

## SECOND READING SPEECH

### Child Care Amendment Bill 2014

Madam Speaker,

I move that the Bill now be read for a second time.

This Bill makes amendments to the *Child Care Act 2001* as a consequence of, and to assist with, the implementation of the new *Registration to Work with Vulnerable People Act 2013*.

The Child Care Act regulates the provision of some child care services. Under section 8 of the Child Care Act, a person must not operate or provide child care or a child care service except as authorised by a licence or registration.

To grant a licence, the Secretary of the Department of Education must be satisfied of a number of things including that the applicant or licence holder is a 'fit and proper person' to hold that 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 Secretary is to take a number of matters into account in determining the 'fit and proper person' test, including:

- whether the person has been charged with or found guilty of an offence punishable by a period of imprisonment either in Tasmania or elsewhere within the previous 10 years;
- whether the person has been charged with or found guilty of, or otherwise disciplined for an offence against various specified pieces of legislation including the *Family Violence Act 2004*, and the *Children, Young Persons and Their Families Act 1997*; and

- whether the person has been the subject of an order such as family violence order or restraint order.

In addition to the requirements under the Child Care Act, child care workers are subject to screening by the Department of Education with safety screening clearances issued for 3 years.

Madam Speaker, the purpose of these assessment and screening requirements is to ensure, as far as is possible, the safety and welfare of children in child care. However, since these provisions and processes were introduced, there have been new developments in the screening of people working with children. These new developments are the basis for the amendments proposed by this Bill.

The protection of children is a high priority for all Australian governments. In recent years, all Australian States and Territories have implemented screening and background checking processes for people working with children, with the Tasmanian Parliament passing the Registration to Work with Vulnerable People Act late last year. The States, Territories and Commonwealth have executed a Memorandum of Understanding allowing an exchange between jurisdictions of expanded criminal history information, including convictions, spent convictions, pending charges and non-conviction charges in relation to people working with children. This expanded information better informs decision making about the risk of harm to children.

The introduction of the Registration to Work with Vulnerable People Act is an important reform which will play a key role in the protection of children and other vulnerable people in the Tasmanian community. The legislation provides a framework for the centralised background checking and risk assessment of people working with or wanting to work with children and other vulnerable people.

Members will note that our legislation refers to vulnerable people rather than children. This is because our legislation was

developed to include screening of people working with vulnerable adults, as well as children, as vulnerable adults are exposed to many of the same risks of harm as children. Most of the other States and Territories only apply this type of background checking to people working with children and it is commonly referred to across Australia as a “Working with Children Check”. To date, the ACT is the only other jurisdiction that has extended their background checking legislation to include persons working with vulnerable people. However, in both the ACT and Tasmania, the screening process has been rolled out to people working with children first.

The premise that underpins background checking is that past behaviour is indicative of possible future behaviour. Unfortunately, there have been documented cases where a person with a history of abusive behaviour has been able to gain access to children because their history was not known to their employer and in some cases, they have gone on to commit further acts of abuse. The effects of such abuse can be long term and devastating. This has been highlighted in the current Royal Commission into Institutional Responses to Child Sexual Abuse. Background checking is seen as an important strategy in reducing the risk of harm to children.

Madam Speaker, one of the purposes of the Registration to Work with Vulnerable People Act is to provide a consistent and centralised system of background checking. A system that is as far as possible consistent with what is happening in other States and Territories. Prior to the commencement of this legislation, there was no uniform system of screening, and the level of background checking undertaken varied depending on the organisation or employer.

Under our Registration to Work with Vulnerable People Act, people who have contact with children or vulnerable adults, in the course of engaging in certain regulated activities, will have to be registered with a screening unit which has been established within the Department of Justice.

Regulated activities are to be prescribed in the Regulations and will be phased in over time to allow for a smoother transition with child-related activities being the first priority (that is – working with children checks).

The first of the regulated activities to commence is child care services. The term “child care services” 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.

People engaged in child care or providing child care services are the first cohort required to be registered under the Registration to Work with Vulnerable People Act. Applications under the Registration to Work with Vulnerable People Act commenced on the first of July in preparation for mandatory registration requirements from 1 October this year.

Given the large number of people engaged in child care services and the fact that there is already a screening process in place, not all child care workers have to be registered by 1 October.

The requirement to be registered is being phased in from 1 October 2014 to 1 January 2016 and depends upon when the child care worker's current Department of Education safety screening clearance expires. The implementation schedule is as follows:

- Workers whose safety screening clearance expires during the period 1 July 2014 to 30 June 2015 will have to be registered under the Registration to Work with Vulnerable People Act by 1 January 2015;
- Workers whose safety screening clearance expires during the period 1 July 2015 to 30 June 2016 will have to be registered by 1 July 2015; and
- Workers whose safety screening clearance expires during the period 1 July 2016 to 30 June 2017 will have to be registered by 1 January 2016.

Anyone who begins working in child care services on or after 1 October 2014 will have to be registered under the Registration to Work with Vulnerable People Act as the Department of Education will not be issuing safety screening clearances after 30 September 2014.

When someone applies for registration under the Registration to Work with Vulnerable People Act they undergo a risk assessment carried out by the screening unit. The information that can be obtained and checked during a risk assessment is more extensive than the criminal history matters taken into account under the Child Care Act or checks carried out by the Department of Education in issuing safety screening clearances. These types of checks include:

- A national criminal history check through CrimTrac;

- A check that identifies all findings of guilt by a court, including those where no conviction was 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 1959*. These are orders such as restraint orders and family violence orders.

Once a person's application is approved, they are registered for a specific period, generally 3 years, and can move between employers and organisations without needing further checks done. The screening unit undertakes continuous monitoring of all registered persons and can suspend or cancel registration if, for example, a registered person breaches a condition of registration or is charged with a relevant offence.

Madam Speaker, by January 2016, all persons engaged in child care services will have to be registered under the Registration to Work with Vulnerable People Act. The Departments of Justice and Education have been working together to facilitate the implementation of the new checks and ensure consistency of the background checking processes carried out. These proposed amendments to the Child Care Act are one aspect of the implementation process. Amendments are currently being made to the Standards established under the Child Care Act to reflect the new registration requirements and transitional arrangements. Amendments have also been made to the Education and Care Services National Regulations.

The background checks undertaken by the screening unit will encompass the criminal history matters referred to under the

Child Care Act, therefore it will be unnecessary duplication to have these matters also checked by the Secretary under the Child Care Act. It is also important to ensure that there is consistency between the pieces of legislation regulating people working in the child care industry.

To this end, the Bill amends the Child Care Act so that the fit and proper person test in section 15A subsection (2), will no longer include a check of criminal offences, restraint orders or family violence orders, but will instead take account of whether the person is registered under the Registration to Work with Vulnerable People 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.

Madam Speaker, this Bill supports the implementation of the Registration to Work with Vulnerable People legislation - a key reform in providing greater protection to Tasmanian children.

I commend the Bill to the House.