

TASMANIA

REGISTRATION TO WORK WITH VULNERABLE PEOPLE AMENDMENT BILL 2018

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REGISTRATION TO WORK WITH VULNERABLE PEOPLE AMENDMENT BILL 2018

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

SHANE DONNELLY, *Clerk of the House*
22 May 2019

*(Brought in by the Minister for Justice, the Honourable Elise
Nicole Archer)*

A BILL FOR

An Act to amend the *Registration to Work with Vulnerable People Act 2013*

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Registration to Work with Vulnerable People Amendment Act 2018*.

2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

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3. Principal Act

In this Act, the *Registration to Work with Vulnerable People Act 2013** is referred to as the Principal Act.

4. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of *another jurisdiction*:

category of registration means a category of registration that is specified in section 4A or that is prescribed in accordance with that section;

- (b) by inserting the following definition after the definition of *child*:

class of vulnerable persons, in relation to a category of registration, means the class of persons specified in section 4A(3) in respect of the category of registration;

- (c) by inserting the following definitions after the definition of *criminal intelligence information*:

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determined, in relation to a regulated activity, means determined under section 7A;

disqualifying offence means an offence that is specified in an order under section 54D to be a disqualifying offence;

- (d) by inserting the following definition after the definition of *named employer*:

NDIS participant means a participant, within the meaning of the *National Disability Insurance Scheme Act 2013* of the Commonwealth;

- (e) by omitting the definition of *regulated activity* and substituting the following definition:

regulated activity means –

- (a) an activity or service prescribed for the purposes of section 4A in respect of a category of registration; and
- (b) an activity or service determined under section 7A in respect of a category of registration;

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(f) by inserting the following paragraph after paragraph (b) in the definition of *relevant offence*:

(ba) a disqualifying offence; or

5. Section 4 amended (*Vulnerable person defined*)

Section 4 of the Principal Act is amended by omitting paragraph (b) from the definition of *vulnerable person* and substituting:

(b) an adult in respect of whom a regulated activity is provided.

6. Section 4A inserted

After section 4 of the Principal Act, the following section is inserted in Part 1:

4A. Categories of registration

(1) For the purposes of this Act, the following are the categories of registration:

(a) child-related activity;

(b) vulnerable adult-related activity;

(c) child and vulnerable adult-related activity;

(d) child and vulnerable adult-related (NDIS endorsed) activity;

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- (e) a category of activity or service prescribed by the regulations as a category of registration.
- (2) For the purposes of this Act, an activity or service may be prescribed, or determined, in respect of a category of registration.
- (3) An activity or service may only be prescribed, or determined, in respect of –
- (a) the category of registration referred to as child-related activity – if the activity or service relates to or involves a child; or
 - (b) the category of registration referred to as vulnerable adult-related activity – if the activity or service relates to or involves an adult who is a vulnerable person; or
 - (c) the category of registration referred to as child and vulnerable adult-related activity – if the activity or service relates to or involves a vulnerable person other than an NDIS participant; or
 - (d) the category of registration referred to as child and vulnerable adult-related (NDIS endorsed) activity – if the activity

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or service relates to or involves
an NDIS participant; or

- (e) a category of activities or services prescribed by the regulations as, or determined under section 7A in respect of, a category of registration – if the activity or service relates to or involves a vulnerable person.

7. Section 6 amended (*Contact with a vulnerable person defined*)

Section 6 of the Principal Act is amended by omitting paragraph (b) from the definition of *contact* and substituting:

- (b) is more than incidental, within the meaning of section 6 of the *National Disability Insurance Scheme (Practice Standards – Worker Screening) Rules 2018* of the Commonwealth, to taking part in the regulated activity; and

8. Section 7A amended (*Interim regulated activity*)

Section 7A(1) of the Principal Act is amended by inserting “in respect of a category of registration” after “regulated activity”.

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9. Section 9 substituted

Section 9 of the Principal Act is repealed and the following section is substituted:

9. Employer may require registration

- (1) Nothing in this Act prevents an employer from requiring an employee to be registered in a category of registration while engaging, on behalf of the employer, in a regulated activity in respect of a member of the class of vulnerable persons to whom the category relates, even though the employee is a person that is not required to be registered to engage in the regulated activity under section 15(2).
- (2) If an employer requires an employee to be registered as specified in subsection (1), the provisions of this Act, apart from Part 3, in relation to registration apply in relation to the employee as if the employee were required by this Act to be so registered.

10. Section 11A amended (Functions and powers of Registrar)

Section 11A(2) of the Principal Act is amended by omitting “including, but not limited to, facilitating education in relation to the operation of this Act and related matters”.

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11. Section 11B amended (Register)

Section 11B(2) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (b) “the regulated activities for” and substituting “the categories of registration in”;
- (b) by omitting from paragraph (g) “the regulated activities” and substituting “the categories of registration”.

12. Section 15 substituted

Section 15 of the Principal Act is repealed and the following section is substituted:

15. Person required to be registered to engage in regulated activity

- (1) Subject to subsection (2), a person is required to be registered in a category of registration if the person engages, in relation to a person who is a member of the class of vulnerable persons to whom that category of registration relates, in a regulated activity that is prescribed, or determined, in respect of that category of registration.
- (2) However, a person is not required to be registered in relation to a regulated activity that is prescribed or determined in respect of a category of registration –

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- (a) if –
- (i) the person is registered under a corresponding law; and
 - (ii) the regulated activity is substantially similar to an activity or service that the person is allowed, by that registration, to engage in under the corresponding law; and
 - (iii) the class of persons in relation to whom the person engages in a regulated activity is substantially similar to the class of vulnerable persons to whom the registration under the corresponding law relates; and
 - (iv) the registration under a corresponding law has not been renewed after the person has, in the opinion of the Registrar, become a resident of this State; or
- (b) if the person is engaged in the regulated activity as –

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- (i) a police officer, including a police officer (however described) of another jurisdiction; or
 - (ii) an AFP appointee within the meaning of the *Australian Federal Police Act 1979* of the Commonwealth; or
- (c) if the person is –
- (i) engaged in the regulated activity (other than a regulated activity that consists of an overnight camp, excursion or stay) for a particular employer in circumstances that do not involve the person being in contact with a vulnerable person; and
 - (ii) so engaged in the regulated activity for that particular employer in those circumstances on not more than 7 days in any calendar year; or
- (d) if the person is a member of a class of persons prescribed by the regulations as not being required to hold registration under this Act

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in a category of registration in respect of which the regulated activity is prescribed or determined; or

- (e) if the person is engaged in a regulated activity in circumstances that are prescribed in the regulations as circumstances in which a person is not required to hold registration under this Act in a category of registration in respect of which the regulated activity is prescribed or determined.
- (3) For the purpose of determining the number of days for which a person is engaged in a regulated activity, any engagement in the regulated activity on a particular day, regardless of the actual time spent engaging in that activity on that day, is taken to be engagement in the regulated activity on that day.
- (4) Subsection (2) does not apply to a person engaged in a regulated activity if –
- (a) the person has been provided with a negative notice in respect of an application for registration in a category of registration in respect of which the regulated activity is prescribed or determined; or

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- (b) the person's registration in a category of registration for which the regulated activity is prescribed or determined has been cancelled under section 51.

13. Section 16 amended (Offence to engage in regulated activity unless registered)

Section 16(1) of the Principal Act is amended as follows:

- (a) by inserting "in a category of registration" after "a registration";
- (b) by inserting "in relation to the class of vulnerable persons to whom that category of registration relates" after "that regulated activity".

14. Section 17 amended (Offence for employer to engage unregistered person in regulated activity)

Section 17(2) of the Principal Act is amended as follows:

- (a) by inserting "in relation to a class of vulnerable persons" after "engage in a regulated activity";
- (b) by inserting "in a category of registration" after "and is not so registered with a registration";

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- (c) by inserting “in relation to the class of vulnerable persons” after “of registration allowing that engagement”;
- (d) by inserting “in relation to a class of vulnerable persons,” after “the regulated activity”;
- (e) by inserting in paragraph (b) “in relation to that class of vulnerable persons” after “engagement”.

15. Section 18 amended (Unregistered person may engage in regulated activity in certain supervised employment circumstances)

Section 18 of the Principal Act is amended as follows:

- (a) by inserting the following definition before the definition of *eligible person* in subsection (1):

approved risk management plan
means a plan in a form approved
by the Registrar for the purposes
of this section;

- (b) by inserting the following paragraphs after paragraph (b) in subsection (3):
 - (ba) the named employer is satisfied that the eligible person has applied for registration under section 19 and that the

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application has not been determined; and

(bb) the named employer –

(i) has an approved risk management plan that is relevant to the eligible person being engaged in that regulated activity for that named employer; and

(ii) is implementing that plan in respect of the eligible person while the eligible person is engaged in that regulated activity under this section; and

(c) by inserting the following subsections after subsection (5):

(6) An applicant who is the subject of a determination made under subsection (4) may, at any time after 6 months after the notice in respect of that determination is provided to the applicant under subsection (5), apply to the Registrar to review that determination.

(7) On receiving an application under subsection (6) to review a determination, the Registrar may –

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(a) confirm that
determination; or

(b) reverse that
determination.

(8) On completing a review under subsection (7), the Registrar is to provide the applicant, and all relevant named employers notified under subsection (5) in relation to the original application, with a notice stating whether or not the applicant is entitled to engage in the regulated activity before the person is registered.

16. Section 18A amended (Unregistered person may engage in regulated activity in special circumstances)

Section 18A of the Principal Act is amended as follows:

(a) by inserting “, in relation to a class of vulnerable persons,” after “a relevant regulated activity” in the definition of *relevant regulated activity* in subsection (1);

(b) by inserting in subsection (2) “, in relation to a class of vulnerable persons,” after “engage in”;

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- (c) by inserting in subsection (2)(b) “, in relation to a class of vulnerable persons,” after “engaging”;
- (d) by inserting in subsection (3) “, in relation to a member of a class of vulnerable persons,” after “engaged”;
- (e) by inserting in subsection (3) “, in relation to a member of the class of vulnerable persons,” after “any engagement”.

17. Section 19 amended (Application for registration)

Section 19 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “in respect of one or more categories of registration” after “Act”;
- (b) by omitting subsection (3) and substituting the following subsections:
 - (3) Despite subsection (1), a person who has been provided with a negative notice in relation to an application in a category of registration, or whose registration in a category of registration has been cancelled, may only apply under that subsection for registration in that category if –

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- (a) the application is made after 5 years after the day on which the person was provided with the negative notice or the cancellation of the registration took effect; or
 - (b) the Registrar is satisfied that there has been significant and exceptional change in the person's circumstances since that day.
- (4) If an application by a person for registration has been refused, or the registration of a person has been cancelled, under a corresponding law, the provisions of subsection (3) apply to that person as if the refusal or cancellation were the provision of a negative notice or cancellation under this Act.

18. Section 20 amended (Contents of application for registration)

Section 20(1) of the Principal Act is amended by inserting after paragraph (d) the following paragraph:

- (daa) the category of registration, or the categories of registration, in which the

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applicant is applying to be registered;
and

19. Section 22 amended (Requiring additional information)

Section 22 of the Principal Act is amended as follows:

(a) by inserting the following subsection after subsection (1A):

(1B) For the purposes of subsection (1) –

(a) the additional information or additional documents that may be required under that subsection include, but are not limited to, references or medical reports in relation to the applicant; and

(b) a requirement may relate to additional information or additional documents that do not exist at the time at which the requirement is made.

(b) by omitting from subsection (2) “refuse to consider the application further” and substituting “dismiss the application”;

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(c) by inserting the following subsection after subsection (2):

- (3) If an application is dismissed under subsection (2), the Registrar is to notify, in writing, the applicant and any employer specified in the application, of that dismissal.

20. Section 23 inserted

After section 22 of the Principal Act, the following section is inserted in Part 4:

23. Registrar may request interview

- (1) The Registrar may request that an applicant attend an interview to provide additional information that the Registrar considers he or she needs to determine the application.
- (2) If an applicant agrees to attend an interview requested under subsection (1), the applicant may have another person present during the interview to provide the applicant with support.
- (3) If an applicant does not comply with a request under subsection (1), the Registrar may dismiss the application.
- (4) If an application is dismissed under subsection (3), the Registrar is to notify,

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in writing, the applicant and any employer specified in the application, of that dismissal.

21. Sections 24A and 24B inserted

After section 24 of the Principal Act, the following sections are inserted in Part 4:

24A. Offence for applicant to fail to notify change of certain details

(1) An applicant must notify the Registrar of any change in information relating to his or her name, address or employer –

(a) if –

(i) a form is approved under section 59 for this notification – in that form; or

(ii) a form is not approved under section 59 for this notification – in writing; and

(b) within 10 working days after the day on which the change occurs.

Penalty: Fine not exceeding 10 penalty units.

(2) It is sufficient compliance with subsection (1) if the applicant provides

notification of the change of name, address or employer by providing it to the Registrar –

- (a) directly, in a manner approved by the Registrar; or
- (b) by lodging it with that part of the responsible Department in relation to the *State Service Act 2000* known as Service Tasmania.

24B. Withdrawal of application

- (1) An applicant may withdraw his or her application for registration by notice, in writing, to the Registrar.
- (2) If an applicant withdraws an application under subsection (1) after one or more of the circumstances specified in subsection (3) occur, the Registrar is to –
 - (a) record the withdrawal of the application on the Register; and
 - (b) notify the person, and any named employer specified in the application, in accordance with section 32(3) as if the Registrar had refused to register the person under that section.
- (3) For the purposes of subsection (2), the following circumstances are specified:

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- (a) the applicant has been provided with a notice, under section 18(5), stating that the applicant is not entitled to engage in the regulated activity before the person is registered;
- (b) the applicant is required to provide additional information or additional documents under section 22;
- (c) the applicant has been requested to attend an interview under section 23;
- (d) the applicant has been provided with a proposed negative notice under section 30.

22. Section 30 amended (Proposed negative notices)

Section 30 of the Principal Act is amended by inserting after subsection (3) the following subsection:

- (4) This section does not apply if the Registrar conducts a risk assessment of a person and is satisfied that the person has been convicted of a disqualifying offence.

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23. Section 32 amended (Refusal to register a person and negative notices)

Section 32 of the Principal Act is amended by inserting after subsection (2) the following subsection:

- (2A) The Registrar is to refuse to register a person if the Registrar is satisfied that the person has been convicted of a disqualifying offence.

24. Section 33 amended (Registration)

Section 33(2)(a) of the Principal Act is amended by omitting subparagraph (i) and substituting the following subparagraph:

- (i) in a category of registration; and

25. Section 33A inserted

After section 33 of the Principal Act, the following section is inserted in Division 1:

33A. Authority of registration

Unless otherwise specified in respect of a person's registration, the registration of a person in a category of registration that relates to members of a class of vulnerable persons authorises the person to engage, in relation to members of that class of vulnerable persons, in any regulated activity prescribed or

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determined in respect of that category of registration.

26. Section 34 amended (Term of registration)

Section 34(1) of the Principal Act is amended by omitting “3 years” and substituting “5 years”.

27. Section 35 amended (Conditional registration)

Section 35 of the Principal Act is amended by inserting after subsection (1) the following subsection:

(1A) Despite subsection (1), the regulations may prescribe a category of registration in respect of which a registration may not be made subject to a condition.

28. Section 42 amended (Registration card)

Section 42(2) of the Principal Act is amended by inserting after paragraph (d) the following paragraph:

(daa) the category of registration; and

29. Section 44 amended (Surrender of registration card)

Section 44 of the Principal Act is amended as follows:

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(a) by inserting the following subsections after subsection (1):

(1A) The Registrar may, by notice in writing to a person whose registration has been suspended under section 51, require the person to surrender his or her registration card.

(1B) A person to whom notice of a requirement is given under subsection (1A) must comply with that requirement within 10 working days after notice of the requirement is given to the person.

Penalty: Fine not exceeding 50 penalty units.

(b) by inserting in subsection (2) “or subsection (1B)” after “subsection (1)”.

30. Sections 46A and 46B inserted

After section 46 of the Principal Act, the following sections are inserted in Division 3:

46A. Requiring information – registered person

(1) The Registrar may, by notice in writing to a registered person, require the registered person to provide information

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or documents that the Registrar considers he or she needs, for the purposes of –

- (a) conducting an additional risk assessment in relation to the registered person; or
 - (b) determining whether or not the registered person has engaged in reportable behaviour and whether or not the person poses a risk to a vulnerable person in light of that behaviour.
- (2) A requirement under subsection (1) may specify a period of not less than 15 working days within which the registered person is to provide the additional information or additional documents.
- (3) For the purposes of subsection (1) –
- (a) the additional information or additional documents that may be required under that subsection include, but are not limited to, references or medical reports in relation to the registered person, and
 - (b) a requirement may relate to additional information or additional documents that do not exist at the time at which the requirement is made.

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- (4) If a registered person does not comply with a requirement under subsection (1), the Registrar may determine to cancel the registered person's registration.
- (5) If the Registrar determines to cancel a registered person's registration under subsection (4), the Registrar is to provide, in accordance with section 50, notice in writing of the intention to cancel the person's registration and, if appropriate, is to cancel, in accordance with section 51, the person's registration.

46B. Requesting interview – registered person

- (1) The Registrar may request a registered person to attend an interview to provide information that the Registrar considers he or she needs, for the purposes of –
 - (a) conducting an additional risk assessment in relation to the registered person; or
 - (b) determining whether or not the registered person has engaged in reportable behaviour and whether or not the person poses a risk to a vulnerable person in light of that behaviour.
- (2) If a registered person does not comply with a requirement under subsection (1), the Registrar may determine to cancel the registered person's registration.

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- (3) If the Registrar determines under subsection (2) to cancel a registered person's registration, the Registrar is to provide, in accordance with section 50, notice in writing of the intention to cancel the person's registration and, if appropriate, is to cancel, in accordance with section 51, the person's registration.

31. Section 48A inserted

After section 48 of the Principal Act, the following section is inserted in Division 3:

48A. Offence for employer to fail to notify change of employee or volunteer engagement

- (1) An employer must, within 10 working days after an employee or volunteer commences or ceases to be engaged in a regulated activity for that employer, notify the Registrar, in writing, of the commencement or cessation, as the case may be.

Penalty: Fine not exceeding 10 penalty units.

- (2) It is sufficient compliance with subsection (1) if the employer provides notification of the commencement or cessation –
- (a) if –

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- (i) a form is approved under section 59 for this notification, in that form; or
 - (ii) a form is not approved under section 59 for this notification, in writing; and
- (b) by providing it to the Registrar –
- (i) directly, in a manner approved by the Registrar; or
 - (ii) by lodging it with that part of the responsible Department in relation to the *State Service Act 2000* known as Service Tasmania.

32. Section 49 amended (Grounds for suspension or cancellation of registration)

Section 49(3) of the Principal Act is amended by omitting “in relation to a regulated activity”.

33. Section 49A amended (Immediate suspension in certain circumstances)

Section 49A of the Principal Act is amended by inserting after subsection (1) the following subsections:

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- (1A) A registered person who is the subject of a determination to suspend made under section 49(2) may, after 6 months after the notice in respect of that determination is given to the registered person under subsection (1)(a), apply to the Registrar to review that determination.
- (1B) On receiving an application to review under subsection (1A), the Registrar may –
 - (a) confirm that determination; or
 - (b) reverse that determination.
- (1C) On completing a review under subsection (1B), the Registrar is to give to the registered person, and all relevant employers notified under subsection (1) in relation to the suspension, a notice stating whether or not the registered person is entitled to engage in a regulated activity while an additional risk assessment is conducted.

34. Section 51 amended (Suspension or cancellation of registration)

Section 51 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “in relation to a regulated activity”;

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(b) by inserting the following subsection after subsection (1):

(1A) The Registrar must cancel a person's registration if the Registrar is satisfied that the person has been convicted of a disqualifying offence.

(c) by omitting from subsection (2) "subsection (1)" and substituting "subsection (1) or (1A)".

35. Section 52 amended (Surrendering registration)

Section 52 of the Principal Act is amended as follows:

(a) by inserting in subsection (1) "under this Act" after "registration";

(b) by omitting from subsection (1) "a written";

(c) by omitting from subsection (1) "together with his or her registration card";

(d) by inserting the following subsection after subsection (1):

(2) The surrender of the registration takes effect on the day on which the notice surrendering the registration is provided to the Registrar.

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(e) by omitting subsection (3) and substituting the following subsections:

(3) A person who surrenders his or her registration in accordance with subsection (1) must surrender his or her registration card to the Registrar no later than 10 working days after the surrender takes effect.

Penalty: Fine not exceeding 50 penalty units.

(3A) It is a defence in proceedings for an offence against subsection (3) if the defendant establishes that, at the relevant time, the registration card –

(a) was lost; or

(b) had been stolen; or

(c) had been destroyed by another person or destroyed accidentally by the defendant.

36. Section 52A amended (Registrar may require or request information, &c.)

Section 52A of the Principal Act is amended as follows:

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- (a) by omitting from subsection (1) “Part 5 or 6” and substituting “this Act”;
- (b) by inserting the following paragraph after paragraph (b) in subsection (3):
 - (ba) a registry established by the Commonwealth for the purposes of recording information relating to the registration, licensing or other authorisation of persons enabling them to work in an activity, or provide a service, that is a regulated activity, whether or not for financial or other material benefit or reward;

37. Section 53 amended (Review of decisions)

Section 53(1) of the Principal Act is amended by omitting paragraph (a) from the definition of *reviewable decision* and substituting:

- (a) a refusal under section 32(1) or (2) to register a person; or

38. Section 53A substituted

Section 53A of the Principal Act is repealed and the following section is substituted:

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53A. Duty of reporting body to notify of reportable behaviour

- (1) If a reporting body becomes aware by any means, or suspects on reasonable grounds, that a registered person has engaged, or may have engaged, in reportable behaviour, the reporting body is to notify the Registrar, as soon as practicable, of the name and other identifying particulars of the person and of the behaviour.
- (2) Subsection (1) applies whether or not the reporting body became aware of the reportable behaviour before or after the commencement of this Act.

39. Section 54B amended (Registrar may disclose certain information)

Section 54B(1) of the Principal Act is amended by omitting “responsible, under an Act,” from paragraph (b) of the definition of *registering authority* and substituting “responsible”.

40. Section 54D inserted

After section 54C of the Principal Act, the following section is inserted in Part 8:

54D. Disqualifying offence order

- (1) The Minister may, by order, specify an offence under a law of this State, another

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State, a Territory or the Commonwealth, or of another country or part of a country, to be a disqualifying offence.

- (2) An order made under subsection (1) is a statutory rule within the meaning of the *Rules Publication Act 1953*.
- (3) Sections 47(3), (3A), (4), (5), (6) and (7) of the *Acts Interpretation Act 1931* apply to an order as if the order were regulations.
- (4) The Registrar is to make an order made under subsection (1) available to the public for inspection in the manner determined by the Registrar.
- (5) On the request of a person, the Registrar is to provide to the person a copy of an order made under subsection (1).

41. Repeal of Act

This Act is repealed on the three hundred and sixty fifth day from the day on which all the provisions of this Act commence.