

CLAUSE NOTES

Registration to Work with Vulnerable People Amendment Bill 2015

- Clause 1: provides the short title for the Act
- Clause 2: the Act will commence on the Royal Assent except Part 3 which commences on 1 April 2016.
- Clause 3: a reference to the Principal Act is a reference to the *Registration to Work with Vulnerable People Act 2013*.
- Clause 4: inserts section 2A of the Principal Act in relation to the Object of the Act to protect vulnerable persons from the risk of harm.
- Clause 5: amends section 3 of the Principal Act to insert the definitions of 'criminal intelligence information', 'Register', 'reportable behaviour', 'reporting body' and to substitute new definitions for 'registration' and 'regulated activity'.
- Clause 6: amends section 6 by removing the need for a person to register simply because they deal with a vulnerable person's record or make a decision about a vulnerable person. This change addresses recommendations 6 and 24 of the *Working with Children Checks Report* issued by the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission).
- Clause 7: inserts section 7A of the Principal Act in relation to the Ministers power to introduce an interim regulated activity.
- inserts section 7B of the Principal Act in relation to establishing that the paramount consideration of the Act is the safety, welfare and protection of vulnerable persons.
- Clause 8: inserts sections 11A and 11B of the Principal Act in relation to identifying the functions and powers of the Registrar and the role of establishing and maintaining a register.
- Clause 9: amends section 18 of the Principal Act in relation to removing some applicants ability to commence work in a regulated activity while an application is being assessed. This change allows the Registrar to use information contained in the Register to establish that a person poses a possible risk of harm to vulnerable people - For instance, if a person has had their application rejected in another state or territory. This change addresses aspects of recommendation 3 of the *Working with Children Checks Report* issued by the Royal Commission.

- Clause 10: inserts section 18A of the Principal Act in relation to providing for 'special circumstances' where a person may be entitled to commence work in a regulated activity without complying with the conditions of section 18. The first regulation of this type is made under Part 4 where it is proposed that a person should be permitted to commence as a carer appointed under the *Children, Young Persons and Their Families Act 1997* despite the fact that they may not yet have applied for Registration to Work with Vulnerable People. Other similar regulations are expected to be made in future where it is deemed in the interests of protecting vulnerable people from the risk of harm.
- Clause 11: amends section 20 of the Principal Act in relation to requiring a person to advise the class of their involvement in regulated activities (Volunteer or Employment). This information affects later changes to ensure the subsidised volunteer fee is not affected by people applying for this class rather than the employment class.
- Clause 12: amends section 22 of the Principal Act in relation to providing that the Registrar may request information be supplied within 15 working days. This change will speed up some assessments and will reduce the risk of harm to vulnerable people that comes from having no timeline for supplying information (Note: applicants can commence work once they have applied, so delaying supplying critical information to the Registrar can impact on risk.)
- Clause 13: repeals section 23 of the Principal Act but is replaced by the new Part 6A.
- Clause 14: amends section 26 of the Principal Act in relation to risk assessment. This change provides for the amendment to section 28 (below).
- Clause 15: amends section 28 of the Principal Act in relation to establishing the types of information that can be taken into consideration in assessing the risk of harm a person poses to vulnerable people. This information includes criminal history, non-convictions information, criminal intelligence and interstate working with children assessments. This change addresses aspects of recommendations 17, 18, 19, 20, 21, 32 and 33 of the *Working with Children Checks Report* issued by the Royal Commission.
- Clause 16: repeals section 29 of the Principal Act but is replaced by Part 6A.
- Clause 17: amends section 30 of the Principal Act in relation to ensuring that information supplied by organisations such as Tasmania Police (or interstate counterparts) is not provided to an applicant in reasons for a negative notice if that information could

prejudice enforcement of the law, a fair trial or adjudication, or disclose the existence of a confidential source etc. The changes are similar to existing provisions in the *Security and Investigations Agents Act 2002*.

- Clause 18:** amends section 31 of the Principal Act in relation to establishing a reasonable time period for a person who has received a proposed negative assessment to request reconsideration. A person has 20 working days to prepare their written response to a proposed negative risk assessment and may request a further 20 working days extension.
- Clause 19:** amends section 32 of the Principal Act to provide a similar outcome to the amendment of section 30 (above).
- Clause 20:** amends section 33 of the Principal Act in relation to what the Registrar must do when an applicant advises the class of their involvement in regulated activities (Volunteer or Employment). This information affects later changes to ensure the subsidised volunteer fee is not affected by people applying for this class rather than the employment class.
- Clause 21:** amends section 37 of the Principal Act (similar to the amendment of section 31) by providing a reasonable time period for a person that has been provided proposed conditional registration. A person has 20 working days to prepare their written response to a proposed conditional registration and may request a further 20 working days extension.
- Clause 22:** inserts section 41A of the Principal Act in relation to providing registrants with the ability to amend registration from volunteer registration to both volunteer and employment registration.
- Clause 23:** amends section 42 of the Principal Act in relation to including the class of registration on the registration card.
- Clause 24:** amends section 43 of the Principal Act in relation to removing the need for people requesting a replacement card to provide written reasons for their request for a new card. This change reduces red tape.
- Clause 25:** repeals section 45 of the Principal Act but is replaced by the new Part 6A.
- Clause 26:** substitutes section 48 of the Principal Act in relation to advising the Registrar of certain details. Previously there was no requirement for the registrant to advise of a new employer or volunteer body. This would have meant that if registration was suspended or cancelled the Registrar could not advise employers or volunteer bodies. This change reduces the risk of harm to

vulnerable people by providing the means for quick action by the Registrar and Employers/Volunteer bodies if new information results in a negative risk assessment.

The changes also provide for advice about a change of address to be supplied through Service Tasmania's - Client Update Service (CUS). This change reduces red tape by not requiring an applicant to communicate the change separately. By using the CUS a person can notify multiple agencies of their change of address in a one stop shop approach.

Clause 27: inserts section 49A of the Principal Act in relation to immediate suspension in certain circumstances. This new section provides the Registrar the ability to move quickly to suspend registration and to stop a person from engaging in a regulated activity if there is sufficient grounds for determining a person registration should be suspended. This change addresses one of the risks of allowing a person to commence work or volunteer before registration is fully assessed. This change addresses aspects of recommendation 25 of the *Working with Children Checks Report* issued by the Royal Commission. This recommendation is that people be permitted to commence in a regulated activity while an application is assessed. This is a reasonable outcome so long as the risks associated are adequately addressed.

Clause 28: amends section 50 of the Principal Act in relation to ensuring that information supplied by organisations such as Tasmania Police (or interstate counterparts) is not provided to an applicant in reasons for a notice of proposed suspension or cancellation of registration if that information could prejudice enforcement of the law, a fair trial or adjudication, or disclose the existence of a confidential source etc. The changes are similar to existing provisions in the *Security and Investigations Agents Act 2002*.

Clause 29: amends section 51 of the Principal Act in relation to ensuring that information supplied by organisations such as Tasmania Police (or interstate counterparts) is not provided to an applicant in reasons for a notice of proposed suspension or cancellation of registration if that information could prejudice enforcement of the law, a fair trial or adjudication, or disclose the existence of a confidential source etc. The changes are similar to existing provisions in the *Security and Investigations Agents Act 2002*.

Clause 30: amends section 52 of the Principal Act in relation to removing the need for a person to explain why their card was lost or destroyed. This change reduces red tape.

Clause 31: inserts PART 6A of the Principal Act in relation to the Registrar's powers regarding compliance with and administration of the Act. The new part replaces sections 23, 29 and 45.

This change implements recommendations 32 and 33 of the *Working with Children Checks Report* issued by the Royal Commission. These recommendations are that the all State and Territory Governments should grant screening agencies the statutory power to monitor compliance with Working with Children Checks laws. This includes powers to compel the production of relevant information for the purposes of compliance monitoring.

Clause 32: amends section 53 of the Principal Act in relation to ensuring that information supplied by organisations such as Tasmania Police (or interstate counterparts) is not disclosed through the reasons for decision following a review by the Magistrates Court (Administrative Appeals Disision) The changes are similar to existing provisions in the *Security and Investigations Agents Act 2002*.

Clause 33: inserts PART 7A of the Principal Act in relation to reportable behaviour.

Inserts section 53A of the Principal Act that provides for reporting bodies to advise the Registrar where a person has engaged in reportable behaviour. The description of reportable behaviour will change depending on the information source and will be prescribed in regulations. As a broad description reportable behaviour is information that indicates a person poses a risk of harm to vulnerable people. The information could be Tasmania Police holdings or it could be information such as information about disciplinary action against a teacher, child care worker, aged care worker or disability services worker along with relevant information from a Child Protection investigation.

This change implements recommendations 19 (c) of the *Working with Children Checks Report* issued by the Royal Commission.

Clause 34: inserts sections 54A, 54B and 54C in Part 8 of the Principal Act.

Section 54A has been moved from section 23 which has been repealed.

Section 54B provides for the sharing of Negative Notice information with other State and Territory registering authorities for Working with Children Checks laws. This change protects vulnerable people from the risk of harm by ensuring all registering authorities have access to interstate decisions and the information assessed in making those decisions.

This change prepares for the implementation of recommendations 3 (a) of the *Working with Children Checks Report* issued by the Royal Commission.

Section 54C provides Employers and Volunteer bodies with the ability to advise the Registrar if they engage a person in a regulated activity. One of the major national challenges for registering authorities is ensuring they have the details of the bodies that engage people in regulated activities in order to advise these bodies if registration is suspended or cancelled.

However, under this approach the bodies that engage a person in regulated activities will be published and accessible by any organisation that has been provided with a person's unique registration number (and surname). If an employer or volunteer body notices their organisation is not listed when they check the online facility– they can add their details. Applicants are then advised that an organisation has advised that they engage the person in a regulated activity. If the registrant advises they are not engaged by an employer or volunteer body registration is amended and the employer is advised that their details have not been added. The employer must then make a decision about whether they wish to continue to engage the person in the regulated activity (because they will not be advised if registration is suspended or cancelled). This change reduces red tape as other approaches would require the Registrar to write to the applicant, wait for the applicant to change the details and possibly follow such actions later.

This change reduces the risk of harm to vulnerable people by ensuring that if a person's registration is suspended or cancelled bodies engaging the person can be quickly advised of the outcome so they can make decisions about the role the person performs (if any) in future.

Where 99% of applicants are likely to accept the change this approach removes needless red tape.

Clause 35: amends section 60 of the Principal Act in relation to the regulations providing for matters relating to the Register and its maintenance and details concerning the notification by a reporting body of information about reportable behaviour.

Clause 36: replaces section 51 of the Principal Act in relation to savings and transitional provisions concerning the changes to class of registration. In effect a person that previously held employee registration will now hold employee/volunteer registration. Because the screening process is identical for both classes it is deemed appropriate to provide both forms of registration so that a person holding the class of registration can be employed

and volunteer without making any further changes. This change reduces red tape by not requiring a person to change their registration details.

Clause 37: a reference to the Principal Act is a reference to the *Registration to Work with Vulnerable People Act 2013*.

Clause 38: amends section 15 of the Principal Act in relation to providing clearer direction to people about the period a person can engage in a regulated activity without registration.

The amendment of subsections (3)(b) and (c) removes the need for a person to register if they work in a child related activity for 3 days in a 4 week period. The requirement is simplified by requiring registration where a person expects to work in a regulated activity greater than 7 days per calendar year.

This change implements recommendations 14 (iii) of the *Working with Children Checks Report* issued by the Royal Commission.

The insertion of subsection 3(d) provides that a non-Australian resident can be engaged in a regulated activity (other than an overnight camp for children) for one continuous 28 day period in any 12 month period. There must be a registered person present and engaged in the regulated activity. This amendment provides for overseas guests to participate in major national events.

The omission of subsections (iv) and (v) remove the exemptions for Registered Health Practitioners and Lawyers. In effect this means that a Registered Health Practitioner or Australian Lawyer engaged in a regulated activity for greater than 7 days in a calendar year must register.

This change partially implements recommendations 14 (b) of the *Working with Children Checks Report* issued by the Royal Commission. Remaining exemptions will be reviewed in line with any National agenda flowing from the Royal Commissions report.

Clause 39: inserts section 16A of the Principal Act which establishes an offence for a person who is registered in the class of volunteer that has been engaged for financial or other material benefit or reward (these people should hold employee/volunteer registration).

Clause 40: inserts section 17A of the Principal Act which establishes an offence for an employer who engages a person or requires a person to be engaged in a regulated activity if that person holds the registration class of volunteer but the engagement will result

in the person receiving financial or other material benefit or reward (these people should hold employee/volunteer registration).

There is a defence if the registered person applies to amend their registration before or on the day they commence. The Department is developing the ability to make this change online. This facility will be available when the section commences on 1 April 2016.

- Clause 41:** a reference to the Principal Regulations is a reference to the *Registration to Work with Vulnerable People Regulations 2014*.
- Clause 42:** inserts PART 2A of the Principal Regulations which provides for the Secretary of the Department of Health and Human Services to appoint carers under the Children, Young Persons and Their Families Act 1997 despite the person having not currently applied for registration to work with vulnerable people.
- Clause 43:** is a standard clause to ensure the above regulations can be amended or repealed in future.