



Australian Capital Territory

Working with Vulnerable People (Background Checking) Amendment Act 2020

A2020-29

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Australian Capital Territory

Working with Vulnerable People (Background Checking) Amendment Act 2020

A2020-29

An Act to amend the *Working with Vulnerable People (Background Checking) Act 2011*, and for other purposes

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

J2019-694

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

1 Name of Act

This Act is the *Working with Vulnerable People (Background Checking) Amendment Act 2020*.

2 Commencement

This Act commences on the later of—

- (a) the commencement of the *Working with Vulnerable People (Background Checking) Amendment Act 2019*, section 3; and
- (b) the day after this Act's notification day.

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

3 Legislation amended

This Act amends the *Working with Vulnerable People (Background Checking) Act 2011*.

Note This Act also amends other legislation (see sch 1).

4 New section 6A

in part 1, insert

6A Best interests of vulnerable people paramount consideration

- (1) A person making a decision under this Act must regard the best interests of vulnerable people as the paramount consideration.
- (2) In forming a view about the best interests of vulnerable people, a person making a decision under this Act must take into account the safety, welfare and protection of vulnerable people.

5 **When is a person *engaged* in a regulated activity?
Section 9 (b) (ii), example 11**

omit

6 **What is *contact* with a vulnerable person?
Section 10, definition of *contact*, paragraph (c) (i),
examples and note**

omit

7 **New sections 11A and 11B**

in part 2, insert

11A **Meaning of *relevant offence***

In this Act:

relevant offence means any of the following offences (whether committed in the ACT or elsewhere):

- (a) a sexual offence;
- (b) an offence against the person;
- (c) an offence involving violence;
- (d) an offence involving dishonesty or fraud;
- (e) an offence relating to property;
- (f) an offence involving possession of, or trafficking in, a drug of dependence or controlled drug;
- (g) an offence against an animal;
- (h) a driving offence;
- (i) a disqualifying offence.

Note A reference to an offence includes a reference to a related ancillary offence, eg attempt (see [Legislation Act](#), s 189).

11B Meaning of *disqualifying offence* etc

In this Act:

class A disqualifying offence means an offence against a provision of a law mentioned in schedule 3, part 3.2, column 2 if—

- (a) any condition mentioned in column 4 for the offence is met; and
- (b) the person who committed the offence is not engaged, or seeking registration to engage, only in a kinship care activity.

class B disqualifying offence—

- (a) means an offence against a provision of a law mentioned in schedule 3, part 3.3, column 2, if any condition mentioned in column 4 for the offence is met; and
- (b) for a person engaged, or seeking registration to engage, only in a kinship care activity—includes an offence mentioned in schedule 3, part 3.2, column 2, if any condition mentioned in column 4 for the offence is met.

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

8 When is a person required to be registered? Section 12 (1)

substitute

- (1) A person is required to be registered—
 - (a) to engage in a regulated activity; or
 - (b) if the person is one of the key personnel of a registered NDIS provider that is providing an NDIS activity.

9 Section 12 (4), definition of *close relative*, paragraph (b) and note

substitute

(b) does not include a kinship carer of the vulnerable person.

**10 Offences—person engage in regulated activity for which person not registered
Section 13 (1), note 1**

substitute

Note 1 A person with conditional registration might not be allowed to engage in all regulated activities (see s 42 and s 54A).

11 Section 13 (5), note 2

substitute

Note 2 The defendant has an evidential burden in relation to the matters mentioned in s (5) (see [Criminal Code](#), s 58).

**12 Offences—employer engage person in regulated activity for which person not registered
Section 14 (1), note 1**

substitute

Note 1 A person with conditional registration might not be allowed to engage in all regulated activities (see s 42 and s 54A).

13 Section 14 (5), note 2

substitute

Note 2 The defendant has an evidential burden in relation to the matters mentioned in s (5) (see [Criminal Code](#), s 58).

14 Section 15A heading

substitute

15A Interim bar—supervised employment

15 Section 15A (1) and note

substitute

- (1) Despite section 15, the commissioner may impose an interim bar on an unregistered person, stopping the person from engaging in either of the following activities, if the commissioner reasonably believes that the person poses an unacceptable risk of harm to a vulnerable person:
- (a) a regulated activity involving children;
 - (b) an NDIS activity.

Note A decision under s (1) is a reviewable decision (see s 61).

**16 When unregistered person may be engaged in regulated activity—kinship carer
Section 16 (1)**

substitute

- (1) This section applies to an unregistered person if the person—
- (a) is engaged in a kinship care activity; and
 - (b) is required to be registered to engage in the activity.

17 Section 16 (3), definition of *kinship carer*

omit

**18 Application for registration
Section 17 (1) and note**

substitute

- (1) A person may apply to the commissioner for registration under this Act, other than registration to engage in a regulated activity for which the person is not eligible to be registered.

Note A fee may be determined under s 68 for this provision.

- (1A) A person who has an adult conviction or finding of guilt for a class A disqualifying offence is not eligible to be registered to engage in—
- (a) a regulated activity involving children; or
 - (b) an NDIS activity.

Note If the person is registered to engage in another regulated activity, the registration is subject to the condition that the person not engage in a regulated activity involving children or an NDIS activity (see s 42A).

19 Section 17 (4), note

omit

20 Section 21 heading

substitute

21 Offences—applicant fail to disclose charge, conviction or finding of guilt for relevant offence

21 Section 21 (1) (c) and (2) (c)

omit

a disqualifying offence or

22 Restriction on reapplying for registration Section 22 (2A)

substitute

- (2A) However, subsection (2) (a) does not apply to a person if—
- (a) the negative notice was given or registration cancelled because the person was not eligible, or stopped being eligible, to be registered under section 17 (1A); and
 - (b) the person is applying for registration to engage in a regulated activity involving children or an NDIS activity.

Examples—change in relevant information

- 1 the person's conviction for the class A disqualifying offence is quashed
- 2 the person becomes a kinship carer for a child

Note A negative notice must be given under s 40 (1) (aa) if the person is not eligible to be registered. Registration is automatically cancelled under s 56A if the person is not eligible to be registered.

23 Sections 24 to 26A

substitute

24 Meaning of *criminal history*

In this Act:

criminal history, about a person, means any conviction of, or finding of guilt against, the person for a relevant offence.

Note A conviction does not include a spent conviction or an extinguished conviction (see [Spent Convictions Act 2000](#), s 16 (c) (i) and s 19H (1) (c) (i)).

25 Meaning of *non-conviction information*

In this Act:

non-conviction information, about a person, means any of the following information:

- (a) the person has an outstanding charge for a relevant offence;
- (b) the person has been charged with a relevant offence but the charge has lapsed, been withdrawn or discharged, or struck out;
- (c) the person has been acquitted of an alleged relevant offence;
- (d) the person has had a conviction for an alleged relevant offence quashed or set aside;
- (e) the person has been served with an infringement notice for an alleged relevant offence;
- (f) the person has a spent conviction for a relevant offence.

Note The *Spent Convictions Act 2000* sets out which convictions can be spent (see that [Act](#), s 11) and when a conviction is spent (see that [Act](#), s 12).

**24 Risk assessment guidelines—content
Section 28 (2) (a), note**

substitute

Note The risk assessment guidelines must provide for certain matters in relation to relevant offences in the person's criminal history (see s 29).

25 Section 28 (2) (b), note

substitute

Note The risk assessment guidelines must provide for certain matters in relation to relevant offences, and alleged relevant offences, in the person's non-conviction information (see s 30).

26 Section 29

substitute

29 Risk assessment guidelines—criminal history

- (1) The risk assessment guidelines must provide for the following to be taken into account in relation to any relevant offence included in a person's criminal 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 the victim at the time of the offence;
 - (e) whether the person's circumstances have changed since the offence was committed;
 - (f) the person's attitude to the offence;
 - (g) if the person has undergone a program of treatment or intervention for the offence—any assessment of the person following the program;
 - (h) if the offence was committed outside Australia—whether the offence is an offence in Australia;
 - (i) whether the person has committed any other relevant offence;
 - (j) any submission made by the person to the commissioner in relation to the matters mentioned in paragraphs (a) to (i).
- (2) In addition, the risk assessment guidelines must provide for whether the person has exceptional circumstances that justify the person being registered if—
 - (a) the person's criminal history includes an adult conviction or finding of guilt for a class B disqualifying offence; and

- (b) the person applies for registration to engage in—
 - (i) a regulated activity involving children; or
 - (ii) an NDIS activity.

Note A person with an adult conviction or finding of guilt for a class A disqualifying offence is not eligible to be registered to engage in a regulated activity involving children or an NDIS activity (see s 17 (1A)).

**27 Risk assessment guidelines—non-conviction information
Section 30**

omit everything before paragraph (a), substitute

The risk assessment guidelines must provide for the following to be taken into account in relation to any relevant offence, or any alleged relevant offence, included in a person's non-conviction information:

28 New section 30 (2)

insert

- (2) In addition, the risk assessment guidelines must provide for whether the person has exceptional circumstances that justify the person being registered if—
 - (a) the person's non-conviction information includes an outstanding charge for a disqualifying offence committed when the person was an adult; and
 - (b) the person applies for registration to engage in—
 - (i) a regulated activity involving children; or
 - (ii) an NDIS activity.

**29 Risk assessments
New section 32 (3)**

insert

- (3) However, the commissioner need not take any further action on the risk assessment if the person—
- (a) applies for registration to engage in—
 - (i) a regulated activity involving children; or
 - (ii) an NDIS activity; and
 - (b) the commissioner becomes aware the person is not eligible, or stops being eligible, under section 17 (1A) to be registered to engage in the activity.

Note Under s 17 (1A), a person is not eligible to be registered to engage in a regulated activity involving children or an NDIS activity if the person has an adult conviction or finding of guilt for a class A disqualifying offence.

**30 Independent advisors—appointment
Section 34 (1), note 1**

omit

**31 Proposed negative notices
Section 37 (4)**

omit

must not tell

substitute

must not, without the person's consent, tell

**32 Negative notices
New section 40 (1) (aa)**

before section 40 (1) (a), insert

- (aa) for an application for registration to engage in a regulated activity involving children or an NDIS activity—if the commissioner becomes aware the person is not eligible, or stops being eligible, under section 17 (1A) to be registered to engage in the activity; or

Note Under s 17 (1A), a person is not eligible to be registered to engage in a regulated activity involving children or an NDIS activity if the person has an adult conviction or finding of guilt for a class A disqualifying offence.

33 Section 40 (2) (a), notes

omit

34 Section 40 (3) and note

omit

35 Section 40 (4), new note

insert

Note If an unregistered person engaging in a regulated activity under s 15 is given a negative notice, the person commits an offence under s 13 if the person continues to engage in the activity.

36 New section 40 (5)

insert

- (5) For subsection (2) (b) and subsection (4), the commissioner must not, without the person’s consent, tell a named employer or vulnerable person the reasons for giving the person the negative notice.

37 **Registration**
Section 41 (2)

substitute

- (2) The commissioner must—
- (a) register the person; and
 - (b) tell the person, in writing—
 - (i) of the positive risk assessment; and
 - (ii) that the person is registered; and
 - (iii) the person's unique identifying number; and
 - (iv) if the registration is conditional under section 42A (Conditional registration—class A disqualifying offence)—
 - (A) what the condition is; and
 - (B) the reasons for the condition; and
 - (v) the day the registration ends; and
 - (vi) anything else prescribed by regulation; and
 - (c) if the registration is conditional under section 42A—tell the named employer (if any) in writing—
 - (i) that the person's registration is conditional; and
 - (ii) what the condition is.
- (2A) For subsection (2) (c), the commissioner must not, without the person's consent, tell the named employer the reasons for the condition.

**38 Conditional registration
Section 42 (2) to (4)**

omit

39 New sections 42A to 42C

insert

42A Conditional registration—class A disqualifying offence

A registration of a person who has an adult conviction or finding of guilt for a class A disqualifying offence is automatically subject to the condition that the person must not engage in—

- (a) a regulated activity involving children; or
- (b) an NDIS activity.

Note 1 Sections 43 to 46 do not apply to a condition under this section.

Note 2 For a kinship carer, a class A disqualifying offence is treated as if it were a class B disqualifying offence (see s 11B).

42B Conditional registration—role-based registration

- (1) The commissioner may register a person (a *role-based registration*) subject to 1 or both of the following conditions:
 - (a) that the person engage only in stated regulated activities;
 - (b) that the person engage in regulated activities only for a stated employer.

Example—role-based registration

a person with a criminal record is registered but may only work as a counsellor in a particular correctional centre

- (2) Before giving a person a role-based registration, the commissioner may—
 - (a) consult, in accordance with the risk assessment guidelines, with 1 or more independent advisors; and
 - (b) consider any relevant advice given.
- (3) A regulation may prescribe information that a person or an employer must give the commissioner before the commissioner may give the person a role-based registration.

42C Conditional registration—disqualifying offences

- (1) This section applies if the commissioner decides to register a person who has—
 - (a) an outstanding charge for a disqualifying offence committed when the person was an adult; or
 - (b) an adult conviction or finding of guilt for a class B disqualifying offence.
- (2) Unless the commissioner is satisfied there are exceptional circumstances, the person’s registration is subject to the condition that the person must not engage in—
 - (a) a regulated activity involving children; or
 - (b) an NDIS activity.

Note 1 If the person is acquitted or the charges lapse or are withdrawn or discharged, the person may apply to the commissioner to have the condition removed (see s 47).

Note 2 If the person has an adult conviction or finding of guilt for a class A disqualifying offence their registration is cancelled (see s 56A).

**40 Proposed conditional registration
Section 43 (1)**

after

register a person conditionally

insert

(other than under section 42A)

41 Section 43 (3)

omit

must not tell

substitute

must not, without the person's consent, tell

**42 Notice of conditional registration
Section 46 (2)**

substitute

- (2) If a registration is subject to a condition, the commissioner must—
- (a) register the person; and
 - (b) tell the person, in writing—
 - (i) of the positive risk assessment; and
 - (ii) that the person is registered subject to a condition including—
 - (A) what the condition is; and
 - (B) the reasons for the condition; and
 - (iii) the person's unique identifying number; and
 - (iv) the day the registration ends; and

- (v) anything else prescribed by regulation; and
- (c) tell the named employer (if any) in writing—
 - (i) that the person’s registration is conditional; and
 - (ii) what the condition is.
- (2A) For subsection (2) (c), the commissioner must not, without the person’s consent, tell the named employer the reasons for the condition.

**43 Interim conditional registration
Section 54A (6)**

substitute

- (6) For subsection (5) (b), the commissioner must not, without the person’s consent, tell the person’s employer the reasons for the interim condition.

44 Section 55 heading

substitute

55 Offences—registered person fail to disclose charge, conviction or finding of guilt for relevant offence

45 Section 55 (1) (b) and (2) (b)

omit

a disqualifying offence or

46 Section 56 heading

substitute

56 Offence—fail to notify change of name**47 New section 56A**

in division 6.4, insert

56A Automatic cancellation—class A disqualifying offence

- (1) A person's registration is automatically cancelled if—
- (a) the person is registered to engage in—
 - (i) a regulated activity involving children; or
 - (ii) an NDIS activity; and
 - (b) the person is not eligible, or stops being eligible, under section 17 (1A) to be registered to engage in the activity.

Note Under s 17 (1A), a person is not eligible to be registered to engage in a regulated activity involving children or an NDIS activity if the person has an adult conviction or finding of guilt for a class A disqualifying offence.

- (2) As soon as the commissioner becomes aware of the person's ineligibility, the commissioner must—
- (a) tell the person, in writing, that their registration is cancelled; and
 - (b) tell the person's employer, in writing, that the person's registration is cancelled.

Note A registered person must tell the commissioner if they are charged with, or convicted or found guilty of, a disqualifying offence (see s 55).

- (3) For subsection (2) (b), the commissioner must not, without the person's consent, tell the person's employer the ground for suspension or cancellation.

**48 Notice of proposed suspension or cancellation of registration
Section 58 (1), except note**

substitute

- (1) If the commissioner intends to suspend or cancel a person's registration under section 57, the commissioner must give the person written notice of the intention.

**49 Suspension or cancellation of registration
Section 59 (3)**

substitute

- (3) For subsection (2) (b), the commissioner must not, without the person's consent, tell the person's employer the ground for suspension or cancellation.

**50 Commissioner may give information to employers
Section 63C (2)**

substitute

- (2) For subsection (1) (c) (iii), the commissioner—
 - (a) need not tell the employer what the person's condition is; and
 - (b) must not, without the person's consent, tell the employer the reason for the condition.

51 Section 63C (as amended)

relocate to part 7A

52 New part 9

insert

Part 9 Transitional—Working with Vulnerable People (Background Checking) Amendment Act 2020

72 Meaning of *commencement day*—pt 9

In this part:

commencement day means the day the *Working with Vulnerable People (Background Checking) Amendment Act 2020*, section 3 commences.

73 Foster carers

- (1) This section applies if, immediately before the commencement day, a person—
 - (a) is registered under this Act; and
 - (b) is engaged in a foster care activity in relation to a child; and
 - (c) has an adult conviction or finding of guilt for a class A disqualifying offence.
- (2) On the commencement day—
 - (a) the person's class A disqualifying offence is taken to be a class B disqualifying offence, in relation to the person's registration to engage in the foster care activity in relation to the child; and

- (b) the person’s registration is automatically subject to the condition that the person must not engage in—
 - (i) a regulated activity involving children, other than the foster care activity in relation to the child; or
 - (ii) an NDIS activity.
- (3) Despite paragraph (2) (a), the commissioner need not carry out a risk assessment of the person in relation to the disqualifying offence until the person applies for renewal of the registration.
- (4) In this section:

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

Note An activity conducted, or a service provided, by a foster carer under the *Children and Young People Act 2008* is a regulated activity (see sch 1, s 1.1).

74 Expiry—pt 9

This part expires 5 years after the commencement day.

Note Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see [Legislation Act](#), s 88).

53 Reviewable decisions Schedule 2, item 1A

substitute

1A	15A (1)	impose interim bar on unregistered person	person
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54 Schedule 2, item 3*substitute*

3	40 (1) (a)	refuse to register person—unacceptable risk	person
3A	40 (1) (b)	refuse to register person—no request for reconsideration	person

55 Schedule 3*substitute***Schedule 3 Disqualifying offences**

(see s 11B)

Part 3.1 Definitions**3.1 Definitions—sch 3**

In this schedule:

Animal Welfare Act means the [Animal Welfare Act 1992](#).*Crimes Act* means the [Crimes Act 1900](#).*Criminal Code* means the [Criminal Code 2002](#).*Drugs of Dependence Act* means the [Drugs of Dependence Act 1989](#).*Road Transport (Safety and Traffic Management) Act* means the [Road Transport \(Safety and Traffic Management\) Act 1999](#).*Sex Work Act* means the [Sex Work Act 1992](#).*young adult relationship*—an offence is within a *young adult relationship* if—

- (a) the offence is committed against a child aged 14 or 15 years; and

- (b) the offender is less than 5 years older than the child; and
- (c) the commission of the offence does not involve violence or coercion.

Part 3.2 Class A disqualifying offences

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

column 1 item	column 2 offence	column 3 short description	column 4 condition
Homicide and related offences			
1	Crimes Act , s 12	murder	
2	Criminal Code , s 44	attempt	to commit murder
3	Crimes Act , s 29 (2)	culpable driving of motor vehicle—cause death	intent to cause death
4	Crimes Act , s 48A (1) (g), for offence against s 29 (2)	aggravated offence against pregnant woman—culpable driving of motor vehicle	intent to cause death
Acts intended to cause injury			
5	Crimes Act , s 19	intentionally inflict grievous bodily harm	offence against vulnerable person
6	Crimes Act , s 20	recklessly inflict grievous bodily harm	offence against vulnerable person
7	Crimes Act , s 21	wounding	offence against vulnerable person
8	Crimes Act , s 22	assault with intent to commit other offence	offence against vulnerable person

column 1 item	column 2 offence	column 3 short description	column 4 condition
9	Crimes Act , s 23	inflict actual bodily harm	offence against vulnerable person
10	Crimes Act , s 24	assault occasioning actual bodily harm	offence against vulnerable person
11	Crimes Act , s 25	cause grievous bodily harm	offence against vulnerable person
12	Crimes Act , s 27 (3) (a)	acts endangering life—chokes, suffocates or strangles	offence against vulnerable person
13	Crimes Act , s 27 (3) (b)	acts endangering life—administer stupefying or overpowering drug	offence against vulnerable person
14	Crimes Act , s 27 (3) (c)	acts endangering life—use offensive weapon	offence against vulnerable person
15	Crimes Act , s 27 (3) (e)	acts endangering life—cause explosion etc	offence against vulnerable person
16	Crimes Act , s 27 (3) (f)	acts endangering life—set trap	offence against vulnerable person
17	Crimes Act , s 27 (3) (g)	acts endangering life—interfere with conveyance, transport facility or public utility service	offence against vulnerable person
18	Crimes Act , s 36	torture	offence against vulnerable person
19	Crimes Act , s 43	childbirth—grievous bodily harm with intent	offence against vulnerable person
20	Crimes Act , s 48A (1) (b)	aggravated offence against pregnant woman—intentionally inflict grievous bodily harm	offence against vulnerable person

column 1 item	column 2 offence	column 3 short description	column 4 condition
21	Crimes Act, s 48A (1) (c)	aggravated offence against pregnant woman—recklessly inflict grievous bodily harm	offence against vulnerable person
22	Crimes Act, s 48A (1) (d)	aggravated offence against pregnant woman—wounding	offence against vulnerable person
23	Crimes Act, s 48A (1) (e)	aggravated offence against pregnant woman—inflict actual bodily harm	offence against vulnerable person
24	Crimes Act, s 74	prohibition of female genital mutilation	offence against vulnerable person
25	Crimes Act, s 75	remove child from ACT for genital mutilation	
Sexual assault and related offences			
26	Crimes Act, s 51	sexual assault in first degree	offence against vulnerable person
27	Crimes Act, s 52	sexual assault in second degree	offence against vulnerable person
28	Crimes Act, s 53	sexual assault in third degree	offence against vulnerable person
29	Crimes Act, s 54	sexual intercourse without consent	offence against vulnerable person
30	Crimes Act, s 55 (1)	sexual intercourse with young person (under 10 years old)	
31	Crimes Act, s 55 (2)	sexual intercourse with young person (under 16 years old)	offence other than within young adult relationship

column 1 item	column 2 offence	column 3 short description	column 4 condition
32	Crimes Act, s 55A	sexual intercourse with young person under special care	
33	Crimes Act, s 56	maintain sexual relationship with young person or person under special care	
34	Crimes Act, s 57	act of indecency in first degree	offence against vulnerable person
35	Crimes Act, s 58	act of indecency in second degree	offence against vulnerable person
36	Crimes Act, s 59	act of indecency in third degree	offence against vulnerable person
37	Crimes Act, s 60	act of indecency without consent	offence against vulnerable person
38	Crimes Act, s 61 (1)	act of indecency without consent (child under 10 years old)	
39	Crimes Act, s 61 (2)	act of indecency without consent (child under 16 years)	offence other than within young adult relationship
40	Crimes Act, s 61A	act of indecency with young person under special care	
41	Crimes Act, s 62 (1)	incest (under 10 years)	
42	Crimes Act, s 62 (2)	incest (under 16 years)	offence against child under 13 years
43	Crimes Act, s 64 (1)	use etc child under 12 years for production of child exploitation material	

column 1 item	column 2 offence	column 3 short description	column 4 condition
44	Crimes Act , s 64 (3)	use etc child 12 years or older for production of child exploitation material	
45	Crimes Act , s 64A	trade in child exploitation material	
46	Crimes Act , s 65	possess child exploitation material	
47	Crimes Act , s 66 (1) (a)	grooming—encourage young person to commit etc act of sexual nature	
48	Crimes Act , s 66 (1) (b)	grooming—engage in conduct with intention of encouraging young person to commit etc act of sexual nature	
49	Crimes Act , s 66 (1) (c)	grooming—engage in conduct with person who has relationship with young person with intention of encouraging young person to commit etc act of sexual nature	
50	Crimes Act , s 79 (1)	sexual servitude—cause person to enter or remain in	offence against vulnerable person
51	Crimes Act , s 79 (2)	sexual servitude—conduct business involving	offence against vulnerable person
52	Crimes Act , s 80	deceptive recruiting for sexual services	offence against vulnerable person

column 1 item	column 2 offence	column 3 short description	column 4 condition
53	Sex Work Act , s 20	cause child to provide commercial sexual services etc	
Abduction, harassment and related offences			
54	Crimes Act , s 37	abduction of young person	offence against child other than family member
55	Crimes Act , s 38	kidnapping	offence against child other than family member
56	Crimes Act , s 40	unlawfully take child etc	offence against child other than family member
57	Crimes Act , s 63	abduction	offence against vulnerable person
Public order offences			
58	Crimes Act , s 63A	bestiality	

Part 3.3 Class B disqualifying offences

column 1 item	column 2 offence	column 3 short description	column 4 condition
Homicide and related offences			
1	Crimes Act , s 15	manslaughter	
2	Road Transport (Safety and Traffic Management) Act , s 6 (1)	drive motor vehicle negligently	causes death
3	Crimes Act , s 17 (1)	suicide—aids or abets	
4	Crimes Act , s 17 (2)	suicide—incites or counsels	

column 1 item	column 2 offence	column 3 short description	column 4 condition
5	Crimes Act , s 29 (2)	culpable driving of motor vehicle—cause death	without intent to cause death
6	Crimes Act , s 42	child destruction	
7	Crimes Act , s 48A (1) (a)	aggravated offence against pregnant woman—manslaughter	
8	Crimes Act , s 48A (1) (g), for offence against s 29 (2)	aggravated offence against pregnant woman—culpable driving of motor vehicle	without intent to cause death
Acts intended to cause injury			
9	Crimes Act , s 19	intentionally inflict grievous bodily harm	offence other than against vulnerable person
10	Crimes Act , s 20	recklessly inflict grievous bodily harm	offence other than against vulnerable person
11	Crimes Act , s 21	wounding	offence other than against vulnerable person
12	Crimes Act , s 22	assault with intent to commit other offence	offence other than against vulnerable person
13	Crimes Act , s 23	inflict actual bodily harm	offence other than against vulnerable person
14	Crimes Act , s 24	assault occasioning actual bodily harm	offence other than against vulnerable person
15	Crimes Act , s 25	cause grievous bodily harm	offence other than against vulnerable person
16	Crimes Act , s 27 (3) (a)	acts endangering life—chokes, suffocates or strangles	offence other than against vulnerable person

column 1 item	column 2 offence	column 3 short description	column 4 condition
17	Crimes Act, s 27 (3) (b)	acts endangering life— administer stupefying or overpowering drug	offence other than against vulnerable person
18	Crimes Act, s 27 (3) (c)	acts endangering life— use offensive weapon	offence other than against vulnerable person
19	Crimes Act, s 27 (3) (e)	acts endangering life— cause explosion etc	offence other than against vulnerable person
20	Crimes Act, s 27 (3) (f)	acts endangering life— set trap	offence other than against vulnerable person
21	Crimes Act, s 27 (3) (g)	acts endangering life— interfere with conveyance, transport facility or public utility service	offence other than against vulnerable person
22	Crimes Act, s 36	torture	offence other than against vulnerable person
23	Crimes Act, s 48A (1) (b)	aggravated offence against pregnant woman—intentionally inflict grievous bodily harm	offence other than against vulnerable person
24	Crimes Act, s 48A (1) (c)	aggravated offence against pregnant woman—recklessly inflict grievous bodily harm	offence other than against vulnerable person
25	Crimes Act, s 48A (1) (d)	aggravated offence against pregnant woman—wounding	offence other than against vulnerable person
26	Crimes Act, s 48A (1) (e)	aggravated offence against pregnant woman—inflict actual bodily harm	offence other than against vulnerable person

column 1 item	column 2 offence	column 3 short description	column 4 condition
27	Crimes Act, s 48A (1) (f)	aggravated offence against pregnant woman—assault occasioning actual bodily harm	offence other than against vulnerable person
28	Crimes Act, s 74	prohibition of female genital mutilation	offence other than against vulnerable person
Sexual assault and related offences			
29	Crimes Act, s 51	sexual assault in first degree	offence other than against vulnerable person
30	Crimes Act, s 52	sexual assault in second degree	offence other than against vulnerable person
31	Crimes Act, s 53	sexual assault in third degree	offence other than against vulnerable person
32	Crimes Act, s 54	sexual intercourse without consent	offence other than against vulnerable person
33	Crimes Act, s 55 (2)	sexual intercourse with young person (under 16 years old)	offence within young adult relationship
34	Crimes Act, s 57	act of indecency in first degree	offence other than against vulnerable person
35	Crimes Act, s 58	act of indecency in second degree	offence other than against vulnerable person
36	Crimes Act, s 59	act of indecency in third degree	offence other than against vulnerable person
37	Crimes Act, s 60	act of indecency without consent	offence other than against vulnerable person
38	Crimes Act, s 61 (2)	act of indecency without consent (child under 16 years)	offence within young adult relationship

column 1 item	column 2 offence	column 3 short description	column 4 condition
39	Crimes Act , s 61B (1)	observe with device or capture visual data— other person	offence against vulnerable person
40	Crimes Act , s 61B (5)	observe with device or capture visual data— other person’s genital/ anal region or breasts	offence against vulnerable person
41	Crimes Act , s 62 (2)	incest (under 16 years)	offence against child 13 years or older
42	Crimes Act , s 62 (3)	incest (16 years or older)	offence other than against vulnerable person
43	Crimes Act , s 72C	non-consensual distribution of intimate images	offence against vulnerable person
44	Crimes Act , s 72D	distribute intimate image of young person	
45	Crimes Act , s 79 (1)	sexual servitude— cause person to enter or remain in	offence other than against vulnerable person
46	Crimes Act , s 79 (2)	sexual servitude— conduct business involving	offence other than against vulnerable person
47	Crimes Act , s 80	deceptive recruiting for sexual services	offence other than against vulnerable person
Dangerous or negligent acts endangering others			
48	Crimes Act , s 39	neglect etc of children	
49	Crimes Act , s 41	expose or abandon child	
Abduction, harassment and related offences			
50	Crimes Act , s 38	kidnapping	offence against child family member or person other than a vulnerable person

column 1 item	column 2 offence	column 3 short description	column 4 condition
51	Crimes Act , s 63	abduction	offence against child family member or person other than a vulnerable person
Fraud, deception and related offences			
52	Criminal Code , s 326	obtain property by deception	offence against vulnerable person
53	Criminal Code , s 332	obtain financial advantage by deception	offence against vulnerable person
54	Criminal Code , s 333	general dishonesty	
55	Criminal Code , s 334	conspiracy to defraud	offence against vulnerable person
56	Criminal Code , s 336	pass valueless cheques	offence against vulnerable person
57	Criminal Code , s 336A	make false statements on oath or in statutory declarations	
58	Criminal Code , s 337	make false or misleading statements	
59	Criminal Code , s 338	give false or misleading information	offence against vulnerable person
60	Criminal Code , s 339	produce false or misleading documents	offence against vulnerable person
61	Criminal Code , s 346	forgery	offence against vulnerable person
62	Criminal Code , s 347	use false document	offence against vulnerable person
63	Criminal Code , s 348	possess false document	offence against vulnerable person
64	Criminal Code , s 351	false statement by officer of body	

column 1 item	column 2 offence	column 3 short description	column 4 condition
Illicit drug offences			
65	Criminal Code, s 603 (1)	traffic controlled drug—large commercial quantity	
66	Criminal Code, s 603 (3)	traffic controlled drug—commercial quantity	
67	Criminal Code, s 603 (5)	traffic controlled drug—trafficable quantity of cannabis	
68	Criminal Code, s 603 (7)	traffic controlled drug—controlled drug other than cannabis	
69	Criminal Code, s 603 (8)	traffic controlled drug—cannabis	
70	Criminal Code, s 607 (1)	manufacture controlled drug to sell—large commercial quantity	
71	Criminal Code, s 607 (3)	manufacture controlled drug to sell— commercial quantity	
72	Criminal Code, s 607 (5)	manufacture controlled drug to sell	
73	Criminal Code, s 609	manufacture controlled drug	
74	Criminal Code, s 610 (1)	sell controlled precursor—large commercial quantity	
75	Criminal Code, s 610 (3)	sell controlled precursor— commercial quantity	

column 1 item	column 2 offence	column 3 short description	column 4 condition
76	Criminal Code, s 610 (5)	sell controlled precursor for manufacture	
77	Criminal Code, s 611 (1)	manufacture controlled precursor—large commercial quantity	
78	Criminal Code, s 611 (3)	manufacture controlled precursor to sell—large commercial quantity	
79	Criminal Code, s 611 (5)	manufacture controlled precursor— commercial quantity	
80	Criminal Code, s 611 (7)	manufacture controlled precursor to sell— commercial quantity	
81	Criminal Code, s 611 (9)	manufacture controlled precursor	
82	Criminal Code, s 611 (10)	manufacture controlled precursor to sell	
83	Criminal Code, s 612 (1)	possess controlled precursor—large commercial quantity	
84	Criminal Code, s 612 (3)	possess controlled precursor— commercial quantity	
85	Criminal Code, s 612 (5)	possess controlled precursor	
86	Criminal Code, s 613 (1)	supply substance, equipment or document for drug manufacture	

column 1 item	column 2 offence	column 3 short description	column 4 condition
87	Criminal Code , s 613 (2)	possess substance, equipment or document to supply for drug manufacture	
88	Criminal Code , s 614	possess substance, equipment or document for drug manufacture	
89	Criminal Code , s 616 (1)	cultivate controlled plant to sell—large commercial quantity	
90	Criminal Code , s 616 (3)	cultivate controlled plant to sell— commercial quantity	
91	Criminal Code , s 616 (5)	cultivate controlled plant to sell— trafficable quantity	
92	Criminal Code , s 616 (7)	cultivate other controlled plant to sell	
93	Criminal Code , s 616 (8)	cultivate cannabis plant to sell	
94	Criminal Code , s 618 (1)	cultivate controlled plant other than cannabis plant	
95	Criminal Code , s 619 (1)	sell controlled plant— large commercial quantity	
96	Criminal Code , s 619 (3)	sell controlled plant— commercial quantity	
97	Criminal Code , s 619 (5)	sell controlled plant— trafficable quantity of cannabis plant	

column 1 item	column 2 offence	column 3 short description	column 4 condition
98	Criminal Code , s 619 (7)	sell controlled plant— controlled plant other than cannabis plant	
99	Criminal Code , s 619 (8)	sell controlled plant— cannabis plant	
100	Criminal Code , s 620 (1)	supply controlled plant, product, equipment or document—cultivation	
101	Criminal Code , s 620 (2)	possess controlled plant, product, equipment or document—intent to supply to another	
102	Criminal Code , s 621	possess controlled plant, product, equipment or document—cultivation	
103	Criminal Code , s 622 (1)	supply controlled drug to child for selling— commercial quantity	
104	Criminal Code , s 622 (3)	supply controlled drug to child for selling	
105	Criminal Code , s 624 (1)	procure child to traffic in controlled drug— commercial quantity	
106	Criminal Code , s 624 (4)	procure child to traffic in controlled drug	
107	Criminal Code , s 625	supply controlled drug to child	
108	Drugs of Dependence Act , s 164 (2)	sell or supply drug of dependence	

column 1 item	column 2 offence	column 3 short description	column 4 condition
109	Drugs of Dependence Act, s 164 (3)	sell or supply prohibited substance	
Public order offences			
110	Animal Welfare Act, s 7A	aggravated cruelty	

56 Dictionary, new definition of *adult conviction or finding of guilt*

insert

adult conviction or finding of guilt, for a person for an offence, means a conviction or finding of guilt for an offence committed when the person was an adult.

57 Dictionary, definitions of *class A disqualifying offence etc*

substitute

class A disqualifying offence—see section 11B.

class B disqualifying offence—see section 11B.

disqualifying offence—see section 11B.

58 Dictionary, new definition of *Drugs of Dependence Act*

insert

Drugs of Dependence Act, for schedule 3 (Disqualifying offences)—see schedule 3, section 3.1.

59 Dictionary, definition of *interim bar*

omit

60 Dictionary, new definitions

insert

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

Note An activity conducted, or a service provided, by a kinship carer under the *Children and Young People Act 2008* is a regulated activity (see sch 1, s 1.1).

kinship carer—see the *Children and Young People Act 2008*, section 516.

61 Dictionary, definition of *relevant offence*

substitute

relevant offence—see section 11A.

62 Dictionary, new definition of *Road Transport (Safety and Traffic Management) Act*

insert

Road Transport (Safety and Traffic Management) Act, for schedule 3 (Disqualifying offences)—see schedule 3, section 3.1.

63 Dictionary, definition of *role-based registration*

substitute

role-based registration—see section 42B.

64 Dictionary, new definition of *young adult relationship*

insert

young adult relationship, for schedule 3 (Disqualifying offences)—see schedule 3, section 3.1.

Schedule 1 Consequential amendments

(see s 3)

Part 1.1 ACT Teacher Quality Institute Act 2010

[1.1] Section 32 (1) (d)

substitute

- (d) the person holds working with vulnerable people registration;
and

[1.2] Section 33 (1) (c)

substitute

- (c) the person holds working with vulnerable people registration;
and

[1.3] Section 35 (1) (b)

substitute

- (b) the person holds working with vulnerable people registration;
and

[1.4] Section 38 (1) (c)

substitute

- (c) maintains working with vulnerable people registration; and

[1.5] Section 38 (1) (d) (ii)

substitute

- (ii) the teacher's working with vulnerable people registration—
 - (A) is made subject to a condition or interim condition;
or
 - (B) is suspended; or
 - (C) ends.

[1.6] Section 51 (5) (d)

substitute

- (d) that the teacher holds working with vulnerable people registration.

[1.7] Section 53 (5) (d)

substitute

- (d) that the permit-holder holds working with vulnerable people registration.

[1.8] Section 67 (c)

substitute

- (c) the teacher's working with vulnerable people registration—
 - (i) is made subject to a condition or interim condition; or
 - (ii) is suspended; or
 - (iii) has ended.

[1.9] Section 70G (5) (b) (ii)

substitute

- (ii) the pre-service teacher's working with vulnerable people registration—
 - (A) is made subject to a condition that the person not engage in a regulated activity involving children; or
 - (B) is suspended; or
 - (C) ends.

[1.10] Section 70M (1) (b)

substitute

- (b) the pre-service teacher's working with vulnerable people registration—
 - (i) is made subject to a condition that the person not engage in a regulated activity involving children; or
 - (ii) is suspended; or
 - (iii) ends.

[1.11] Section 70M (2) (b)

substitute

- (b) if the provider becomes aware that the pre-service teacher's working with vulnerable people registration—
 - (i) is subject to a condition that the person not engage in a regulated activity involving children; or
 - (ii) is suspended; or
 - (iii) has ended.

[1.12] Dictionary, definition of *working with vulnerable people registration*

substitute

working with vulnerable people registration means registration that allows a person to work with children under—

- (a) the *Working with Vulnerable People (Background Checking) Act 2011*; or
- (b) for a pre-service teacher—
 - (i) the *Working with Vulnerable People (Background Checking) Act 2011*; or
 - (ii) a law of another jurisdiction that corresponds or substantially corresponds to the *Working with Vulnerable People (Background Checking) Act 2011*.

Part 1.2 Children and Young People Act 2008

[1.13] Section 514B (3) (a)

substitute

- (a) the person is registered under the *Working with Vulnerable People Act* to engage in a regulated activity described in that Act, schedule 1, section 1.1 (Child protection services); or

Note An activity conducted or a service provided under this Act for a child or young person is a regulated activity under the *Working with Vulnerable People Act*, sch 1, s 1.1.

[1.14] Section 514E (1) and (2)

omit

3 years

substitute

5 years

[1.15] Section 856A (1)

omit

Working with Vulnerable People (Background Checking) Act 2011

substitute

[Working with Vulnerable People Act](#)

[1.16] Section 856B (1)

omit

Working with Vulnerable People (Background Checking) Act 2011

substitute

[Working with Vulnerable People Act](#)

[1.17] Section 875 (2), examples

omit

- *Working with Vulnerable People (Background Checking) Act 2011*

substitute

- [Working with Vulnerable People Act](#)

Part 1.3 **Magistrates Court (Working with Vulnerable People Infringement Notices) Regulation 2012**

[1.18] Schedule 1, new item 9A

insert

9A	55A (1)	50	500
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Part 1.4 **Mental Health (Secure Facilities) Act 2016**

[1.19] Section 69 (3) (c)

substitute

- (c) the person's registration under the *Working with Vulnerable People (Background Checking) Act 2011*—
- (i) is made subject to a condition that the person not engage in a regulated activity described in that [Act](#), schedule 1, section 1.8 (Mental health); or
 - (ii) is suspended; or
 - (iii) ends; or

Part 1.5

Working with Vulnerable People (Background Checking) Regulation 2012

[1.20] Section 5 heading

substitute

5 Role-based registration—information—Act, s 42B (3)

[1.21] Section 5 (2) (c)

omit

[1.22] Section 5 (2) (g) and (h)

substitute

- (g) strategies for communication and support, including training materials for people engaged by the employer to—
- (i) help identify risks of harm to vulnerable people; and
 - (ii) give instructions for how to handle disclosures or suspicions of harm to vulnerable people; and
 - (iii) outline the employer’s risk management strategy.

[1.23] Section 6 (2) (b)

omit

section 42 (4)

substitute

section 42B (3)

[1.24] Dictionary, note 3

omit

- role-based registration (see s 42 (2))

substitute

- role-based registration (see s 42B (1))
-

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 21 May 2020.

2 Notification

Notified under the [Legislation Act](#) on 9 July 2020.

3 Republications of amended laws

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

I certify that the above is a true copy of the Working with Vulnerable People (Background Checking) Amendment Bill 2020, which was passed by the Legislative Assembly on 2 July 2020.

Acting Clerk of the Legislative Assembly

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