



Australian Capital Territory

# Working with Vulnerable People (Background Checking) Act 2011

A2011-44

## Contents

---

	Page
<b>Part 1</b>	<b>Preliminary</b>
1	Name of Act 2
2	Commencement 2
3	When does Act apply to a regulated activity? 2
4	Dictionary 4
5	Notes 4
6	Offences against Act—application of Criminal Code etc 4
<b>Part 2</b>	<b>Important concepts</b>
7	Who is a <i>vulnerable person</i> ? 5
8	What is a <i>regulated activity</i> ? 5
9	When is a person <i>engaged</i> in a regulated activity? 6
10	What is <i>contact</i> with a vulnerable person? 7

---

J2009-767

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

	Page
11 <i>Who is an employer?</i>	8
<b>Part 3                      Requirement for registration</b>	
12      When is a person required to be registered?	9
13      Offences—person engage in regulated activity for which person not registered	13
14      Offences—employer engage person in regulated activity for which person not registered	15
15      When unregistered person may be engaged in regulated activity—supervised employment	16
16      When unregistered person may be engaged in regulated activity—kinship carer	17
<b>Part 4                      Applying for registration</b>	
17      Application for registration	19
18      Application for registration—contents	19
19      Application for registration—additional information	21
20      Application for registration—withdrawal	22
21      Offences—applicant fail to disclose charge, conviction or finding of guilt for relevant offence	22
22      Restriction on reapplying for registration	23
<b>Part 5                      Risk assessments</b>	
<b>Division 5.1              Important concepts</b>	
23      Meaning of <i>risk assessment</i>	25
24      Meaning of <i>criminal history</i>	25
25      Meaning of <i>non-conviction information</i>	26
26      Meaning of <i>relevant offence</i>	26
<b>Division 5.2              Risk assessment guidelines</b>	
27      Risk assessment guidelines	27
28      Risk assessment guidelines—content	28
29      Risk assessment guidelines—criminal history	29
30      Risk assessment guidelines—non-conviction information	30
31      Risk assessment guidelines—other information	31

		Page
<b>Division 5.3</b>	<b>Conducting risk assessments</b>	
32	Risk assessments	32
33	Commissioner may seek information from entities to conduct risk assessments	32
34	Independent advisors—appointment	33
35	Independent advisors—advice	34
36	Independent advisors—ending appointment	34
<b>Division 5.4</b>	<b>Negative risk assessments</b>	
37	Proposed negative notices	35
38	Reconsideration of negative risk assessments	36
39	Extensions of period for reconsideration of negative risk assessment	36
40	Negative notices	37
<b>Part 6</b>	<b>Registration</b>	
<b>Division 6.1</b>	<b>Registration</b>	
41	Registration	39
42	Conditional registration	39
43	Proposed conditional registration	40
44	Reconsideration of proposed conditional registration	41
45	Extensions of period for reconsideration of proposed conditional registration	42
46	Notice of conditional registration	43
47	Conditional registration—amendment	44
48	Offences—registered person contravene condition of registration	45
<b>Division 6.2</b>	<b>Registration cards</b>	
49	Registration cards	46
50	Offence—fail to produce registration card	46
51	Lost, stolen or damaged registration cards	47
52	Offence—fail to return registration card	47
<b>Division 6.3</b>	<b>Monitoring registered people</b>	
53	Commissioner may seek information from entities about registered people	48
54	Additional risk assessments	49

## Contents

---

	Page	
55	Offences—registered person fail to disclose charge, conviction or finding of guilt for relevant offence	50
56	Offence—fail to notify change of name or address	51
<b>Division 6.4</b>	<b>Suspending or cancelling registration</b>	
57	Grounds for suspension or cancellation of registration	51
58	Notice of proposed suspension or cancellation of registration	52
59	Suspension or cancellation of registration	52
<b>Division 6.5</b>	<b>Surrendering registration</b>	
60	Surrendering registration	54
<b>Part 7</b>	<b>Notification and review of decisions</b>	
61	Meaning of <i>reviewable decision</i> —pt 7	55
62	Reviewable decision notices	55
63	Applications for review	55
<b>Part 8</b>	<b>Miscellaneous</b>	
64	Protection from liability	56
65	Offences—use or divulge protected information	56
66	Evidentiary certificates	59
67	Disqualification orders	59
68	Determination of fees	59
69	Approved forms	60
70	Review of Act	60
71	Regulation-making power	60
72	Fair Trading (Australian Consumer Law) Act 1992, dictionary, definition of <i>fair trading legislation</i> , new paragraph (g)	61
<b>Schedule 1</b>	<b>Regulated activities</b>	62
<b>Part 1.1</b>	<b>Activities or services for children</b>	62
1.1	Child protection services	62
1.2	Justice facilities for children	63
1.3	Childcare service	64

## Contents

---

	Page	
1.4	Child education services	64
1.5	Child accommodation services	65
1.6	Counselling and support services for children	65
1.7	Commercial services for children	66
<b>Part 1.2</b>	<b>Activities or services for vulnerable people</b>	<b>67</b>
1.8	Mental health	67
1.9	Migrants, refugees and asylum seekers	67
1.10	Homeless people	68
1.11	Housing and accommodation	68
1.12	Justice facilities	69
1.13	Prevention of crime	70
1.14	Victims of crime	70
1.15	Services for addictions	70
1.16	Community services	71
1.17	Disability services	72
1.18	Respite care services	73
1.19	Emergency services personnel	73
<b>Part 1.3</b>	<b>Other activities or services for vulnerable people</b>	<b>74</b>
1.20	Transport	74
1.21	Coaching and tuition	75
1.22	Vocational and educational training	75
1.23	Religious organisations	75
1.24	Clubs, associations and movements	76
<b>Schedule 2</b>	<b>Reviewable decisions</b>	<b>77</b>
<b>Dictionary</b>		<b>78</b>





Australian Capital Territory

# **Working with Vulnerable People (Background Checking) Act 2011**

**A2011-44**

---

An Act to provide for background checking and registration of people who work with vulnerable people, and for other purposes

---

The Legislative Assembly for the Australian Capital Territory enacts as follows:

---

J2009-767

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Working with Vulnerable People (Background Checking) Act 2011*.

### 2 Commencement

- (1) This Act commences on a day fixed by the Minister by written notice.

*Note 1* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

*Note 2* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

- (2) If this Act has not commenced within 12 months beginning on its notification day, it automatically commences on the first day after that period.
- (3) The Legislation Act, s 79 (Automatic commencement of postponed law) does not apply to this Act.

### 3 When does Act apply to a regulated activity?

- (1) This Act applies to a regulated activity mentioned in an item in table 3, column 2 on and after the date mentioned in column 3 in relation to the item.

**Table 3 Application of Act to regulated activities**

column 1 item	column 2 regulated activity	column 3 date of application
1	activities or services for children (see sch 1, pt 1.1)	1 year after the day part 2 commences



<b>column 1 item</b>	<b>column 2 regulated activity</b>	<b>column 3 date of application</b>
2	<ul style="list-style-type: none"> <li>• homeless people (see sch 1, s 1.10)</li> <li>• victims of crime (see sch 1, s 1.14)</li> <li>• community services (see sch 1, s 1.16)</li> <li>• disability services (see sch 1, s 1.17)</li> <li>• respite care services (see sch 1, s 1.18)</li> <li>• religious organisations (see sch 1, s 1.23)</li> </ul>	2 years after the day part 2 commences
3	<ul style="list-style-type: none"> <li>• coaching and tuition (see sch 1, s 1.21)</li> <li>• vocational and educational training (see sch 1, s 1.22)</li> <li>• clubs, associations and movements (see sch 1, s 1.24)</li> </ul>	3 years after the day part 2 commences
4	<ul style="list-style-type: none"> <li>• migrants, refugees and asylum seekers (see sch 1, s 1.9)</li> <li>• housing and accommodation (see sch 1, s 1.11)</li> <li>• prevention of crime (see sch 1, s 1.13)</li> <li>• emergency services personnel (see sch 1, s 1.19)</li> </ul>	4 years after the day part 2 commences
5	<ul style="list-style-type: none"> <li>• mental health (see sch 1, s 1.8)</li> <li>• transport (see sch 1, s 1.20)</li> </ul>	5 years after the day part 2 commences
6	<ul style="list-style-type: none"> <li>• justice facilities (see sch 1, s 1.12)</li> <li>• services for addictions (see sch 1, s 1.15)</li> </ul>	6 years after the day part 2 commences

(2) This section expires 6 years after the day part 2 commences.

## 4 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition '*spent*, for a conviction—see the *Spent Convictions Act 2000*, section 7.' means that the term 'spent' is defined in that section and the definition applies to this Act.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

## 5 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

## 6 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1* *Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2* *Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

## Part 2 Important concepts

### 7 Who is a *vulnerable person*?

In this Act:

*vulnerable person* means—

- (a) a child; or
- (b) an adult who is—
  - (i) disadvantaged; and
  - (ii) accessing a regulated activity in relation to the disadvantage.

#### Examples—disadvantaged

- 1 an adult with a physical or mental disability
- 2 an adult who suffers social or financial hardship
- 3 an adult who cannot communicate, or who has difficulty communicating, in English

*Note* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

### 8 What is a *regulated activity*?

(1) In this Act:

*regulated activity*—

- (a) means—
  - (i) an activity or service mentioned in schedule 1; or
  - (ii) an activity or service prescribed by regulation; but
- (b) does not include an activity or service declared by the Minister under subsection (2).

- (2) The Minister may declare that a stated activity or service is not a regulated activity.
- (3) A declaration is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

## 9 When is a person *engaged* in a regulated activity?

A person is *engaged* in a regulated activity if the person—

- (a) has contact with a vulnerable person as part of engaging in the activity; and

*Note* **Contact**, between a person and a vulnerable person as part of engaging in a regulated activity—see s 10.

- (b) is engaged in the activity in any capacity and whether—
  - (i) for reward or otherwise; or
  - (ii) under an arrangement with someone else or otherwise.

### **Examples—capacity in which engaged in activity**

- 1 employee
- 2 contractor or subcontractor
- 3 consultant
- 4 self-employed person
- 5 apprentice
- 6 volunteer
- 7 agent
- 8 supervisor
- 9 person on a work experience placement for an educational or vocational course
- 10 person carrying out work for a sentence, including a community service order

11 member of a management committee of an unincorporated body or association

12 minister of religion for a religious organisation

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

## 10 What is *contact* with a vulnerable person?

In this Act:

*contact*, between a person and a vulnerable person as part of engaging in a regulated activity, means contact that—

- (a) would reasonably be expected as a normal part of engaging in the activity; and
- (b) is not incidental to engaging in the activity; and
- (c) is 1 or more of the following:
  - (i) physical contact, including engaging in the activity at the same place as the vulnerable person;

### **Examples—same place**

- 1 an office
- 2 anywhere on a school campus

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (ii) oral communication, whether face-to-face or by telephone;
- (iii) written communication, including—
  - (A) electronic communication; or
  - (B) dealing with a record relating to the vulnerable person;

- (iv) making a decision that affects the vulnerable person.

**Examples—contact**

- 1 A water main bursts at a school during school hours. A plumber is called to the school to fix the problem. Despite working near children, the plumber's contact with the children is not contact for this Act for either of the following reasons:
  - (a) it would not reasonably be expected as a normal part of plumbing;
  - (b) it is incidental to the plumber's activity.
- 2 A school janitor routinely carries out minor repairs at a school during school hours. The janitor's contact with the children is contact for this Act as the contact—
  - (a) would reasonably be expected as a normal part of the janitor's activities; and
  - (b) is not incidental to the janitor's activities; and
  - (c) is physical contact, as the janitor is carrying out the activities in the same place as children.

## 11 Who is an *employer*?

In this Act:

*employer*, in relation to a regulated activity, means an entity for whom a person engages in the activity.

**Examples—employer**

- 1 principal contractor is an employer of a subcontractor
- 2 charitable organisation is an employer of a volunteer
- 3 religious organisation is an employer of a minister of religion

*Note 1* **Entity** includes an unincorporated body and a person (including a person occupying a position) (see Legislation Act, dict, pt 1).

*Note 2* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

## Part 3 Requirement for registration

### 12 When is a person required to be registered?

- (1) A person is required to be registered to engage in a regulated activity.
  - (2) However, a person is not required to be registered to engage in a regulated activity if the person is—
    - (a) under 16 years old; or
    - (b) engaged in the activity (other than an overnight camp for children) for not more than—
      - (i) 3 days in any 4-week period; and
      - (ii) 7 days in any 12-month period; or
    - (c) registered under a corresponding law and—
      - (i) the activity is substantially similar to a regulated activity the person is allowed to engage in under the corresponding law; and
      - (ii) the person is engaged in the activity for not more than 28 days in any 12-month period; or
- Note*     **Corresponding law**—see the dictionary.
- (d) a close relative of each vulnerable person taking part in the activity with whom the person has contact; or
  - (e) engaged in the activity as a volunteer and—
    - (i) is a close relative of a vulnerable person taking part, or who normally takes part, in the activity; and

- (ii) a close relative of each vulnerable person taking part in the activity is engaged, or expected to be engaged, in the activity; or

**Examples**

- 1 playgroup
- 2 a club sporting event for children at which a parent of each child is expected to be present
- 3 a pottery class for children in which a parent of each child also takes part

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (f) engaged in the activity in the same capacity as a vulnerable person; or

**Examples**

- 1 players in a sporting team
- 2 work colleagues

- (g) engaged in the activity as a school student on a work experience placement or doing practical training; or

- (h) an employer or supervisor of a vulnerable person, unless the vulnerable person is engaged in a regulated activity; or

**Examples**

- 1 A person supervising a school student on a work experience placement at a childcare centre is required to be registered.
- 2 A person supervising a school student on a work experience placement at an accounting firm is not required to be registered.

- (i) engaged in the activity as—

- (i) a police officer, including a police officer (however described) of another jurisdiction; or

- (ii) an AFP appointee within the meaning of the *Australian Federal Police Act 1979* (Cwlth); or



- (iii) a registered health professional under the *Health Professionals Act 2004* or a health practitioner; or
  - (iv) a lawyer; or
  - (v) a staff member of, or volunteer for, an approved provider under the *Aged Care Act 1997 (Cwlth)*; or
  - (vi) a financial services licensee under the Corporations Act; or
  - (j) engaged in the activity for a Commonwealth or Territory government agency and the only contact the person has with a vulnerable person is providing a service to the vulnerable person at a public counter or shopfront, or by telephone; or
- Example**  
an administrative worker employed by Centrelink or Medicare
- (k) engaged in the activity and the only contact the person has with a vulnerable person is providing information to, or receiving information from, the vulnerable person by telephone; or
- Example**  
an employee or volunteer working on a helpline or at a call centre
- (l) engaged in the activity and the only contact the person has with a vulnerable person is working with a record of the vulnerable person; or
  - (m) engaged in the activity for a declared state of emergency; or

*Note* A state of emergency may be declared under the *Emergencies Act 2004*, s 156.

- (n) engaged in the activity for a Territory or national event and the commissioner declares that the person is not required to be registered for the activity; or

**Examples—Territory or national event**

- 1 Paralympics
- 2 World Youth Day

*Note* **Commissioner** means the commissioner for fair trading (see the dictionary).

- (o) a person prescribed by regulation.

- (3) A declaration is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (4) In this section:

**close relative**, of a vulnerable person—

- (a) means the vulnerable person's—

- (i) domestic partner; or

*Note* **Domestic partner**—see the Legislation Act, s 169.

- (ii) father, mother, grandfather, grandmother, stepfather, stepmother, father-in-law or mother-in-law; or

- (iii) son, daughter, grandson, granddaughter, stepson, stepdaughter, son-in-law or daughter-in-law; or

- (iv) brother, sister, half-brother, half-sister, stepbrother, stepsister, brother-in-law or sister-in-law; or

- (v) uncle, aunt, uncle-in-law or aunt-in-law; or

- (vi) nephew, niece or cousin; but

(b) does not include a kinship carer under the *Children and Young People Act 2008*.

*Note* An activity conducted or a service provided by a kinship carer under the *Children and Young People Act 2008* is a regulated activity—see sch 1, s 1.1.

*day* includes part of a day.

*school* means a high school or secondary college.

### 13 **Offences—person engage in regulated activity for which person not registered**

- (1) A person commits an offence if the person—
- (a) engages in a regulated activity; and
  - (b) is required to be registered to engage in the activity; and
  - (c) does not have a registration allowing the person to engage in the activity.

Maximum penalty: 50 penalty units.

*Note 1* A person with conditional registration may not be allowed to engage in all regulated activities (see s 42).

*Note 2* A person whose registration is suspended does not have a registration allowing the person to engage in a regulated activity (see s 59 (5)).

*Note 3* The employer for the regulated activity also commits an offence (see s 14).

- (2) An offence against subsection (1) is a strict liability offence.

- (3) A person commits an offence if the person—
- (a) engages in a regulated activity; and
  - (b) is required to be registered to engage in the activity; and
  - (c) does not have a registration allowing the person to engage in the activity; and
  - (d) knows, or is reckless about whether, the person—
    - (i) is engaging in a regulated activity; and
    - (ii) is required to be registered to engage in the activity.

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.

- (4) Strict liability applies to subsection (3) (c).
- (5) This section does not apply to a person if—
- (a) the person is not registered; but
  - (b) the person engages in a regulated activity under section 15 or section 16.

*Note 1* An unregistered person who has applied for registration may engage in a regulated activity for which the person is required to be registered in certain circumstances (see s 15 and s 16).

*Note 2* The defendant has an evidential burden in relation to the matters mentioned in s (4) (see Criminal Code, s 58).

**14 Offences—employer engage person in regulated activity for which person not registered**

- (1) An employer commits an offence if—
- (a) the employer engages a person in a regulated activity; and
  - (b) the person is required to be registered to engage in the activity; and
  - (c) the person does not have a registration allowing the person to engage in the activity.

Maximum penalty: 50 penalty units.

*Note 1* A person with conditional registration may not be allowed to engage in all regulated activities (see s 42).

*Note 2* A person whose registration is suspended does not have a registration allowing the person to engage in a regulated activity (see s 59 (5)).

- (2) An offence against subsection (1) is a strict liability offence.
- (3) An employer commits an offence if—
- (a) the employer engages a person in a regulated activity; and
  - (b) the person is required to be registered to engage in the activity; and
  - (c) the person does not have a registration allowing the person to engage in the activity; and
  - (d) the employer knows, or is reckless about whether—
    - (i) the employer is engaging the person in a regulated activity; and
    - (ii) the person is required to be registered to engage in the activity.

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.

- (4) Strict liability applies to subsection (3) (c).
- (5) This section does not apply to an employer if an unregistered person engages in a regulated activity for the employer under section 15 or section 16.

*Note 1* An unregistered person who has applied for registration may engage in a regulated activity for which the person is required to be registered in certain circumstances (see s 15 and s 16).

*Note 2* The defendant has an evidential burden in relation to the matters mentioned in s (2) (see Criminal Code, s 58).

**15 When unregistered person may be engaged in regulated activity—supervised employment**

- (1) This section applies to an unregistered person if—
  - (a) the person has applied for registration under section 17; and
  - (b) the commissioner has not—
    - (i) registered the person under section 41; or
    - (ii) given the person a negative notice under section 40; and
  - (c) the person has not withdrawn the application.
- (2) The person may engage in a regulated activity for which the person is required to be registered if—
  - (a) the person is eligible; and
  - (b) the person included a named employer for the activity on the person’s application for registration; and

*Note* **Named employer**—see s 18 (1) (d) (i)

- (c) the named employer has agreed to engage the person in the activity; and

- (d) a registered person is present at all times while the unregistered person is engaged in the activity.

*Note* An unregistered person who is engaging in a regulated activity under this section commits an offence under s 13 if the person continues to engage in the activity after—

- (a) the person's application for registration is withdrawn (see s 20); or  
(b) the person is given a negative notice (see s 40).
- (3) To remove any doubt, nothing in this section prevents an employer refusing to engage an unregistered person in a regulated activity.

- (4) In this section:

*eligible*—a person is *eligible* if—

- (a) the person has not previously been given a negative notice under this Act or a corresponding law; and  
(b) the person has not had a previous registration suspended or cancelled; and  
(c) the person's most recent registration (if any) was not conditional.

## 16 When unregistered person may be engaged in regulated activity—kinship carer

- (1) This section applies to an unregistered person if—
- (a) the person is engaged in a regulated activity under the *Children and Young People Act 2008*, part 15.4 (Out-of-home carers) as a kinship carer; and  
(b) the person is required to be registered to engage in the activity.

- (2) The person may engage in the regulated activity if—
- (a) the person has applied for registration under section 17; and
  - (b) the commissioner has not given the person a negative notice under section 40; and
  - (c) the person has not withdrawn the application; and
  - (d) the person is eligible.

- (3) In this section:

***eligible***—see section 15 (4).

***kinship carer***—see the *Children and Young People Act 2008*, section 509.



## Part 4 Applying for registration

### 17 Application for registration

- (1) A person may apply to the commissioner for registration under this Act.

*Note 1* **Commissioner** means the commissioner for fair trading (see the dictionary).

*Note 2* If a form is approved under s 69 for this provision, the form must be used.

*Note 3* A fee may be determined under s 68 for this provision.

- (2) This section is subject to section 22.

*Note* Under s 22, a person who is given a negative notice or whose registration is cancelled must not reapply for registration for 3 years, unless relevant information about the person has changed.

### 18 Application for registration—contents

- (1) An application for registration must include—

- (a) the applicant's name and any previous name; and
- (b) the applicant's current home address, and any previous home address in the 5 years before applying; and
- (c) evidence of the applicant's identity; and

**Example**

100 points of identification

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (d) if the applicant engages, or intends to engage, in a regulated activity for a particular employer—
  - (i) the employer (the **named employer**) for the activity; and

- (ii) the named employer's address and contact details; and
  - (iii) the capacity in which the applicant engages, or intends to engage, in the activity for the named employer; and
  - (e) anything else prescribed by regulation.
- (2) The application must be accompanied by—
- (a) a consent by the applicant for the commissioner to—
    - (i) check the applicant's criminal history, non-conviction information and any other information about the applicant that may be relevant in deciding the application; and
      - Note 1* **Criminal history**, about a person—see s 24.
      - Note 2* **Non-conviction information**, about a person—see s 25.
    - (ii) seek information or advice from any entity in relation to the applicant's—
      - (A) application under section 33; or
      - (B) registration under section 53; and
    - (iii) contact the named employer (if any) in relation to the status of the applicant's application or registration; and
      - Note* For example, the commissioner must tell a person's employer if the person withdraws an application (see s 20 (2) (a)), if the commissioner registers the person (see s 41 (2) (c)), if the commissioner refuses to register the person (see s 40 (2) (b)), if there is a change in an applicant's registration status as a result of an additional risk assessment (see s 54), or if a person's registration is suspended or cancelled (see s 59 (2) (b)) or surrendered (see s 60 (4)).
  - (b) a written statement by the applicant stating—
    - (i) whether the applicant has been convicted or found guilty of a relevant offence outside Australia; and

(ii) if the applicant has been convicted or found guilty of a relevant offence outside Australia—details of the offence; and

(c) anything else prescribed by regulation.

*Note* It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).

(3) The commissioner must tell the applicant in writing about the following:

(a) the rights and obligations of the applicant under this Act;

(b) information the applicant may supply to support the application;

(c) the risk assessment guidelines mentioned in division 5.2 and where to find a copy.

*Note* The commissioner may tell the applicant about the matters in s (3) in any way the commissioner considers appropriate, including on a form approved for s 17 or in guidelines made for this Act.

## **19 Application for registration—additional information**

(1) The commissioner may, in writing, require an applicant to give the commissioner additional information in writing or documents that the commissioner reasonably needs to decide the application.

(2) If the applicant does not comply with a requirement under subsection (1), the commissioner may refuse to consider the application further.

*Note* It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).

**20 Application for registration—withdrawal**

- (1) An applicant may withdraw an application at any time by written notice to the commissioner.

*Note* If a form is approved under s 69 for this provision, the form must be used.

- (2) If an application is withdrawn the commissioner—
- (a) must tell the named employer (if any) that the application has been withdrawn; and
  - (b) need take no further action on the application.

*Note* If an unregistered person engaging in a regulated activity under s 15 withdraws the person's application for registration, the person commits an offence under s 13 if the person continues to engage in the activity.

**21 Offences—applicant fail to disclose charge, conviction or finding of guilt for relevant offence**

- (1) A person commits an offence if—
- (a) the person has applied for registration; and
  - (b) the commissioner has not—
    - (i) told the person that the person has been registered; or
    - (ii) given the person a negative notice; and
  - (c) the person is charged with a relevant offence; and
  - (d) the person does not tell the commissioner about the charge in writing within 10 working days after the day the person is charged.

Maximum penalty: 50 penalty units.

- (2) A person commits an offence if—
- (a) the person has applied for registration; and
  - (b) the commissioner has not—
    - (i) told the person that the person has been registered; or
    - (ii) given the person a negative notice; and
  - (c) the person is convicted or found guilty of a relevant offence; and
  - (d) the person does not tell the commissioner about the conviction or finding of guilt in writing within 10 working days after the day the person is convicted or found guilty.

Maximum penalty: 50 penalty units.

- (3) An offence against this section is a strict liability offence.

## **22 Restriction on reapplying for registration**

- (1) This section applies to a person if—
- (a) the person is given a negative notice; or
- Note* **Negative notice**—see s 40 (2).
- (b) the person's registration is cancelled.
- (2) The person may apply for registration under section 17 only if—
- (a) it is at least 3 years after the day—
    - (i) the person was given the negative notice; or
    - (ii) the cancellation took effect; or

*Note* For when a cancellation takes effect, see s 59 (4).

(b) there has been a change in relevant information about the person since—

- (i) the person was given the negative notice; or
- (ii) the cancellation took effect

**Examples—change in relevant information**

- 1 a person has been acquitted of a previously pending charge for a relevant offence
- 2 a person's conviction for a relevant offence has been quashed

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(3) The risk assessment guidelines may provide for what constitutes a change in relevant information about the person.

## **Part 5**                      **Risk assessments**

### **Division 5.1**                **Important concepts**

#### **23**                      **Meaning of *risk assessment***

(1) In this Act:

*risk assessment*, for a person, means an assessment by the commissioner of whether the person poses an unacceptable risk of harm to a vulnerable person.

**Examples—harm**

- 1 sexual
- 2 physical
- 3 emotional
- 4 financial

*Note*                      An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(2) It does not matter whether the risk of harm arises from neglect, abuse or other conduct by the person.

#### **24**                      **Meaning of *criminal history***

In this Act:

*criminal history*, about a person, means any conviction of, or finding of guilt against, the person for a relevant offence.

*Note*                      A conviction does not include a spent conviction (see *Spent Convictions Act 2000*, s 16 (c) (i)).

## 25 Meaning of *non-conviction information*

In this Act:

*non-conviction information*, about a person, means any of the following information about a relevant offence (or an alleged relevant offence):

- (a) the person has been charged with the offence but—
  - (i) a proceeding for the alleged offence is not finalised; or
  - (ii) the charge has lapsed, been withdrawn or discharged, or struck out;
- (b) the person has been acquitted of the alleged offence;
- (c) the person has had a conviction for the alleged offence quashed or set aside;
- (d) the person has been served with an infringement notice for the alleged offence;
- (e) the person has a spent conviction for the offence.

*Note* The *Spent Convictions Act 2000* sets out which convictions can be spent (see that Act, s 11) and when a conviction is spent (see that Act s 12).

## 26 Meaning of *relevant offence*

In this Act:

*relevant offence* means any of the following offences (whether committed in the ACT or elsewhere):

- (a) a sexual offence;
- (b) an offence against the person;
- (c) an offence involving violence;
- (d) an offence involving dishonesty or fraud;



- (e) an offence relating to property;
- (f) an offence involving possession of, or trafficking in, a drug of dependence or controlled drug;
- (g) an offence against an animal;
- (h) a driving offence.

*Note* A reference to an offence includes a reference to a related ancillary offence, eg attempt (see Legislation Act, s 189).

## **Division 5.2 Risk assessment guidelines**

### **27 Risk assessment guidelines**

- (1) The commissioner must make guidelines (*risk assessment guidelines*) about how risk assessments are to be conducted under this Act.
- (2) A guideline may apply, adopt or incorporate an instrument, as in force from time to time.

*Note* The text of an applied, adopted or incorporated instrument, whether applied as in force from time to time or as at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disappplied (see s 47 (7)).

- (3) A risk assessment guideline is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

## 28 Risk assessment guidelines—content

- (1) The risk assessment guidelines must provide for—
  - (a) matters the commissioner must or may take into account in conducting a risk assessment; and
  - (b) how those matters must or may be taken into account.
- (2) Without limiting subsection (1), the risk assessment guidelines must provide for the following to be taken into account in conducting a risk assessment for a person in relation to a regulated activity:
  - (a) the person’s criminal history;

*Note* The risk assessment guidelines must provide for certain matters to be taken into account in relation to relevant offences included in the person’s criminal history—see s 29.
  - (b) non-conviction information about the person;

*Note* The risk assessment guidelines must provide for certain matters to be taken into account in relation to relevant offences, or alleged relevant offences, included in the non-conviction information about the person—see s 30.
  - (c) whether the person was previously given a negative notice under this Act or a corresponding law;
  - (d) whether the person was previously registered under this Act or a corresponding law (including whether the registration was suspended or cancelled);

- (e) any other information the commissioner believes on reasonable grounds is or may be relevant in deciding whether, in engaging in the activity, the applicant poses a risk of harm to a vulnerable person.

**Examples—par (e)**

- 1 an order made against the person made under the *Domestic Violence and Protection Orders Act 2008*
- 2 a care and protection order under the *Children and Young People Act 2008* for a child for whom the person has or had parental responsibility under that Act
- 3 a professional disciplinary proceeding against the person

*Note 1* The risk assessment guidelines must provide for certain matters to be taken into account in relation to other information—see s 31.

*Note 2* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) The risk assessment guidelines must provide that—
- (a) the applicant may make submissions to the commissioner in relation to any matter the commissioner must or may take into account in conducting a risk assessment; and
  - (b) the commissioner must not take into account any information about an applicant unless satisfied on reasonable grounds that the information is accurate.

**29 Risk assessment guidelines—criminal history**

The risk assessment guidelines must provide for the following to be taken into account in relation to any relevant offence included in the person's criminal history:

- (a) the nature, gravity and circumstances of the offence;
- (b) the relevance of the offence;
- (c) how long ago the offence was committed;

- (d) the age of the person and the victim at the time of the offence;
- (e) whether the person's circumstances have changed since the offence was committed;
- (f) the person's attitude to the offence;
- (g) if the person has undergone a program of treatment or intervention for the offence—any assessment of the person following the program;
- (h) if the offence was committed outside Australia—whether the offence is an offence in Australia;
- (i) whether the person has committed any other relevant offence;
- (j) any submission made by the person to the commissioner in relation to the matters mentioned in paragraphs (a) to (i).

### **30 Risk assessment guidelines—non-conviction information**

The risk assessment guidelines must provide for the following to be taken into account in relation to any relevant offence, or any alleged relevant offence, included in the non-conviction information about the person:

- (a) the nature, gravity and circumstances of the offence or alleged offence;
- (b) the relevance of the offence or alleged offence;
- (c) how long ago the offence or alleged offence was committed;
- (d) the age of the person and the victim at the time of the offence or alleged offence;
- (e) the truthfulness, completeness and reliability of any information or evidence provided by the person who made the allegation or provided the initial information;

- (f) the nature, extent and outcome of any investigation into the offence or alleged offence;
- (g) any formal statement made by the person to a police officer, including any answer given in a recorded interview, in relation to the offence or alleged offence;
- (h) any evidence given by the person in a court proceeding for the offence or alleged offence;
- (i) whether this was the person's first offence or alleged offence;
- (j) any submission made by the person to the commissioner in relation to the matters mentioned in paragraphs (a) to (i).

### **31 Risk assessment guidelines—other information**

The risk assessment guidelines must provide for the following to be taken into account in relation to any other information the commissioner believes on reasonable grounds is or may be relevant in deciding whether, in engaging in a regulated activity, the applicant poses a risk of harm to a vulnerable person:

- (a) how the information was obtained;

**Examples**

- 1 tip off from a member of the public
- 2 a media report

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (b) the relevance of the information;
- (c) the truthfulness, completeness and reliability of the information;
- (d) any submission made by the person to the commissioner in relation to the matters mentioned in paragraphs (a) to (c).

## Division 5.3 Conducting risk assessments

### 32 Risk assessments

- (1) On application by a person for registration, the commissioner must conduct a risk assessment for the person.

*Note* The commissioner need not conduct a risk assessment if the application has been withdrawn (see s 20 (2) (b)).

- (2) The risk assessment must be conducted in accordance with the risk assessment guidelines.

### 33 Commissioner may seek information from entities to conduct risk assessments

The commissioner may seek information or advice from any entity the commissioner considers may be able to give information or advice that will assist the commissioner in conducting a risk assessment for a person.

#### **Examples—entity**

- 1 the chief police officer
- 2 a government department
- 3 an employer for a regulated activity

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

### 34 Independent advisors—appointment

- (1) The commissioner must appoint 7 or more people as independent advisors the commissioner may ask for advice about—
- (a) whether to give a person a role-based registration; or
  - (b) any other aspect of a risk assessment for a person.

*Note 1* **Role-based registration**—see s 42 (2).

*Note 2* For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

- (2) The people appointed—
- (a) must include the following:
    - (i) at least 1 Aboriginal or Torres Strait Islander person;
    - (ii) at least 1 person with experience or expertise in relation to refugees and migrants;
    - (iii) at least 1 person who is a psychologist with experience or expertise in forensic or clinical psychology;
    - (iv) at least 1 person with experience or expertise in relation to children and young people;
    - (v) at least 1 person with experience or expertise in relation to people with a disability;
    - (vi) at least 1 person with experience or expertise in relation to people with mental illness;
    - (vii) at least 1 person with experience or expertise in relation to people with drug or alcohol dependency; and
  - (b) may include 1 or more people with experience or expertise in any other field the commissioner considers relevant to a matter mentioned in subsection (1) (a) or (b).

- (3) An appointment as an independent advisor must be for not longer than 3 years.
- (4) An appointment is a notifiable instrument.  
*Note* A notifiable instrument must be notified under the Legislation Act.
- (5) The conditions of an independent advisor's appointment are the conditions agreed between the commissioner and the person, subject to any determination under the *Remuneration Tribunal Act 1995*.

### **35 Independent advisors—advice**

- (1) This section applies if the commissioner wishes to ask an independent advisor for advice about a matter mentioned in section 34 (1) (a) or (b).
- (2) The commissioner must ask a least 3 independent advisors for the advice.
- (3) The request for advice must be made, and the advice must be given, in accordance with the risk assessment guidelines.

### **36 Independent advisors—ending appointment**

The commissioner may end a person's appointment as an independent advisor—

- (a) if the person does not provide advice within a reasonable time when asked by the commissioner; or
- (b) for misbehaviour; or
- (c) for physical and mental incapacity, if the incapacity substantially affects the exercise of the person's ability to give advice to the commissioner; or
- (d) if the commissioner becomes aware that the person has at any time been convicted in Australia of an offence punishable by imprisonment for 1 year or longer; or



- (e) if the commissioner becomes aware that the person has at any time been convicted outside Australia of an offence that, if it had been committed in the ACT, would be punishable by imprisonment for 1 year or longer.

*Note* A person's appointment also ends if the person resigns (see Legislation Act, s 210).

## **Division 5.4 Negative risk assessments**

### **37 Proposed negative notices**

- (1) This section applies if—
- (a) the commissioner conducts a risk assessment for a person; and
  - (b) the commissioner is satisfied that the person poses an unacceptable risk of harm to a vulnerable person (a ***negative risk assessment***).
- (2) The commissioner must tell the person in writing (a ***proposed negative notice***) that the commissioner intends to refuse to register the person.
- (3) A proposed negative notice must state—
- (a) the reasons for the negative risk assessment; and
  - (b) that, if the person would like the commissioner to reconsider the decision, the person may take the steps mentioned in section 38 (1); and
  - (c) that, if the person does not take the steps mentioned in section 38 (1), the commissioner must give the person a negative notice.
- (4) The commissioner must not tell a named employer—
- (a) that a proposed negative notice has been given to a person; or
  - (b) the reasons for giving the person the notice.

### 38 Reconsideration of negative risk assessments

- (1) If the commissioner gives a person a proposed negative notice, the person may—
  - (a) within 10 working days after the commissioner gives the person the proposed negative notice, tell the commissioner in writing that the person intends to ask the commissioner to reconsider the decision; and
  - (b) within 20 working days after the commissioner gives the person the notice, ask the commissioner in writing to reconsider the decision.

*Note* If a form is approved under s 69 for this provision, the form must be used.

- (2) If the person asks the commissioner to reconsider the decision, the commissioner must, as soon as practicable, conduct a risk assessment (a *revised risk assessment*) for the person.

*Note* A revised risk assessment may result in registration (see s 41), which may be conditional (see s 42), or a negative notice (see s 40).

- (3) The person may give the commissioner, and the commissioner must consider in conducting the revised risk assessment, any new or corrected information the person believes is relevant.

### 39 Extensions of period for reconsideration of negative risk assessment

- (1) On written application by a person, the commissioner may extend the period mentioned in section 38 (1) (a) or (b).

*Note* The commissioner may extend the period even if it has ended (see Legislation Act, s 151C).

- (2) The commissioner may extend the period only if the commissioner is satisfied on reasonable grounds that it is appropriate to extend the period given the person's circumstances.

**Examples—when period may be extended**

- 1 a person did not receive a proposed negative notice because the person was unexpectedly hospitalised
- 2 a person needs more than 20 working days to obtain relevant information because the information is from a foreign country

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) The commissioner must tell the person in writing of a decision under subsection (1) and—
- (a) if the commissioner extends the period—state the extended period; or
  - (b) if the commissioner refuses to extend the period—the reasons for the decision.

*Note* The commissioner must also give the person a reviewable decision notice in relation to a decision to—

- (a) extend the period for a stated period; or
- (b) refuse to extend the period (see s 62).

## **40 Negative notices**

- (1) The commissioner must refuse to register a person—
- (a) if—
    - (i) the commissioner conducts a revised risk assessment for a person; and
    - (ii) the commissioner is satisfied that the person poses an unacceptable risk of harm to a vulnerable person; or

- (b) if the commissioner gives the person a proposed negative notice and—
- (i) the person does not tell the commissioner that the person intends to ask the commissioner to reconsider the decision under section 38 (1) (a); or
  - (ii) the person—
    - (A) tells the commissioner that the person intends to ask the commissioner to reconsider the decision under section 38 (1) (a); but
    - (B) does not ask the commissioner to reconsider the decision under section 38 (1) (b).
- (2) If the commissioner refuses to register a person, the commissioner must—
- (a) tell the person in writing (a *negative notice*) that the commissioner refuses to register the person and the reasons for the refusal; and
- Note* The commissioner must also give the person a reviewable decision notice in relation to the decision (see s 62).
- (b) tell the named employer (if any) in writing that a negative notice has been given to the person.
- (3) For subsection (2) (b), the commissioner must not tell a named employer the reasons for giving the person the negative notice.
- Note* If an unregistered person engaging in a regulated activity under s 15 is given a negative notice, the person commits an offence under s 13 if the person continues to engage in the activity.

## **Part 6                      Registration**

### **Division 6.1              Registration**

#### **41                      Registration**

- (1) This section applies if the commissioner—
  - (a) conducts a risk assessment or a revised risk assessment for a person; and
  - (b) is satisfied that the person poses no risk or an acceptable risk of harm to a vulnerable person (a *positive risk assessment*).
- (2) The commissioner must—
  - (a) register the person; and
  - (b) tell the person in writing of the positive risk assessment and that the person has been registered; and
  - (c) tell the named employer (if any) in writing that the person has been registered.
- (3) Registration must be for not longer than 3 years.

#### **42                      Conditional registration**

- (1) A registration may be subject to conditions.

**Examples—conditions**

- 1 a registered person must not drive a motor vehicle if a vulnerable person is a passenger
- 2 a registered person must not have unsupervised contact with a vulnerable person
- 3 a registered person must not supervise another registered person

4 a registered person may be engaged by any employer but only in a stated regulated activity

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(2) Without limiting subsection (1), the commissioner may register a person (a ***role-based registration***) subject to the conditions that the person may engage only in stated regulated activities for a stated employer.

**Example—role-based registration**

a person with a criminal record is registered but may only work as a counsellor in a particular correctional centre

(3) Before giving a person a role-based registration, the commissioner may—

(a) consult, in accordance with the risk assessment guidelines, with 3 or more independent advisors; and

(b) consider any relevant advice given.

(4) A regulation may prescribe information that a person or an employer must give the commissioner before the commissioner may give the person a role-based registration.

### 43 Proposed conditional registration

(1) If the commissioner intends to register a person conditionally, the commissioner must tell the person in writing (a ***proposed conditional registration notice***).

(2) A proposed conditional registration notice must state—

(a) what the condition is and the reasons for proposing to register the person conditionally; and

- (b) that, if the person would like the commissioner to reconsider the decision, the person may take the steps mentioned in section 44 (1); and
  - (c) that if the person does not take the steps mentioned in section 44 (1), the commissioner must register the person conditionally.
- (3) The commissioner must not tell a named employer—
- (a) that a proposed conditional registration notice has been given to a person; or
  - (b) the reasons for giving the person the proposed conditional registration notice.

#### **44 Reconsideration of proposed conditional registration**

- (1) If the commissioner gives a person a proposed conditional registration notice, the person may—
- (a) within 10 working days after the commissioner gives the person the proposed conditional registration notice, tell the commissioner in writing that the person intends to ask the commissioner to reconsider the decision; and
  - (b) within 20 working days after the commissioner gives the person the notice, ask the commissioner in writing to reconsider the decision.

*Note* If a form is approved under s 69 for this provision, the form must be used.

- (2) If the person asks the commissioner to reconsider the decision, the commissioner must, as soon as practicable—
- (a) if the commissioner is satisfied that the condition is unnecessary—register the person unconditionally; or
  - (b) if the commissioner is satisfied that the condition is necessary—register the person subject to the condition.

*Note* The commissioner's decision to register a person subject to a condition is reviewable (see s 61).

- (3) The person may give the commissioner, and the commissioner must consider in reconsidering the decision, any new or corrected information the person believes is relevant.

#### **45 Extensions of period for reconsideration of proposed conditional registration**

- (1) On written application by a person, the commissioner may extend the period mentioned in section 44 (1) (a) or (b).

*Note* The commissioner may extend the period even if it has ended (see Legislation Act, s 151C).

- (2) The commissioner may extend the period only if the commissioner is satisfied on reasonable grounds that it is appropriate to extend the period given the person's circumstances.

##### **Examples—when period may be extended**

- 1 a person did not receive a proposed conditional registration notice because the person was unexpectedly hospitalised
- 2 a person needs more than 20 working days to obtain relevant information because the information is from a foreign country

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) The commissioner must tell the person in writing of a decision under subsection (1) and—
- (a) if the commissioner extends the period—state the extended period; or
  - (b) if the commissioner refuses to extend the period—the reasons for the decision.

*Note* The commissioner must also give the person a reviewable decision notice in relation to a decision to—

- (a) extend the period for a stated period; or



- (b) refuse to extend the period (see s 62).

#### **46 Notice of conditional registration**

- (1) The commissioner must register a person subject to a condition if the commissioner gives the person a proposed conditional registration notice and—
- (a) the person does not tell the commissioner that the person intends to ask the commissioner to reconsider the decision under section 44 (1) (a); or
  - (b) the person—
    - (i) tells the commissioner that the person intends to ask the commissioner to reconsider the decision under section 44 (1) (a); but
    - (ii) does not ask the commissioner to reconsider the decision under section 44 (1) (b).

*Note* The commissioner must also register a person subject to a condition if the commissioner has reconsidered the decision and is satisfied that the condition is necessary (see s 44 (2) (b)).

- (2) If a registration is subject to a condition, the commissioner must—
- (a) tell the person in writing what the condition is and the reasons for the condition; and
    - Note* The commissioner must also give the person a reviewable decision notice in relation to the decision to register the person subject to a condition (see s 62).
  - (b) tell the named employer (if any) in writing—
    - (i) that the person's registration is subject to a condition; and
    - (ii) what the condition is.

## 47 Conditional registration—amendment

- (1) A person with conditional registration may apply to the commissioner to amend the person's registration (including by removing or amending a condition of the registration).

*Note* If a form is approved under s 69 for this provision, the form must be used.

- (2) The commissioner may, in writing, require the applicant to give the commissioner the additional information in writing or documents the commissioner reasonably needs to decide the application.
- (3) If the applicant does not comply with a requirement under subsection (2), the commissioner may refuse to consider the application further.

*Note* It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).

- (4) On application by a person to amend a conditional registration, the commissioner must—
- (a) amend the registration; or
  - (b) refuse to amend the registration.
- (5) The commissioner must—
- (a) tell the applicant in writing of a decision under subsection (4) and—
    - (i) if the commissioner amends the registration—state the details of the amendment; and
    - (ii) if the commissioner refuses to amend the registration—the reasons for the decision; and

*Note* The commissioner must also give the applicant a reviewable decision notice in relation to a decision to refuse to amend the applicant's registration (see s 62).

- (b) if the commissioner amends the registration—tell the named employer (if any) in writing—
  - (i) that the applicant’s registration has been amended; and
  - (ii) the details of the amendment.

**48 Offences—registered person contravene condition of registration**

- (1) A person commits an offence if—
  - (a) the person’s registration is subject to a condition; and
  - (b) the person contravenes a requirement of the condition.Maximum penalty: 50 penalty units.
- (2) An offence against subsection (1) is a strict liability offence.
- (3) A person commits an offence if—
  - (a) the person’s registration is subject to a condition; and
  - (b) the person contravenes a requirement of the condition; and
  - (c) the person knows, or is reckless about whether, the person is contravening the requirement.

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.

- (4) Strict liability applies to subsection (3) (a).

*Note* The commissioner may suspend or cancel a person's registration if the person's registration is subject to a condition and the person contravenes a requirement of the condition (see s 57 (1)).

## Division 6.2 Registration cards

### 49 Registration cards

- (1) If the commissioner registers a person, the commissioner must give the person a working with vulnerable people registration card (a *registration card*).
- (2) A registration card must contain—
- (a) a unique identifying number (a *registration number*); and
  - (b) the date the registration ends; and
  - (c) anything else prescribed by regulation.

### 50 Offence—fail to produce registration card

- (1) A registered person commits an offence if the person—
- (a) engages in a regulated activity; and
  - (b) is required to be registered to engage in the activity; and
  - (c) is asked to produce the person's registration card by—
    - (i) a police officer; or
    - (ii) a person authorised by the commissioner; and
  - (d) does not produce the person's registration card.

Maximum penalty: 10 penalty units.

- (2) An offence against this section is a strict liability offence.

**51 Lost, stolen or damaged registration cards**

(1) This section applies if a registration card given to a person is lost, stolen or damaged.

(2) The person may apply to the commissioner for a replacement card.

*Note 1* If a form is approved under s 69 for this provision, the form must be used.

*Note 2* A fee may be determined under s 68 for this provision.

(3) The application must be accompanied by a statutory declaration made by the applicant setting out the circumstances in which the card was lost, stolen or damaged.

(4) If a person applies for a replacement card, the commissioner must—

(a) replace the card; or

(b) refuse to replace the card.

*Note* The commissioner must give the person a reviewable decision notice in relation to the decision to refuse to replace the card (see s 62).

(5) The commissioner must replace the card if satisfied that—

(a) the person held a registration card; and

(b) the card is lost, stolen or damaged.

**52 Offence—fail to return registration card**

(1) A person commits an offence if—

(a) the person's registration is—

(i) suspended or cancelled under section 59; or

(ii) surrendered under section 60; and

- (b) the person does not return the person's registration card to the commissioner as soon as practicable, but within 10 working days, after the day the suspension or cancellation takes effect.

Maximum penalty: 50 penalty units.

*Note* For when a suspension or cancellation takes effect, see s 59 (4).

- (2) Subsection (1) does not apply to a person if the person's card has been—
- (a) lost or stolen; or
- (b) destroyed by someone else.

*Note* The defendant has an evidential burden in relation to the matters mentioned in s (2) (see Criminal Code, s 58).

- (3) An offence against this section is a strict liability offence.

## Division 6.3 Monitoring registered people

### 53 Commissioner may seek information from entities about registered people

- (1) The commissioner may seek information or advice from any entity the commissioner considers may be able to give information or advice that is relevant to whether a registered person continues to pose no risk or an acceptable risk of harm to a vulnerable person.

**Example**

an updated criminal history report from the chief police officer

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) An entity may give information or advice in response to a request under this section and, in doing so, does not contravene any duty of confidentiality the entity has under any law or agreement, despite anything to the contrary in the law or agreement.

## 54 Additional risk assessments

- (1) This section applies if the commissioner believes on reasonable grounds that there is new relevant information about a registered person.

### Examples—new relevant information

- 1 a registered person is suspected of having committed a relevant offence
- 2 a registered person has been charged with a relevant offence
- 3 a registered person has been convicted or found guilty of a relevant offence

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) The commissioner must—
- (a) conduct a risk assessment (an *additional risk assessment*) for the person taking into account the new relevant information; and
  - (b) tell the person in writing that the additional risk assessment is being conducted.

*Note* If the commissioner decides to conduct an additional risk assessment for a person, the commissioner may suspend the person's registration while the assessment is conducted (see s 57 (2)).

- (3) If the commissioner conducts an additional risk assessment for the person and is satisfied that that the person poses no risk or an acceptable risk of harm to a vulnerable person, the commissioner may—
- (a) leave the person's registration unchanged; or
  - (b) add a condition to, or amend a condition of, the person's registration.

(c) remove a condition from the person's registration.

*Note 1* Section 43 sets out the commissioner's obligations if the commissioner intends to register a person conditionally.

*Note 2* The commissioner must cancel a person's registration if the commissioner has conducted an additional risk assessment for the person and is satisfied that that the person poses an unacceptable risk of harm to a vulnerable person (see s 57 (3)).

(4) The risk assessment guidelines may provide for what constitutes new relevant information about a registered person.

## **55 Offences—registered person fail to disclose charge, conviction or finding of guilt for relevant offence**

(1) A person commits an offence if the person—

- (a) is registered; and
- (b) is charged with a relevant offence; and
- (c) does not tell the commissioner about the charge in writing within 10 working days after the day the person is charged.

Maximum penalty: 50 penalty units.

(2) A person commits an offence if the person—

- (a) is registered; and
- (b) is convicted or found guilty of a relevant offence; and
- (c) does not tell the commissioner about the conviction or finding of guilt in writing within 10 working days after the day the person is convicted or found guilty.

Maximum penalty: 50 penalty units.

(3) An offence against this section is a strict liability offence.



**56 Offence—fail to notify change of name or address**

- (1) A person commits an offence if—
- (a) the person is registered; and
  - (b) the person's name or address changes; and
  - (c) the person does not tell the commissioner in writing of the change within 10 working days after the day the change happens.

Maximum penalty: 10 penalty units.

*Note* If a form is approved under s 69 for this provision, the form must be used.

- (2) An offence against this section is a strict liability offence.

**Division 6.4 Suspending or cancelling registration**

**57 Grounds for suspension or cancellation of registration**

- (1) The commissioner may suspend or cancel a person's registration if—
- (a) the person's registration is subject to a condition; and
  - (b) the person contravenes a requirement of the condition; and
  - (c) the commissioner believes on reasonable grounds that suspension or cancellation is necessary for this Act.

*Note* A person commits an offence if the person contravenes a requirement of a condition—see s 48.

- (2) If the commissioner decides to conduct an additional risk assessment for a person, the commissioner may suspend the person's registration while the assessment is conducted.

*Note* The commissioner must conduct an additional risk assessment for a person under s 54 if the commissioner believes on reasonable grounds that there is new relevant information about the person.

- (3) The commissioner must cancel a person's registration if the commissioner—
- (a) has conducted an additional risk assessment for the person; and
  - (b) is satisfied that the person poses an unacceptable risk of harm to a vulnerable person.

**58 Notice of proposed suspension or cancellation of registration**

- (1) The commissioner must give written notice of an intention to suspend or cancel a person's registration to the person.
- (2) A notice of intention to suspend or cancel a person's registration must—
- (a) set out the ground for suspension or cancellation; and
  - (b) state that the person may, within 10 working days after the day the commissioner gives the person the notice, give reasons why the person considers that the registration should not be suspended or cancelled.

**59 Suspension or cancellation of registration**

- (1) The commissioner must suspend or cancel a person's registration if the commissioner—
- (a) has given written notice to the person of an intention to suspend or cancel the registration; and
  - (b) has considered any reasons given by the person in accordance with the notice; and
  - (c) is satisfied that the ground for suspension or cancellation under section 57 exists.

*Note* The commissioner's decision to suspend or cancel a person's registration is reviewable (see s 61).

- (2) The commissioner must—
- (a) tell the person in writing—
- (i) that the person’s registration is suspended or cancelled;  
and
- (ii) the ground for suspension or cancellation; and
- Note* The commissioner must also give the person a reviewable decision notice in relation to the decision to suspend or cancel the person’s registration (see s 62).
- (b) tell the person’s employer (if any) in writing that the person’s registration has been suspended or cancelled.
- (3) For subsection (2) (b), the commissioner must not tell the person’s employer the ground for suspension or cancellation.
- (4) The suspension or cancellation takes effect—
- (a) on the day after the day the commissioner tells the person in writing that the person’s registration is suspended or cancelled;  
or
- (b) if a later date is stated in the notice of suspension or cancellation—on the later date.
- (5) To remove any doubt, a person whose registration is suspended does not have a registration allowing the person to engage in a regulated activity.

*Note* A person engaging in a regulated activity for which the person is required to be registered commits an offence under s 13 if the person’s registration is suspended or cancelled and the person continues to engage in the activity.

## Division 6.5 Surrendering registration

### 60 Surrendering registration

- (1) A registered person may surrender the person's registration by giving written notice of the surrender (a *surrender notice*) to the commissioner.

*Note* If a form is approved under s 69 for this provision, the form must be used.

- (2) The surrender notice must be accompanied by—
  - (a) the person's registration card; or
  - (b) if the card has been lost, stolen or destroyed—a statutory declaration signed by the person stating that the card has been lost, stolen or destroyed.

*Note* The *Statutory Declarations Act 1959* (Cwlth) applies to the making of statutory declarations under ACT laws.

- (3) The surrender of the registration takes effect—
  - (a) on the day the surrender notice is given to the commissioner; or
  - (b) if a later date is stated in the surrender notice—on the later date.
- (4) The commissioner must tell the person's employer (if any) in writing that the person's registration has been surrendered.

## Part 7                      Notification and review of decisions

### 61                      **Meaning of *reviewable decision*—pt 7**

In this part:

*reviewable decision* means a decision mentioned in schedule 2, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

### 62                      **Reviewable decision notices**

If the commissioner makes a reviewable decision, the commissioner must give a reviewable decision notice only to each entity mentioned in schedule 2, column 4 in relation to the decision.

*Note*                      The requirements for a reviewable decision notice are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

### 63                      **Applications for review**

An entity mentioned in schedule 2, column 4 in relation to a reviewable decision may apply to the ACAT for review of the decision.

*Note*                      If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

## Part 8 Miscellaneous

### 64 Protection from liability

- (1) An official is not civilly liable for anything done or omitted to be done honestly and without recklessness—
  - (a) in the exercise of a function under this Act; or
  - (b) in the reasonable belief that the act or omission was in the exercise of a function under this Act.
- (2) Any civil liability that would, apart from subsection (1), attach to an official attaches instead to the Territory.
- (3) In this section:

*official* means—

- (a) the commissioner; or
- (b) an independent advisor; or
- (c) a person authorised under this Act by the commissioner to do or not to do a thing.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

### 65 Offences—use or divulge protected information

- (1) A person to whom this section applies commits an offence if—
  - (a) the person uses information; and
  - (b) the information is protected information about someone else; and

- (c) the person is reckless about whether the information is protected information about someone else.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) A person to whom this section applies commits an offence if—
  - (a) the person does something that divulges information; and
  - (b) the information is protected information about someone else; and
  - (c) the person is reckless about whether—
    - (i) the information is protected information about someone else; and
    - (ii) doing the thing would result in the information being divulged to someone else.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) Subsections (1) and (2) do not apply if the information is used or divulged—
  - (a) under this Act or another territory law; or
  - (b) in relation to the exercise of a function, as a person to whom this section applies, under this Act or another territory law; or
  - (c) in a court proceeding.
- (4) Subsections (1) and (2) do not apply to the using or divulging of protected information about a person with the person's consent.

*Note* The defendant has an evidential burden in relation to the matters mentioned in ss (3) and (4) (see Criminal Code, s 58).

(5) A person to whom this section applies need not divulge protected information to a court, or produce a document containing protected information to a court, unless it is necessary to do so for this Act or another law applying in the territory.

(6) In this section:

*court* includes a tribunal, authority or person having power to require the production of documents or the answering of questions.

*divulge* includes—

- (a) communicate; or
- (b) publish

*person to whom this section applies* means—

- (a) a person who is or has been—
  - (i) the commissioner; or
  - (ii) an independent advisor; or
- (b) anyone else who has exercised a function under this Act.

*produce* includes allow access to.

*protected information* means information about a person that is disclosed to, or obtained by, a person to whom this section applies because of the exercise of a function under this Act by the person or someone else.

**Examples—protected information**

- 1 information obtained by the commissioner in conducting a risk assessment for a person
- 2 information disclosed by the commissioner in seeking information or advice from an entity about a registered person

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).



*use information* includes make a record of the information.

## **66 Evidentiary certificates**

- (1) The commissioner may give a signed certificate—
  - (a) stating that on a stated date or during a stated period a named person was or was not registered; and
  - (b) if the person was registered—including details of the person’s registration.
- (2) A certificate under this section is evidence of the matters stated in it.
- (3) Unless the contrary is proved, a document that purports to be a certificate under this section is taken to be a certificate.

## **67 Disqualification orders**

- (1) If a court finds a person guilty of an offence against this Act, the court may make an order disqualifying the person from applying for registration for a stated period or until a stated thing happens.
- (2) In this section:

*offence against this Act* includes an offence against the Criminal Code in relation to anything done, or not done, under or in relation to this Act.

## **68 Determination of fees**

- (1) The Minister may determine fees for this Act.

*Note* The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3)

- (2) A determination is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

**69 Approved forms**

- (1) The commissioner may approve forms for this Act.
- (2) If the commissioner approves a form for a particular purpose, the approved form must be used for the purpose.

*Note* For other provisions about forms, see the Legislation Act, s 255.

- (3) An approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

**70 Review of Act**

- (1) The Minister must, as soon as practicable after the end of this Act's 3rd year and 7th year of operation—
  - (a) review the operation of the Act; and
  - (b) present a report of the review to the Legislative Assembly.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

- (2) This section expires 8 years after the day it commences.

**71 Regulation-making power**

- (1) The Executive may make regulations for this Act.

*Note* A regulation must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (2) Without limiting subsection (1), a regulation may make provision for—
  - (a) the obligations of employers before engaging people in regulated activities; and
  - (b) the obligations of employers in relation to people they engage in regulated activities.

- (3) A regulation may create offences and fix maximum penalties of not more than 20 penalty units for the offences.

**72 Fair Trading (Australian Consumer Law) Act 1992,  
dictionary, definition of *fair trading legislation*,  
new paragraph (g)**

*insert*

- (g) the *Working with Vulnerable People (Background Checking) Act 2011*.

## **Schedule 1 Regulated activities**

(see s 8)

### **Part 1.1 Activities or services for children**

#### **1.1 Child protection services**

- (1) An activity or service is a regulated activity if the activity is conducted, or the service is provided, under the *Children and Young People Act 2008* for a child or young person.
- (2) Without limiting subsection (1), a regulated activity includes an activity conducted or a service provided under the *Children and Young People Act 2008*—
  - (a) by—
    - (i) a member of the Children and Youth Services Council; or
    - (ii) a family group conference facilitator; or
    - (iii) a kinship carer; or
    - (iv) a foster carer; or
    - (v) a residential care service; or
    - (vi) a researcher for a research project; or
    - (vii) an authorised assessor; or
    - (viii) another person administering, or exercising a function under, the Act; or

(b) under a therapeutic protection order.

*Note* See the *Children and Young People Act 2008*, particularly:

- pt 2.2 (Children and Youth Services Council);
- pt 3.2 (Family group conferences—facilitators);
- s 438 (Care and protection assessment—authorisation of assessors);
- s 509 (Who is a *kinship carer*?);
- s 510 (Who is a *foster carer*?);
- s 511 (What is a *residential care service*?);
- pt 16.2 (Therapeutic protection orders);
- ch 22 (Research involving children and young people).

## **1.2 Justice facilities for children**

(1) An activity or service is a regulated activity if—

- (a) any of the usual functions of the activity or service are carried out in relation to a child at a justice facility; or
- (b) the activity is conducted, or the service is provided, in relation to a child because of a sentence, detention, probation, parole or other order, that could be made or imposed by a court.

(2) In this section:

***justice facility*** means—

- (a) a detention place; or
- (b) a place outside a detention place if a detainee is, or has been, directed to work or take part in an activity at the place; or
- (c) any other place a child may be held in custody.

### 1.3 Childcare service

- (1) An activity or service is a regulated activity if the activity is conducted, or the service is provided, by—
- (a) a childcare service; or
  - (b) another commercial service that provides child care.

**Examples—par (b)**

- 1 babysitting service
- 2 nanny service
- 3 a service conducted by a hotel or resort to provide childcare to children who are short term guests

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) In this section:

***childcare service***—see the *Children and Young People Act 2008*, section 732.

*Note* ***Childcare service*** means—

- (a) a childcare centre; or
- (b) a family day care scheme.

### 1.4 Child education services

- (1) An activity or service is a regulated activity if the activity is conducted, or the service is provided, as part of a child education service.
- (2) In this section:

***child education service***—

- (a) means a service for which the main purpose is to provide education and care for children; and

(b) includes—

- (i) a school or other educational institution, whether or not operated by or on behalf of the Territory; and
- (ii) a school-crossing service.

*school* means a preschool, primary school, high school or secondary college.

## **1.5 Child accommodation services**

- (1) An activity or service is a regulated activity if the activity is conducted, or the service is provided, as part of a child accommodation service.
- (2) In this section:

*child accommodation service*—

- (a) means a service for which the main purpose is to provide residential accommodation for children; and
- (b) includes an overnight camp for children, irrespective of the kind of accommodation or of how many children are involved.

**Examples—child accommodation service**

- 1 school group accommodation
- 2 a home stay, including as part of a student exchange
- 3 a school boarding facility

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

## **1.6 Counselling and support services for children**

An activity or service is a regulated activity if the activity is conducted, or the service is provided, as part of—

- (a) a counselling service for children; or
- (b) a support service for children.

## **1.7 Commercial services for children**

An activity or service is a regulated activity if—

- (a) the activity is conducted, or the service is provided specifically for children by a commercial entity; and
- (b) the activity or service is one of the following:
  - (i) an entertainment or party service;
  - (ii) a gym or play facility;
  - (iii) a photography service;
  - (iv) a talent or beauty competition.



## **Part 1.2                      Activities or services for vulnerable people**

### **1.8                      Mental health**

An activity or service is a regulated activity if any of the usual functions of the activity or service include providing treatment, care, rehabilitation or protection to people who are mentally impaired, mentally dysfunctional or mentally ill.

#### **Examples**

- 1 an activity or service that provides personal care, assessment or referral of support needs, education, training and skill development, information services, recreation, counselling, community access, accommodation support, rehabilitation, or employment services, specifically for people who are mentally impaired, mentally dysfunctional or mentally ill
- 2 an activity or service provided in association with the use of premises for the care, treatment or accommodation of people who are mentally impaired, mentally dysfunctional or mentally ill

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

### **1.9                      Migrants, refugees and asylum seekers**

An activity or service is a regulated activity if the activity is conducted, or the service is provided, to support—

- (a) migrants, or
- (b) refugees or asylum seekers; or

- (c) people who cannot communicate, or who have difficulty communicating, in English.

**Examples**

an activity or service that provides assistance settling in the ACT, including mentoring, employment services, transport or accommodation support, specifically for migrants, refugees, asylum seekers or people from non-English speaking backgrounds

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

## **1.10 Homeless people**

An activity or service is a regulated activity if the activity is conducted, or the service is provided, to support people who are homeless.

**Examples**

- 1 an activity or service that provides food, transport, coordination or referral of support needs for people who are homeless
- 2 a drop in centre
- 3 a soup kitchen

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

## **1.11 Housing and accommodation**

A service or activity is a regulated activity if any of the usual functions of the service or activity include providing public or community housing or accommodation to people suffering social or financial hardship.

**Examples**

- 1 public housing
- 2 social housing
- 3 community housing
- 4 housing assistance

- 5 social housing
- 6 crisis accommodation
- 7 refuges

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

### **1.12 Justice facilities**

- (1) An activity or service is a regulated activity if—
  - (a) any of the usual functions of the activity or service are carried out in relation to an adult at a justice facility; or
  - (b) the activity is conducted, or the service is provided, in relation to an adult because of a sentence, detention, probation, parole or other order, that could be made or imposed by a court.
- (2) In this section:  
*justice facility* means—
  - (a) a correctional centre; or
  - (b) a remand centre; or
  - (c) a detention place; or
  - (d) a place outside a detention place if a detainee is, or has been, directed to work or take part in an activity at the place; or
  - (e) any other place a person may be held in custody.

### 1.13 Prevention of crime

An activity or service is a regulated activity if the activity is conducted, or the service is provided, in relation to a person to reduce the likelihood of the person committing a criminal offence.

#### Examples

- 1 a program to keep police informed of the whereabouts and other personal details about a person who has committed a crime to reduce the likelihood that the person will reoffend
- 2 a mentoring program

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

### 1.14 Victims of crime

An activity or service is a regulated activity if the activity is conducted, or the service is provided, to assist or support victims of crime.

#### Example

an activity or service that provides counselling and support, therapeutic intervention, financial assistance, information or advice for victims of crime

*Note 1* Victims of crime are eligible for assistance under the victims services scheme (see *Victims of Crime Act 1994*, pt 4).

*Note 2* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

### 1.15 Services for addictions

- (1) An activity or service is a regulated activity if any of the usual functions of the activity or service include providing treatment, care, rehabilitation or protection to people who are—
  - (a) addicted to, or misuse, a substance (whether alcohol, a medicine, a prohibited substance or another substance); or

(b) addicted to an activity.

**Examples**

- 1 an activity or service that provides health care, counselling, accommodation or financial support for people who are addicted to a substance or an activity
- 2 a needle and syringe exchange program
- 3 a methadone treatment and withdrawal program
- 4 a gambling addiction telephone help-line

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(2) In this section:

***prohibited substance***—see the *Medicines, Poisons and Therapeutic Goods Act 2008*, section 13.

## **1.16 Community services**

An activity or service is a regulated activity if the activity is conducted, or the service is provided, to—

- (a) people and families suffering social or financial hardship; or
- (b) people who need support to live independently.

**Examples**

- 1 an activity or service that provides crisis intervention, emergency relief, parenting support, assessment or referral of support needs, education, training and skill development, information services, counselling, community access, or employment services, for people and families suffering social or financial hardship
- 2 an activity or service that provides home help, home maintenance or modification, allied health care, personal care, food services, assessment or referral of support needs, information services, coordination, case management, recreation, counselling, community access, rehabilitation, or employment services, to people who need support to live independently

- 3 an activity or service provided in association with the use of premises for the care, treatment or accommodation of people who need support to live independently

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

### 1.17 Disability services

- (1) An activity or service is a regulated activity if the activity is conducted, or the service is provided, specifically for people with a disability.

#### Examples

- 1 an activity or service that provides home help, home maintenance or modification, personal care, food services, assessment or referral of support needs, information services, coordination, case management, recreation, counselling, community access, rehabilitation, or employment services, to people with a disability
- 2 an activity or service provided in association with the use of premises for the care, treatment or accommodation of people with a disability

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) In this section:

**disability**—see the *Human Rights Commission Act 2005*, section 8 (2).

*Note* For the *Human Rights Commission Act 2005*, s 8 (2), **disability** means a disability that—

- (a) is attributable to an intellectual, psychiatric, sensory or physical impairment, or a combination of those impairments; and
- (b) is permanent or likely to be permanent; and
- (c) results in—
  - (i) the person having a substantially reduced capacity for communication, learning or mobility; and
  - (ii) the need for continuing support services for the person; and
- (d) may, but need not, be of a chronic episodic nature.

**1.18 Respite care services**

An activity or service is a regulated activity if any of the usual functions of the activity or service include providing respite care.

**1.19 Emergency services personnel**

An activity or service is a regulated activity if the activity is conducted, or the service is provided, by—

- (a) an emergency service; or
- (b) a person acting on behalf of an emergency service.

## Part 1.3 Other activities or services for vulnerable people

### 1.20 Transport

An activity or service is a regulated activity if any of the usual functions of the activity or service include providing public or private transport that is—

- (a) specifically for, or mainly used by, children; or
- (b) specifically for people accessing a regulated activity mentioned in part 1.2.

**Example—par (a)**

a school bus service

**Examples—par (b)**

- 1 a minibus transporting detainees to or from a remand centre
- 2 a taxi for mobility impaired people

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) To remove any doubt, an activity or service is a regulated activity if a person must have 1 or both of the following to conduct the activity or provide the service:

- (a) a public vehicle licence;
- (b) a driving instructor certificate of accreditation.

*Note 1* **Public vehicle licence**—see the *Road Transport (Driver Licensing) Act 1999*, dictionary.

*Note 2* For certificates of accreditation for driving instructors, see the *Road Transport (Driver Licensing) Regulation 2000*, pt 7 (Accreditation of driving instructors).



### **1.21 Coaching and tuition**

An activity or service is a regulated activity if—

- (a) any of the usual functions of the activity or service include coaching or tuition specifically for—
  - (i) children; or
  - (ii) people accessing a regulated activity mentioned in part 1.2; and
- (b) the coaching or tuition is provided by a commercial entity.

### **1.22 Vocational and educational training**

An activity or service is a regulated activity if any of the usual functions of the activity or service include providing vocational education and training specifically for—

- (a) children; or
- (b) people accessing a regulated activity mentioned in part 1.2.

#### **Examples**

- 1 a pathways to employment program
- 2 an adult English language, literacy and numeracy skills program
- 3 an industry training service

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

### **1.23 Religious organisations**

An activity or service is a regulated activity if—

- (a) the activity is conducted, or the service is provided, by—
  - (i) a religious organisation; or
  - (ii) a person acting on behalf of a religious organisation; and

- (b) the activity or service is—
- (i) specifically for, or mainly used by children; or
  - (ii) specifically for people accessing a regulated activity mentioned in part 1.2.

**Example—par (a)**

Sunday school

**Example—par (b)**

counselling provided by a minister of religion

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

## **1.24 Clubs, associations and movements**

An activity or service is a regulated activity if—

- (a) the activity is conducted, or the service is provided, by a club, association or movement (including of a cultural, recreational or sporting nature); and
- (b) the club association or movement has significant membership or involvement by—
  - (i) children; or
  - (ii) people accessing a regulated activity mentioned in part 1.2.

**Examples**

1 a children's football team

2 an art class for people who require assistance to live independently

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

## Schedule 2      Reviewable decisions

(see pt 7)

<b>column 1 item</b>	<b>column 2 section</b>	<b>column 3 decision</b>	<b>column 4 entity</b>
1	39 (1)	extend period for stated period	person
2	39 (1)	refuse to extend period	person
3	40 (1)	refuse to register person	person
4	44 (2) (b)	register person subject to condition	person
5	45 (1)	extend period for stated period	person
6	45 (1)	refuse to extend period	person
7	46 (1)	register person subject to condition	person
8	47 (4) (b)	refuse to amend person's conditional registration	person
9	51 (4) (b)	refuse to replace person's registration card	person
10	59 (1)	suspend or cancel person's registration	person

## Dictionary

(see s 4)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACAT
- ACT
- adult
- Australia
- change
- chief police officer
- child
- commissioner for fair trading
- contravene
- Corporations Act
- correctional centre
- Criminal Code
- detention place
- disallowable instrument (see s 9)
- document
- domestic partner (see s 169 (1))
- emergency service
- entity
- found guilty
- function
- health practitioner
- home address
- lawyer
- Legislation Act
- notifiable instrument (see s 10)
- penalty unit (see s 133)
- person (see s 160)

- police officer
- reviewable decision notice
- territory law
- the Territory
- working day
- writing.

***additional risk assessment***—see section 54 (2) (a).

***commissioner*** means the commissioner for fair trading.

***conditional registration*** means a registration that is subject to conditions.

***contact***, between a person and a vulnerable person—see section 10.

***corresponding law*** means—

- (a) a law of another jurisdiction corresponding, or substantially corresponding, to this Act; or
- (b) a law of another jurisdiction prescribed by regulation as a corresponding law for this Act.

***criminal history***, about a person—see section 24.

***employer***, in relation to a regulated activity—see section 11.

***engaged***, in a regulated activity—see section 9.

***independent advisor*** means an independent advisor appointed under section 34.

***jurisdiction*** means a State, the Commonwealth or an internal Territory, including the ACT.

***named employer***, for a regulated activity—see section 18 (1) (d) (i).

***negative notice***—see section 40 (2) (a).

***negative risk assessment***—see section 37 (1) (b).

***non-conviction information***, about a person—see section 25.

***proposed conditional registration notice***—see section 43 (1).

***proposed negative notice***—see section 37 (2).

***registration*** means a registration under this Act.

***registration card***—see section 49 (1).

***registration number***—see section 49 (2) (a).

***regulated activity***—see section 8.

***relevant offence***—see section 26.

***reviewable decision***, for part 7 (Notification and review of decisions)—see section 61.

***revised risk assessment***—see section 38 (2).

***risk assessment***, for a person—see section 23.

***risk assessment guidelines***—see section 27.

***role-based registration***—see section 42 (2).

***spent***, for a conviction—see the *Spent Convictions Act 2000*, section 7.

***vulnerable person***—see section 7.

---

## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 26 August 2010.

**2 Notification**

Notified under the Legislation Act on 8 November 2011.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

---

I certify that the above is a true copy of the Working with Vulnerable People (Background Checking) Bill 2011, which originated in the Legislative Assembly as the Working with Vulnerable People (Background Checking) Bill 2010 and was passed by the Assembly on 25 October 2011.

Clerk of the Legislative Assembly

© Australian Capital Territory 2011