Australian Capital Territory

Controlled Sports Public Interest Guidelines 2019 (No 1)

**Disallowable Instrument DI2019-225**

made under the

*Controlled Sports Act 2019*, section 13 (Consideration of public interest)

**1 Name of instrument**

This instrument is the *Controlled Sports Public Interest Guidelines 2019 (No 1)*.

**2 Commencement**

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

 (2) The *Legislation Act 2001*, section 81 (6) applies to this instrument.

Note: The Legislation Act 2001, s 81 provides for the exercise of a power given by a law if the law, or amending law, has been notified but has not yet commenced.

**3 Public interest guidelines**

I make the guidelines in the Schedule about how the public interest is to be assessed under Part 3 of the *Controlled Sports Act 2019.*

Yvette Berry

Minister for Sport and Recreation

27 September 2019

**SCHEDULE**

# **CONTROLLED SPORTS** **PUBLIC INTEREST GUIDELINES**

The Public Interest Guidelines (the Guidelines) are a disallowable instrument, made under section 13 of the *Controlled Sports Act 2019* (the Act). The Guidelines provide the framework of what the Registrar will consider when assessing if it is in the public interest for a person to be registered as a controlled sports contestant or official.

# ****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 public interest assessments on behalf of the Registrar, 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*.

# ****Consent****

The application includes the applicant’s consent to the Registrar:

* checking the applicant’s criminal history;
* obtaining information held by any entity that may be relevant to deciding an application.

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

**Decision Making**

The Registrar may request applicants to provide supporting information in certain circumstances. Further, an applicant may also make submissions to the Registrar on any matter that the Registrar may consider when assessing the application as identified in the Guidelines. The Registrar 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 process and potential registration outcomes.

**Risk Assessment Process**

The risk assessment process under the Act is based on the Australia and New Zealand Risk Management Standard (the Standard) 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 Australia and New Zealand Risk Management 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 Registrar is to what extent the applicant’s background means that it would not be in the public interest for them to be registered as a contestant or an official. 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 an offence either in Australia or overseas and in information obtained by the Registrar. If the application form or criminal history check identifies a criminal history or other information that warrants assessment, the risk analysis process commences.

Section 13 of the Act provides that the following **must** be taken into consideration when assessing if it is in the public interest for a person to be registered as a controlled sports official or contestant:

* if the person (or relevant person/s for a corporation) has been convicted or found guilty of a Class A offence; and
* if the person (or relevant person/s for a corporation) has had a controlled sports registration suspended or cancelled under this Act or a corresponding law.

The Act provides that the following **may** be taken into consideration when undertaking an assessment of public interest:

* if the person (or relevant person/s for a corporation) has been convicted or found guilty of a Class B offence; and
* any other relevant matter.

Table 1[[1]](#footnote-1) establishes the relative severity of the offence categories[[2]](#footnote-2) 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.

Further detail on what factors the Registrar may consider is at Risk Analysis.

Table 1. Relative severity of offence categories.

|  |  |  |  |
| --- | --- | --- | --- |
|  |  |  | OFFENCE AGAINST THIS ACT |
|  |  |  |  |  | OFFENCE INVOLVING ASSAULT OR VIOLENCE  |
|  |  | OFFENCE INVOLVING USE OF ALCOHOL OR CONTROLLED DRUG |  |  | OFFENCE INVOLVING FIREARMS  |
|  | DRIVING OFFENCE  | OFFENCE INVOLVING DISHONESTY OR FRAUD  |  | OFFENCE INVOLVING CHEATING AT GAMBLING | OFFENCE INVOLVING FRAUD  |
| NO CRIMINAL HISTORY | OFFENCE NOT RELEVANT  | OFFENCE AGAINST SECTION 4 a to j GAMBLING AND RACING ACT | CONTROLLED SPORTS REGISTRATION SUSPENDED OR CANCELLED | OFFENCE INVOLVING TERORISM | OFFENCE INVOLVING CONTROLLED DRUG (OTHER THAN POSESSION) |
|  |  |  |  |  |  |
| REGISTRATION |  |  |  | CLASS BMAY BE CONSIDEREDREGISTRAR MAY SEEK ADVICE\*  |  |  |  | CLASS A MUST BE CONSIDEREDREGISTRAR WILL SEEK ADVICE\*  |

# **\* Advice may be sourced from independent advisors in law enforcement, or the Advisory Committee.**

# ****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 risk[[3]](#footnote-3).” The level of risk is influenced by the combination of potential sources of risk, likelihood and their consequences for the different responsibilities of being a contestant or an official. Officials will be held to a higher standard than contestants given their position of trust and responsibility.

***Criminal history***

The primary source of risk that is examined by the Registrar is the applicant’s criminal history. Spent convictions will not be considered as part of the criminal history check.

The Registrar will consider the following characteristics of any offence listed in section 13 of the Act in the applicant’s history:

1. the nature, gravity and circumstances of the offence;
2. the relevance of the offence;
3. how long ago the offence was committed;
4. the age of the person and of the victim at the time of the offence;
5. whether the person’s circumstances have changed since the offence;
6. the applicant’s attitude to the offence;
7. if any treatment or intervention was undertaken, any subsequent assessment of the person;
8. if there is an equivalent offence in Australia (for an offence committed overseas);
9. number of relevant offences; and
10. any submission made by the applicant addressing the above.

***Other information***

In considering information obtained from other sources the Registrar will take into consideration:

1. how the information was obtained;
2. the relevance of the information;
3. the truthfulness, completeness and reliability of the information; and
4. any submission made by the applicant addressing the above.

Information subject to a Reviewable Decision process could potentially be disclosed to the applicant if the ACT Civil and Administrative Tribunal determines that it is not security sensitive information in accordance with s84 of the Act.

***Table 2. Summary of factors considered by the Registrar***

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

|  |  |  |  |
| --- | --- | --- | --- |
| **Characteristic** | **Consideration[[4]](#footnote-4)** | **Possible evidence[[5]](#footnote-5)** | **Impact on risk level[[6]](#footnote-6)** |
| Nature of offence or alleged offence or other information matter  | Abuse of power or breach of trust | Statement of facts/Prosecution briefCriminal history checkRegulatory or agency reports | ↑ |
| Pre-meditated or wilful action to harm | ↑ |
| Used force or weapons | ↑ |
| Fraud and cheating at gambling | ↑ |
| Gravity of offence or alleged offence or other information matter  | Penalty imposed: Imprisonment (including suspended)Penalty other than imprisonmentMaximum imposed | Criminal history check | ↑↔↑ |
| Impact on victim or alleged victim  | Victim Impact StatementStatement of facts/Prosecution brief | ↔  |
| Pattern of escalating severity/seriousness  | Criminal history check | ↑ |
| Circumstances of the offence or alleged offence or other information matter | Intoxicated during offence/alleged offence or other information matter: Non‑recurring | SubmissionStatement of facts/Prosecution briefPsychological/Professional reportsPolice or witness statementsRegulatory 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** |
| Overseas offences or other information matter | Equivalent offence or other information matter in Australia | Criminal history check from other countryReports 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 checkRegulatory 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 planProfessional reports/assessment | ↓ |
| Maturity or change in behaviour (demonstrated) | Referee reportSubmission | ↓ |
| Greater social support or stability | ↓ |
| Change in socio-economic factors that influenced the circumstances that led to the offence(s) or other information matter | SubmissionStatement of facts/Prosecution | ↓ |
| Timing | Lapse of time since last offence or alleged offence or other information matter: less than 1 year1-5 years5+ years | Criminal history checkEmployer recordsRegulatory or agency reports | ↑─↓ |
| Alleged/Committed over extended timeRepeatedFrequentSpontaneous  | Criminal history checkStatement of facts/Prosecution brief | ↑↑↑─ |

|  |  |  |  |
| --- | --- | --- | --- |
| **Characteristic** | **Consideration** | **Possible evidence** | **Impact on risk level** |
| Age | Age of applicant at time of first offence or other information matter: Before 14 yearsAfter 14 years | Criminal history check | ↑[[7]](#footnote-7)─ |
| Age of victim: under 18 or elderly | Statement of facts/Prosecution briefRegulatory 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 | SubmissionStatement of facts/Prosecution briefProfessional reports/assessment | ↔ |
| Expressed remorse[[8]](#footnote-8) | ↓ |
| Expressed regret | ─ |
| Timing: expressed upfront or at time of offence or convictionExpressed 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[[9]](#footnote-9) following treatment | Demonstrated improvement in area of concern | Treatment program/professional reportStatement of facts/Prosecution brie | ↓ |
| High risk of relapse | ↔[[10]](#footnote-10) |
| Implications from failure to complete mandated treatment or engage with professional support | ↑ |
| Implications from multiple withdrawals or non-graduation from voluntary treatment | SubmissionTreatment program/professional report | ↔ |
| **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[[11]](#footnote-11) | Application formCriminal history checkEmployer information | ↑ |
| Nature of offence/matter is not relevant to the requirements of the regulated activity | ↓ |

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

|  |  |  |  |
| --- | --- | --- | --- |
| **Characteristic** | **Consideration[[12]](#footnote-12)** | **Possible evidence** | **Relative weight given to info[[13]](#footnote-13)**  |
| Truthfulness, completeness and reliability of information | Competent, reliable and credible witness | Statement of facts/Prosecution briefCourt decisionComplaint information or report | ↗ |
| Unbiased or unconnected witness | ↗ |
| History of fraud or deception | ↙ |
| How information was obtained | Obtained from a public authority | Statement of facts/Prosecution briefComplaint information or report | ↗ |
| Anonymous tip-off | ↙ |
| Nature, extent and outcome of investigation | Insufficient information for investigation | Statement of facts/Prosecution briefRegulatory or agency reports | ↙ |
| Full investigation, with witness statements | ↗ |
| 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 Registrar | Statement of facts/Prosecution briefCourt documentsSubmissionRegulatory or agency reports | ↗ |
| Evidence was tested in a court of law | ↗ |
| Submissions from applicant | Submission provides rationale for actions, cause or circumstances, supported by evidence where available | Professional reports/assessmentStatutory DeclarationReferee report Statement of facts/Prosecution brief | ↗ |
| Submission outlines change in circumstances and reasons for change | ↗ |
| Inconsistent with objective facts of a matter (where known) | ↙ |

**Further considerations**

***Personal and/or professional referees***

The Registrar 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.

***Number and seriousness of relevant offences:***

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

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

**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 register as a controlled sports contestant or official, the Registrar, or a delegate, will request further information from the applicant or other agencies on the nature and severity of the offences or alleged offences, or other information.

How the applicant addresses the Registrar’s request is up to them; however documentation that may assist the Registrar 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.

***Referral to advisory committee****:* The Registrar may consult relevant officers within Access Canberra. Officers will review complex cases and together recommend options to the Registrar, which may include referral to the Advisory Committee for advice.

***Referral to Independent Advisors to the Registrar:*** The Advisory Committee are appointed by the Minister under the Act to give independent advice to the Minister about controlled sports. The Advisory Committee will consist of one representative from ACT Police, one medical practitioner, two representatives from the controlled sports industry, a representative from ACT Government Sport and Recreation, and the Controlled Sports Registrar. Members holding roles for ACT Police and the medical practitioner of the Advisory Committee may also be consulted individually for sensitive matters where further disclosure may compromise an applicant’s privacy.

**RISK EVALUATION**

Risk evaluation is the process by which the Registrar 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 Registrar will determine whether identified risk factors (criminal history, previous registration 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**

Following the risk evaluation, along with consideration of the other requirements for registration, an applicant will receive written notification of the Registrar’s decision. The applicant will have 20 working days after notification to provide any further information. If further information is submitted the Registrar must within 20 working days from receiving the information reconsider the decision and tell the applicant in writing the decision. The notice of decision must include reasons for the decision, and state that the decision is reviewable.

## ****FURTHER INFORMATION****

Further information on Controlled Sports can be located as follows:

ACT Legislation Register: <https://www.legislation.act.gov.au/View/a/2019-9/current/PDF/2019-9.PDF>

Access Canberra website: [www.accesscanberra.act.gov.au](http://www.ors.act.gov.au/community/working_with_vulnerable_people)

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

1. This table may change subject to implementation of the scheme, input from stakeholders, and review of the Act. [↑](#footnote-ref-1)
2. A guide to the types of offences that fall into these classes can be obtained from Access Canberra. [↑](#footnote-ref-2)
3. *AS/NZS ISO 13000:2009 Risk management – Principles and guidelines* [↑](#footnote-ref-3)
4. These are indicative and do not represent an exhaustive list of considerations. The Registrar 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. [↑](#footnote-ref-4)
5. 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. [↑](#footnote-ref-5)
6. 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. [↑](#footnote-ref-6)
7. Age is an increased risk factor only where the first offence preceded a history of criminal activity. [↑](#footnote-ref-7)
8. 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. [↑](#footnote-ref-8)
9. Assessment will only be considered where they are a qualified professional. [↑](#footnote-ref-9)
10. Relevant when relapse would directly increase identified risks or impact on the inherent requirements of the regulated activity or role. [↑](#footnote-ref-10)
11. The type of offence/matter and its relevance will be given greater consideration where a specified activity or role is identified. [↑](#footnote-ref-11)
12. These are indicative and do not represent an exhaustive list of considerations. [↑](#footnote-ref-12)
13. ↗ represents increased weight given to information. ↙ represents reduced weight given to information. [↑](#footnote-ref-13)