

SECOND READING SPEECH

Registration to Work with Vulnerable People Bill 2013

Mr Speaker, the *Registration To Work With Vulnerable People Bill 2013* (the Bill) creates a framework to enable the building of a regulatory scheme which once enacted, will become the primary law in Tasmania that provides for background checking as part of a risk assessment of people working with, or wanting to work with, children or vulnerable adults in Tasmania.

The exclusion of people with a known history of certain behaviour is a fundamental part of creating safe environments for vulnerable people.

The aim of the Bill is to reduce the incidence of sexual, physical, psychological, emotional or financial harm or neglect of children or vulnerable adults in Tasmania.

The Bill is in eight parts. The Law sets out key definitions, the requirement for people to apply for registration when they are engaged in an activity that is regulated under the Act; the process for application; risk assessment and registration processes; notification, review and appeal of decisions made by the Registrar; miscellaneous provisions including exemptions from the *Right to*

Information Act 2009 and *Personal Information Protection Act 2004*, and the making of regulations.

The Bill is a significant reform in Tasmania as it introduces a requirement for people who have contact with children and vulnerable adults, in the course of engaging in certain regulated activities, to be registered with a statutory screening unit that will be established in the Department of Justice. It will add an important layer of protection for vulnerable children and adults in Tasmania.

The Bill complements and builds on existing legislation and will replace current checking requirements across a range of regulated activities.

In line with obligations under the *National Framework for Creating Child Safe Environments – Organisations, Employees and Volunteers*, checking systems for people working with children have been established or are being developed in all other Australian jurisdictions.

The protection of the rights of children and vulnerable adults in Tasmania is a legitimate objective and pressing social need. The Government considers that the creation of a checking system for people who work with, or want to work

with, vulnerable people, with appropriate safeguards, is a proportionate response to the protection of those rights.

It is also an issue important to the Tasmanian community. Community organisations actively engaged working with vulnerable people, for example the Scouts Association, as well as organisations that passionately advocate for their safety, such as Bravehearts, have persistently called for the establishment of a background checking and risk assessment system in Tasmania.

The basic premise of background checking is that the past behaviour of an individual provides an indication of the possible future behaviour of that individual. Examples or patterns of abusive or inappropriate behaviour can sometimes be evident in information available for assessment, which includes an individual's criminal record or employment history.

We know that offenders in our community are not otherwise easily identifiable. They are usually the 'average' person from any background. They often try hard to impress adults they come in contact with, in order to win-over trust and respect. They usually interact easily with children.

There have been documented cases in which a person with a history of abusive behaviour has gained access to vulnerable people because their previous history was not known to their employer or other vetting agency. In the worst cases, these people have gone on to commit further abuse or neglect. As we know, Mr Speaker, the harm caused by such behaviour can lead to a lifetime of untold sadness for the affected individual. In the most extreme circumstances, the consequences can lead to tragedy, the victim taking their own life.

There is a current situation known to me where a person had been helping out with a junior football club. This person allegedly had engaged in child sexual abuse over 20 years ago. As there was no mechanism, however, to identify a risk, such as what the Bill before the House will provide, this person has since adversely affected the lives of at least fifteen young men. Not only did someone they trust fail these boys, but so too did a system that had no capacity to prevent the club's administration from putting this person in contact with children.

Evidence suggests around half of sex offenders gain access to their victims through children's organisations.

The effects of sexual abuse on children is significant, and the negative impacts can be experienced both in the short and long-term.

Short-term effects include poor school achievement, depression, increased self-blame for negative events, anxiety, aggression, regressive behaviour, and dissociation.

Research indicates that the long term effects of sexual abuse can include significantly higher rates of psychiatric disorder, major depression, suicide attempts, alcohol dependence, substance abuse, social anxiety and difficulties with interpersonal relationships.

It is a sad fact that there are also adults in our community, who, due to the need for the provision of services or support, are vulnerable to abuse by paid or unpaid workers. In particular, people with physical, intellectual, or psychiatric disabilities face high risks of sexual assault and exploitation. Evidence indicates that this applies particularly to women living with disability who, are more than twice as vulnerable to abuse as women without a disability.

Some of our older Tasmanians are also vulnerable to abuse and neglect. This abuse can be physical, financial, psychosocial, sexual or neglect.

That is why this government has developed and is implementing a comprehensive Elder Abuse Prevention Strategy, to protect those Tasmanians made vulnerable, physically or mentally, by the aging process.

While vulnerable members of the community are awarded some protections under legal frameworks such as the *Anti-Discrimination Act 1998*, or the *Disability Services Act 2011*, these Acts do not regulate background checking and risk assessment.

Therefore, the practices and processes used by organisations and agencies when undertaking background checking and risk assessment of prospective employees and volunteers are not consistent or centralised and the background information received is often limited to a person's criminal history only.

We must acknowledge that those current limitations on our background checking processes potentially expose vulnerable Tasmanian children and adults to harm.

Through the *Teacher's Registration Act 2000*, Tasmania allows for background checking however this applies to only part of the workforce involved with our children and is not as comprehensive as that in the Bill before the House.

Some organisations have policies in place to assess employees or volunteers who work with vulnerable people, with particular attention to the risk of harm they may pose to vulnerable people. Categories of employment groups subject to this type of checking include:

- Childcare workers
- Child protection workers
- Health care workers and
- People involved in the delivery of community services

Many government contracts with non-government organisations ensure people engaged by the organisations to work with vulnerable people do not pose a risk to the vulnerable person.

Many individual organisations in the community also recognise that background checking of employees or volunteers who are in contact with vulnerable people is an important part of creating a safe working environment. As checks are not mandatory, individual policies vary in terms of who is checked, what is checked, how often checks are conducted and what information will lead to an exclusionary decision. Any costs incurred to undertake background checks are either borne by the organisation, passed to the employee, or passed to the volunteer. Organisations are also subject to the costs and liabilities that may arise from their individual checking decisions, particularly if they have – as a result of a decision based on limited information – failed in their duty of care to those to whom they are providing support.

The background checking and risk assessment process detailed in the Bill provides for the centralisation and coordination of background checking and risk assessment. The Bill also provides for a broader basis on which to conduct background checking that includes a person’s criminal history, non-conviction information, relevant offences and other pertinent information.

This more sophisticated, nationally consistent and aligned approach will enable us to take all reasonable measures to make our community safer for vulnerable

Tasmanians and ensure we have the best possible people working with them, either as employees or volunteers.

The checking system introduced through this Bill is aimed at having a minimal impact on the financial capacity of individuals or organisations.

It is a privilege, and a great responsibility, to work with people who need extra care and support, or children in their learning and play environments. While we have sought to minimise the expense of registration, to undertake this important nurturing, enabling responsibility will come at some cost to employees and volunteers.

Volunteers will be registered at minimal cost to the individual or organisation. While the overall aim of the checking system will be to reduce the risk of harm to vulnerable people, this is to be achieved without discouraging individuals or organisations from providing services to vulnerable people across the community. Volunteers play an extremely valuable role in creating a more inclusive community, and we do want to continue to encourage and foster Tasmania's proud record of volunteerism.

A rigorous and transparent background check and risk assessment process will enable appropriate and defensible decision making. Background checking and risk assessment will complement, but not replace an organisation's recruitment practices and other policies to create safe places for children, vulnerable adults, employers, employees and volunteers.

This legislation cannot be seen as the panacea in the protection of our vulnerable citizens. It is only one important component of creating a safer Tasmania, where the fundamental rights of all citizens are respected and protected. Protecting the vulnerable is a responsibility we all share. Government and Parliament play a key role as evidenced by this debate today, but creating safe environments for vulnerable people is a broad community responsibility.

The Bill also provides protective measures for current and future employees and volunteers through ensuring an individual's career and/or volunteer opportunities are not unduly influenced by non-relevant criminal information, such as, parking infringements.

On a personal note, it is a matter of public record that if this were to be the case – I would never work with another vulnerable Tasmanian!

The State has obligations under international Conventions. The Bill complements relevant Articles found in International Conventions; in particular Article 19.1 and 23.2 of the *Convention on the Rights of the Child*, Article 16 of the *Convention on the Rights of Persons with Disabilities* and Article 6.1, 7 and 26 of the *Covenant on Civil and Political Rights*.

In line with those obligations and for the purpose of the Bill, vulnerable people are defined as children under the age of eighteen years and adults who through their circumstances need or wish to access a regulated activity or service.

The Bill itself has been modelled on equivalent legislation from the Australian Capital Territory, building on a successful model, and providing for flexibility through regulated activities and other operational details to be prescribed following further community consultation. It provides for the overarching legislative and administrative arrangements to establish and support a centralised screening process in Tasmania. The exact nature of all regulated activities, and when people will be required to be registered will be provided

for in the Regulations. Consequently, people engaging in regulated activities will only be required to be registered upon adoption of the relevant Regulations.

It is anticipated that, through the Regulations, the requirement for registration would commence in different years depending on the type of activity or service a person works in.

Phasing in regulated activities in this way will allow for further consultation with the community to assist in determining priority and in determining the need to expand or modify the list of regulated activities as services change with time.

In the first year of its operation, the provisions in this Bill will apply to all employees and volunteers who work with children. Over time, it will capture people living with disability, older Tasmanians, people accessing specialist homelessness services, Tasmanians living with mental illness and humanitarian entrants.

The Bill will apply to people having contact with children and vulnerable adults accessing a regulated activity or service. Certain people will require

background checking in order to be registered to work or volunteer with vulnerable people.

Some of the ways a person can engage in an activity are as an employee, a contractor or subcontractor, a consultant, a self-employed person, an apprentice, a volunteer, an agent, a supervisor, a person on work experience placement for an educational or vocational course, a person carrying out work for a sentence, including a community service order, a member of a management committee of an un-incorporated body or association, or a Minister of religion for a religious organisation.

An employer is an agency, organisation or individual who engages an employee or volunteer in a regulated activity or service which causes that employee or volunteer to have contact with vulnerable people.

A person applying for registration will be required to voluntarily provide approval to access their criminal history, all non-conviction information, and any other information that they believe will assist the Registrar to reach a decision.

Other information can include information from an employer regarding policies or procedure that mitigate risk an employee or volunteer may pose to vulnerable people accessing the services or activities provided by the organisation or agency.

The Registrar will also have the power to gather information from a range of sources, both from within Tasmania and other jurisdictions, such as previous employers or organisation contacts, to assist in deciding whether to register the person.

The Bill proposes that there will be two types of registration:

- general registration allows you to move between all regulated activities within Tasmania for up to three years without the need to reapply and
- conditional registration imposes specific conditions on your registration; for example, you may not be able to transport vulnerable people due to your prior driving offences such as your license being cancelled as a result of drink driving offences.

Registration can be based on a specific role within an organisation, whether it be as an employee or volunteer.

In practice, most applicants for registration to work with vulnerable people will receive general registration.

If an applicant only wished to be assessed for role-based registration, they can indicate this preference with the support of their employer in their application form.

Of course, some applicants may be issued with a negative assessment, meaning they are not deemed eligible for registration. A person who is not satisfied with the decision may firstly request a review by the Registrar and if still not satisfied may apply to the Magistrates Court (Administrative Appeals Division) for a review of the negative assessment.

The employer or organisation will not be informed of the reasoning or rationale used by the Registrar in determining any negative assessment or conditions imposed on an individual's registration. This is in order to protect the individual privacy of the applicant.

Mr Speaker, the State of Tasmania would be negligent in its duty of care towards vulnerable people if it did not impose penalties for a person engaging

in a regulated activity without appropriate registration or who fails to disclose information in the knowledge it would prevent registration. Therefore the Bill provides for such an offence.

It is also important to state that the Bill proposes exemptions that a person is not required to be registered to engage in a regulated activity. Those exemption include, if a person is:

- under 16 years of age
- engaged in the activity for no more than 3 days in any 4-week period, and 7 days in any calendar year
- a person who is not registered under the Act may be involved in a regulated activity when there is more (other than an overnight camp for children) than incidental contact when:
 - i another person who is registered under the Act is present or
 - ii a person who is also exempted from the requirement to be registered is present.
- registered under another state's law *and* the activity is of a similar nature to the activity the person is allowed to engage in under the other state's law; *and* the person is engaged in the activity for no more than 28 days in any 12-month period

- a close relative of each vulnerable person taking part in the activity with whom the person has contact; unless a child has been placed in their care under formal kinship care arrangements for the purposes of the *Children, Young Persons and Their Families Act 1997*
- engaged in the activity in the same capacity as a vulnerable person. *For example: players in a sporting team*
- engaged in the regulated activity for an emergency, within the meaning of the *Emergency Management Act 2006* or
- engaged in the regulated activity for a Tasmanian, national or international event and the Minister has declared, by order, that the person, or persons of a class which includes the person, are not required to be registered for the regulated activity

In conclusion, Mr Speaker, it is important that we are very clear as to the key elements of this Bill:

- the implementation of a centralised screening process provides greater benefits to vulnerable people and to individuals and organisations working with them than any checking process currently available in Tasmania
- the Bill establishes mandatory minimum checking standards that will apply across all regulated activities. Volunteers and employees over the age of

16 will be required to undergo background checking and risk assessment if they wish to work with vulnerable people in the future

- in cases where there is little or no information indicating risk to vulnerable people, applicants will be registered for three years and provided with an identifying card. The card will be similar to a driver's license including a photograph and will be transferable across employment and volunteering activities within Tasmania
- by granting individuals with what could be considered an 'occupational license' to work with children, to work with vulnerable people, or to work with both children and vulnerable people, vulnerable people and their families and carers can be assured that all individuals delivering vital services have been subject to a background checking and risk assessment process
- Tasmania is the last State or Territory to introduce a working with children check. Consequently, in the development of the supporting legislation and screening protocols we have the benefit of learning from the successes as well as the challenges encountered and overcome in other jurisdictions

Mr Speaker, we recognise that vulnerability comes in many forms. That is why we've extended the scope of this background checking and risk assessment framework beyond that of other jurisdictions. Should this Bill pass, the A.C.T. and Tasmania will be the only jurisdictions to extend its protective registration framework to all vulnerable people, including children.

- the draft Bill provides for the overarching legislative and administrative arrangements to support a centralised screening process in Tasmania. The proposed Bill defines 'vulnerable people', 'regulated activities', who is required to seek registration, the role of the registrar, the period and conditions (if any) of registration, and the review of decisions
- a centralised screening system provides rigour and consistency across Tasmania to employees and volunteers, that respects the right to privacy, and offers them the capacity for a fair and transparent review of decisions
- applicants who are unhappy with a decision made by the Registrar have the right to have the decision reviewed under the specific circumstances proposed in the Bill and
- the Bill provides for a rigorous framework supported by a range of offences that will act as a deterrent to those persons or organisations wishing to operate outside that framework.

Mr Speaker, I commend this Bill to the House.