

Working with Vulnerable People (Background Checking) Risk Assessment Guidelines 2018 (No 1)

Disallowable Instrument DI2018–223

made under the

Working with Vulnerable People (Background Checking) Act 2011, Section 27 (Risk assessment guidelines)

1 Name of instrument

This instrument is the *Working with Vulnerable People (Background Checking) Risk Assessment Guidelines 2018 (No 1)*.

2 Commencement

This instrument commences on the day after the day it is notified.

3 Risk assessment guidelines

I make the guidelines in Schedule 1 about how risk assessments are to be conducted under the *Working with Vulnerable People (Background Checking) Act 2011*.

4 Repeal

DI2012-190 is repealed.

David Snowden
Commissioner for Fair Trading
6 August 2018

SCHEDULE 1

WORKING WITH VULNERABLE PEOPLE COMMISSIONER'S RISK ASSESSMENT GUIDELINES

The Risk Assessment Guidelines (the Guidelines) are a disallowable instrument, made under section 27 of the *Working with Vulnerable People (Background Checking) Act 2011* (the Act). The Guidelines provide the framework of what the Commissioner for Fair Trading (the Commissioner) will consider when conducting a risk assessment for the purposes of the Act; i.e. in determining whether an applicant poses an unacceptable risk of harm to a *vulnerable person*¹ when engaging in a *regulated activity*.

The risk assessment process described in the Guidelines is consistent with the Australian/New Zealand Standard *AS/NZS ISO 31000:2009 – Risk management – Principles and guidelines* (the Standard). The Standard provides generic guidelines and establishes a number of principles for the identification and management of risk.

While there is substantial research on risk factors for sexual offences and abuse of children, comprehensive data on the incidence and risk factors of harm to disadvantaged adults accessing services is not available. As such, it is not possible for the Guidelines to create a risk assessment framework that takes into account every contingency or occurrence. The Guidelines outline the minimum mandatory considerations, and provides for other matters, depending on the circumstances of the individual, the Commissioner may consider in assessing an individual's risk of harm.

It is acknowledged that the working with vulnerable people background checking scheme is the first of its kind in Australia. To determine whether operations are meeting the requirements of the Act, and to discover omissions, anomalies or unintended consequences the Act will be subject to review after three years of operation. Similarly, the Guidelines are intended to be subject to continuous improvement.

Compliance with other legislation

The *Human Rights Act 2004*, as well as the principles of the *Discrimination Act 1991* have been considered and applied during the development of the Guidelines. When delegated officers undertake risk assessments on behalf of the Commissioner, the officers are required to comply with impacting ACT legislation, such as the *Human Rights Act 2004*, *Discrimination Act 1991* and the *Information Privacy Act 2014*.

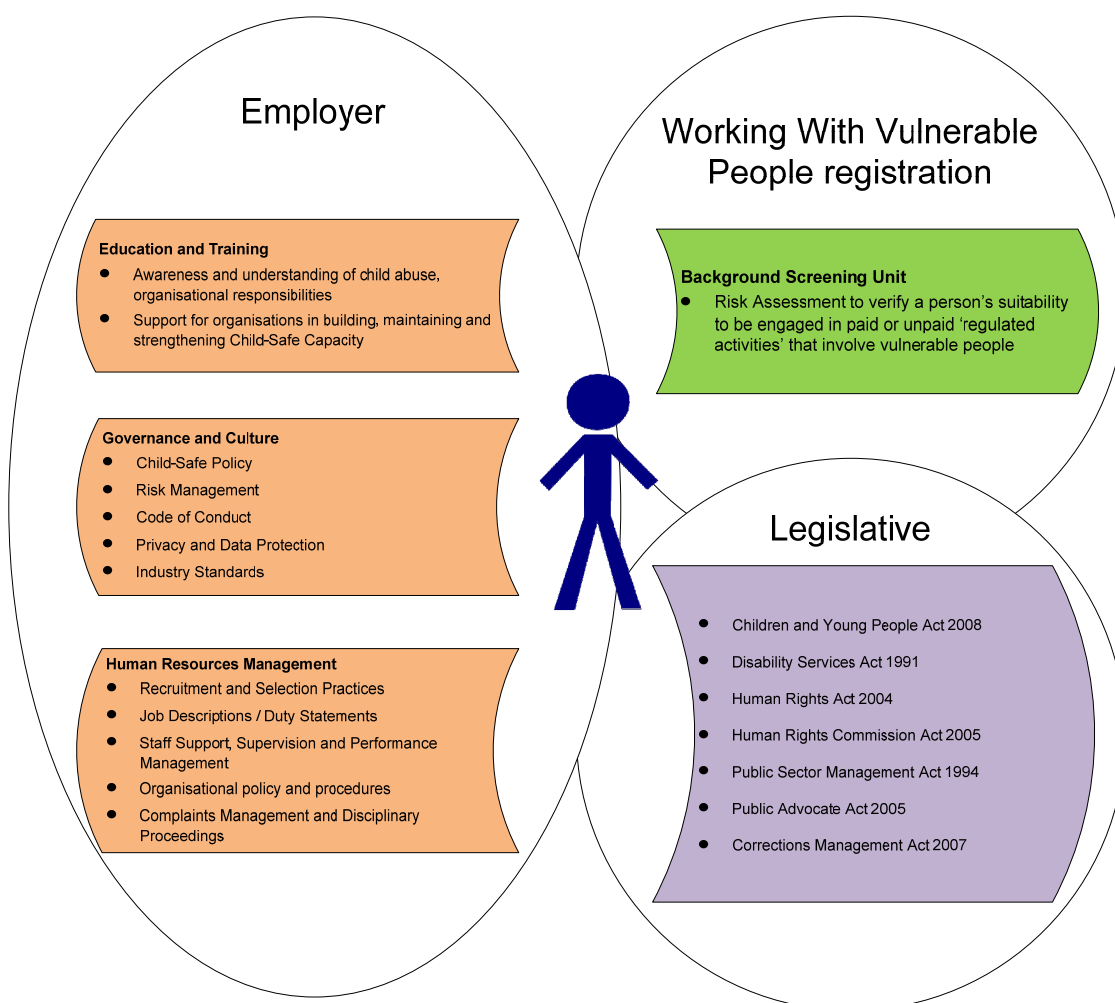
¹ Words in italics are defined in the Dictionary of the *Working with Vulnerable People (Background Checking) Act 2011*.

BACKGROUND CHECKING SYSTEM

The aim of the Act is to protect vulnerable people in the ACT from harm when accessing regulated activities. The Act and *Working with Vulnerable People (Background Checking) Regulation 2012* is based on the principle of determining that a person's background does not represent an unacceptable risk of harm to vulnerable people if engaged, whether paid or unpaid, in a regulated activity. If this is deemed so, they may be registered to work with vulnerable people. **Section 7** of the Act defines a 'vulnerable person'. Regulated activities are described in **Schedule 1** of the Act.

The registration scheme is not intended to be the sole protection of vulnerable people in the ACT. Various community agencies and other sectors are regulated by other guidelines, including the child care, education, health, children and young people, disability and aged care sectors. Additionally, government funding is generally contingent on the organisation having suitable and sufficient organisational governance and controls in place. Employers themselves undertake assessment of an applicant's suitability during recruitment, which can include probity assessments. Figure 1 figuratively represents some of the controls in place in the ACT to protect vulnerable people.

Figure 1. Controls designed to protect vulnerable people in the ACT.



Consent

The application includes the applicant's consent to the Commissioner:

- checking the applicant's criminal history;
- checking non-conviction information;
- checking other information that may be relevant in assessing the application;
- seeking information or advice from any entity in relation to the application or registration; and
- contacting a named employer in relation to the status of the application or registration.

The consent forms part of the application form and cannot be accepted unless completed.

The Commissioner will obtain the applicant's consent to contact other specific entities where not explicitly authorised by the consent given on application. If an applicant refuses consent the risk assessment will be processed on the basis of information available to the Commissioner, noting the applicant's refusal. See page 9 for examples of some of the entities that may be contacted.

If an additional risk assessment is required (due to a request for reconsideration of a proposed negative notice, or new information becomes available on the registered person), the person will be notified in accordance with the Act.

Consent cannot be provided by another person without legal authority, for example by an employer, who is not the subject of the assessment.

Decision Making

The Commissioner may request applicants to provide supporting information in certain circumstances. Further, an applicant may also make submissions to the Commissioner on any matter that the Commissioner will or may consider during the risk assessment as identified in the Guidelines. The Commissioner will only give consideration to information obtained from the applicant or other entities if satisfied that the information is reasonably accurate.

Procedural fairness, or natural justice, is a core aspect of the decision-making process. This means that:

- the applicant will be given the opportunity to reply/make submissions prior to a decision being made;
- the decision maker's determination will be made without bias or predisposition;
- evidence will be used to support a decision; and
- disputed matters will be investigated.

Applicants can access further information from Access Canberra to assist their understanding of the application and risk assessment process, and potential registration outcomes.

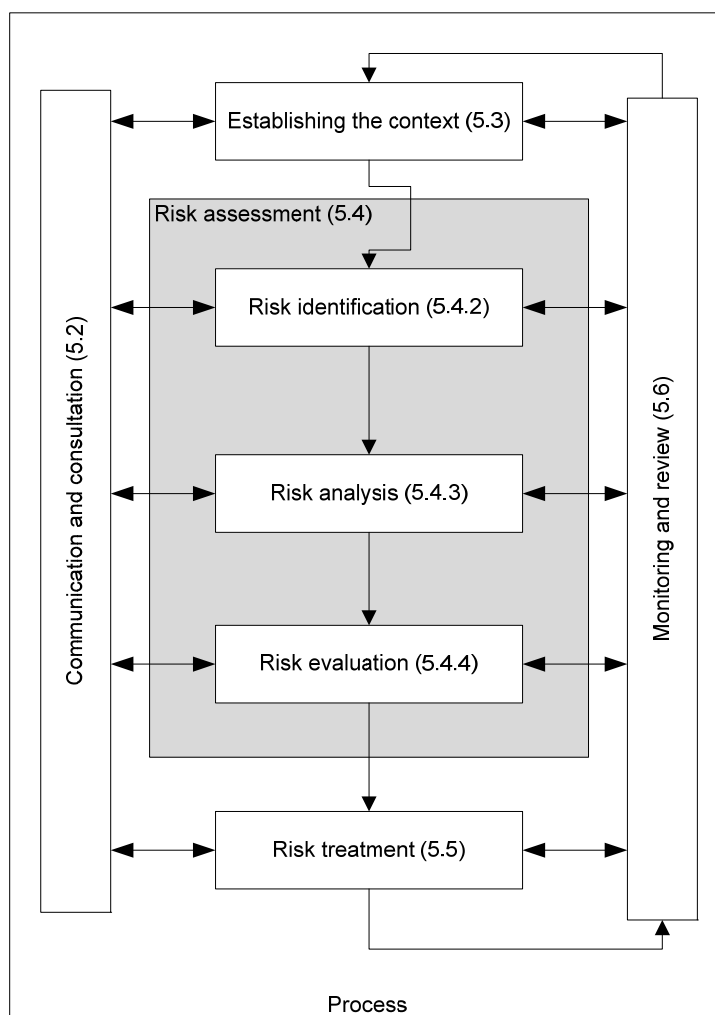
RISK ASSESSMENT PROCESS

The risk assessment process under the Act is based on the Standard for risk management and consists of three steps:

- Risk identification;
- Risk analysis; and
- Risk evaluation.

The complete risk management process is set out below.

Figure 2. The Risk Management Process.



AS/NZS ISO 31000:2009 Risk management – Principles and guidelines. Numbering refers to the relevant clause in the Standard.

RISK IDENTIFICATION

The Standard defines risk as “effect of uncertainty on objectives,” and is often expressed in terms of a combination of the consequences of an event and the associated likelihood of occurrence. Risk identification is defined as the “process of finding, recognising and describing risks;” this involves the identification of risk sources, events, their causes and the potential consequences.

In this regard, the risk to be assessed by the Commissioner is to what extent the applicant’s background poses a threat of harm, be it sexual, physical, emotional, financial, neglect or other, to a vulnerable person. It is acknowledged, however, that people can make significant changes in their lives and this can influence the current level of risk.

The existence of potential sources of risk is identified through the application process. This includes the applicant’s statement of whether they have been charged or found guilty of a *relevant offence*² either in Australia or overseas; and in information obtained by the Commissioner. If the application form or criminal history check identifies a criminal history or other information that warrants assessment, the risk analysis process commences.

The Act requires that the following be taken into account during a risk assessment:

- the person’s criminal history;
- non-conviction information;
- any previous negative notices issued under the Act or corresponding law;
- whether the person has previously been registered under the Act or corresponding law;
- any other information the Commissioner considers relevant in determining the applicant’s risk.

Table 1³ establishes the relative severity of the offence categories⁴ defined in the Act and the typical level of consideration those types of offences receive. Where there is a greater likelihood of risk (based solely on the outcome of the criminal history check), the application, relevant documentation, and other sources of information as described in the Guidelines will be considered by officers at a higher level.

The table is a guide only and does not represent all the various factors that are taken into consideration when assessing a person’s background – particularly if the applicant has applied for a conditional or role-based registration – nor is it intended to influence an outcome or decision based on the offence.

Further detail on what factors the Commissioner must and may consider is at Risk Analysis.

² Words in italics are defined in the Dictionary of the *Working with Vulnerable People (Background Checking) Act 2011*.

³ This table may change subject to implementation of the scheme, input from stakeholders, and review of the Act

⁴ A guide to the types of offences that fall into these classes can be obtained from Access Canberra

Table 1. Relative severity of offence categories.

				OFFENCE AGAINST AN ANIMAL UNSPENT	SEXUAL OFFENCE AGAINST A CHILD
			OFFENCE AGAINST AN ANIMAL SPENT	OFFENCE INVOLVING DISHONESTY OR FRAUD SPENT	OFFENCE INVOLVING VIOLENCE UNSPENT
		DRIVING OFFENCE UNSPENT	DRUG POSSESSION	OFFENCE RELATING TO PROPERTY UNSPENT	DRUG TRAFFICKING UNSPENT
	DRIVING OFFENCE SPENT	OFFENCE RELATING TO PROPERTY SPENT	OFFENCE INVOLVING VIOLENCE SPENT	OFFENCE AGAINST THE PERSON UNSPENT	OFFENCE INVOLVING DISHONESTY OR FRAUD UNSPENT
NO CRIMINAL HISTORY	OFFENCE NOT RELEVANT SPENT	OFFENCE NOT RELEVANT UNSPENT	OFFENCE AGAINST THE PERSON SPENT	SEXUAL OFFENCE*	DRUG TRAFFICKING SPENT

GENERAL REGISTRATION	ASSESSMENT OF ASSOCIATED ISSUES	REFERRAL TO ORS ADVISORY COMMITTEE	REFERRAL TO INDEPENDENT ADVISORS	NEGATIVE NOTICE UNLESS SATISFIED OTHERWISE
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* Urination/defecation in public is not considered a sexual offence for the purposes of the risk assessment.

RISK ANALYSIS

The intent of the risk analysis process is not to determine whether a person is guilty or innocent. Risk analysis is the process “to comprehend the nature of risk and to determine the level of risk⁵.” The level of risk is influenced by the combination of potential sources of risk, likelihood and their consequences; particularly where they impact on the **inherent requirements of the job** in which the person will be engaged.

Criminal history

The primary source of risk that is examined by the Commissioner is the applicant’s criminal history. The criminal history check will identify spent⁶ and unspent offences (the Act provides for the Commissioner to consider these convictions).

⁵ AS/NZS ISO 13000:2009 *Risk management – Principles and guidelines*

⁶ A conviction is ‘spent’ (based on the definition under the *Spent Convictions Act 2000*) on completion of the relevant crime-free period (5 consecutive years if the person was not dealt with as an adult, or in any other case 10 consecutive years), or the conviction or findings were quashed or set aside, or the person was granted a pardon for the offence.

The Commissioner will consider the following characteristics of any *relevant offence* in the applicant's 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 of the victim at the time of the offence;
- e) whether the person's circumstances have changed since the offence;
- f) the applicant's attitude to the offence;
- g) if any treatment or intervention was undertaken, any subsequent assessment of the person;
- h) if there is an equivalent offence in Australia (for an offence committed overseas);
- i) number of relevant offences; and
- j) any submission made by the applicant addressing the above.

For offences of the same category, the Commissioner will consider a spent conviction a lower risk to the vulnerable person than an unspent one. This is based on the significant period of non-offending required for a conviction to be considered spent, and the fact that the offence could not have been deemed significant enough to attract more than 6 months imprisonment. However, the *Spent Convictions Act 2000* prescribes that sexual offences, offences by a corporation, and offences where a penalty of six months or more imprisonment was imposed cannot be spent.

Non-conviction information

Another source of information on the applicant's risk that may be examined is the applicant's non-conviction history. Consent to access this information is given in the application and is obtained from Police. The Commissioner will consider the following characteristics of any relevant offence, or alleged relevant offence, included in the *non-conviction information*⁷:

- 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 of 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;
- f) the nature, extent and outcome of any investigation into the offence or alleged offence;
- g) any formal statement made by the applicant to a Police officer;
- 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; and
- j) any submission made by the applicant addressing the above.

⁷ Non-conviction information is the following about an offence or an alleged offence: person has been charged with offence but; a proceeding for the alleged offence is not finalised, or charge has lapsed, been withdrawn or discharged, or struck out; person has been acquitted; person has had a conviction for the alleged offence quashed or set aside; person has been served with an infringement notice for the alleged offence; or person has a spent conviction for the offence.

Non-conviction information about alleged offences will carry significantly less influence in the assessment of risk as there was insufficient evidence for a conviction. Where there is a history of recurrent alleged relevant offences the applicant will be asked to make a submission providing further information.

The outcome of a risk assessment will not be determined solely on the basis of any non-conviction information. Information obtained from a criminal history check and other entities will be also be considered.

Previous negative notices

If a person was issued a negative notice more than three years ago, the circumstances will be examined by the Commissioner. If the negative notice (or equivalent) was given by the Issuing Authority in another State or Territory they will be contacted for further information with the applicant's consent. Due to the ACT not applying disqualifying offences, it may be possible in some circumstances for a person refused in another State or Territory to receive registration in the ACT.

If the notice was issued by the Commissioner within the previous three years, the applicant is ineligible to apply for registration unless there has been a change in circumstances; such as a change in the status of the offence (i.e. becomes spent, is acquitted of a pending charge, or is quashed) or an employer/prospective employer is now available to support the applicant in mitigating previously identified risks to achieve role-based registration.

Previous registrations

If a person has held an equivalent registration (to work with children or vulnerable people) in another State or Territory cancelled or suspended; with the applicant's consent, the Commissioner will contact the Issuing Authority to establish the circumstances. The applicant may provide a submission to the Commissioner in support of their application.

Any person holding a conditional or role-based registration (or equivalent) in another State or Territory will be subjected to the full risk assessment process. The Issuing Authority or previous employers, with the applicant's consent, may be contacted for further information.

Where a person holds a current general registration for working with children and/or vulnerable people (or equivalent) in another State or Territory, unless there has been a change in circumstances since approval (as indicated in a criminal history check – which all interstate applicants will be subject to), the Commissioner will usually issue a general registration.

Other information

The WWVP scheme requires the Commissioner to make an assessment about the level of risk of harm a person poses to a vulnerable person, including, sexual, physical, emotional and financial harms. It does not matter if the risk arises from neglect, abuse or other conduct by the person. As such, the Commissioner will consider any information obtained from other sources during the risk assessment process if believed it is, or may be, relevant to determining whether the applicant poses an unacceptable risk. The consideration of other information provides for the assessment of risk where information obtained does not fall within the scope of criminal history or non-conviction information as defined in the Act. This may include information obtained from other government authorities (including, but not limited to, the Courts, Police, Care and Protection agencies, professional regulatory or registration authorities), employers, the applicant, or other public sources (other information matter). Where an applicant has indicated that they were previously registered as a health professional or health practitioner, with the applicant's consent, the Commissioner will contact the relevant regulatory or registration authority, or other complaints bodies to obtain further information about any suspensions, cancellations or disciplinary action.

In considering information obtained from other sources the Commissioner will take into account:

- a) how the information was obtained;
- b) the relevance of the information;
- c) the truthfulness, completeness and reliability of the information; and
- d) any submission made by the applicant addressing the above.

Table 2. Summary of factors considered by the Commissioner

As this scheme affects a broad number of activities and people it is not possible to outline every potential consideration or outcome. The tables below identify the minimum considerations should a criminal history check, non-conviction history, registration history, or other information examined during the risk assessment require further scrutiny.

Any conclusions reached, about a person's risk when engaged in a regulated activity with vulnerable people, will have an evidentiary basis; relying on statements from professionals, employers, referees or reports on incidents as evidence to support these variables.

Table 2. Summary of factors considered by the Commissioner

Where information is available and relevant the Commissioner will consider the following matters:

Characteristic	Consideration ⁸	Possible evidence ⁹	Impact on risk level ¹⁰
Nature of offence or alleged offence or other information matter	Abuse of power or breach of trust	Statement of facts/Prosecution brief Criminal history check Non-conviction information Regulatory or agency reports	↑
	Pre-meditated or wilful action to harm		↑
	Committed against a vulnerable person		↑
	Used force or weapons		↑
	Unlawful deprivation of personal liberty		↑
	No identifiable victim		↔
	Sexual offence		↑
Gravity of offence or alleged offence or other information matter	Penalty imposed: Imprisonment (including suspended)	Criminal history check	↑
	Penalty other than imprisonment		↔
	Maximum imposed	Victim Impact Statement Statement of facts/Prosecution brief	↑
	Impact on victim or alleged victim		↔
Circumstances of the offence or alleged offence or other information matter	Pattern of escalating severity/seriousness	Criminal history check	↑
	Intoxicated during offence/alleged offence or other information matter: Non-recurring	Submission Statement of facts/Prosecution brief Psychological/Professional reports Police or witness statements Non-conviction information Regulatory or agency reports	↓
	Diminished capacity due to mental state at time of offence/alleged offence or other information matter		↔
	Diminished insight at time of offence/alleged offence or other information matter		↔
Characteristic	Consideration	Possible evidence	Impact on risk level

⁸ These are indicative and do not represent an exhaustive list of considerations. The Commissioner will only consider these factors where there is available evidence. The applicant may make a submission in relation to any matter listed in this table.

⁹ These are indicative and do not represent an exhaustive list of possible sources of evidence. Applicant's consent will be obtained where an entity requires it.

¹⁰ These are indicative; various combinations of factors and the applicant's individual circumstances will influence the specific change in risk. ↑ represents an increase to the risk/significance.

↓ represents a decrease to the risk/significance. – represents no impact on the risk/significance. ↔ risk level is dependent upon other circumstances of the offence/alleged offence.

Working with Vulnerable People (Background Checking) Risk Assessment Guidelines 2018 (No 1)

Overseas offences or other information matter	Equivalent offence or other information matter in Australia	Criminal history check from other country Reports from other country	–
	Equivalency of the penalty imposed in foreign country to maximum penalty in Australia		↔
Number of offences or alleged offences or other information matter	Multiple convictions/allegations for same type of offence	Criminal history check Non-conviction information Regulatory or other agency reports	↑
	Multiple convictions/allegations over time		↑
	Single offence or alleged offence or other information matter		↓
Change in circumstances since offence or other information matter	Mental health/illness/insight/problematic alcohol and/or other drug use: Improvement or managed	Treatment plan Professional reports/assessment	↓
	Maturity or change in behaviour (demonstrated)	Referee report	↓
	Greater social support or stability	Submission	↓
	Change in socio-economic factors that influenced the circumstances that led to the offence(s) or other information matter	Submission Statement of facts/Prosecution	↓
Timing	Lapse of time since last offence or alleged offence or other information matter: less than 1 year 1-5 years 5+ years (except child sexual offence)	Criminal history check Employer records Regulatory or agency reports	↑ – ↓
	Alleged/Committed over extended time Repeated Frequent Spontaneous	Criminal history check Statement of facts/Prosecution brief Non-conviction information	↑ ↑ ↑ –

Working with Vulnerable People (Background Checking) Risk Assessment Guidelines 2018 (No 1)

Characteristic	Consideration	Possible evidence	Impact on risk level
Age	Age of applicant at time of first offence or other information matter: Before 14 yrs After 14 yrs	Criminal history check	↑ ¹¹ –
	Age of victim: under 18 or elderly	Statement of facts/Prosecution brief Regulatory or agency reports	↑
	Significant difference in age/mental capacity between victim and applicant		↑
Attitude towards offence or other information matter	Accepted responsibility and/or apologised	Submission Statement of facts/Prosecution brief Professional reports/assessment	↔
	Expressed remorse ¹²		↓
	Expressed regret		–
	Timing: expressed upfront or at time of offence or conviction Expressed after significant lapse in time or for personal benefit		↓ –
	Accepted treatment and/or need for change	Enrolment/graduation in treatment program	↓
	Multiple breaches of court orders	Criminal history check	↑
Assessment ¹³ following treatment	Demonstrated improvement in area of concern	Treatment program/professional report Statement of facts/Prosecution brief	↓
	High risk of relapse		↔ ¹⁴
	Implications from failure to complete mandated treatment or engage with professional support		↑
	Implications from multiple withdrawals or non-graduation from voluntary treatment	Submission Treatment program/professional report	↔

¹¹ Age is an increased risk factor only where the first offence preceded a history of criminal activity.

¹² There is a legal difference between remorse and regret. In essence, remorse requires an admission of guilt and recognition of the impact of the individual's actions on the victim (empathy); whereas regret is an emotional response, which can range from disappointment to sorrow, that may not include repentance or empathy. Remorse and regret will only be considered where assessed by a qualified professional or stated in a Court document.

¹³ Assessment will only be considered where they are a qualified professional.

¹⁴ Relevant when relapse would directly increase identified risks or impact on the inherent requirements of the regulated activity or role.

Working with Vulnerable People (Background Checking) Risk Assessment Guidelines 2018 (No 1)

Characteristic	Consideration	Possible evidence	Impact on risk level
Relevance of offence or alleged offence or other information matter	Nature of offence/matter is inherent to the requirements of the regulated activity ¹⁵	Application form Criminal history check Employer information	↑
	Nature of offence/matter is not relevant to the requirements of the regulated activity		↓

¹⁵ The type of offence/matter and its relevance will be given greater consideration where a specified activity or role is identified.

The Commissioner will also give consideration to the following when evaluating information provided in relation to the risk assessment:

Characteristic	Consideration ¹⁶	Possible evidence	Relative weight given to info ¹⁷
Truthfulness, completeness and reliability of information	Competent, reliable and credible witness	Statement of facts/Prosecution brief	↗
	Unbiased or unconnected witness	Court decision	↗
	History of fraud or deception	Complaint information or report	↘
How information was obtained	Obtained from a public authority	Statement of facts/Prosecution brief	↗
	Anonymous tip-off	Complaint information or report	↘
Nature, extent and outcome of investigation	Insufficient information for investigation	Statement of facts/Prosecution brief	↘
	Full investigation, with witness statements	Regulatory or agency reports	↗
Evidence given by applicant in defence; formal statement or in Court	Consistent with information provided by applicant, in application, and by other sources utilised by Commissioner	Statement of facts/Prosecution brief Court documents Submission	↗
	Evidence was tested in a court of law	Regulatory or agency reports	↗
Submissions from applicant	Submission provides rationale for actions, cause or circumstances, supported by evidence where available	Professional reports/assessment	↗
	Submission outlines change in circumstances and reasons for change	Statutory Declaration Referee report	↗
	Inconsistent with objective facts of a matter (where known)	Statement of facts/Prosecution brief	↘

¹⁶ These are indicative and do not represent an exhaustive list of considerations.

¹⁷ ↗ represents increased weight given to information. ↘ represents reduced weight given to information.

Further considerations

Personal and/or professional referees

The Commissioner will generally give greater weight to references from referees who have known a person for an extended period of time and who may have specific knowledge of the offence/s and any subsequent change in behaviour or circumstances; or are qualified to make inferences about any change in behaviour or circumstances.

This information will generally only be requested by the Commissioner where a decision cannot be made without it, and is relevant to the current consideration. However, the applicant may provide any further relevant information that they believe supports their case at any time.

Number and seriousness of relevant offences:

If the criminal history check has multiple offences, the Commissioner will assess the potential risk to vulnerable people by considering offences in the context of the relative risk matrix on page 6.

If the multiple offences are of varying severity, the Commissioner will firstly consider the offence that has been identified as having the greatest risk as the trigger for the risk assessment process.

Lived experience

The Commissioner acknowledges that some individuals, by virtue of their history, have valuable lived experience to share with vulnerable people accessing a regulated activity or service, and that people can make significant changes in their lives. These experiences may, in some circumstance, also increase the risk of harm; however, they do not automatically preclude general registration.

Depending on the individual's circumstances, the applicant may need to demonstrate that these risks can be mitigated sufficiently to meet the requirements for a role-based or conditional licence.

Inherent requirements of the job

A primary consideration of the Commissioner is that the risks relate to the type of registration applied for. Where general registration is requested, risks will be considered equally for all regulated activities, regardless of whether the applicant has indicated they will only work with a specified type of vulnerable person.

If a person applies for (or the Commissioner recommends) conditional or role-based registration, the impact of the risks will be considered specifically within the context of the regulated activity the person works in or the type of vulnerable person they work with.

Actions following identification and analysis of risks

Request further information: Where there is insufficient information to assess identified risk/s that impact on the person's ability to engage with vulnerable people, the Commissioner, or a delegate, will request further information from the applicant or other agencies on the nature and severity of the offences or alleged offences.

How the applicant addresses the Commissioner's request is up to them; however documentation that may assist the Commissioner includes (but is not limited to): a statement of facts on the matter; the finding and summary of the court decision; references from the applicant (personal and/or professional); evidence of completion of a justice program or satisfactory completion of parole; or any other information the applicant believes supports their application.

Where the applicant is supported by their employer, with the applicant's consent, the employer can provide evidence of implemented workplace-based measures (either organisational or individual) that mitigate the identified risks. The Commissioner will work with the applicant and named employers to ensure the measures sufficiently mitigate the risks and are acceptable to all parties.

The Commissioner is authorised under section 33 of the Act to seek information or advice from any entity considered relevant in the risk assessment process.

Referral to internal advisory committee: The Commissioner may consult relevant officers within Access Canberra. Officers will review complex cases and together recommend options to the Commissioner, which may include referral to *Independent Advisors*.

Referral to Independent Advisors to the Commissioner: Independent Advisors are appointed by the Commissioner under the Act to give independent advice to the Commissioner about any aspect of the risk assessment. A member's appointment to the advisory panel will be dependent on qualifications, expertise and/or experience in relevant fields including, but not limited to, forensic or clinical psychology, psychiatry, criminology, domestic violence, children and young people, refugees and migrants, alcohol and other drugs, and mental health.

When requesting advice, the Commissioner will write to a minimum of three Independent Advisors. The request will provide a summary of the current status of the risk assessment and identify the specific matters of concern the Commissioner requires to be addressed by the advisor – this may be limited to the advisor's area of expertise or experience. The advisor will have access to all relevant information obtained on the applicant with all personal information de-identified. The advisor will be given a minimum of 10 business days to respond in writing addressing the Commissioner's concerns and, if requested, provide a recommendation for registration.

The Commissioner will, unless otherwise satisfied, consult with Independent Advisors prior to issuing a proposed negative notice, and may consult with them on proposed role-based registrations. Applicants will be advised when an application is to be referred for advice.

RISK EVALUATION

Risk evaluation is the process by which the Commissioner compares the results of the risk analysis (background checking) with the risk criteria to determine whether the risk, and/or its magnitude, is acceptable.

What is acceptable risk?

Following consideration of an applicant's background, the Commissioner will determine whether identified risk factors (criminal history, non-conviction information, previous registration, previous negative notices and other information) require mitigation to be acceptable for the purposes of issuing a registration.

Where there is a very low or low level of risk this is acceptable without any mitigation. A moderate or high level of risk requires mitigation (i.e. conditions) to reduce the risk to an acceptable level. A critical level of risk is unacceptable (i.e. applicant will be issued with a proposed negative notice).

Table 3. Risk Rating Matrix.

Impact	Likelihood				
	Rare	Unlikely	Possible	Likely	Almost certain
Catastrophic	Moderate	High	High	Critical	Critical
Major	Moderate	Moderate	High	High	Critical
Moderate	Low	Moderate	Moderate	High	High
Minor	Very low	Low	Moderate	Moderate	Moderate
Insignificant	Very low	Very low	Low	Moderate	Moderate

Outcomes following risk evaluation

The registration scheme has been designed to provide flexibility; with general, conditional and role-based options for registration. The outcome of the risk assessment, including consideration of any submissions made by the applicant, will influence the type of registration that can be issued.

There are four potential outcomes of the risk assessment:

General registration: Where there is no evidence of risk, or an acceptable risk, of harm to vulnerable people, applicants will be issued with general registration for a period of not more than three years.

People who are granted general registration are able to move between employers or volunteer positions without reapplying.

Conditional registration: Where identified risk/s requires mitigation to be acceptable, the Commissioner will propose conditional registration. Conditional registration may be broad (John may work in X, Y and Z regulated activities) or specific (Jane may not drive a vehicle with a vulnerable person as a passenger in the course of their role) and will be designed according to the specific risk/s identified during the risk assessment process.

The applicant can request reconsideration of any proposed conditions. The Commissioner will consider any new or corrected information provided before making a decision.

The Commissioner will inform the employer (where named) of the conditions placed on the individual's registration but not the reasons for doing so.

Conditional arrangements are transferable and do not require nomination of a specific employer.

If the person's circumstances change during the period of registration, the Commissioner also has the capacity to amend a person's application or registration, and may issue a higher level of registration if satisfied that a conditional or role-based registration is unnecessary.

Role-based registration: This is a specific type of conditional registration where certain **employer/workplace-based measures** are required to mitigate identified risks. This type of registration restricts a person to engagement in a specified regulated activity and requires support and input from a named employer; for example, a person may only work as a counsellor in a particular mental health program.

The Commissioner will assess the organisational capability of the employer, and the controls in place to support that person in their employment, based on the information provided in support of the applicant. Role-based registration decisions will be made on a case-by-case basis in consultation with the applicant.

Role-based arrangements are not transferrable and the person cannot move freely between regulated activities or employers.

Negative Notice: Where a person has committed offences, or has a history of non-conviction or other information which indicates that they pose an unacceptable risk of harm to vulnerable people accessing regulated activities or services, the Commissioner will issue a proposed negative notice.

The notice will outline the process for requesting a reconsideration of the proposed negative notice. If reconsideration is requested the Commissioner will conduct a revised risk assessment and consider any new or corrected information provided.

If no further information is received, or additional information does not satisfy the Commissioner that the risk of harm is reduced, a negative notice will be issued.

MONITORING OF REGISTERED PEOPLE

At any time during the period of registration the Commissioner may seek information or advice from an entity if it is believed that they may be able to give advice that is relevant to whether a registered person continues to pose an acceptable risk of harm to a vulnerable person.

If it is believed there is new relevant information the Commissioner will write to the registered person notifying them that an additional risk assessment will be conducted in accordance with the Guidelines. The person may make a submission to support their case.

FURTHER INFORMATION

Further information on the Working with Vulnerable People Background Checking System and related legislation can be located as follows:

ACT Legislation Register: <http://www.legislation.act.gov.au/a/2011-44/default.asp>

Access Canberra website www.accesscanberra.act.gov.au

Human Rights Commission: <http://www.hrc.act.gov.au/>