



# The Risk Assessment Process

## Overview

In 2014 the *Registration to Work with Vulnerable People Act 2013* (the Act) commenced 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 vulnerable people, to reduce the risk of sexual, physical and emotional harm.

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 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 vulnerable people
- Prevent those with such criminal records who do apply from gaining positions of trust when working with vulnerable people
- Establish consistent standards for background screening for working with vulnerable people 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 or registered person 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, and can 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 Vulnerable People (Children) Registration?**

The criteria that requires registration to work with children is determined by the work the person is engaged in and by the closeness of contact they have with children. The type of contact or work that must be registered is called a 'regulated activity'.

Regulated activities are determined by the *Registration to Work with Vulnerable People Regulations 2014*.

## **The application process**

When an application for a Working with Vulnerable People (Children) Registration is lodged, an applicant gives consent to undergo a national background check. If a person is successful in gaining registration, they also consent to ongoing monitoring for the duration of their registration.

The purpose of these checks is to assess whether a person poses no risk, an acceptable risk or an unacceptable risk of harm to children.

Information that may be considered during the risk assessment process includes the full criminal history of the applicant (including non-conviction information such as allegations, pending charges, and any orders the person is subject to), employment history and other information considered relevant.

During the risk assessment process, applicants or registered persons may be asked to provide additional information, provide references or undergo an interview in relation to their application or registration. The Registrar also has the power to obtain information and advice from other entities, including employers, when considered relevant.

The process for the background check and risk assessment is established in legislation. That is, the *Registration to Work with Vulnerable People Act 2013* sets out what information must or may be taken into account when conduct the risk assessment, specifies where further information can be obtained and how personal information is handled. The Act also details the offences that will trigger further investigation, which may result in a negative risk assessment and a refusal of registration.

The following information outlines the risk assessment process in more detail. This information should be used to assist an applicant in determining what information should be provided to the Registrar in their application, and how the information is likely to be assessed.

## **The background check**

A risk assessment is an evaluation of an individual's eligibility for child-related work, as in whether a person poses a risk to the safety of children. The assessment is conducted by the Working with Children Unit and the outcome is either a clearance or a refusal to work with children.

The assessment process is typically completed within six weeks. For some cases, the assessment can take longer, depending on the nature and location of the records involved. The Working with Children Unit will keep an applicant informed throughout the review process and will make all reasonable attempts to complete the risk assessment process as soon as is practicable after an application is received.

When a person applies for a Working with Vulnerable People (Children) Registration, there are three possible outcomes:

- successful (without conditions) Working with Vulnerable People (Children) Registration
- successful (with conditions) Working with Vulnerable People (Children) Registration
- refusal of a Working with Vulnerable People (Children) Registration

## Matters that can be taken into account

In Tasmania, a number of matters may be taken into account for the purpose of a background check. These matters include:

- the criminal history of the applicant, including his/her national and international criminal history:
  - a relevant offence the applicant has been found guilty of, even if a conviction has not been recorded or it has been annulled
  - the non-conviction history of the applicant, including allegations or pending charges
  - any orders that the applicant may have been subject to (including restraint orders, family violence orders or child protection orders)
- any past reportable behaviour that indicates the person poses a risk of harm to vulnerable persons, whether by reason of neglect, abuse or other conduct
- whether the person has been refused registration, or had their registration suspended or cancelled, in Tasmania or any other jurisdiction
- the employment history of the applicant (including unemployment history, information about any misconduct or disciplinary actions taken against the person)
- any relevant personal information about the applicant (such as multiple change of name or address)
- whether the applicant has provided false or misleading information, or failed to provide relevant information, at any stage during the application or risk assessment process
- any other matter that the Registrar considers relevant in the circumstances.

## Changes in circumstances

An applicant must notify the Register of any change in relevant information including name, address, employer, and criminal history. Similarly, registered persons who are already working with vulnerable persons must also update the Registrar as to any relevant changes in circumstances.

## Relevant Offences

Relevant offences are defined in the Act as:

- an offence under the *Poisons Act 1971* or the *Misuse of Drugs Act 2001*, or a similar offence committed elsewhere
- any of the following offences, whether committed in Tasmania or elsewhere
  - a sexual offence
  - an offence against a person
  - an offence involving violence
  - an offence involving dishonesty or fraud

- an offence relating to property
  - an offence against an animal
  - a driving offence
- an offence committed in Tasmania or elsewhere relating to another offence that comprises of any of the following behaviours
  - attempting to commit the offence
  - inciting, instigating, aiding or abetting the commission of the other offence
  - being an accessory after the fact to the other offence

The offences which will be considered relevant by the Registrar are listed in the Schedule of Offences, as prescribed in the *Registration to Work with Vulnerable People Regulations 2014*.

## How is risk assessed?

When assessing a person's suitability, or ongoing suitability, for child-related work, the following factors may be considered in relation to the information assessed as part of the risk assessment process:

Factors relating to the conduct:

- nature, gravity or seriousness of the matter (as demonstrated by details of the conduct, court outcome and penalty)
- length of time since the conduct occurred
- age and vulnerability of the victim(s)
- relationship between the offender and victim(s)
- age difference between the offender and victim(s)
- impact on the victim(s)

Factors relating to the applicant or registered person:

- conduct since the offence/alleged offence
- likelihood of the offences being repeated
- whether there is a pattern of concerning conduct.

## 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 relevant entity
- a public authority of a jurisdiction other than Tasmania

- a government agency, or part of a government agency of a jurisdiction other than Tasmania
- a body, corporate or unincorporated, established by or under the statute law of a jurisdiction other than Tasmania

## Risk assessment results

If a risk assessment determines that a person poses an unacceptable risk of harm to vulnerable persons, the Registrar will notify the person in writing that the Registrar intends to refuse to register the person. This notification is called a proposed negative notice, or an intention to suspend or cancel registration for persons who are already registered.

There are a number of instances where the Registrar must automatically issue a proposed negative notice or an intention to suspend or cancel the registered persons registration. These include:

- where the applicant has been charged with, or convicted of, a Schedule I offence, and
- if at the time the offence was committed, the applicant was an adult and the victim was a child.

The purpose of a proposed negative notice, or an intention to suspend or cancel registration, is to advise the applicant or registered persons that the Registrar has made a negative risk assessment against them and to outline the process that follows.

## Review of negative risk assessment

The person has the opportunity to request the Registrar reconsider the negative risk assessment and to provide further information into the circumstances surrounding the circumstances that have resulted in the negative risk assessment.

If the person does not make this request, a ‘negative notice’ will be issued by the Registrar and registration will not be granted. In the case of registered persons, their registration will be suspended or cancelled.

If a Working with Vulnerable People (Children) Registration is refused, it is a criminal offence to work in regulated child related activities for five years (unless circumstances have changed that permit an earlier application).

If the person is already working with children, they must immediately cease working or volunteering in a child related regulated activity.

## Schedule I – Offences

1. An offence under section 8 of the *Animal Welfare Act 1993*
2. An offence under section 9 of the *Animal Welfare Act 1993*
- 3.
- 4.
- 5.
6. An offence under section 95 of the *Children, Young Persons and Their Families Act 1997*

- 7.** An offence under section 17(4) of the *Classification (Publications, Films and Computer Games) Enforcement Act 1995*
- 8.** An offence under section 72 of the *Classifications (Publications, Films and Computer Games) Enforcement Act 1995*
- 9.** An offence under section 72A of the *Classification (Publications, Films and Computer Games) Enforcement Act 1995*
- 10.** An offence under section 73 of the *Classification (Publications, Films and Computer Games) Enforcement Act 1995*
- 11.** An offence under section 73A of the *Classification (Publications, Films and Computer Games) Enforcement Act 1995*
- 12.** An offence under section 74 of the *Classification (Publications, Films and Computer Games) Enforcement Act 1995*
- 13.** An offence under section 74A of the *Classification (Publications, Films and Computer Games) Enforcement Act 1995*
- 14.** An offence under section 122 of the *Criminal Code Act 1924*
- 15.** An offence under section 124 of the *Criminal Code Act 1924*
- 16.** An offence under section 125 of the *Criminal Code Act 1924* -
- 17.** An offence under section 125A of the *Criminal Code Act 1924*
- 18.** An offence under section 125B of the *Criminal Code Act 1924*
- 19.** An offence under section 125C of the *Criminal Code Act 1924*
- 20.** An offence under section 125D(1) of the *Criminal Code Act 1924*
- 21.** An offence under section 125D(3) of the *Criminal Code Act 1924*
- 22.** An offence under section 126 of the *Criminal Code Act 1924*
- 23.** An offence under section 127 of the *Criminal Code Act 1924*
- 24.**
- 25.** An offence under section 129 of the *Criminal Code Act 1924*
- 26.** An offence under section 130 of the *Criminal Code Act 1924*
- 27.** An offence under section 130A of the *Criminal Code Act 1924*
- 28.** An offence under section 130B of the *Criminal Code Act 1924*
- 29.** An offence under section 130C of the *Criminal Code Act 1924*
- 30.** An offence under section 130D of the *Criminal Code Act 1924*

- 31.** An offence under section 133 of the *Criminal Code Act 1924*
- 32.** An offence under section 137 of the *Criminal Code Act 1924*
- 33.** An offence under section 138 of the *Criminal Code Act 1924*
- 34.**
- 35.** An offence under section 152 of the *Criminal Code Act 1924*
- 36.** An offence under section 158 of the *Criminal Code Act 1924*
- 37.** An offence under section 159 of the *Criminal Code Act 1924*
- 38.** An offence under section 161 of the *Criminal Code Act 1924*
- 39.** An offence under section 162 of the *Criminal Code Act 1924*
- 40.** An offence under section 162A of the *Criminal Code Act 1924*
- 41.** An offence under section 163 of the *Criminal Code Act 1924*
- 42.** An offence under section 165A of the *Criminal Code Act 1924*
- 43.** An offence under section 166 of the *Criminal Code Act 1924*
- 44.**
- 45.** An offence under section 169 of the *Criminal Code Act 1924*
- 46.** An offence under section 170 of the *Criminal Code Act 1924*
- 47.** An offence under section 172 of the *Criminal Code Act 1924*
- 48.** An offence under section 175 of the *Criminal Code Act 1924*
- 49.** An offence under section 176 of the *Criminal Code Act 1924*
- 50.** An offence under section 177 of the *Criminal Code Act 1924*
- 51.** An offence under section 178 of the *Criminal Code Act 1924*
- 52.** An offence under section 178A of the *Criminal Code Act 1924*
- 53.** An offence under section 178D of the *Criminal Code Act 1924*
- 54.** An offence under section 178E of the *Criminal Code Act 1924*
- 55.** An offence under section 183 of the *Criminal Code Act 1924*
- 56.** An offence under section 184 of the *Criminal Code Act 1924*
- 57.** An offence under section 184A of the *Criminal Code Act 1924*

- 58.** An offence under section 185 of the *Criminal Code Act 1924*
- 59.** An offence under section 186(1) of the *Criminal Code Act 1924*
- 60.** An offence under section 189 of the *Criminal Code Act 1924*
- 61.** An offence under section 191 of the *Criminal Code Act 1924*
- 62.** An offence under section 191A of the *Criminal Code Act 1924*
- 63.** An offence under section 192(1) of the *Criminal Code Act 1924*
- 64.** An offence under section 240(4) of the *Criminal Code Act 1924*
- 65.**
- 66.**
- 67.** An offence under section 269A of the *Criminal Code Act 1924*
- 68.** An offence under section 297 of the *Criminal Code Act 1924*
- 69.** An offence under section 298 of the *Criminal Code Act 1924*
- 70.**
- 71.**
- 72.** An offence under section 272.8 of the *Criminal Code Act 1995* of the Commonwealth
- 73.** An offence under section 272.9 of the *Criminal Code Act 1995* of the Commonwealth
- 74.** An offence under section 272.10 of the *Criminal Code Act 1995* of the Commonwealth
- 75.** An offence under section 272.11 of the *Criminal Code Act 1995* of the Commonwealth
- 76.** An offence under section 272.12 of the *Criminal Code Act 1995* of the Commonwealth
- 77.** An offence under section 272.13 of the *Criminal Code Act 1995* of the Commonwealth
- 78.** An offence under section 272.14 of the *Criminal Code Act 1995* of the Commonwealth
- 79.** An offence under section 272.15 of the *Criminal Code Act 1995* of the Commonwealth
- 80.** An offence under section 272.18 of the *Criminal Code Act 1995* of the Commonwealth
- 81.** An offence under section 272.19 of the *Criminal Code Act 1995* of the Commonwealth
- 82.** An offence under section 272.20 of the *Criminal Code Act 1995* of the Commonwealth
- 83.**
- 84.** An offence under section 273.6 of the *Criminal Code Act 1995* of the Commonwealth

- 85.** An offence under section 273.7 of the *Criminal Code Act 1995* of the Commonwealth
- 86.**
- 87.**
- 88.** An offence under section 471.19 of the *Criminal Code Act 1995* of the Commonwealth
- 89.** An offence under section 471.20 of the *Criminal Code Act 1995* of the Commonwealth
- 90.** An offence under section 471.22 of the *Criminal Code Act 1995* of the Commonwealth
- 91.** An offence under section 471.24 of the *Criminal Code Act 1995* of the Commonwealth
- 92.** An offence under section 471.25 of the *Criminal Code Act 1995* of the Commonwealth
- 93.** An offence under section 471.26 of the *Criminal Code Act 1995* of the Commonwealth
- 94.**
- 95.**
- 96.** An offence under section 474.22 of the *Criminal Code Act 1995* of the Commonwealth
- 97.** An offence under section 474.23 of the *Criminal Code Act 1995* of the Commonwealth
- 98.** An offence under section 474.24A of the *Criminal Code Act 1995* of the Commonwealth
- 99.** An offence under section 474.25A of the *Criminal Code Act 1995* of the Commonwealth
- 100.** An offence under section 474.25B of the *Criminal Code Act 1995* of the Commonwealth
- 101.** An offence under section 474.26 of the *Criminal Code Act 1995* of the Commonwealth
- 102.** An offence under section 474.27 of the *Criminal Code Act 1995* of the Commonwealth
- 103.** An offence under section 474.27A of the *Criminal Code Act 1995* of the Commonwealth
- 104.** An offence under section 233BAB of the *Customs Act 1901* of the Commonwealth
- 105.** An offence under section 8 of the *Family Violence Act 2004*
- 106.** An offence under section 9 of the *Family Violence Act 2004*
- 107.**
- 108.** An offence under section 6 of the *Misuse of Drugs Act 2001*
- 109.** An offence under section 7 of the *Misuse of Drugs Act 2001*
- 110.**
- 111.**

- I12.** An offence under section 12 of the *Misuse of Drugs Act 2001*
- I13.** An offence under section 13 of the *Misuse of Drugs Act 2001*
- I14.** An offence under section 14 of the *Misuse of Drugs Act 2001*
- I15.** An offence under section 33 of the *Poisons Act 1971*
- I16.**
- I17.** An offence under section 7A of the *Police Offences Act 1935*
- I18.** An offence under section 8(1A)(a) of the *Police Offences Act 1935*
- I19.**
- I20.** An offence under section 13A of the *Police Offences Act 1935*
- I21.** An offence under section 13B of the *Police Offences Act 1935*
- I22.** An offence under section 13C of the *Police Offences Act 1935*
- I23.**
- I24.**
- I25.**
- I26.** An offence under section 35(2) of the *Police Offences Act 1935*
- I27.** An offence under section 35(3) of the *Police Offences Act 1935*
- I28.** An offence under section 36 of the *Police Offences Act 1935*
- I29.**
- I30.**
- I31.**
- I32.** An offence under section 7(1)(a) of the *Sex Industry Offences Act 2005*
- I33.** An offence under section 7(1)(d) of the *Sex Industry Offences Act 2005*
- I34.** An offence under section 7(2) of the *Sex Industry Offences Act 2005*
- I35.**
- I36.** An offence under section 9(1) of the *Sex Industry Offences Act 2005*
- I37.** An offence under section 9(2) of the *Sex Industry Offences Act 2005*
- I38.** An offence in another jurisdiction that, if committed in Tasmania, would be an offence specified in this Schedule

- I39.** An offence that includes as an element the intention to commit an offence specified in this Schedule
- I40.** An offence of attempting, or of conspiracy or incitement to commit, an offence specified in this Schedule
- I41.** An offence, not already specified in this Schedule, relating to murder
- I42.** An offence, not already specified in this Schedule, relating to manslaughter
- I43.** An offence, not already specified in this Schedule, involving the intentional wounding of, or causing bodily harm to, a child by an adult
- I44.** A sexual offence, not already specified in this Schedule, committed against, or in the presence of, a child

## Further information

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