, regardless of whether that contact is "regular or ongoing unsupervised contact" or not, **or alternatively,** that vetting obligations are placed on **all health-related, educational, recreational and charitable** organisations (both statutory and NGO) employing people who have access to children, regardless of the role of those employees within those organisations, not least because such organisations would be regarded as "safe" for children and vulnerable adults by the general public.

Further on this section, we submit that there are difficulties of interpretation with the phrase "regular or ongoing unsupervised contact". In the rape crisis sector, for example, **most** contacts with clients are one-on-one, however those contacts would not be described internally as "unsupervised", as supervision of all aspects of the work from a very experienced counsellor/therapist and/or manager for all staff and volunteers is the norm. However, this "supervision" refers to one-on-one sessions between employee/volunteer and their counsellor/manager, **not** to the physical presence of the counsellor/manager while the volunteer or staff member is working with the client.

Finally on this section, RCNI submits that the legislation should ensure that vetting obligations should be applied in situations where employees/volunteers have access to **confidential information** relating to children or vulnerable adults, as there is enormous potential for harm to be caused to these groups by the criminal misuse of such information, in particular by experienced and determined "groomers".

1.4.2 Section 5(2) vis a vis Section 11 ("Register of Organisations to have persons vetted"):

RCNI submits that there is an apparent contradiction between the extension of Section 5 to "persons providing accommodation in their private home for children or vulnerable adults, other than family relatives", and the entirety of Section 11. While Section 5(2) places vetting obligations on individuals providing such accommodation, the Register contemplated by Section 11 seems to exclude those are neither themselves employers, nor organisations. We would submit that there are many private individuals offering accommodation to young people in their own home who are **neither employers nor members of any organisation**. It can hardly be the intention of the Oireachtas that the Register should contain no reference to them. RCNI submits therefore that Section 5(2) be amended to make it clear that a private individual offering accommodation to young people in his/her own home, for example as a host of language students, has not only vetting obligations **but also** an obligation to be registered with the National Vetting Bureau. Private individuals subject to

such obligations should also be subjected **in priority** to outside inspections, as they are not part of an organisation with responsibility for their proper recruitment and supervision.

RCNI further submits that it would be helpful to spell out in the Bill that foster care family members over the age of 16 should be subject to vetting obligations.

1.4.3 Section 6: "Employment Positions Excluded from this Act"

Section 6 (b): RCNI submits that this wording excludes childminders who are not minding enough children to become subject to HSE Pre-School Regulations, from vetting obligations, and that it should be amended to include those minding children on a regular professional basis. On the other hand, where children are in the care of a babysitter or childminder at the request of their parent or guardian, RCNI submits that there is no need to restrict this level of parental discretion to the family home. It often happens that children are put in the temporary care of a trusted friend or relative at the parent's request, so that they can be picked up from school/brought to an activity/brought to the friend's home, usually until a parent can pick them up after work. If vetting restrictions were to apply to all such informal situations, it seems likely that parents would object strongly. We submit that such objections would be counterproductive for the safety of our children and vulnerable adults.

Section 6(c), (d): RCNI submits that there are difficulties of interpretation with the phrase "occasional, ad hoc, voluntary basis". Is its meaning cumulative, ie does it mean occasional and ad hoc and voluntary, and is there any difference between the meaning of "occasional" and "ad hoc" and if so, what is it? Would people working near children on occasion be subject to vetting obligations if they were paid for their work? How often is "occasional" as opposed to "regular and ongoing?" In relation to students tutoring other students on an occasional basis, normally this is a completely private situation with no opportunity for any supervision by any responsible third party. RCNI submits that persons over the age of 16 tutoring others in a private, one-on-one setting should be subject to vetting obligations **and** to outside inspection **in priority**.

1.4.4 Section 9(3): It follows from the foregoing submissions in paragraphs1.4.2 and 1.4.3, that RCNI also submits that "premises" should include private residences, if as a matter of fact they **are** the business premises of a private individual, for example someone offering accommodation to under-age foreign language students in their own home.

1.4.4 Section 10(1): "Other Jurisdictions"

RCNI submits that the wording of this section could be strengthened, to put the Garda Commissioner under an obligation to use his/her best endeavours to establish agreements with other jurisdictions to exchange information, to include "relevant information" as defined in these Draft Heads where possible. These endeavours where successful would have the effect over time of making it considerably easier and quicker to vet prospective workers who had spent periods of their lives in other countries.

1.4.5 Section 13: "Duties of Liaison Persons"

RCNI notes that the proposed heads only make provision for the making of regulations in relation to the vetting of persons already employed who have not been vetted in the past five years, but does not as yet place any vetting obligations on anyone in respect of anyone who is not a prospective new employee or volunteer. We are concerned that this may mean that there is no possibility of re-vetting for existing employees, paid or unpaid, after five years as currently recommended, under the new statutory system, and would submit that it is important that re-vetting of existing employees remains a possibility. Indeed, we would submit that as the amount of information available will now increase, it would be better to have all employees re-vetted after three years.

1.4.6 Section 14: "Relevant Information"

RCNI welcomes very much the extension of information obtainable under vetting disclosures to certain types of non-conviction information. We would submit:

Under Section 14 (a): the phrase "investigation of a criminal offence" should explicitly include investigations carried out by others besides An Garda Siochana, especially the HSE;

The definition of "harm" should be aligned with that contained in the Children First Guidelines 2011 and the forthcoming legislation to put those Guidelines on a statutory basis;

Consideration should be given to replacing the phrase "bona fide" with an English one which would have meaning for most people reading it, such as "reasonable";

RCN I would also submit that this subsection should be aligned with the relevant Draft Head of the forthcoming Criminal Law (Withholding of Information on Crimes against Children and Vulnerable Adults) Bill 2011. It should be noted that this subsection confines itself to information **resulting from the investigation of a criminal offence**, while the Withholding Information Draft Heads refer to information about a crime which a persons "knows or believes" to have been committed. While that legislation will place an obligation on anyone with knowledge or belief that a crime has been committed to report such knowledge or belief to the Guards, subject only to reasonable excuse for not doing so, it does not at all follow that there will be a criminal investigation once that information is received. The victim concerned when approached may be unable or decline to make a statement, for any number of good reasons, and there may be no other line of enquiry. It seems to the RCNI that such information **would not** come under the definition of "relevant information" in this subsection, or any other. Some means of closing this gap should be sought and found, if at all possible.

Under Section 14(b): RCNI submits that it is important that the list in Schedule 2 of organisations is broad enough to include as many organisations as possible having an

"investigative or regulatory or disciplinary process or licensing process", so that the full complexity of children's lives is reflected in legislation about information-sharing to protect them.

Under Section 14(c): RCNI submits that the legislation needs to specify that it also covers **undertakings given in Court** in relation to domestic violence proceedings.

1.4.7 Under Section 17: RCNI submits that where the Bureau finds that there is "relevant information" on an individual and that it should be disclosed to the organisation or individual making the vetting application under the procedure in Section 20, such information should then be shared with any **other** organisation who has already made a vetting application about that person previously. This would avoid the danger that unless and until triggered by a **new** application, that vital information would remain unknown to any organisation which had gotten a clean bill of health on a given applicant *before* a second application from a second organisation revealed that new information.

1.4.8 Schedule 1: "Schedule of offences which may be disclosed to Registered Organisations/Liaison Persons. This list will exclude minor offences for road traffic fines-on-the-spot etc".

RCNI submits that this list should include all offences, as although there are many offences minor in themselves, an accumulation of minor offences over time might lead an employer to a different conclusion about whether they should be employed or not – indeed regardless sometimes of the nature of these offences and their relevance or otherwise to the job in question.

1.4.9 "Portability" of National Bureau Vetting: RCNI submits that under the new legislation, any organisation should be able to verify very quickly and reliably whether any prospective new employee or volunteer has been vetted within the last (say) three years, and if that person has been so vetted, no vetting obligation should arise until the expiration of that (say) three year period. At present, a person applying for any new position, part-time, full-time, paid or voluntary where he/she will have substantial unsupervised contact with children or vulnerable adults, should be vetted again, even if he/she has just been vetted positively for another such position. This means substantial duplication of effort by the existing Garda Central Vetting Unit, and such duplication should be avoided as far as possible by the new National Vetting Bureau.

1.5 Miscellaneous Queries re the Draft Heads:

1.5.1 Section 4 (2): "Expenses" – Who Might Have to Pay?

RCNI are very concerned that charges might be imposed in respect of getting employees and volunteers vetted on community and voluntary organisations whose funding is precarious and limited. We would submit that those categories of registered organisations

which might have to pay for vetting should never include any category of charitable, community or voluntary organisations, as their work would never be done without the commitment of large numbers of dedicated volunteers. We would also submit that it would be onerous and counter-productive for many individuals (or their parents or guardians on their behalf) to have to pay for vetting to cover semi-formal contact situations such as private tutoring.

1.5.2 Section 23 (5): "Offences: Falsifications, etc"

RCNI are concerned that it is not clear under this subsection where liability lies, for failure to obtain a disclosure and/or employing a person where there are reasonable grounds for believing that such a person may pose a risk to children or vulnerable adults. Is this a personal or corporate liability, and who exactly is liable, for example, liaison officer, line manager, CEO, or Board of Directors of a registered organisation?

1.6 Practical Suggestions from Rape Crisis Network Ireland:

RCNI would like to offer the following practical suggestions, some of which were already made in our Presentation to the Joint Oireachtas Committee on Justice, Equality and Defence on 21st September 2011:

- Could the vetting system now become electronic? At present, all the forms have to be filled in by hand, and any errors mean that the form has to be returned to the vetting subject to be corrected or re-completed. This is time-consuming and inefficient. Surely in these days of encryption technologies, it should be possible to use or adapt a secure online system which would address the fears that the Guards have of data not being tightly controlled, and which would be designed to allow **no** omissions or invalid answers.

- Consideration could now be given to an electronic database of Garda Vetting Application Forms, accessible **only** to Liaison Persons through a system of Unique Identifying Numbers. In this way, outstanding applications could be tracked by LPs, thus cutting down on the numbers of telephone enquiries to the National Vetting Bureau.

- Could the forms now be rationalised, to provide enough space for current information and to dispense with the need to record one's address under the age of (say) seven?

- The new National Vetting Bureau must be properly resourced, otherwise the recruitment and selection process will be delayed unacceptably for both staff and volunteers. This is particularly important for **small** organisations. That said, RCNI must praise sincerely the hard work, dedication and professionalism of the existing Garda Central Vetting Unit.

- Training and information on new National Vetting Bureau law and procedures should be readily available through some secure online system, for all Liaison Persons, and for all management personnel responsible for recruitment and human resources generally – as well as through face-to-face sessions. This would reduce the amount of time NVB personnel would need to spend answering queries from LPs on the phone. In addition, some general information should be made available online for vetting subjects, as to their rights and responsibilities.

Rape Crisis Network Ireland

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