

TASMANIA

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**REGISTRATION TO WORK WITH VULNERABLE  
PEOPLE (RISK ASSESSMENT FOR NDIS  
ENDORSED ACTIVITIES) ORDER 2020**

**STATUTORY RULES 2020, No. 101**

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**REGISTRATION TO WORK WITH VULNERABLE  
PEOPLE (RISK ASSESSMENT FOR NDIS  
ENDORSED ACTIVITIES) ORDER 2020**

I make the following order under section 26 of the *Registration to Work with Vulnerable People Act 2013*.

Dated 22 December 2020.

ELISE ARCHER  
Minister for Justice

**1. Short title**

This order may be cited as the *Registration to Work with Vulnerable People (Risk Assessment for NDIS Endorsed Activities) Order 2020*.

**2. Commencement**

This order takes effect on the day on which the last uncommenced provision of the *Registration to Work with Vulnerable People Amendment Act 2019* commences.

**3. Interpretation**

(1) In this order –

*applicant* means a person who has applied for registration under the Act in the category

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of registration that is child and vulnerable adult-related (NDIS endorsed) activity;

**NDIS** means the National Disability Insurance Scheme, established by the *National Disability Insurance Scheme Act 2013* of the Commonwealth;

**NDIS-registered person** means a person who is registered under the Act in the category of registration that is child and vulnerable adult-related (NDIS endorsed) activity;

**NDIS-relevant offence** means –

- (a) a relevant offence within the meaning of the Act; and
- (b) a presumed exclusion offence; and
- (c) an offence specified in Part 3 of Schedule 1 or a substantially similar offence under a corresponding law;

**presumed exclusion offence** means an offence specified in Part 2 of Schedule 1 or a substantially similar offence under a corresponding law.

- (2) Unless the contrary intention appears, an expression that is used in this order and the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018*

or the *National Disability Insurance Scheme (Practice Standards - Worker Screening) Rules 2018* of the Commonwealth has, in this order, the same meaning respectively as in those rules.

- (3) The *Acts Interpretation Act 1931* applies to the interpretation of this order as if this order were by-laws.

#### **4. Application of order**

This order applies in respect of –

- (a) the performance of a risk assessment of an applicant; and
- (b) the performance of an additional risk assessment of an NDIS-registered person.

#### **5. Matters to be taken into account when conducting risk assessment**

- (1) When conducting a risk assessment, or additional risk assessment, of an applicant or NDIS-registered person, respectively, the Registrar may take into account the following matters:
- (a) a matter specified in clause 5 of the *Registration to Work with Vulnerable People (Risk Assessment for Child-related Activities) Order 2014*;

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- (b) a matter specified in any risk assessment manual prepared for the purposes of worker screening under the NDIS, published by the Commonwealth, as amended from time to time;
  - (c) whether the applicant or NDIS-registered person has been charged with, or convicted of, an NDIS-relevant offence.
- (2) When conducting an additional risk assessment of an NDIS-registered person, the Registrar may also take into account the matters specified in section 28(1A) of the Act.
- (3) The matters referred to in subclauses (1) and (2) are to be taken into account in conducting a risk assessment, or an additional risk assessment, by considering the nature of the behaviour, or alleged behaviour, of the applicant, or NDIS-registered person, that is relevant to the matters referred to in these subclauses.

**6. Conduct of risk assessments and additional risk assessments**

- (1) In this clause –

*matter*, in relation to a risk assessment, or an additional risk assessment, means a matter, referred to in clause 5(1), taken into account by the Registrar in conducting the risk assessment or additional risk assessment.

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- (2) If the Registrar considers it relevant to do so in relation to a matter that he or she is taking into account in conducting a risk assessment, or an additional risk assessment, the Registrar may consider –
- (a) the nature, gravity and circumstances of an offence, misconduct, disciplinary proceeding or other relevant information relating to the matter, and how this is relevant to child and vulnerable adult-related (NDIS endorsed) activity; and
  - (b) the length of time that has passed since the matter occurred; and
  - (c) the vulnerability of the victim at the time of the matter occurring, including –
    - (i) the age of the victim; and
    - (ii) the age difference between the applicant, or NDIS-registered person, and the victim; and
    - (iii) the applicant's, or NDIS-registered person's, relationship to the victim or position of authority over the victim at the time of the matter occurring; and
  - (d) the applicant's, or NDIS-registered person's, criminal, misconduct, disciplinary or other relevant history, including whether there is a pattern of concerning conduct; and

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- (e) the applicant's, or NDIS-registered person's, conduct since the matter occurred; and
- (f) all other relevant circumstances in respect of the offending, misconduct or other relevant history of the applicant, or NDIS-registered person, and the impact on the eligibility of the applicant, or NDIS-registered person, to be engaged in child and vulnerable adult-related (NDIS endorsed) activity.

**7. Conduct not to be taken into account**

The Registrar must not take into account any conduct by the applicant that constituted an offence at the time when the conduct occurred but would not have constituted an offence at the time when the application for registration under the Act was made.

**8. Making of submissions to Registrar**

- (1) At any time before the Registrar completes a risk assessment in respect of an applicant or NDIS-registered person, the applicant or NDIS-registered person may provide information to the Registrar that the applicant or NDIS-registered person believes may be relevant to the risk assessment.

- (2) The Registrar may take any information provided under subclause (1) into account when conducting a risk assessment.

**9. Issue of negative notice**

- (1) If an applicant or NDIS-registered person –
- (a) has been convicted, as an adult, of a presumed exclusion offence; or
  - (b) has charges pending for a presumed exclusion offence or a disqualifying offence –

the Registrar must issue a negative notice to the applicant or NDIS-registered person, unless the Registrar is satisfied that exceptional circumstances exist in relation to the applicant or NDIS-registered person such that the applicant or NDIS-registered person does not pose an unacceptable risk of harm to a person with disability.

- (2) For the purposes of this clause, exceptional circumstances are not limited to the circumstances of the presumed exclusion offence with which the applicant or NDIS-registered person has been charged or of which the applicant or NDIS-registered person has been convicted.

**10. Changes in circumstances of affected person**

- (1) In this clause –

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***affected person*** means a person who –

- (a) has been provided with a negative notice, or whose registration has been cancelled, under the Act in relation to the category of registration that is child and vulnerable adult-related (NDIS endorsed) activity; or
- (b) has had registration, in a category of registration that is substantially similar to the category that is child and vulnerable adult-related (NDIS endorsed) activity, refused or cancelled under a corresponding law.

***relevant date***, in respect of an affected person, means the date on which –

- (a) the negative notice was provided in respect of the affected person; or
  - (b) the registration of the affected person was cancelled.
- (2) For the purposes of section 19(3)(b) of the Act, the matters that may constitute significant and exceptional change in the circumstances of an affected person include but are not limited to the following matters:
- (a) that the affected person was not found guilty in respect of proceedings, or those

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- proceedings were withdrawn, and those proceedings –
- (i) were pending at the relevant date; and
  - (ii) were taken into account when making the negative notice or cancelling the registration;
- (b) that since the relevant date –
- (i) the affected person has had a finding of guilt quashed or set aside; and
  - (ii) that finding of guilt had been taken into account when making the negative notice or cancelling the registration;
- (c) that a finding in relation to any other matter that had been taken into account when making the negative notice, or cancellation of the registration, in respect of the affected person has been quashed or set aside or has otherwise expressly or impliedly ceased to have effect, since the relevant date.
- (3) Nothing in subclause (2) prevents the Registrar from allowing an application under section 19 of the Act that does not meet the requirements of that subclause if the Registrar is satisfied that there has been a significant and exceptional

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change in the person's circumstances since the relevant date.

**11. New relevant information of NDIS-registered person**

For the purposes of section 46 of the Act, any of the following information constitutes new relevant information in respect of an NDIS-registered person:

- (a) the NDIS-registered person is suspected of having committed an NDIS-relevant offence;
- (b) the NDIS-registered person has been charged with an NDIS-relevant offence;
- (c) the NDIS-registered person has been convicted of an NDIS-relevant offence;
- (d) the NDIS-registered person has been found guilty of an NDIS-relevant offence.

**SCHEDULE 1 – NDIS-RELEVANT OFFENCES**

Clause 3

**PART 1 – INTERPRETATION**

**1. Interpretation**

In this Schedule –

*at-risk person* means an adult who is, or may be, unable to take care of himself or herself, or unable to protect himself or herself from harm or exploitation, due to age, illness or disability;

*parent* includes a guardian, within the meaning of the *Children, Young Persons and Their Families Act 1997*, a step-parent, a surrogate parent, an adoptive parent and a foster parent;

*person under care* means a child or at-risk person who has a relationship with the relevant person in the context of receiving support or services;

*relevant person* means an applicant or an NDIS-registered person.

**PART 2 – PRESUMED EXCLUSION OFFENCES**

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	<b>Presumed exclusion offences</b>
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<b>Presumed exclusion offences</b>	
1.	An offence under section 56, 159 or 163 of the <i>Criminal Code</i> or section 9 of the <i>Animal Welfare Act 1993</i>
2.	An offence under section 167A of the <i>Criminal Code</i> or section 32(2A) of the <i>Traffic Act 1925</i> , if the relevant person did not intend to cause the death of the victim to whom the offence relates
3.	An offence under section 175 or 179 of the <i>Criminal Code</i> that is against a person who is neither a child nor an at-risk person, if the relevant person did not intend to cause the death of the victim to whom the offence relates
4.	An offence under section 125A of the <i>Criminal Code</i> , if the relevant person did not use violence or coercion in the commission of the offence, the victim to whom the offence relates was aged 14 years or older at the time when the offence was committed and the relevant person is fewer than 5 years older than the victim to whom the offence relates
5.	An offence under section 127, 133, 168, 169, 170(1), 170A, 172, 178A, 183(a) or 184A of the <i>Criminal Code</i> that is against a person who is neither a child nor an at-risk person
6.	An offence under section 177 or 178 of the <i>Criminal Code</i> against a person under care
7.	An offence under section 186 or 191A of the <i>Criminal Code</i> if the relevant person is the parent of the victim or if the victim is neither a child nor an at-risk person

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<b>Presumed exclusion offences</b>	
8.	An offence under section 240(2)(b), 240A(1)(a) or (2)(c) of the <i>Criminal Code</i> , if the bodily harm caused in committing the offence is the equivalent of grievous bodily harm
9.	An offence under section 250, 251, 252, 252A, 253, 253A, 278, 279, 280, 284, 288 or 290 of the <i>Criminal Code</i> , section 28 of the <i>Misuse of Drugs Act 2001</i> or section 13A or 13B of the <i>Police Offences Act 1935</i> against, or in relation to, a child or at-risk person
10.	An offence under section 6, 7, 8, 9, 10, 11, 12, 13, 14, 20, 21, 22, 26, 27 or 27A of the <i>Misuse of Drugs Act 2001</i> and section 47 of the <i>Poisons Act 1971</i> , if the offence involves a child or at-risk person
11.	An offence under section 6, 7, 8, 9, 10, 11, 12, 13, 14, 20, 21, 22, 26, 27 or 27A of the <i>Misuse of Drugs Act 2001</i> and section 47 of the <i>Poisons Act 1971</i> , if the quantity of the drug to which the offence relates is a trafficable quantity within the meaning of the <i>Misuse of Drugs Act 2001</i>

**PART 3 – SPECIFIED OFFENCES**

<b>Specified offences</b>	
1.	An offence under section 75, 80, 100(b), 139(b), 162, 167B, 173, 174, 176, 184, 192, 234, 234A, 240, 240A, 241, 242, 244, 245, 268, 268A, 269, 269A, 276AA, 276B(1) or 276F of the <i>Criminal Code</i>

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	<b>Specified offences</b>
2.	An offence under section 137 of the <i>Criminal Code</i> , if the offence took place within the boundaries of, or immediately adjacent to, a school
3.	An offence under section 191(2) or 195 of the <i>Criminal Code</i> , if the offence is against a child or at-risk person
4.	An offence under section 112 or 113 of the <i>Firearms Act 1996</i>
5.	An offence under section 13A or 13B of the <i>Police Offences Act 1935</i> that is not against an at-risk person
6.	An offence under section 32 or 35 of the <i>Family Violence Act 2004</i> or section 106I of the <i>Justices Act 1959</i>
7.	An offence under section 50 of the <i>Children, Young Persons and Their Families Act 1997</i> or section 105A of the <i>Criminal Code</i> , if the offence is against a child or at-risk person
8.	An offence under section 6, 7, 8, 9, 10, 11, 20, 21, 22, 23, 24 or 27A of the <i>Misuse of Drugs Act 2001</i>
9.	An offence under section 8, 10 or 11 of the <i>Animal Welfare Act 1993</i>

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Printed and numbered in accordance with the *Rules  
Publication Act 1953*.

Notified in the *Gazette* on 30 December 2020.

This order is administered in the Department of Justice.

**EXPLANATORY NOTE**

*(This note is not part of the order)*

This order specifies certain matters relating to the conduct of a risk assessment, under the *Registration to Work with Vulnerable People Act 2013*, in respect of a person applying for registration under that Act in the category of registration that is child and vulnerable adult-related (NDIS endorsed) activity.