

Australian Capital Territory

Children and Young People (Kinship and Foster Carers Risk Assessment) Guidelines 2023

Disallowable Instrument DI2023-202

made under the

Children and Young People Act 2008, section 514B (5) (Approved carers—director-general may approve)

1 Name of instrument

This instrument is the *Children and Young People (Kinship and Foster Carers Risk Assessment) Guidelines 2023*.

2 Commencement

This instrument commences on the day after it is notified.

3 Risk assessment guidelines

I make the guidelines in Schedule 1 about how risk assessments are to be conducted under section 514B (3) of the *Children and Young People Act 2008*.

Rachel Stephen-Smith MLA
Minister for Families and Community Service
22 June 2023

SCHEDULE 1

Children and Young People (Kinship and Foster Carers Risk Assessment) Guidelines 2023

made under the *Children and Young People Act 2008*

Table of Contents

Preamble.....	3
Compliance with other legislation	4
What information must the director-general consider?.....	4
Giving consideration in exceptional circumstances	4
Appropriate Person.....	5
Criminal history.....	5
Child Concern Reports	6
The risk assessment process	8
Risk Identification.....	8
Risk analysis	8
Risk evaluation	9
Decisions following risk assessment	9
Decisions following risk assessment	9
Monitoring of approved carers	10
Ongoing risk assessment.....	10
Revocation of carer approval.....	10
Table 1 – Summary of factors which the director-general <i>must</i> consider in relation to an applicant who does not hold a WWVP registration	11
Table 2 – Summary of factors which the director-general <i>must</i> consider in relation to an applicant’s criminal history and their possible risk impact	12
Table 2a – Summary of factors which the director-general <i>may</i> consider in relation to an applicant’s criminal history and their possible risk impact	13
Table 3a – Summary of factors which the director-general <i>must</i> consider in relation to an applicant’s child protection history and their possible risk impact.....	15
Table 3b – Summary of factors which the director-general <i>may</i> consider in relation to an applicant’s child protection history and their possible risk impact	15

Preamble

Child and Youth Protection Services (CYPS) involvement in a family's circumstances is guided by the *Children and Young People Act 2008* (the CYP Act) through graduated and proportionate steps (or thresholds). The thresholds act to balance the protection of children and young people against the protection of the family unit, within parameters set by the *Human Rights Act 2004*. These guidelines are intended to assist decision makers when they are assessing persons to provide foster or kinship care to children and young people (Carer Assessments).

Under the CYP Act, the director-general of the Community Services Directorate (CSD) is required to place children and young people who cannot live with their birth parents with an 'approved carer', who may be either a foster carer or kinship carer. Section 514B provides the power to authorise a person as an approved carer and section 514C sets out a number of criteria for approval.

The director-general must be satisfied that the person is an 'appropriate person' to care for children or young people (s 514B(1)) and the director-general must consider relevant 'suitability information', any relevant reference or report, and the results of any test or medical examination (s 514C).

The suitability information must also be considered for each other adult member of the person's household.

The intent of the Carer Assessment process is to ensure that vulnerable children and young people are not placed at further risk of abuse or neglect.

The CYP Act requires that, with some exceptions, any person seeking to be authorised as an approved carer be registered under the *Working with Vulnerable People (Background Checking) Act 2011* (WWVP Act). WWVP registration is therefore a key requirement for prospective foster and kinship carers who are seeking approval under the s514 of the CYP Act.

However, where a carer is not registered with the WWVP scheme, an alternative risk assessment process is possible, as long as the carer meets criteria stipulated by s514(3(c)) of the CYP Act. These criteria include: that the carer is 'significant person' for the child or young person; the carer has a 'familiar relationship with the child or young person'; that the carer does not pose an 'unacceptable risk' to the child/ren in their care; and that the placement is in the child's 'best interests'.

The CYP Act focuses attention on whether a person providing out-of-home care services poses an *unacceptable risk of harm* to a vulnerable person. The process of assessing carers or potential carers who do not hold a WWVP registration may allow the Directorate to provide a more culturally appropriate assessment of suitability for a kinship carer who identifies as an Aboriginal and/or Torres Strait Islander.

These Guidelines provide guidance for how the director-general will consider and assess information.

The risk assessment process described in the Guidelines is consistent with Australian Standard *AS ISO 31000:2018 Risk Management – Principles and Guidelines* (the Risk Standard) which provides generic guidelines and establishes a number of principles for the identification and management of risk.

It is not possible for the Guidelines to create a risk assessment framework that considers every possible scenario. The Guidelines outline the minimum considerations which the director-general must, or may, consider in assessing whether an individual presents a risk of harm to a child or young person.

The Guidelines include specific reference to how CYPS assesses information under section 65 of the CYP Act for those people seeking approval as an authorised carer under section 516 or section 518 regardless of WWVP registration status. The Risk Assessment involves gathering information, analysing the information, and applying professional judgement to the information at each stage of the assessment.

It is important to note that the approval of a person as an authorised carer is a separate decision to the decision to place a child or young person.

Compliance with other legislation

The Guidelines, as well as personnel from the Community Services Directorate, comply with a range of relevant laws, both those of the Territory and the Australian Government.

The CYP Act is a component of a broader “protective framework” within the ACT which is designed to protect children and vulnerable people from harm such as abuse and neglect. This framework includes a range of laws, agencies and administrative functions which collectively play a role in ensuring that the rights and interests of vulnerable people within our community are safeguarded.

Other Acts, agencies, or schemes which play an integral role in this protective framework include:

- *Working with Vulnerable (Background Checking) Act 2011 (ACT)*;
- *Crimes Act 1900 (ACT)*;
- *Discrimination Act 1991 (ACT)*;
- *Disability Discrimination Act 1992 (Cwth)*;
- *Disability Services Act 1991 (ACT)*;
- *Human Rights Act 2004 (ACT)*;
- *National Disability Insurance Scheme Act 2013 (Cwth)*;
- *Senior Practitioner Act 2018 (ACT)*; and
- Reportable Conduct Scheme;

What information must the director-general consider?

The Act requires the director-general to consider the “suitability information” in section 65 of the CYP Act and, in particular, any relevant criminal history (s 65(1)(a)), any child concern reports (s 65(1)(g)) and any proven experience or capacity in providing services to children and young people (s 65(1)(f)). In addition, the Act requires approved carers to be registered under the WWVP Act (s 514B). Where the person is not registered under the WWVP Act to engage in a regulated activity and the person is to be authorised as a kinship carer under section 516 or a foster carer under section 518 for a child or young person, carer approval can be given in exceptional circumstances.

Giving consideration in exceptional circumstances

It is a requirement that every person who provides out-of-home care services to children and young people within the ACT must be registered under the WWVP Act, unless provided with an exemption under section 514B. The provision of out-of-home care services is a regulated activity under the WWVP Act and the framework for assessment of risk, for registration and for monitoring within the WWVP Act is to be applied as a rule.

The director-general may exercise discretion where a particular applicant is considered an appropriate person to care for a particular child or young person, based on the specific screening arrangements in the CYP Act and independently of the general screening arrangements in the WWVP Act. This will support the use of culturally sensitive and risk proportionate assessments of carers who face barriers in obtaining a WWVP registration.

This discretion can only be exercised where the director-general is satisfied that the applicant:

- is an ‘appropriate person’ within the meaning of section 514B,

- is a 'significant person' within the meaning of section 14,
- is a person who has a 'familiar relationship' to the child or young person,
- is a person who does not pose an unacceptable risk to the child or young person, and
- is a person with whom a placement would be in the best interests of the child or young person.

To determine the 'familiar relationship', consideration must be given to the length, degree and the extent of the relationship with the child in the assessment process.

Details on how these factors will be considered and evidence which may be referred to or sought to support decision making can be found in Table 1.

Appropriate Person

The matters that may be considered in determining whether someone is an 'appropriate person' within the meaning of section 514B are not set out in the CYP Act but they can be drawn from the subject-matter, scope and object, or the purpose, of its provisions and its legislative scheme. The notion of 'appropriate person' takes its meaning from its context, from the activities in which the person will be engaged and the ends which are to be served by those activities.

Criminal history

When assessing risk to a child or young person, one risk indicator that is examined by the director-general is the applicant's national police history. Consent to access this information is given in the application to become an approved carer. The Criminal History Risk Assessment is a process of gathering information about the prospective carer's criminal history and determining whether this would pose a current or future risk to a child. When assessing risk, and determining appropriateness or suitability, the director-general is entitled, and may be required, to look beyond a conviction or finding of guilt to determine what weight it should be given in the process.

The purpose of the Criminal History Risk Assessment is to help answer the following questions:

- What (if any) would the risk issues be for a child if placed in the applicant's care? (e.g. Does the Criminal History information identify a prior or current risk to a child being abused and/or neglected and/or exposed¹ to family violence?)
- What (if any) environmental factors might either increase or decrease the child's vulnerability to this risk?
- What (if anything) might increase or decrease the probability of abuse or neglect occurring, recurring or continuing in the future?
- Would any of the above factors impact upon the applicant's ability to perform their responsibilities as a carer?
- Where risks are present, but it is determined to be in the child's best interests to be placed or remain in the placement, what (if any) ongoing protective intervention is required to ensure children are safe if the prospective carer were to be authorised under s514?

The outcome of the risk analysis is a judgment about the probability and consequences of future abuse or neglect.

Section 65(1) of the CYP Act requires that the director-general consider any conviction, or finding of guilt, for:

- an offence relating to the provision of services for children or young people; or
- an offence against a child or young person; or

¹ 'Exposed' does not mean that the child must have been present, or in the home at the time of family violence. Where a child lives in the same home as a person who is a victim of family violence they are always understood to be 'exposed' to family violence.

- an offence involving a child or young person; or
- an offence involving violence; or
- a sex offence; or
- an offence involving dishonesty or fraud; or
- an offence involving possession of, or trafficking in, a drug of dependence or controlled drug; or
- an offence against an animal.

These details, and information about convictions and findings of guilt for other offences, will be contained in the Expanded Criminal History Check which is provided by ACT Policing. The expanded police history check will identify spent² and unspent offences which the CYP Act allows the director-general to consider.

The police history check will also reveal information about any convictions that have been quashed, circumstances where charges have been laid but were subsequently not proceeded with and matters that did not proceed to prosecution or were dismissed in court. All of these are important as, even though in some cases they may relate to matters that are many years old, research shows that past behaviour can be an indicator of future conduct.

Consideration of criminal history requires assessment of any *relevant offence* for which there may be pending charges, a conviction or finding of guilt.

In considering this information, the director-general may consider a range of factors and is not limited to consideration of the matters in section 65. Details on how these factors will be considered and evidence which may be referred to or sought to support decision making can be found in Table 2.

Child Concern Reports

When assessing risk to a child or young person, a further risk indicator is the applicant's child protection information holdings. Consent to access this information is given in the application to become an approved carer. The director-general must consider whether a child concern report about the applicant has been received by the director-general and any action that has been taken in response to the report by the director-general or a court or tribunal.

A Child Protection History Risk Assessment involves a considered analysis of a carer's involvement with Child Protection agencies, presenting risk factors and how these may impact on their ability to provide care to a child, through gathering all known information about children the prospective carer has provided care to and other children they may have been involved with.

The purpose of the Child Protection History Risk Assessment is to help answer the following questions:

- What (if any) would the risk issues be for children if placed in the applicant's care? (e.g. Does the Child Protection information holdings identify a risk to a child being abused and/or neglected and/or exposed³ to family violence?)
- What (if any) environmental factors might either increase or decrease the child's vulnerability to this risk?
- What (if anything) might increase or decrease the probability of abuse or neglect occurring, recurring or continuing in the future?
- Would any of the above factors impact upon the applicant's ability to perform their responsibilities as a carer?

² A conviction is 'spent' (based on the definition under the *Spent Convictions Act 2000*) on completion of the relevant crime-free period (5 consecutive years if the person was not dealt with as an adult, or in any other case 10 consecutive years), or the conviction or findings were quashed or set aside, or the person was granted a pardon for the offence.

³ 'Exposed' does not mean that the child must have been present, or in the home at the time of family violence. Where a child lives in the same home as a person who is a victim of family violence they are always understood to be 'exposed' to family violence.

- Where risks are present, but it is determined to be in the child’s best interest to be placed or remain in the placement, what (if any) ongoing protective intervention is required to ensure children are safe if the prospective carer was to be authorised under s514?

The outcome is a judgment about the consequences and the probability of future abuse or neglect.

The director-general may consider the following child protection information holdings:

- historic file information including previous Child Concern Reports, Assessments, Appraisal records, file notes etc;
- information received from an interstate/international child protection agency;
- information received from a designated entity relating to a Reportable Conduct Investigation; and
- any other source of information about the carer, their children and their family.

In considering this information, the director-general may consider a range of factors. Details on how these factors will be considered and evidence which may be referred to or sought to support decision making, along with the relative weight given to such information, can be found in Table 3.

Other suitability information

Section 65 of the CYP Act provides for additional information and considerations which the director-general must consider when assessing someone to be authorised as an approved carer, including but not limited to:

- any proven noncompliance by the applicant with a legal obligation in relation to providing services for children or young people;
- any refusal of an application for a licence or other authority (however described) in relation to providing services for children or young people;
- the applicant’s reputation for honesty and integrity;
- whether the applicant has proven experience or demonstrated capacity in providing services for children and young people;
- information listed above for each other adult member of the entity’s household; and
- any other consideration relevant to the entity’s ability to provide high quality services for children or young people.

To remove any doubt, the information may be about any circumstance or thing mentioned above whether inside or outside the ACT.

As noted above, section 514B permits the director-general to assess other information and considerations. The question of ‘appropriateness’—and the question of ‘suitability’ generally—points to a process of gathering information about the broader environment of the prospective carer and household members.

The purpose is to gather information that informs the broader assessment process including:

- the carer’s parenting capacity;
- whether the carer has proven experience or demonstrated capacity in providing services for children and young people;
- the presence of environmental factors, i.e., substance abuse, mental illness, violent behaviour and social isolation will also be considered relevant when they, in isolation or in combination, *diminish the carer’s capacity* to provide sufficient care and protection to the child or young person; and
- other considerations relevant to the carer’s and other household members’ ability to provide high quality services for children or young people.

The additional suitability information gathered should also be used to determine the suitability of a prospective carer. These may be considered at any and all stages of the carer assessment process.

The risk assessment process

The risk assessment process in these Guidelines is based on the Risk Standard⁴ which identifies risk assessment as being an overall process comprising risk identification, risk analysis, and risk evaluation.

Risk Identification

This is the process of finding, recognising, and describing risks. In the context of carer approvals, it involves the identification of risk sources, events, causes (to the extent this can be determined). In identifying a “risk of harm”, “risk” can be taken to mean the “chance or the possibility”,⁵ while “harm” can be taken to mean a risk of “abuse” — being acts towards the child or young person (or others) which constitute physical, sexual or emotional abuse— or “neglect” — being failures to provide the child or young person with the necessities of life resulting in significant harm to wellbeing or development.⁶

The risk to be assessed by the director-general is the extent to which an applicant’s background poses a threat of harm to a child or young person.

Risk analysis

This is the process of understanding the nature of risk and its characteristics, including the risk level. It is about establishing the potential consequences and probability of occurrence or recurrence of risk in the context of caring for children or young people and the potential impact a person might have on a child or young person. To assess the likelihood of a risk, the director-general must take all the information gathered in the risk identification phase and come to a conclusion as to what weight to assign to each piece of information. Attention is *first* directed to present facts and the inferences that may be drawn from them. Attention is *then* directed to any allegations and the risk of harm that may follow from those allegations, if true.

In either case, the director-general is to consider their *nature* and the *strength* or *weakness* of the supporting material.

Where an independent court or tribunal has not made a finding on a serious allegation, the director-general is still required to reach some conclusion about likelihood of the allegation being true.

If a serious allegation is involved, and a determination has not been made by any independent court or tribunal, care should be taken that any conclusion does not rest on “inexact proof, indefinite testimony, or indirect inference”.

A conclusion requires more than a mere mechanical comparison of probabilities. One may not “point with a wavering finger”, but feel an “actual persuasion” or be “comfortably satisfied” that it is true.⁷

If a conclusion cannot be reached one way or the other, care should be taken to measure and weigh the probabilities. It will usually be necessary to form a ‘belief’—an inclination of the mind towards accepting, rather than rejecting, the fact—rather than a ‘suspicion’—a state of conjecture or surmise or a mere apprehension or idle wondering. And it will usually need to be reasonable. In either case, there is a difference between suspecting

⁴ Australian Standard *AS ISO 31000:2018 Risk Management – Principles and Guidelines*.

⁵ See the discussion of risk in another context *Applicant 201915 v Commissioner for Fair Trading (Occupational Regulation) [2019] ACAT 117*

⁶ See sections 342 and 343 of the *Children and Young People Act 2008*.

⁷ See generally *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 350 and 361-362.

or believing that something *has* happened and speculating that it *may* have happened. If the director-general can only speculate about an allegation, they must dismiss it or conduct a further investigation.

At the end of the risk analysis process, the director-general will make a conclusion about the risks having regard to all of the evidence and other material available. Any recommendations, decisions and analysis will be clearly documented.

To assist in risk analysis, consideration can be given to a range of factors which are outlined in Tables 1 - 4.

Risk evaluation

Risk evaluation is the process of determining how, if at all, the risk would impact on the prospective carer's ability to provide care for a child or young person. Decisions may be taken to mitigate risks, and this is recognised in the decision to approve, or not, the person.

The outcome of the risk evaluation is a professional judgment about the consequences and probability of abuse or neglect of a child or young person were they to be placed or remain in the placement with the prospective carer. Any recommendations, decisions and analysis will be clearly documented.

Ultimately, the risk evaluation process is directed toward determining if a risk is considered an 'unacceptable risk'.

In determining whether a risk is an 'unacceptable risk', consideration should be given to the likelihood of a risk becoming a reality, but also on the seriousness of the consequences if it does.⁸

This reflects that the nature of the potential consequences might elevate the risk level. This is consistent with the approach adopted by the Australian risk management standard in so far as a risk can become unacceptable where consequences are serious, even if the likelihood is low or infrequent.

Decisions following risk assessment

The decision made following risk assessment equates to the process of risk treatment under the risk Standard.

Decisions following risk assessment

In making a decision following risk assessment, as per section 8 of the Act, the "best interests of children and young people as the paramount consideration" will prevail in the consideration of risk and the determination of approval outcomes.

Broadly speaking, there are two different outcomes:

- **Prospective carer meets the requirements of section 514B**
 - The director-general has assessed that the person does not pose an unacceptable risk and is an appropriate person for the purposes of section 514B to care for a child or young person.
 - Where the person does not hold a WWVP registration, the director-general has additionally considered information under section 514B(3).
 - Further Carer Assessments will be conducted to determine suitability under section 514B.
- **Prospective carer does not meet the requirements of section 514B(3)**
 - The director-general has assessed that the person may pose an unacceptable risk of harm to children or young people, and has therefore determined that they are not an appropriate person,
or

⁸ See *Department of Human Services v DR* [2013] VSC 579 at [61]

- The director-general has assessed that the person does meet the other requirements of s514B(3).

Monitoring of approved carers

If a person is authorised under section 514B as an approved carer, throughout the period of a person's carer approval, there will be ongoing monitoring by CYPs to ensure that the person continues to not present a risk of harm to children or young people. The director-general can receive information from any source about changes in relevant information about an approved carer which might lead to determinations about whether or not the person presents a risk of harm. Furthermore, section 514F of the Act makes it an offence for an approved carer not to notify the director-general of changes in relevant information within 7 days of those changes occurring. The director-general will use any such information in considering an additional risk assessment.

Ongoing risk assessment

Once a carer is assessed as an appropriate person and granted a long-term Approved Carer Authority, an ongoing risk assessment of their capacity will be undertaken every 5 years.

If significant concerns are raised during the 5-year approval period, an additional review of the person's suitability may occur.

This continued assessment focuses on the systematic reassessment and review of risk and safety factors identified and the ability for the person to remain an approved carer.

Revocation of carer approval

Section 514EA outlines when the director-general may revoke a person's approval as an approved carer.

Further Information

Further information can be located as follows:

Community Services Directorate website <https://www.communityservices.act.gov.au/>

Children and Young People Act 2008 <https://legislation.act.gov.au/a/2008-19/>

Working with Vulnerable People (Background Checking) Act 2011 <https://www.legislation.act.gov.au/a/2011-44/>

ACT Human Rights Commission: <https://hrc.act.gov.au/>

ACT Legislation Register: <https://legislation.act.gov.au>

Australia and New Zealand Standard Offence Classification:
<https://www.abs.gov.au/ausstats/abs@.nsf/mf/1234.0>

National Offence Index: <https://www.abs.gov.au/ausstats/abs@.nsf/mf/1234.0.55.001>

Reportable Conduct Scheme: <https://www.communityservices.act.gov.au/ocvfs/children/reportable-conduct-scheme>

Royal Commission into Institutional Responses to Child Sexual Abuse:
<https://www.childabuseroyalcommission.gov.au>

Standards Australia: AS 31000: 2018 Risk Management – Guidelines
<https://www.standards.org.au/standards-catalogue/sa-snz/publicsafety/ob-007/as--iso--31000-colon-2018>

Table 1 – Summary of factors which the director-general *must* consider in relation to an applicant who does *not hold* a WWVP registration

Factor	Possible Considerations	Possible evidence	Weight
Prospective carer is a 'significant person' within the meaning of section 14 (S 514B (3) (c) (ii))	Whether they are a person (other than a family member) who the child or young person, a family member of the child or young person or the director-general considers is significant in the child's or young person's life	Child protection information holdings Information gathered from child Information gathered from birth parents or other significant family / community members Submission by prospective carer	↗
Prospective carer is a person who has familiar relationship to the child or young person (S 514B (3) (c) (ii))	The length, degree and the extent of the relationship	Other source information Genograms, finding Kin and other cultural definitions	↗
	Relationship, frequency of contact, trust, safety and attachment		↗
Prospective carer is a person who, in the circumstances, does not pose an unacceptable risk to the child or young person (S 514B (3) (c) (ii))	Criminal History and how this may impact on their ability to care for the child	Criminal History Check Submission by prospective carer Statement of Facts Court documents	↔*
	Child Protection History and how this may impact on their ability to care for the child	Child protection information holdings Submission by prospective carer	↔*
	Protective factors and risk mitigation strategies	Reportable Conduct Investigation	↗
	Other source information that may be relevant	Other source information Independent or Professional Assessments	↔*
It would be in the best interests of the child or young person to have the person authorised as their kinship carer or foster carer (S 514B (3) (c) (ii))	The views and wishes of the child or young person	Child protection information holdings	↗
	The child's or young person's sense of racial, ethnic, religious, individual or cultural identity should be preserved and enhanced	Information gathered from child Information gathered from birth parents or other significant family /community members	↗
	The child's or young person's education, training or lawful employment should be encouraged and continued without unnecessary interruption	Submission by prospective carer Other source information	↗
	The child's or young person's age, maturity, developmental capacity, sex, background and other relevant characteristics should be considered		↗
	The need for the child or young person to maintain a connection with the lifestyle, culture and		↗

Children and Young People (Kinship and Foster Carers Risk Assessment) Guidelines 2023

	traditions of the child's or young person's Aboriginal or Torres Strait Islander community		
	The length, degree and the extent of the relationship		↗
	The views and wishes of the birth parents or other significant family /community members		↔*

↗ = increased weight given to information

↔* = weight given dependent on other circumstances

Table 2 – Summary of factors which the director-general *must* consider in relation to an applicant's criminal history and their possible risk impact

Factor	Consideration	Possible evidence	Impact on risk level
Nature, Gravity and Circumstances of offence (or alleged offence, or matter about which information has been received) (s65 of the CYP Act)	An offence relating to the provision of services for children or young people	Criminal History Check Child protection information holdings Reportable Conduct Investigation Statement of Facts Court documents Regulatory or other reports Other source information Submission by the prospective carer Independent or Professional Assessments	↑
	An offence against a child or young person		↑
	An offence involving a child or young person		↑
	An offence involving violence		↑
	A sex offence		↑
	An offence involving dishonesty or fraud		↑
	An offence involving possession of, or trafficking in, a drug of dependence or controlled drug		↑
	An offence against an animal		↑
	Characteristics of any relevant offence (including those listed above) in the applicant's criminal history and how it is related to providing care to a child		↔
	All CYPs information holdings, i.e. child protection and criminal history (e.g. if there is a pattern of offending or violent behaviour)		↔
	Whether or not the event/concern (or the outcome) impacts the applicant's ability to perform their responsibilities as a carer		↔

↑ = increase to the risk/significance

↔ = risk level dependent on other circumstances of offence/alleged offence

* means this would need to be considered in the context of the nature/gravity of the offence, not only the fact that it occurred more than 5yrs ago

- means no impact on the risk or significance

Table 2a – Summary of factors which the director-general *may* consider in relation to an applicant’s criminal history and their possible risk impact

Factor	Consideration	Possible evidence	Impact on risk level
Nature of offence (or alleged offence, or matter about which information has been received)	Abuse of power or breach of trust	Statement of facts/prosecution brief Criminal history check Child protection information holdings Regulatory or agency reports Court documents Other source information	↑
	Pre-meditated or wilful action to harm		↑
	Committed against a vulnerable person/child/young person		↑
	Used force or weapons		↑
	Unlawful deprivation of personal liberty		↑
	No identifiable victim		↔
	Sexual offence		↑
	Prolonged, repeated, or gratuitous violence		↑
Gravity of offence (or alleged offence, or matter about which information has been received)	Penalty imposed: imprisonment (including suspended) sentence	Criminal history check	↑
	Penalty other than imprisonment		↔
	Maximum penalty imposed on applicant		↑
	Impact on victim or alleged victim	Police or witness statements Victim impact statement Statement of facts/prosecution brief Child protection information holdings	↔
	Pattern of escalating severity/seriousness	Criminal history check Police or witness statements Child protection information holdings	↑
	Extent of harm/injuries to victim/s: immediate and short lasting, or long term	Police or witness statements Victim impact statement Statement of facts/prosecution brief Child protection information holdings	↔ ↑
Circumstances of offence (or alleged offence, or matter about which information has been received)	Intoxicated during offence/alleged offence or matter about which information has been received: Non-recurring	Submission by applicant Statement of facts/prosecution brief Psychological/other professional reports	↔
	Diminished capacity due to mental state at time of offence/alleged offence, or matter about which information has been received	Police or witness statements Child protection information holdings Regulatory or agency reports	↔

Children and Young People (Kinship and Foster Carers Risk Assessment) Guidelines 2023

	Diminished insight at time of offence/alleged offence, or matter about which information has been received	Court documents Victim impact statement Other source information	↔
Relevance of offence (or alleged offence/conviction, or matter about which information has been received) and how it may impact on their ability to provide care to a child	Re-occurrence of offence/allegation/conviction would pose a significant risk to a child in the person's care	Criminal History Check Self-reported information in consent form Statement of facts	↑
	Re-occurrence of offence/allegation/conviction may pose a risk to a child in the person's care	Child protection information holdings	↔
	Protective factors and risk mitigations Re-occurrence of offence/allegation/conviction poses limited risk to a child in the person's care		↔ ↓
How long ago the offence was committed	Lapse of time since last offence/alleged offence, or matter about which information has been received less than 1 year	Criminal history check Police or witness statements Regulatory or agency reports	↑
	1-5 years	Court documents	–
	≥ 5 years (except child sexual offence)	Child protection information holdings	↔*
	Alleged/committed over extended time Repeated Frequent	Criminal history check Statement of facts/prosecution brief Child protection information holdings Other source information	↑ ↑ ↑
	Spontaneous		–
	Time elapsed since imposition/completion of any related penalty	Regulatory or agency reports Criminal history check	↔
Age of prospective carer at time of offence (or matter about which information has been received)	< 14 years	Criminal history check	↑
	≥ 14 years	Statement of facts/prosecution brief Child protection information holdings Court documents	–
	Significant difference in age/mental capacity between applicant and victim	Regulatory or agency reports	↑
Age of victim at time of offence (or matter about which information has been received)	< 18 years, or elderly	Statement of facts/prosecution brief Police/witness statements Victim impact statement Court documents	↑

Children and Young People (Kinship and Foster Carers Risk Assessment) Guidelines 2023

		Regulatory or agency reports Child protection information holdings	
--	--	---	--

↑ = increase to the risk/significance ↓ = decrease to the risk/significance ↔ = risk level dependent on other circumstances of offence/alleged offence
 * means this would need to be considered in the context of the nature/gravity of the offence, not only the fact that it occurred more than 5yrs ago
 - means no impact on the risk or significance

Table 3a – Summary of factors which the director-general *must* consider in relation to an applicant’s child protection history and their possible risk impact

Factor	Consideration	Possible evidence	Impact on risk level
Nature, Gravity and Circumstances of issue/incident/allegations and how it is related to providing care to a child	Number of child concern reports the nature, extent and outcome of any investigation into the abuse or neglect or alleged abuse or neglect	Child protection information holdings Reportable Conduct Investigation Criminal History Check Statement of facts	↔

↑ = increase to the risk/significance ↓ = decrease to the risk/significance ↔ = risk level dependent on other circumstances of offence/alleged offence
 * means this would need to be considered in the context of the nature/gravity of the offence, not only the fact that it occurred more than 5yrs ago
 - means no impact on the risk or significance

Table 3b – Summary of factors which the director-general may consider in relation to an applicant’s child protection history and their possible risk impact

Factor	Consideration	Possible evidence	Impact on risk level
Nature, Gravity and Circumstances of issue/incident/allegations and how it is related to providing care to a child	Multiple reports received over an extended period of time – child concern reports, notifications	Child protection information holdings Reportable Conduct Investigation Criminal History Check Statement of facts Court documents Regulatory or other reports Other source information Submission by the prospective carer Independent or Professional Assessments	↑
	There is history of multiple sources of notifiers alleging similar problems		↑
	Concerns relate to multiple harm types and / or multiple persons responsible for harm over time		↑
	Concerns have been received from service providers / professionals (mandated reporters)		↑
	Reports include incidents of inappropriate parenting in public		↑
	the child protection substantiations based on all the information available (e.g. if there is a pattern of behaviour and/or substantiations)		↑

Children and Young People (Kinship and Foster Carers Risk Assessment) Guidelines 2023

	Reports include allegations of a sexual nature towards children or young people		↑
The age of the victim/alleged victim	12-18 years		↔
	<12 years		↑
	<5 years		↑
	<2 years		↑
The period of time since the incident occurred	<10 years		↑
	≥10 years		↔
Other factors that may impact on the person's ability to care for a child	Whether or not the event/concern (or the outcome) impacts the prospective carer's ability to perform their responsibilities as a carer		↑
	Any particular vulnerabilities to abuse or neglect within the prospective carer's household to children (including factors such as social isolation, disability, drug and alcohol misuse, mental illness)		↑
	Carer factors which may affect the quality and competence of parenting or care (including social and psychological factors such as the beliefs the prospective carer has about the child, the impact of these beliefs on parenting or care and the nature of the relationship between the prospective carer and the child)		↑
	Previous or current Domestic Violence Orders or other Protection Orders		↑
	Pattern and history of abuse and neglect or other forms of risk for the child or siblings within the home or care environment		↑
	The existence and nature of both the formal and informal supports available to the family, and the ability and willingness of the carers to access and accept services		↓
	Any known family strengths and protective factors that may reduce future risk to the child and their siblings		↓

↑ = increase to the risk/significance

↓ = decrease to the risk/significance

↔ = risk level dependent on other circumstances of offence/alleged offence

Children and Young People (Kinship and Foster Carers Risk Assessment) Guidelines 2023

* means this would need to be considered in the context of the nature/gravity of the offence, not only the fact that it occurred more than 5yrs ago
 - means no impact on the risk or significance

Table 4: Summary of other factors which the director-general *may* consider in relation to an applicant’s criminal and child protection history and their possible risk impact

Factor	Consideration	Possible evidence	Impact on risk level
Change in circumstances since abuse or neglect or offence or matter about which information has been received	Mental health/illness/insight/problematic alcohol and/or other drug use: improvement or managed	Treatment plan Psychological/ other professional reports or Assessments Child protection information holdings	↔
	Maturity or demonstrated change in behaviour	Referee report/s Submission by prospective carer Psychological / other professional reports or assessments	↓
	Greater social support or stability		↓
	Change in socio-economic factors that influenced circumstances that led to the offences, or matters about which information has been received	Submission by prospective carer Referee report/s Psychological/ other professional reports or assessments	↓
Applicant’s attitude towards abuse and neglect or offence or matter about which information has been received	Attitude towards abuse and neglect generally and its effect on the child or young person	Child protection information holdings Submission by prospective carer Other source information	↔
	Their understanding of responsibility and any justifications for any abuse or neglect of the child	Court documents Statement of facts/prosecution brief	↔
	Accepted responsibility and/or apologised	Psychological/ other professional reports or assessments	↓
	Expressed remorse		↔
	Pleaded guilty in related court proceedings	Victim impact statement	↔
	Expressed regret	Referee reports	-
	Timing of remorse/regret: Up front or at time of offence or conviction After significant lapse in time, or for possible		↓

Children and Young People (Kinship and Foster Carers Risk Assessment) Guidelines 2023

	personal benefit		-
	Accepted treatment and/or need for change	Enrolment in/completion of treatment program	↓
	Demonstrated change and improvement in parenting capacity		
	Multiple breaches of court orders	Criminal history check Court documents	↑

↑ = increase to the risk/significance

↓ = decrease to the risk/significance

↔ = risk level dependent on other circumstances of offence/alleged offence

* means this would need to be considered in the context of the nature/gravity of the offence, not only the fact that it occurred more than 5yrs ago

- means no impact on the risk or significance