



## The Risk Assessment Process

### Overview

In 2012 the *Registration to Work with Vulnerable People Act 2012* (the Act) was proclaimed in Tasmania. The purpose of this important piece of legislation is to create a centralised background checking and risk assessment process for people working with children to reduce the risk of sexual, physical and emotional harm to children.

The concept behind background checking is that past behaviour of an applicant provides an indication of the possible future behaviour of an applicant. Therefore a national criminal history check and processing of relevant information from other sources are important elements of background checking and part of what is called a 'risk assessment'.

The purpose of this fact sheet is to inform applicants of the risk assessment process. The Act creates guidelines as to what is important in a risk assessment and what the Registrar needs to consider when conducting a risk assessment. The Act aims to:

- Deter people from applying to work with children where they have criminal histories that could indicate they pose a risk of harm to children
- Prevent those with such criminal records who do apply from gaining positions of trust when working with children
- Establish consistent standards for background screening for working with children and the ethical use of such information.

### What does this Fact Sheet explain?

This fact sheet should guide the applicant as to what type of criminal history will indicate to the Registrar that the applicant may pose a risk of harm to children. It also serves to guide any applicant who does have a criminal history as to what information can be supplied to the Registrar to support their application. The Registrar can request further information from the applicant when conducting an initial risk assessment; he/she can also request further information when auditing people who have an existing registration to work with children. This fact sheet is relevant for all circumstances.

## Who must apply for a Working with Children Registration?

The criteria that requires registration to work with children is determined by the work the applicant is engaged in and by the closeness of contact the applicant has with children. The type of contact that must be registered is called a 'regulated activity'. The definition of a regulated activity is determined by the regulations attached to the Act and may be subject to change. The definition of a regulated activity and how it applies to different environments where people work with children is explained in full in the following Fact Sheet:

*See 'Fact sheet: A guide to the 3-year phased in approach for child-related sectors' at the Working with Children Registration website:*

[www.justice.tas.gov.au/working\\_with\\_children](http://www.justice.tas.gov.au/working_with_children)

The Act also sets out a list of persons who are exempt or not required to be registered to engage in a regulated activity, an example is a registered health practitioner. Any employer can choose to require that any or all of his/her employee/s (and volunteer/s) are registered to work with children despite the fact that the person is exempt according to the Act. An employer (or volunteer body) can make the requirement of any staff person at any time.

Those who are already working with children, for example teachers, child care workers and sporting coaches will be required to register to work with children even if their employer has already required a background check prior to their employment. The vast number of people already working with children means that registration will be 'phased in' over a three year period; this process will be determined by industry sectors.

## The Implementation Schedule for Industry Sectors

In the first year the sectors to be phased in are child care services, followed by religious services, commercial services for children, coaching and tuition then clubs associations and movements. The full three year phased in approach is also outlined in the fact sheet referred to above.

Separate Sector Guides have been developed for each industry sector explaining what type of work is considered a 'regulated activity' in that specific sector. These sector guides can also be found at:

[www.justice.tas.gov.au/working\\_with\\_children](http://www.justice.tas.gov.au/working_with_children)

## The application process

When an application for a Working with Children Registration is lodged the terms and conditions as part of the application give authorisation to the Registrar to gather information for a background check. The information that can be gained for the purposes of a background check in Tasmania is broad and includes a full criminal history of the applicant including charges that have not yet been heard, any orders that have been made, employment history and any other relevant information. A risk assessment describes the process of evaluating the available information to reach a conclusion about the risk of harm a person may pose to children. A rigorous and transparent risk assessment process must form part of the background checking process to ensure that decisions are appropriate. The background check and risk assessment process is established in the legislation. That is, the Act sets out what information must be used to conduct a background check, where further information can be

obtained and the power to get that information regardless of any personal information laws that protect it. The Act also details the offences that will automatically trigger a negative risk assessment against an applicant and determine him/her unsuitable to work with children. There are offences listed where the Registrar must undertake further investigation and offences listed where the Registrar may, if he or she chooses, to undertake further investigation. The Act also outlines what aspects of the offence must be considered when a further investigation is conducted.

The following outlines detail into the risk assessment process. This detail can be used to assist an applicant in determining how their background is likely to be assessed by the Registrar and what information should be provided by the applicant or at the request of the Registrar.

## The background check

In Tasmania the information that can be gained for the purpose of a background check is set out in the Act as follows;

- a. The criminal history of the applicant, including his or her national and international criminal history
- b. Any offence the applicant has been found guilty of; even if a conviction has not been recorded or it has been annulled
- c. Any offences for which the offender has been charged, including whether they are pending charges
- d. Any orders that the applicant may have been subject to ie restraint orders, family violence orders or child protection orders
- e. Any other matter that the registrar considers relevant

## Offences contained in the background check that must be considered in the application process

When conducting the criminal history check, if the Registrar becomes aware that the applicant has committed an offence, the Registrar must then determine

- a. If the offence is a
  - (i) Schedule 1 or Schedule 2 offence (see attachment A and B)
  - (ii) If it is not a Schedule 1 or Schedule 2 offence, if it a relevant offence
- b. The outcome of the charges

## Relevant Offences

Relevant offences are defined in the Act as:

- a. An offence under the *Poisons Act 1971* or the *Misuse of Drugs Act 2001*, or a similar offence committed elsewhere
- b. Any of the following offences, whether committed in Tasmania or elsewhere
  - i. a sexual offence
  - ii. an offence against a person
  - iii. an offence involving violence
  - iv. an offence involving dishonesty or fraud
  - v. an offence relating to property
  - vi. an offence against an animal
  - vii. a driving offence

- c. An offence committed in Tasmania or elsewhere relating to another offence that comprises of any of the following behaviours
  - i. attempting to commit the offence
  - ii. inciting, instigating, aiding or abetting the commission of the other offence
  - iii. being an accessory after the fact to the other offence

## Offences contained in the background check that must be subject to an automatic Proposed Negative Notice

If the applicant has been **convicted** of a Schedule 1 offence and, if at the time the offence was committed, the applicant was an adult and the victim was a child, the registrar **must** make a negative risk assessment and issue a proposed negative notice. The purpose of a proposed negative notice is to warn the applicant that the Registrar has made a negative risk assessment against them and to outline the process that follows. The applicant has the opportunity to request the Registrar reconsider the negative risk assessment and to provide further information into the circumstances surrounding the offences that have resulted in the negative risk assessment. If the applicant does not make this request a 'negative notice' will be issued by the Registrar.

## Offences contained in the background check where the Registrar must undertake further investigation

The Act sets out circumstances whereby the applicant has a criminal record which does not lead to an automatic negative risk assessment but the Registrar **must** undertake further investigations into the history of the applicant. The relevant circumstances apply when an applicant;

- a. is convicted of an offence specified in Schedule 1, and at the time of offence was committed offence the victim was an adult; or
- b. has been charged with, but not convicted of, an offence specified in Schedule 1; or
- c. has been charged with an offence specified in Schedule 2: or
- d. has been convicted of, or found guilty of a relevant offence that is not specified in Schedule 1 or 2; or
- e. is subject to reporting obligations - reporting obligations arise from an offence whereby the offender has reporting obligations imposed on him/her by the Court. Reporting obligations fall under part 3 of the *Community Protection (Offender Reporting) Act 2005*.

## Further investigation

If any of the above offences appear in the criminal history check of the applicant further investigation must assess;

- a. the seriousness of the conduct; and
- b. the length of time between the conduct occurring and the application for registration under the act; and
- c. the age of the applicant at the time the conduct occurred; and
- d. the age and vulnerability of the victim of the conduct at the time the conduct occurred; and
- e. the relationship between the applicant and the victim of the conduct at the time the conduct occurred; and

- f. the age difference between the applicant and the victim of the conduct at the time the conduct occurred; and
- g. if the victim was a child, whether the applicant knew or could have known at the time of the conduct that the victim was a child; and
- h. the impact on the victim of the conduct; and
- i. the applicant's conduct since the conduct referred to above; and
- j. the current age of the applicant; and
- k. the significance of the complete criminal history of the applicant and of any offence the applicant has been found guilty of where a conviction has not been recorded in respect of the offence of the conviction or the conviction has been annulled; and
- l. to the satisfaction of the Registrar, the likelihood that the applicant will repeat conduct referred to above; and
- m. any impact that repeating conduct referred to above may have on a child.

### Offences where the Registrar may undertake further investigation

The Act sets out circumstances whereby the applicant has a criminal record which does not lead to an automatic negative risk assessment but the Registrar **may** undertake further investigations if he/she thinks fit. The relevant circumstances apply when the applicant:

- a. has had multiple changes in his or her name; or
- b. has had multiple aliases; or
- c. has had multiple changes of address within a short period of time at any point in time before the application; or
- d. has had multiple changes of employer within a short period of time any point in time before the application; or
- e. has had large periods of unemployment;
- f. has been the subject of a finding by an entity that the applicant has engaged in –
  - (i) Sexual misconduct against, with or in the presence of a child, including the grooming of a child for a sexual act; or
  - (ii) A serious physical assault of a child; or
- g. the applicant is, or has been, the subject of orders protection orders, restraint orders or family violence orders; or
- h. has been subject of disciplinary actions for misconduct at his or her place of employment.

### Accessible information

To assist in conducting a risk assessment the Registrar may request and obtain information and advice from other entities. When the request for information is made the entity must provide the information requested and, providing the information does not breach any other duties they have related to confidentiality despite any laws or agreements. Information can be sourced from:

- a. Any entity
- b. Any other jurisdiction's public authority
- c. Any other government agency, or part of a government agency
- d. Any body, corporate or unincorporated, established by or under the statute law of a jurisdiction other than Tasmania or another jurisdiction

**SCHEDULE I - Offences**

1. Murder
2. Manslaughter
3. An offence involving the intentional wounding of, or cause grievous bodily harm to, a child by an adult who is more than 3 years older than the victim
4. An offence under section 122 of the *Criminal Code* - Unnatural crimes, sexual intercourse with an animal.
5. An offence under section 124 of the *Criminal Code* - Sexual intercourse with a young person under the age of 17.
6. An offence under section 125 of the *Criminal Code* - person permitting unlawful sexual intercourse with a young person on premises
7. An offence under section 125A of the *Criminal Code* - maintaining sexual relationship with a young person under the age of 17 years
8. An offence under section 125B of the *Criminal Code* - indecent act with or directed at young person under the age of 17 years
9. An offence under section 125C of the *Criminal Code* - procuring unlawful intercourse with person under 17 years
10. An offence under section 125D(1) of the *Criminal Code* - Communications with intent to procure person under 17 years to engage in an unlawful sexual act
11. An offence under section 126 of the *Criminal Code* - Sexual intercourse of a person with mental impairment
12. An offence under section 127 of the *Criminal Code* - indecent assault (*if the person against whom the offence is committed is a child*)
13. An offence under section 127A of the *Criminal Code* - aggravated sexual assault
14. An offence under section 129 of the *Criminal Code* - procuring by threats or drugs
15. An offence under section 130 of the *Criminal Code* - Involving person under 18 years in the production of child exploitation material
16. An offence under section 130A of the *Criminal Code* - Production of child exploitation material

- 17.** An offence under section 130B of the *Criminal Code* - Distribution of child exploitation material
- 18.** An offence under section 133 of the *Criminal Code* - incest (*if the person against whom the offence is committed is a child*)
- 19.** An offence under section 139 of the *Criminal Code* - Interfering with human remains
- 20.** An offence under section 165A of the *Criminal Code* - Infanticide
- 21.** An offence under section 169 of the *Criminal Code* - Administering a drug with intent to facilitate the commission of an offence (*if the person against whom the offence is committed is a child*)
- 22.** An offence under section 170 of the *Criminal Code* - Acts intended to cause grievous or prevent apprehension
- 23.** An offence under section 178 of the *Criminal Code* - ill treatment of children
- 24.** An offence under section 178A of the *Criminal Code* - female genital mutilation
- 25.** An offence under section 185 of the *Criminal Code* - rape
- 26.** An offence under section 186(1) of the *Criminal Code* - forcible abduction
- 27.** An offence under section 189 of the *Criminal Code* - abduction of a young person under the age of 17 years
- 28.** An offence under section 191 of the *Criminal Code* - Abduction and harbouring of an abducted child
- 29.** An offence under section 191A of the *Criminal Code* - Kidnapping
- 30.** An offence under section 192(1) of the *Criminal Code* - Stalking (*if the person against whom the offence is committed is a child*)
- 31.** An offence under section 72A of the *Classification (Publications, Films and Computer Games) Enforcement Act 1995* - Making or reproducing child exploitation material, causing or permitting child exploitation material to be made or being in any way involved in the making or reproduction of child exploitation material
- 32.** An offence under section 73 of the *Classification (Publications, Films and Computer Games) Enforcement Act 1995* - Procuring, or inviting or attempting to procure, child to be involved in making child exploitation material
- 33.** An offence under section 73A of the *Classification (Publications, Films and Computer Games) Enforcement Act 1995* - Distributing child exploitation material or facilitating the distribution of child exploitation material
- 34.** An offence under section 9(1) of the *Sex Industry Offences Act 2005* - Procuring or otherwise causing or permitting a child to provide sexual services in a sexual services business

- 35.** An offence under section 9(2) of the *Sex Industry Offences Act 2005* - Receiving a fee or reward from sexual services provided by a child in a sexual services business
- 36.** An offence under section 270.6A of the *Criminal Code Act 1995* of the Commonwealth - Forced labour offences
- 37.** An offence under section 270.7 of the *Criminal Code Act 1995* of the Commonwealth - Deceptive recruiting for labour or services
- 38.** An offence under section 272.8 of the *Criminal Code Act 1995* of the Commonwealth - sexual intercourse with a child outside Australia
- 39.** An offence under section 272.9 of the *Criminal Code Act 1995* of the Commonwealth - Sexual activity (other than sexual intercourse) with a child outside Australia
- 40.** An offence under section 272.10 of the *Criminal Code Act 1995* of the Commonwealth - aggravated offence – child with mental impairment or under care, supervision or authority of defendant
- 41.** An offence under section 272.11 of the *Criminal Code Act 1995* of the Commonwealth - Persistent sexual abuse of child outside Australia
- 42.** An offence under section 272.12 of the *Criminal Code Act 1995* of the Commonwealth - sexual intercourse with young person outside Australia – defendant in a position
- 43.** An offence under section 272.13 of the *Criminal Code Act 1995* of the Commonwealth - Sexual activity (other than sexual intercourse) with young person outside Australia – defendant in position of trust or authority
- 44.** An offence under section 272.14 of the *Criminal Code Act 1995* of the Commonwealth - Procuring child to engage in sexual activity outside Australia
- 45.** An offence under section 272.15 of the *Criminal Code Act 1995* of the Commonwealth - “Grooming” child to engage in sexual activity outside Australia
- 46.** An offence under section 272.18 of the *Criminal Code Act 1995* of the Commonwealth - Benefiting from offence against Division 272 (Child sex offences outside Australia)
- 47.** An offence under section 272.19 of the *Criminal Code Act 1995* of the Commonwealth - Encouraging an offence against Division 272 (Child sex offences outside Australia)
- 48.** An offence under section 272.20 of the *Criminal Code Act 1995* of the Commonwealth - Preparing for or planning an offence against Division 272 (Child sex offences outside Australia)
- 49.** An offence under section 273.7 of the *Criminal Code Act 1995* of the Commonwealth - Aggravated offence (for offences against section 273.5 (possessing etc child pornography material outside Australia) and section 273.6 (possessing etc child abuse material outside Australia)) – offence involving conduct on 3 or more occasions and 2 or more people



- 50.** An offence under section 471.22 of the *Criminal Code Act 1995* of the Commonwealth - Aggravated offence (for offences against Division 471 Subdivision B – offences relating to use of postal or similar service for child pornography material or child abuse material) – offence involving conduct on 3 or more occasions and 2 or more people
- 51.** An offence under section 471.24 of the *Criminal Code Act 1995* of the Commonwealth - Using a postal or similar service to procure persons under 16
- 52.** An offence under section 471.25 of the *Criminal Code Act 1995* of the Commonwealth - Using a postal or similar service to “groom” persons under 16
- 53.** An offence under section 474.24A of the *Criminal Code Act 1995* of the Commonwealth - Aggravated offence (for offences against Division 474 Subdivision D – offences relating to use of carriage service for child pornography material or child abuse material) – offence involving conduct on 3 or more occasions and 2 or more people
- 54.** An offence under section 474.25B of the *Criminal Code Act 1995* of the Commonwealth - Aggravated offence – child with mental impairment or under care, supervision or authority of people
- 55.** An offence in another jurisdiction that, if committed in Tasmania, would be an offence specified in this Schedule
- 56.** An offence that includes as an element the intention to commit an offence specified in this Schedule

## **SCHEDULE 2 - Further offences**

- 1.** An offence involving the intentional wounding of, or causing bodily harm to, a child by an adult other than an offence that is specified in Schedule 1
- 2.** A sexual offence committed against, or in the presence of, a child other than an offence that is specified in Schedule 1
- 3.** An offence under section 125D(3) of the *Criminal Code* - Making a communication with intention of exposing a person under the age of 17 years to indecent material
- 4.** An offence under section 130C of the *Criminal Code* - Possession of child exploitation material
- 5.** An offence under section 130D of the *Criminal Code* - Accessing child exploitation material
- 6.** An offence under section 137 of the *Criminal Code* - indecency
- 7.** An offence under section 138 of the *Criminal Code* - Exhibiting obscene matter
- 8.** An offence under section 152 of the *Criminal Code* - Omission of duty
- 9.** An offence under section 169 of the *Criminal Code* - administering drug to facilitate offence
- 10.** An offence under section 178A of the *Criminal Code* - Female genital mutilation
- 11.** An offence under section 184 of the *Criminal Code* Common Assault (*where the victim is a child*)
- 12.** An offence under section 8 of the *Animal Welfare Act 1993* - Cruelty to animals
- 13.** An offence under section 9 of the *Animal Welfare Act 1993* - Aggravated cruelty
- 14.** An offence under section 73 of the *Classification (Publications, Films and Computer Games) Enforcement Act 1995* - Procuring, or inviting or attempting to procure, child to be involved in making child exploitation material
- 15.** An offence under section 74A of the *Classification (Publications, Films and Computer Games) Enforcement Act 1995* - Possessing, accessing or attempting to access child exploitation material
- 16.** An offence under section 6 of the *Misuse of Drugs Act 2001* - Manufacturing controlled drug for sale
- 17.** An offence under section 7 of the *Misuse of Drugs Act 2001* - Cultivating controlled plant for sale
- 18.** An offence under section 10 of the *Misuse of Drugs Act 2001* - Manufacturing controlled precursor intended for use in manufacture of controlled drugs for sale

- 19.** An offence under section 13 of the *Misuse of Drugs Act 2001* - Procuring child to traffic in controlled substance
- 20.** An offence under section 14 of the *Misuse of Drugs Act 2001* - Supplying controlled drug to child
- 21.** An offence under section 7A of the *Police Offences Act 1935* - Loitering near children
- 22.** An offence under section 8(1A)(a) of the *Police Offences Act 1935* - exposing person
- 23.** An offence under section 13A of the *Police Offences Act 1935* - Observation or recording in breach of privacy
- 24.** An offence under section 13B of the *Police Offences Act 1935* - Publishing or distributing prohibited visual recording
- 25.** An offence under section 13C of the *Police Offences Act 1935* - Possession of prohibited visual recording
- 26.** An offence under section 35(3) of the *Police Offences Act 1935* - Assaulting with indecent intent
- 27.** An offence under section 7(1)(a) of the *Sex Industry Offences Act 2005* - Intimidating, assaulting or threatening to assault a sex worker
- 28.** An offence under section 7(1)(d) of the *Sex Industry Offences Act 2005* - administering to a sex worker, or causing a sex worker to take, any drug or substance with the intent to stupefy or overpower that sex worker
- 29.** An offence under section 7(2) of the *Sex Industry Offences Act 2005* - Intimidating, assaulting or threatening to assault person or threatening to cause person to be deported for purpose of inducing provision or continued provision of:
  - (a) Sexual services in a sexual services business or
  - (b) Fee or reward derived from provision of sexual services in a sexual services business.
- 30.** An offence under section 273.5 of the *Criminal Code Act 1995* of the Commonwealth - Possessing, controlling, producing, distributing or obtaining child pornography
- 31.** An offence under section 273.6 of the *Criminal Code Act 1995* of the Commonwealth - Possessing, controlling, producing, distributing or obtaining child abuse material outside Australia
- 32.** An offence under section 471.16 of the *Criminal Code Act 1995* of the Commonwealth - Using a postal or similar service for child pornography material

- 33.** An offence under section 471.17 of the *Criminal Code Act 1995* of the Commonwealth - Possessing, controlling, producing, supplying or obtaining child pornography material for use through a postal or similar service
- 34.** An offence under section 471.19 of the *Criminal Code Act 1995* of the Commonwealth - Using a postal or similar service for child abuse material
- 35.** An offence under section 471.20 of the *Criminal Code Act 1995* of the Commonwealth - Possessing, controlling, producing, supplying or obtaining child abuse material for use through a postal or similar service
- 36.** An offence under section 471.26 of the *Criminal Code Act 1995* of the Commonwealth - Using a postal or similar service to send indecent material to person under 16
- 37.** An offence under section 474.19 of the *Criminal Code Act 1995* of the Commonwealth - Using a carriage service for child pornography material
- 38.** An offence under section 474.20 of the *Criminal Code Act 1995* of the Commonwealth - Possessing, controlling, producing, supplying or obtaining child pornography material for use through a carriage service
- 39.** An offence under section 474.22 of the *Criminal Code Act 1995* of the Commonwealth - Using a carriage service for child abuse material
- 40.** An offence under section 474.23 of the *Criminal Code Act 1995* of the Commonwealth - Possessing, controlling, producing, supplying or obtaining child abuse material for use through a carriage service
- 41.** An offence under section 474.25A of the *Criminal Code Act 1995* of the Commonwealth - Using a carriage service for sexual activity with person under 16 years of age
- 42.** An offence under section 474.26 of the *Criminal Code Act 1995* of the Commonwealth - Using a carriage service to procure persons under 16 years of age
- 43.** An offence under section 474.27 of the *Criminal Code Act 1995* of the Commonwealth - Using a carriage service to “groom” persons under 16 years of age
- 44.** An offence under section 474.27A of the *Criminal Code Act 1995* of the Commonwealth - Using a carriage service to transmit indecent communication to a person under 16 years of age
- 45.** An offence under section 233BAB of the *Customs Act 1901* of the Commonwealth - Special offence relating to tier 2 goods (*if the offence involves items of child pornography or of child exploitation material*)
- 46.** An offence in another jurisdiction that, if committed in Tasmania, would be an offence specified in this Schedule
- 47.** An offence that includes as an element the intention to commit an offence specified in this Schedule
- 48.** An offence of attempting, or of conspiracy or incitement to commit, an offence specified in this Schedule

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