

# 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)**

## EXPLANATORY STATEMENT

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This explanatory statement relates to the *Controlled Sports Public Interest Guidelines 2019 (No 1)*. It has been prepared in order to assist the reader of the Guidelines. It does not form part of the Guidelines and has not been endorsed by the Legislative Assembly. The statement is to be read in conjunction with the Guidelines. It is not, and is not meant to be, a comprehensive description of the Guidelines.

## OUTLINE

The *Controlled Sports Act 2019* commences on 11 October 2019.

The Act regulates the conduct of controlled sports events in the ACT. A controlled sport is a combat sport, or any other high-risk sport or activity defined in regulation. Only combat sports are covered by the Act at the time of writing this Explanatory Statement. A combat sport is a sport or activity in which a person strikes, kicks, hits, grapples with, throws or punches another person.

Combat sports present a number of public safety risks, from physical harm to contestants through to public safety in the conduct of events and the potential for exploitation given the value of rewards being offered for particular contests and revenue generated through the event. Consultation and research have highlighted the potential for criminal associations within some parts of the industry.

Section 12 of the Act creates the position of Registrar of Controlled Sports (Registrar) to undertake a number of decision-based functions within the Act. This includes matters such as decisions on registrations and considerations of public interest, registered event approvals, and considerations on suspension or cancellation of registration. The Guidelines will support this decision-making process and make it clear to the public how certain matters will be treated.

The Guidelines provide the framework of what the Registrar will consider when making an assessment of the public interest to make a determination regarding registrations as a controlled sports official or controlled sports contestant; i.e. in determining whether an applicant poses an unacceptable risk of harm.

Section 13 of the Act outlines the consideration of public interest process relating to registrable events, including the matters that the Registrar *must* consider, and additional matters that the Registrar *may* consider when making a decision about whether to grant registration to an applicant applying to be a controlled sports official or contestant for registrable events. Offences are categorised as Class A (must consider) or Class B (may consider).

Section 13 (2) allows the Minister to make guidelines about what the Registrar must consider when assessing the public interest for registrations of officials and contestants. These guidelines make it clear how the risk assessment process will be undertaken in relation to matters that may be highlighted during the registration process. A relative weighting is given to each factor based on the risk factors relating to safety and integrity of controlled sports events in the ACT.

There are no definitive cut-offs defined in the Act or these Guidelines that will prevent a person from becoming registered. Each person and their background checking will be managed on a case-by-case basis with considerations being given to:

- the role the applicant is applying for (for example, promoter, referee, contestant);
- matters raised in background screening;
- time since offence;
- the nature, gravity and circumstances of the offence;
- the relevance of the offence and the number of relevant offences;
- the age of the applicant and the victim at the time of the offence;
- changes in personal circumstances since the offence;
- the applicant's attitude to the offence;
- treatments or interventions; and
- any submission made by the applicant with regards to the above.

Differing levels of rigour will be applied to the registration process depending on the position that the person is applying for. For instance, a person seeking to be registered as a promoter will have more scrutiny applied to their application given the relative power this position holds. A promoter has the ultimate say in the event proceedings, including the selection of officials (including judges), and the matching of contestants. This means that there is a risk of fraudulent activity were an unscrupulous operator granted a promoter's registration. A contestant on the other end of the spectrum, has less power in this situation to make decisions regarding events and particular contests, and therefore considerations relating to their registration will be more lenient. This ensures that an applicant that has prior offences but is utilising controlled sports as an effective diversionary activity is not unnecessarily excluded from competing.

The Act requires the applicant consenting to the Registrar:

- checking the applicant's criminal history;
- checking other information that may be relevant in assessing the application;
- and

- seeking information or advice from any entity in relation to the application or registration.

Procedural fairness, or natural justice, is a core aspect of the Guidelines' decision making process. This means that the applicant will be given the opportunity to reply/make submissions prior to a decision being made; there will be a lack of bias or predisposition by the decision maker; evidence will be used to support a decision; disputed matters will be investigated.

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 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*.

All decisions made regarding registrations are reviewable.

## **CLAUSE NOTES**

### **Clause 1      Name of disallowable instrument**

This clause provides for the name of the disallowable instrument.

### **Clause 2      Commencement**

This clause allows for the disallowable instrument to commence the day after its notification day. The *Legislation Act 2001*, section 81 applies so as to allow the making of this instrument prior to commencement of the *Controlled Sports Act 2019*.

### **Clause 3      Public Interest Guidelines**

This clause states that the Minister makes the guidelines in the Schedule about how the public interest is to be assessed under the *Controlled Sports Act 2019*.

## SCHEDULE NOTES

The Schedule contains important Guidelines for the Registrar or delegated officer to follow when considering the public interest in making a determination regarding registrations as a controlled sports official or controlled sports contestant.

Key features of the Guidelines include:

- The checking of an applicant’s criminal history (with the written consent of the applicant);
- Information gathering from relevant entities (again with the consent of the applicant);
- Strong procedural fairness arrangements in which applicants may, for example, be asked to comment on information provided to the Registrar or delegate before a decision is made;
- A recognised risk assessment process based on *AS/NZS ISO 31000-2009 Risk Management Principles and Guidelines* from the Australia and New Zealand Risk Management Standard;
- A table establishing the relative severity of offence categories defined in the Act and the typical level of consideration those offences receive. For example, where there is a greater likelihood of risk based on the outcome of a criminal history check, the application may be assessed by delegated officers at a higher level;
- Articulation of what characteristics the Registrar will need to consider when considering convictions in an applicant’s history;
- Further considerations that the Registrar may consider, for example the number and seriousness of offences, and what personal and professional referees have to say about the applicant;
- A risk evaluation process of ‘what is an acceptable risk?’; and
- Closure of a procedural fairness loop by giving an applicant 20 working days to comment on a decision, the giving of reasons for the decision and access to merits review of the decision.

The Guidelines also provide advice to readers on how further information about Controlled Sports may be found.