

FACT SHEET

Child Care Amendment Bill 2014

The Child Care Amendment Bill 2014 (the Bill) makes amendments to the *Child Care Act 2001* as a consequence of, and to facilitate, the implementation of the *Registration to Work with Vulnerable People Act 2013* (the RWVP Act).

The RWVP Act was passed by Parliament late last year and commenced on 1 July 2014. The RWVP Act provides a centralised system for the background checking and registration of people who work (including voluntary work), or want to work, in various regulated activities with vulnerable people. The background checking and registration process is managed by a screening unit within the Department of Justice.

The regulated activities are being rolled out in a staged implementation with child care services being the first of the regulated activities to commence. Child care service is defined in the regulations as meaning:

- An education and care service as defined in clause 5 of the Education and Care Services National Law (Tasmania) within the meaning of the *Education and Care Services National Law (Application) Act 2011*; or
- A child care service as defined in section 3(1) of the *Child Care Act 2001*; or
- Child care as defined in section 4 of the *Child Care Act 2001*.

This includes:

- Child care centres;
- Family day care services;
- Nanny services and other child-minding services provided on a commercial basis;
- Babysitting services, unless the services are provided under a private arrangement (whether or not a fee is payable); and
- Au pair work, if the work involves the provision of child care.

The Child Care Act regulates the provision of some child care services. It prohibits a person from operating or providing child care or a child care service except as authorised by a licence or registration granted by the Secretary of the Department of Education.

The Secretary must not grant a licence unless satisfied of certain matters including that the applicant or licence holder is a “fit and proper person” to hold a licence. The “fit and proper person” test applies not only to the applicant or licence holder, but also to other people who may be involved in managing the child care service, child carers, ancillary staff or other persons who may come into contact with a child to whom the child care service is provided, such as a spouse or other relative who lives with the applicant or licence holder.

The “fit and proper person” test includes (amongst other things):

- whether the person has been charged with, or found guilty of an offence that is punishable by a period of imprisonment within the past 10 years (whether in Tasmania or elsewhere);
- whether the person has been charged with, or found guilty of, or otherwise disciplined for an offence against a number of specified pieces of legislation, including the *Family Violence Act 2004* and the *Children Young Persons and Their Families Act 1997*; and
- whether the person is or has been subject to an order made under the *Children Young Persons and Their Families Act*, the *Family Violence Act* or the *Justices Act 1959* (restraint orders).

Under the new background checking and registration system established by the RWVP Act, the screening unit will undertake a comprehensive risk assessment including a range of checks such as:

- a national criminal history check through CrimTrac;
- a check that identifies all findings of guilt by a court, including those where no conviction has been recorded or where a conviction has been annulled;
- an international criminal history check where this is available and is considered necessary by the Registrar of the screening unit;
- where available, a check of charges against the applicant regardless of the outcome, for example, pending charges, charges that did not proceed, etc; and
- a check of orders under the *Family Violence Act*, the *Children, Young Persons and Their Families Act* and the *Justices Act* (e.g., restraint orders, domestic violence orders etc).

The checks undertaken under the RWVP Act will incorporate and be more extensive than the criminal history matters taken into account in the fit and proper person test under the *Child Care Act*. To avoid unnecessary and costly duplication and inconsistencies in legislation, the Bill proposes amendments to the *Child Care Act* so that the fit and proper person test

will no longer include a check of criminal offences, restraint orders and family violence orders, but will instead take account of whether a person is registered under the RWVP Act. If a person has been granted registration, it means that they have passed the rigorous assessment undertaken under that legislation including the comprehensive checks of criminal records and orders.

The requirement for child care workers to be registered under the RWVP Act is being phased in from 1 October 2014 to 1 January 2016 so that not all child care workers will have to be registered at once. Prior to the commencement of the RWVP Act, child care workers have been subject to screening processes undertaken by the Department of Education. The requirement to be registered under the RWVP Act depends upon the date of expiry of the Department of Education's safety screening clearance. The transitioning process is as follows:

- People who have a safety screening clearance from the Department of Education that expires during the period 1 July 2014 to 30 June 2015 will have to be registered under the RWVP Act by 1 January 2015;
- People who have a safety screening clearance that expires during the period 1 July 2015 to 30 June 2016 will have to be registered under the RWVP Act by 1 July 2015;
- People who have a safety screening clearance that expires during the period 1 July 2016 to 30 June 2017 will have to be registered under the RWVP Act by 1 January 2016; and
- People who commence working in child care services on or after 1 October 2014 will have to apply for registration under the RWVP Act as the Department of Education will not be issuing safety screening clearances after 30 September 2014.