

Department of Justice
Tasmanian Government

By email: HaveYourSay@justice.tas.gov.au

**RE: COMMUNITY CONSULTATION
Registration to Work with Vulnerable People Regulations 2023 and Registration to Work with
Vulnerable People (Risk Assessment) Order 2023**

Thank you for the opportunity to make a submission to the Department of Justice ('the Department') in relation to your current community consultation on the Registration to Work with Vulnerable People Regulations 2023 ('the Draft Regulations') and Registration to Work with Vulnerable People (Risk Assessment) Order 2023 ('the Draft Risk Assessment Order').

The Tasmanian Council of Social Service (TasCOSS) is the peak body for the community services industry in *lutruwita*/Tasmania. Our Vision is of one *lutruwita*/Tasmania, free of poverty and inequality, where everyone has the same opportunity. Our Mission is to challenge and change the systems, behaviours and attitudes that create poverty, inequality and exclusion, to ensure all Tasmanians have equal opportunity to live a good life.

The stated purpose of the proposed amendments to the current registration scheme for working with vulnerable people in Tasmania is to expand both the definition of 'vulnerable people' under the Registration to Work with Vulnerable People Act 2013 ('the Act'), as well as the definition of 'vulnerable adult activities'.

'Vulnerable adults' will now include adults subject to Guardianship and Administration Orders, people with a disability, people subject to treatment under the Mental Health Act and people 65 years or older, or Aboriginal and Torres Strait Islander people 50 years or older. 'Vulnerable adult activities' will now include advocacy services, aged care services, employment services, Guardianship and Administration services and Public Trustee services. Combined child and vulnerable adult-related activities will now include counselling services, disability services, educational services (including TasTAFE, University of Tasmania and training organisations), transport services and health services. The proposed amendments also include a single risk assessment order for child-related activities, NDIS-related activities and activities involving vulnerable adults.

Recent Tasmanian and national inquiries have raised serious concerns around the safety of those who may be particularly vulnerable to abuse, neglect and ill-treatment. The recent *Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings* ('the Commission of Inquiry') revealed the need for significant change to better promote the rights of children within state institutions and protect them from abuse. Similarly, the findings of the recent *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* ('the Disability Royal Commission') demonstrate that people with disability continue to be routinely exposed to violence, abuse, neglect and

exploitation, and that systemic change is needed to promote and protect the rights of people with disability throughout Australia.

TasCOSS strongly supports measures to promote the rights of people who may be vulnerable within institutions, including children and Tasmanians with disability. However, we are unclear the expansion of the current regulatory framework in relation to Working with Vulnerable People (‘WWVP’) checks will have any significant positive impact on vulnerable Tasmanians. In the absence of comprehensive explanatory memoranda in relation to the proposed changes, it is also unclear what is driving the proposed changes.

Academic reports have raised concerns about the effectiveness and/or appropriateness of working with children check schemes across Australia, highlighting the following:

- Registration schemes using assessments based on a person’s criminal history rely on the person having already come to the attention of police and justice systems, when much abusive behaviour has historically gone unreported and the majority of sexual abuse perpetrators detected do not have prior convictions for offences relating to children;¹
- Registration/screening processes may give organisations (as well as families and communities) a false sense of security about people who work with children or vulnerable people, particularly if the registration scheme is not accompanied by supervision, training or education to promote proactive measures/responses to safety issues which may arise;
- There are significant equity issues which arise in the context of registration schemes using a person’s criminal history. As noted by one researcher: ‘Because obtaining clearance to work with children involves many categories of offences, juvenile and adult charges, convictions, spent convictions, and police intelligence, an applicant’s criminal history can be taken into account many years after any offences occurred... the charge or conviction may have occurred many years ago and further penalty now can be disproportionate and irrelevant to the offence, or the applicant’s personal circumstances at the time of the charge or conviction may have significantly changed. Using criminal history as the basis for employing people has the effect of excluding and marginalising people who have already been punished at law. Consideration must be given to balancing a person’s right to move past an old or minor conviction and the protection of children’.²
- Registration schemes which rely on the assessment of a person’s criminal history disproportionately impact Aboriginal and Torres Strait Islander people, who continue to be overrepresented in the criminal justice system. A recent report has also found the application process for registration could be ‘exhausting and re-traumatising’ for Aboriginal people in particular, due to various factors including intergenerational trauma, accessibility issues (particularly in remote communities), language barriers and complex ID requirements;³

¹ Irenyi, M., Bromfield, L., Beyer, L. and Higgins, D. ‘Child maltreatment in organisations: Risk factors and strategies for prevention’ (2006), *Child Abuse Prevention Issues* (25), pp16-17.

² Tilbury, C. ‘Working with children checks - time to step back?’ (2014) *The Australian Journal of Social Issues*, 49(1), 87–100, p94.

³ Queensland Parliament, Legal Affairs and Safety Committee, Report No 38: Examination of the Working with Children (Indigenous Communities) Amendment Bill 2021 (October 2022), accessed at <https://documents.parliament.qld.gov.au/tableoffice/tabledpapers/2022/5722T1799-B205.pdf>.

- There are significant costs associated with administering registration schemes, both for organisations and for individuals, which (given the issues outlined above) may not be commensurate with the protection they provide.

TasCOSS notes the current registration regime will soon be further supported by Child and Youth Safe Organisations Framework, which provides clear and consistent guidelines for organisations in relation to how they should prioritise and promote the safety and wellbeing of children and young people, as well as how to respond in relation to potential safety concerns.

We further note that national inquiries, as well as human rights bodies, have called for a nationally consistent approach to registration schemes. However, Tasmania is one of the few states and territories (alongside the Australian Capital Territory and South Australia) where registration is required to work with ‘vulnerable people’ rather than just those under 18. In further expanding the definition of ‘vulnerable adult’ and the scope of activities which may require registration, we are concerned Tasmania may be moving away from the nationally consistent, standardised scheme recommended by national inquiries⁴ and human rights bodies.⁵

TasCOSS strongly recommends the following:

- The Tasmanian Government should prioritise reforms recommended by the Disability Royal Commission, including (not but limited to) the following:
 - o The reduction/elimination of restrictive practices;
 - o The implementation of supported decision-making frameworks;
 - o Strengthened oversight mechanisms (such as a properly resourced Disability Commissioner who is able to investigate and take action in relation to complaints;
 - o Criminal justice reforms to promote and protect the rights of people with disability;
 - o Increased culturally-safe supports for Aboriginal people with disability; and
 - o A human-rights based approach.
- The Tasmanian Government should ensure our WWVP registration scheme is aligned with other states and territories, as per the National Framework for Protecting Australia’s Children.⁶
- Consistent with the recommendations of both the Commission of Inquiry⁷ and the Disability Royal Commission,⁸ the Tasmanian Government should prioritise the development and implementation

⁴ Such as the Royal Commission into Institutional Responses to Child Sexual Abuse.

⁵ See Australian Human Rights Commission, Working With Children Check – Australian Human Rights Commission Response to the Royal Commission into Institutional Responses to Child Sexual Abuse: Issue Paper 1 (12 August 2013), accessed at https://humanrights.gov.au/sites/default/files/wwcc_submission_aug_2013.pdf.

⁶ Department of Social Services, Australian Government, Safe and Supported: the National Framework for Protecting Australia’s Children 2021–2031 (2021), accessed at https://www.dss.gov.au/sites/default/files/documents/12_2021/dess5016-national-framework-protecting-childrenaccessible.pdf.

⁷ For example, see Recommendation 6.5 of the Commission of Inquiry into the Tasmanian Government’s Responses to Child Sexual Abuse: Final Report (August 2023), Volume 3: Chapter 6 — The way forward: Children in schools, p134.

⁸ For example, see Recommendation 10.22 of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: Final Report (September 2023), Executive Summary and Recommendations, p296.

- of a comprehensive training and education scheme/program to be delivered across the public and community sector to ensure clear understanding of how to identify and respond to concerning behaviour.
- To support organisations with the implementation of the Child and Youth Safe Organisations Framework, we recommend the Government also invest in measures to build the capacity of Tasmanian organisations and entities, as well as the families and carers of Tasmanian children, such as:
 - o Comprehensive information, training and education provided to organisations not only in relation to their obligations under the Scheme, but in relation to existing community supports and/or networks available to assist children and young people;
 - o Clear information provided to organisations in relation to referral pathways to engage children, young people, their families and/or carers with additional supports if needed; and
 - o Comprehensive community education and information campaign to be developed and delivered prior to the introduction of the Scheme. This should include information developed for (and ideally co-designed with) children and young people, focused on the obligations of organisations as well as their rights.

Please do not hesitate to contact our office if you have any questions in relation to the above.

Yours faithfully

Adrienne Picone
Chief Executive Officer

1 December 2023
