



Australian Capital Territory

Background Checking Legislation Amendment Act 2023

A2023-12

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Australian Capital Territory

Background Checking Legislation Amendment Act 2023

A2023-12

An Act to amend the *Children and Young People Act 2008* and the *Working with Vulnerable People (Background Checking) Act 2011*

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

Part 1 Preliminary

1 Name of Act

This Act is the *Background Checking Legislation Amendment Act 2023*.

2 Commencement

This Act commences on the day after its notification day.

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

3 Legislation amended

This Act amends the *Children and Young People Act 2008* and the *Working with Vulnerable People (Background Checking) Act 2011*.

Part 2 Children and Young People Act 2008

4 Approved carers—director-general may approve Section 514B (3), except note

substitute

- (3) The director-general may approve a person as an approved carer only if—
- (a) the person is registered under the [Working with Vulnerable People Act](#) to engage in a regulated activity; or
 - (b) the person—
 - (i) has applied for registration under the [Working with Vulnerable People Act](#); and
 - (ii) may engage in a regulated activity under that [Act](#), section 16 (2) (When unregistered person may be engaged in regulated activity—kinship carer or foster carer); or
 - (c) the person is not registered under the [Working with Vulnerable People Act](#) to engage in a regulated activity and—
 - (i) the person is to be authorised as a kinship carer under section 516 or a foster carer under section 518 for a child or young person; and
 - (ii) the director-general is satisfied that—
 - (A) the person is a significant person for the child or young person; and
 - (B) the person has a familiar relationship with the child or young person; and
 - (C) given the familiar relationship, the person does not pose an unacceptable risk to the child or young person; and

- (D) taking into account all the circumstances, it would be in the best interests of the child or young person to have the person authorised as their kinship carer or foster carer.
- (4) In deciding whether a person has a familiar relationship with a child or young person, the director-general must consider the length of the relationship and the extent and degree to which the person engages with the child or young person.
- (5) The Minister must make guidelines about matters the director-general must consider under subsection (3) (c) (ii).
- (6) A guideline is a disallowable instrument.
- (7) In this section:
regulated activity means a regulated activity mentioned in the [Working with Vulnerable People Act](#), schedule 1, section 1.1 (Child protection services).

Part 3 Working with Vulnerable People (Background Checking) Act 2011

5 Section 11B

substitute

11B Meaning of *disqualifying offence* etc

(1) In this Act:

class A disqualifying offence means an offence against—

- (a) a provision of a law mentioned in schedule 3, part 3.2, column 2, if any condition mentioned in column 4 for the offence is met; or
- (b) a provision of a law declared to be a class A disqualifying offence, if any condition declared for the offence is met.

class B disqualifying offence means an offence against—

- (a) a provision of a law mentioned in schedule 3, part 3.3, column 2, if any condition mentioned in column 4 for the offence is met; or
- (b) a provision of a law declared to be a class B disqualifying offence, if any condition declared for the offence is met.

disqualifying offence means a class A disqualifying offence or a class B disqualifying offence.

- (2) The Minister may declare—
- (a) either of the following to be a class A disqualifying offence or a class B disqualifying offence:
 - (i) a provision of a law of the Commonwealth, another State or a foreign country that corresponds, or substantially corresponds, to a provision of a law mentioned in—
 - (A) for a class A disqualifying offence—schedule 3, part 3.2, column 2; and
 - (B) for a class B disqualifying offence—schedule 3, part 3.3, column 2;
 - Note* **State** includes the Northern Territory (see [Legislation Act](#), dict, pt 1).
 - (ii) a provision of a law that has been omitted, or omitted and remade with changes; and
 - Note* A conviction against an offence under a provision of a law that has been omitted or remade does not include a spent conviction or an extinguished conviction (see [Spent Convictions Act 2000](#), s 16 (c) (i) and s 19H (1) (c) (i)).
 - (b) any condition that must be met for an offence declared under paragraph (a) to be a disqualifying offence.
- (3) A declaration is a disallowable instrument.

11C Disqualifying offences—kinship care activities

- (1) This section applies if a person—
- (a) applies for registration under section 17; and
 - (b) is engaged, or seeking registration to engage, only in a kinship care activity; and
 - (c) has an adult conviction or finding of guilt for a class A disqualifying offence.

(2) The person's class A disqualifying offence is taken to be a class B disqualifying offence in relation to the application for registration.

(3) In this section:

kinship care activity means an activity conducted as a kinship carer under the *Children and Young People Act 2008*, part 15.4 (Out-of-home carers).

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 (2)).

6 When is a person required to be registered? New section 12 (2) (ia)

insert

(ia) engaged in the activity for a court or tribunal as an interpreter for a vulnerable person who cannot communicate, or who has difficulty communicating, in English; or

7 New section 12 (2) (na)

after the note, insert

(na) not required to be registered under section 16 (3); or

8 Section 12 (5), definition of *close relative*

substitute

close relative, of a vulnerable person, means the vulnerable person's—

(a) domestic partner; or

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

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

- (c) son, daughter, grandson, granddaughter, stepson, stepdaughter, son-in-law or daughter-in-law; or
- (d) brother, sister, half-brother, half-sister, stepbrother, stepsister, brother-in-law or sister-in-law; or
- (e) uncle, aunt, uncle-in-law or aunt-in-law; or
- (f) nephew, niece or cousin.

9 Section 16

substitute

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

- (1) This section applies to an unregistered person if the person is engaged in a regulated activity mentioned in schedule 1, section 1.1 (Child protection services) as—
 - (a) a kinship carer; or
 - (b) a foster carer.
- (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) The person is not required to be registered to engage in the activity if the person is an approved carer under the *Children and Young People Act 2008*, section 514B (3) (c).

Note Under the *Children and Young People Act 2008*, section 514B (3) (c), the director-general may approve an unregistered person as an approved carer for a child or young person if—

- (a) the person is to be authorised to be a kinship carer or foster carer; and
- (b) the director-general is satisfied that the person is a significant person for the child or young person, has a familiar relationship with the child or young person and does not pose an unacceptable risk to the child or young person, and that the approval is in the best interests of the child or young person.

- (4) In this section:

eligible—see section 15 (4).

foster carer—see the *Children and Young People Act 2008*, section 518.

10 Independent advisors—appointment Section 34 (3)

omit

3 years

substitute

5 years

11 Conditional registration—class A disqualifying offence Section 42A, note 2

substitute

Note 2 For a kinship carer, a class A disqualifying offence is taken to be a class B disqualifying offence (see s 11C (2)).

**12 Child protection services
Schedule 1, section 1.1 (2), note, new dot point**

insert

- s 514B (Approved carers—director-general may approve);

**13 Migrants, refugees and asylum seekers
Schedule 1, section 1.9, new note**

after the example, insert

Note A person is not required to be registered to engage in a regulated activity for a court or tribunal as an interpreter for a vulnerable person who cannot communicate, or who has difficulty communicating, in English (see s 12 (2) (ia)).

**14 Class A disqualifying offences
Schedule 3, part 3.2 heading, note**

substitute

Note An offence mentioned in this part is taken to be a class B disqualifying offence for a person engaged, or seeking registration to engage, in a kinship care activity (see s 11C).

15 Schedule 3, part 3.2, item 2

omit

16 Schedule 3, part 3.2, item 67, column 4

omit

offence against child under 13 years

17 Schedule 3, part 3.2, new item 67A

insert

| | | | |
|-----|---------------------------------------|----------------------------|-----------------------------------|
| 67A | Crimes Act , s 62 (3) | incest (16 years or older) | offence against vulnerable person |
|-----|---------------------------------------|----------------------------|-----------------------------------|

**18 Class B disqualifying offences
Schedule 3, part 3.3, items 21 and 24**

omit

19 Schedule 3, part 3.3, item 66

omit

**20 Schedule 3, part 3.3, items 81, 84, 86, 91, 96, 120, 126, 135
and 136**

omit

21 Dictionary, definition of *kinship care activity*

omit

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 20 October 2022.

2 Notification

Notified under the [Legislation Act](#) on 11 April 2023.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Background Checking Legislation Amendment Bill 2023, which originated in the Legislative Assembly as the Background Checking Legislation Amendment Bill 2022 and was passed by the Assembly on 29 March 2023.

Clerk of the Legislative Assembly

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