

CLAUSE NOTES

Child Care Amendment Bill 2014

Clause 1: Short title

This clause provides that the Bill will be cited as the *Child Care Amendment Act 2014*.

Clause 2: Commencement

This clause provides for the Bill to commence on the day on which it receives the Royal Assent.

Clause 3: Principal Act

This clause provides that the Principal Act to which the amendments apply is the *Child Care Act 2001*.

Clause 4: Section 15A amended (Criteria for grant of, or holding, licence)

This clause is the key clause of the Bill. It makes amendments to section 15A(2) of the Child Care Act.

The amendments proposed by this clause have been developed in response to the new *Registration to Work with Vulnerable People Act 2013* (RWVP Act) which commenced on 1 July 2014.

The RWVP Act provides for the registration of people who work (including voluntary work), or want to work, in various regulated activities with vulnerable people. Regulated activities are prescribed in the Registration to Work with Vulnerable People Regulations (the regulations), and are being implemented in stages with activities relating to children commencing first.

Child care services are the first activities to be prescribed as regulated activities. The regulations define child care services as:

- An education and care service as defined in 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 screening unit began accepting applications for registration from 1 July 2014 in preparation for mandatory registration requirements from 1 October 2014. However, 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 and the requirement to be registered 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.

The Child Care Act regulates the provision of some child care services and child care workers. 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. Section 16(3) provides that the Secretary must not grant a licence unless he or she is satisfied, amongst other things, that the applicant is a fit and proper person to hold that licence.

Section 15A(2) sets out the criteria for the fit and proper person test which 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 or will be provided, such as a spouse or other relative who lives with the applicant or licence holder.

This clause makes amendments to the requirements set out in section 15A(2) as a consequence of the new background checking processes established by the RWVP Act. The Department of Education will make changes to the Standards established under the Child Care Act to reflect the new registration requirements and transitional arrangements.

Sub-clause 4(a) – replacement of section 15A(2)(g):

Currently, one of the criteria under the fit and proper person test is whether the person has been charged with, or found guilty of,

in Tasmania or elsewhere, in the past 10 years, an offence that is punishable by a period of imprisonment.

Under the new working with children checks, to be carried out under the RWVP Act, the screening unit will undertake a risk assessment prior to granting a registration. This will 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;
- where available, an international criminal history check if this 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 2004*, the *Children, Young Persons and Their Families Act 1997*, and the *Justices Act 1959*.

The checks undertaken under the RWVP Act will incorporate and be more extensive than the requirement in section 15A(2)(g) of the Child Care Act.

To avoid duplication and inconsistencies in the legislation, the proposed amendment will remove the existing requirement and replace it with a new criterion – being that the person seeking a licence or continuing to hold a licence under the Child Care Act is registered under the RWVP Act. This change also applies to the 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 or will be provided, such as a spouse or other relative who lives with the applicant or licence holder.

Subclause 4(b) – amendment to section 15A(2)(h):

Section 15A(2)(h) sets out another requirement for the fit and proper person test which is 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* or the *Children, Young Persons and Their Families Act 1997*.

This proposed amendment removes the requirement to take these offences into account as offences under the Family Violence Act and the Children, Young Persons and Their Families Act will be considered in risk assessments carried out under the RWVP Act.

Subclause 4(c) – amendment to section 15A(2)(h)(v):

This proposed amendment simply reflects the amendments made under subclause 4(b) above.

Subclause 4(d) – amendment to section 15A(2)(i):

Section 15A(2)(i) requires the Secretary to take into account whether the person is or has been subject to an order made under:

- The Children, Young Persons and Their Families Act; or
- The Family Violence Act; or
- The *Justices Act 1959*.

These are Family Violence Orders or Restraint Orders.

The proposed amendments will delete paragraph (i) of section 15A(2). This provision is not necessary if the amendment is made to section 15A(2)(g), as a risk assessment under the RWVP Act will take these types of orders into account. The proposed amendment will therefore avoid duplication and ensure consistency in the way that these matters are assessed.

Clause 5: Repeal

This is a standard repeal provision to remove the empty shell of the Bill after all its provisions have been transferred and have come into effect in the Principal Act.