

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.

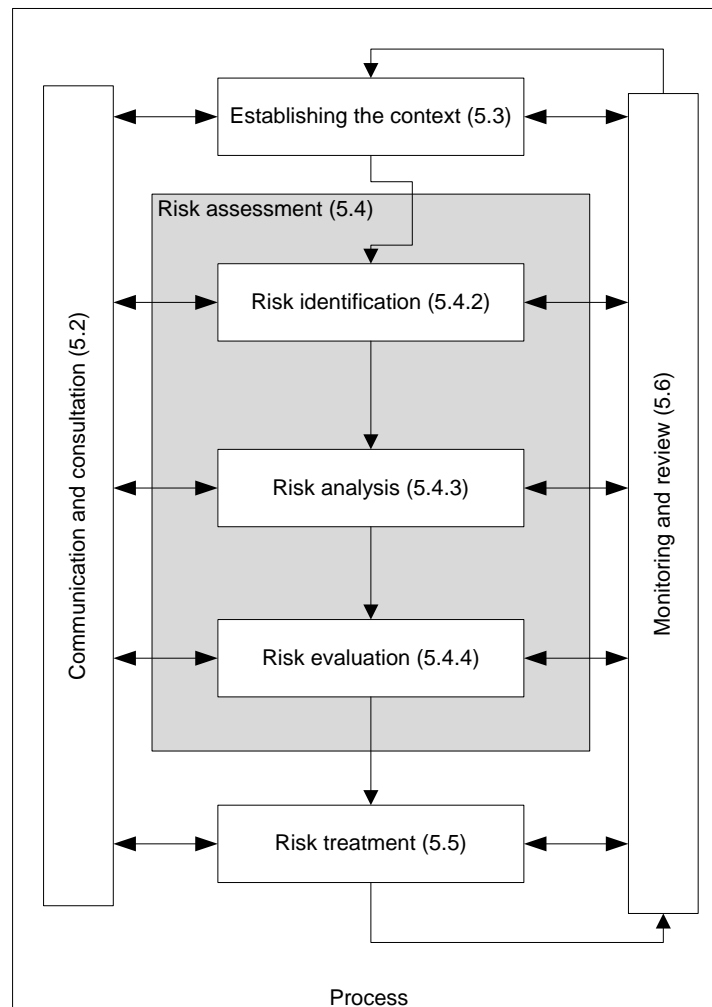
RISK ASSESSMENT PROCESS

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 1¹ establishes the relative severity of the offence categories² 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.

¹ This table may change subject to implementation of the scheme, input from stakeholders, and review of the Act.

² 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 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 TERRORISM	OFFENCE INVOLVING CONTROLLED DRUG (OTHER THAN POSSESSION)
REGISTRATION		CLASS B MAY BE CONSIDERED REGISTRAR MAY SEEK ADVICE*			CLASS A MUST BE CONSIDERED REGISTRAR 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 risk³.” 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.

³ AS/NZS ISO 13000:2009 Risk management – Principles and guidelines

The Registrar will consider the following characteristics of any offence listed in section 13 of the Act 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.

Other information

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

- 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.

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	Possible evidence ⁵	Impact on risk level ⁶
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 Regulatory 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)	Criminal history check	↑
	Penalty other than imprisonment		↔
	Maximum imposed		↑
	Impact on victim or alleged victim	Victim Impact Statement Statement 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	Submission Statement of facts/Prosecution brief Psychological/Professional reports Police or witness statements 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
Overseas offences or other information matter	Equivalent offence or other information matter in Australia	Criminal history check from other country Reports from other country	—

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.

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.

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.

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	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 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	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	↑ ↑ ↑ —

Characteristic	Consideration	Possible evidence	Impact on risk level
Age	Age of applicant at time of first offence or other information matter: Before 14 years After 14 years	Criminal history check	↑ ⁷ —
	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 ⁸		↓
	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 ⁹ following treatment	Demonstrated improvement in area of concern	Treatment program/professional report Statement of facts/Prosecution brief	↓
	High risk of relapse		↔ ¹⁰
	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	↔

⁷ Age is an increased risk factor only where the first offence preceded a history of criminal activity.

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.

⁹ Assessment will only be considered where they are a qualified professional.

¹⁰ Relevant when relapse would directly increase identified risks or impact on the inherent requirements of the regulated activity or role.

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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	Application form Criminal history check Employer information	↑
	Nature of offence/matter is not relevant to the requirements of the regulated activity		↓

¹¹ The type of offence/matter and its relevance will be given greater consideration where a specified activity or role is identified.

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

Characteristic	Consideration ¹²	Possible evidence	Relative weight given to info ¹³
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 Registrar	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	↘

¹² These are indicative and do not represent an exhaustive list of considerations.

¹³ ↗ represents increased weight given to information. ↘ represents reduced weight given to information.

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

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