Australian Capital Territory

Working with Vulnerable People (Background Checking) Risk Assessment Guidelines 2026

Disallowable instrument DI2026–250

made under the

Working with Vulnerable People (Background Checking) Act 2011, s 27 (Risk assessment guidelines)

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1 Name of instrument

This instrument is the *Working with Vulnerable People (Background Checking) Risk Assessment Guidelines 2026*.

2 Commencement

This instrument commences on the day after its notification day.

3 Risk assessment guidelines

I make the guidelines in schedule 1 about how risk assessments are to be conducted under the Act.

4 Revocation

This instrument revokes the *Working with Vulnerable People (Background Checking) Risk Assessment Guidelines 2024* (DI2024-295).

Josh Rynehart
Commissioner for Fair Trading
25 November 2026

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SCHEDULE 1

RISK ASSESSMENT GUIDELINES

made under the *Working with Vulnerable People (Background Checking) Act 2011*

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"A person making a decision under this Act must regard the best interests of vulnerable people as the paramount consideration."

"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."

Working with Vulnerable People (Background Checking) Act 2011, (as amended); Section 6A "Best interests of vulnerable people paramount consideration"

Preamble

The *Working with Vulnerable People (Background Checking) Act 2011* (the Act), as amended, provides for background checking and registration of people who work with vulnerable people.

The intent of the Working with Vulnerable People (WWVP) scheme is to protect vulnerable people from harm. The intent is not to ensure that all individuals can engage in an activity of their choice, particularly if they are assessed as posing an unacceptable risk of harm to a vulnerable person.

It is important to note that the nature of some people's criminal history and other relevant background information, including convictions which may be very old, spent, or quashed, may result in registration, or re-registration, being refused or cancelled.

Furthermore, the introduction of disqualifying offences through changes to the Act which were passed in 2019 and 2020 will result in some people, including those who may have previously been registered, no longer being able to maintain their existing registration or will result in some people no longer being able to gain registration in order to work or volunteer in certain regulated activities.

The Act requires that, with some exceptions, any person who is seeking to work or volunteer with a vulnerable person must undergo a background check to determine whether or not they present a risk of harm to a vulnerable person. A key component of this check is an expanded criminal history check, which is more probing than similar checks a person may have previously undergone for other purposes.

Positive registration decisions may be made through an automated process where a background check identifies no adverse information. While this process involves automated decision-making, it does not involve the use of artificial intelligence (AI), machine learning or generative AI. Decisions are made by applying predefined rules and criteria, rather than through AI-based assessment, interpretation or judgement.

A risk assessment of a person seeking registration is conducted wherever there is criminal history or other information about offences or conduct which indicate the person may pose a risk of harm to vulnerable people.

The Act provides that the process of how such information is to be considered is to be outlined in "Risk Assessment Guidelines" (the Guidelines) which are made under section 27 of the Act.

The Guidelines provide the framework for what the Commissioner for Fair Trading (the Commissioner) must consider when conducting a risk assessment for the purposes of the Act; i.e. in determining whether an applicant poses an unacceptable risk of harm to a vulnerable person when engaging in a *regulated activity*. Section 8 and Schedule 1 of the Act describe what is a regulated activity for the purpose of WWVP, while Section 8A of the Act describes what is an NDIS activity.

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.

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It is not possible for the Guidelines to create a risk assessment framework that takes into account every possible scenario. The Guidelines outline the minimum mandatory considerations which the Commissioner must or may consider in assessing an individual's risk of harm.

The Guidelines include specific reference to those people seeking registration to undertake NDIS activities. In some cases, the requirements for people seeking registration for an NDIS activity differ from those seeking registration to undertake a regulated activity involving children, or other regulated activities more generally. Where this is the case, the NDIS specific requirements are clearly identified in the Guidelines.

Similarly, there are some requirements for those seeking registration to work with children which may differ from more general WWVP requirements. Where this is so, the working with children checking requirements are clearly identified in the Guidelines.

Transferability of registration across regulated activities and its impact on the risk assessment

For the purposes of the WWVP scheme (excepting for NDIS activities), unless there are any restrictions imposed on a person's registration, it can be used across the full range of regulated activities and across categories of vulnerable persons. This means that past offences and conduct need to be considered against the full range of regulated activities prescribed within the Act. This is because a person who is applying for registration for the purpose of volunteering to work in a drug and alcohol rehabilitation centre, for example, may then use their registration to work in a childcare centre. This is far from being an inconceivable scenario, and the potential level of risk posed by the registered person to people in each regulated activity is starkly different.

The resultant effect of this is that the risk assessment process must, to an extent, adopt a worst case scenario approach in terms of the breadth of regulated activity.

Note that a risk assessment for an NDIS activity or for working with children must be considered separately against slightly differing criteria (identified later in the Guidelines) to that for working with vulnerable people more generally.

If the Commissioner has determined that a person presents a risk of harm such that registration cannot be granted for an **NDIS activity** or to **work with children**, then it is also likely, based on the type of offences which result in exclusion, that the Commissioner will find that person not suitable for WWVP registration unless satisfied otherwise.

Compliance with other legislation

The Guidelines, as well as personnel from the office of the Commissioner, comply with a range of relevant legislation, both that of the ACT and also the Australian Government.

The WWVP Act and background checking scheme are components 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 legislation, agencies and administrative functions which collectively play a role in ensuring that the rights and aspirations of vulnerable people within our community are safeguarded.

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

- *Children and Young People Act 2008;*
- *Crimes Act 1914* (Federal);
- *Disability Discrimination Act 1992* (Federal);
- *Disability Services Act 1991;*

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- *Human Rights Act 2004;*
- *National Disability Insurance Scheme Act 2013* (Federal)*;*
- Reportable Conduct Scheme; and
- The *Senior Practitioner Act 2018* for the elimination and reduction of restrictive practices;

A key step in the ACT legislative process is the assessment of proposed law against the Territory's *Human Rights Act 2004*. The human rights assessment of both the 2019 and 2020 amendments to the Act acknowledges that the changes will impact on a small number of registrants and future applicants under the scheme. The human rights assessment for the 2019 Act noted that the amendments "*will impact on the human rights of a small number of registrants under the Working with Vulnerable People Scheme…*" That assessment also noted that the changes to the Act "*…seeks to protect the rights and dignity of vulnerable people by limiting their exposure to those who pose a risk to their safety and well-being"* and concluded that *"For the purpose of background checking, the person's right to protection from harm was determined to be the prevailing right."* The human rights assessment of the 2019 changes to the Act also concluded that "*While the WWVP registration scheme is inherently discriminatory* [toward some applicants or registered persons] *as it draws a distinction between individuals who have been convicted, found guilty of, or charged (or to be charged) with certain offences, the reason for the differential treatment is proportionate to the risk."*

Additionally, the human rights assessment of the 2020 amendments to the WWVP Act concluded that *"the protection of children and other vulnerable people is the paramount consideration and is prioritised over the rights of others involved in the WWVP scheme, including applicants."* This assessment went on to state that "*It is therefore necessary to treat certain people differently to best protect the rights and freedoms of vulnerable people.*

Links to the Royal Commission into Institutional Responses to Child Sexual Abuse

The standards adopted by the Act in relation to **working with children checks** were developed together by the Commonwealth, state and territory governments with reference to recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse. State and territory Ministers responsible for the different working with children check schemes have endorsed these national standards through the Council of Attorneys-General and Community Services Ministers' Forum.

Importantly, the ACT government committed to address all of the recommendations of the Royal Commission and has been a participant in the development of the "National Standards for Working with Children Checks" which have been developed to ensure a consistent approach to screening those people seeking registration for child-related work. Moreover, the approach taken in the ACT delivers on the expectations of the working with children checking reforms which were anticipated through the work of the Royal Commission.

Links with National Disability Insurance Scheme Legislation

The National Disability Insurance Scheme (NDIS) is governed by Australian Government legislation, specifically the *National Disability Insurance Scheme Act 2013*. Quality and governance of the scheme is overseen by a federal NDIS Quality and Safeguards Commission. This Commission is responsible for a range of matters, including collaborating with States and Territories to ensure nationally consistent NDIS worker screening processes. This Commission has allocated responsibility for NDIS worker screening checks in the ACT to the Commissioner for Fair Trading under the WWVP Act. The national approach to worker screening for NDIS activities has been agreed through the Council of Australian Governments' "Intergovernmental Agreement on Nationally Consistent Worker Screening for the National Disability Insurance Scheme" (the IGA).

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Transitional arrangements to give effect to this commenced in the ACT on 1 July 2019 with NDIS changes to the Act taking effect from 1 February 2021.

The Guidelines also incorporate provisions which are specific to those people seeking registration for the purposes of registration for an **NDIS activity**. These specific provisions are clearly identified throughout.

Consideration and Impact of Disqualifying Offences on people seeking registration for NDIS activities or to work with children

From 1 February 2021 disqualifying offences for people seeking registration for an **NDIS activity**, or to **work with children** apply. Disqualifying offences are categorised as "Class A" or "Class B" in the Act.

Schedule 3 of the Act provides comprehensive tables listing both Class A and Class B disqualifying offences. Column 4 of each table identifies specific conditions which have to be met in relation to an offence for it to be disqualifying for the purposes of registration for **NDIS** or for **working with children**.

Section 17(1A) of the Act provides that any person who has been *convicted* or *found guilty* of a Class A disqualifying offence (where a relevant condition mentioned in Column 4 of Part 3.2 of Schedule 3 is met) is not eligible for registration to engage in a **regulated activity involving children** or an **NDIS activity**. Where a person has been *charged* with a disqualifying offence they are also to be excluded from registration for an NDIS activity or from working with children unless the charge was/is subsequently withdrawn or discharged, or the person is acquitted, or there are exceptional circumstances in relation to the offence (30 (2)) which would otherwise justify registration.

The Act further prohibits a person who has been found to be ineligible under Section 17(1A) or had their registration cancelled, because of a Class A disqualifying offence, from reapplying for registration for an **NDIS activity** or to **work with children** (Section 22 (2A) of the Act) unless there has been a change in the relevant information about the person since the refusal or cancellation. An example of such a change is the Class A disqualifying offence is quashed. Furthermore, such a person is excluded from applying for NDIS work in another jurisdiction also.

Any person who has been convicted or found guilty of a Class B disqualifying offence (where a relevant condition mentioned in Column 4 of Part 3.3 of Schedule 3 is met) is to be excluded from registration for an NDIS activity or from working with children unless there are exceptional circumstances in relation to the offence which reduce the risk of harm posed by the person and which otherwise might justify registration.

Where a person has been *charged* with a Class A disqualifying offence, or charged or convicted or found guilty of a Class B disqualifying offence, the Commissioner will, where necessary, seek further information relating to exceptional circumstances relevant to the offence. Any such information gathered through this process will be considered by the Commissioner as part of the risk assessment process.

Where appropriate, the Commissioner will engage with not only the applicant, but also other parties, to obtain further information and to determine whether or not exceptional circumstances exist in relation to identified offences, classified as Class B offences.

Table 1 provides a summary of the factors which need to be considered by the Commissioner in relation to criminal history of an applicant for an **NDIS activity** or for **working with children**.

What information must the Commissioner consider?

The Act requires the Commissioner to make an assessment about the level of risk of harm a person poses to a vulnerable person, including, sexual, physical, emotional and financial harms. It does not matter if the risk arises

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from neglect, abuse or other conduct by the person. As such, the Commissioner will consider a range of information obtained from various sources during the risk assessment process if believed it is, or may be, relevant to determining whether the applicant poses an unacceptable risk.

Section 28 of the Act specifies the *matters* the Commissioner "*must or may take into account when conducting a risk assessment"* [28 (1) (a)], and "*how those matters must or may be taken into account"* [28 (1) (b)].

Section 28(2) of the Act requires that the following "*must be taken into account when conducting a risk assessment for a person in relation to a regulated activity"*.

- The person's criminal history
- Non-conviction information about the person
- Whether the person was previously given a negative notice under this Act or a corresponding law
- Whether the person was previously registered under this Act or a corresponding law (including whether the registration was suspended or cancelled)
- Any other information the Commissioner believes on reasonable grounds is or may be relevant in deciding whether, in engaging in the activity, the applicant poses a risk of harm to a vulnerable person.

The Guidelines provide that the applicant is able to make submissions to the Commissioner about any matter which the Commissioner may be taking into account. The Commissioner may request from the person, in writing, further information which may reasonably be required to make a decision in the risk assessment process. In the event that the person refuses to provide any such requested information, the Commissioner can refuse to consider the person's application further.

Section 28 (3)(b) of the Act requires that the Commissioner "*must not take into account any information about an applicant unless satisfied on reasonable grounds that the information is accurate".*

Note that it is an offence under the *Criminal Code, 2002* to make a false or misleading statement, to provide false or misleading information, or to provide a false or misleading document.

Criminal history

The primary risk indicator that is examined by the Commissioner is the applicant's national police history. As previously outlined, the expanded police history check used for this purpose is more probing than a police check a person might be familiar with and will identify spent[1] and unspent offences which the Act allows the Commissioner 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. It is important to remember that the Act regards the best interests of vulnerable people as the paramount consideration. Consideration of criminal history requires assessment of any *relevant offence* for which there may be pending charges or indeed a conviction or finding of guilt. The changes arising from the 2020 amendment to the Act resulted in incorporation of disqualifying offences in the definition of relevant offence (section 11A).

Section 29(1) of the Act requires that the Commissioner consider the following characteristics of any relevant offence included in the applicant's criminal history:

a) the nature, gravity and circumstances of the offence;
b) the relevance of the offence;

[1] 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.

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c) how long ago the offence was committed;
d) the age of the person and of the victim at the time of the offence;
e) whether the person's circumstances have changed since the offence was committed;
f) the applicant's attitude to the offence;
g) if any treatment or intervention was undertaken, any subsequent 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; and
j) any submission made by the applicant addressing the above.

Details on how these factors will be considered and evidence which may be referred to or sought to support consideration and decision making can be found in Table 2.

Additionally, Section 29(2) of the Act requires that consideration be given to whether the person has exceptional circumstances that justify them being registered if their criminal history includes a conviction or finding of guilt for a Class B disqualifying offence and they have applied to work in a regulated activity involving children or in an NDIS activity. Exceptional circumstances may also be considered where a person is charged with a Class A disqualifying offence. Further to this, section 30 (2) of the Act provides that consideration is to be given to whether there are exceptional circumstances justifying a person being registered where that person has outstanding charges for a disqualifying offence.

Previous negative notices

Excepting where a negative notice has been issued as a result of a Class A disqualifying offence, if an applicant was issued a negative notice (or equivalent) more than five years ago, the circumstances will be re-examined by the Commissioner. If the negative notice (or equivalent) was given by an issuing authority in another State or Territory (and included on the National Reference System, or the National Worker Screening Database which are described below), that authority will be contacted for further information. The WWVP scheme does not apply mandatory disqualifying offences, except for those people seeking registration for an **NDIS activity** or for **working with children**. Equivalent schemes in other jurisdictions may incorporate disqualifying offences and for this reason it may be possible in some circumstances for a person refused in another State or Territory to receive registration in the ACT.

If the notice was issued by the Commissioner within the previous five years, the applicant is ineligible to apply for registration unless there has been a change in "*relevant information about the person"* (except where the exclusion/negative notice was issued due to a disqualifying offence). Such changes might include: a change in the status of the offence (e.g. becomes spent, a person is acquitted of a pending charge, or a conviction is quashed); the person has successfully completed a course of treatment (confirmed by practitioners); or perhaps an employer/prospective employer is now available to support the applicant in mitigating previously identified risks to achieve role-based/restricted registration.

The *National Worker Screening Database*, administered by the NDIS Commission will be checked to determine the status of any **NDIS worker screening registrations** relating to an applicant. The National Worker Screening Database serves to support the national portability of NDIS registrations through maintaining a register of current registrations and exclusions. Decisions made by the Commissioner in relation to NDIS registrations will be uploaded to the National Worker Screening Database.

Additionally, negative decisions in relation to **Working with Children Checks** will be included on the *National Reference System*, administered by the Australian Criminal Intelligence Commission, thereby strengthening the protections to children through the sharing of outcomes to assist in determining the suitability of an applicant.

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Previous registrations

When conducting a risk assessment the Commissioner will take into account whether a person holds an equivalent registration in another State or Territory, in deciding whether the person poses a risk of harm to a vulnerable person when engaging in a regulated activity. As is the case with other applications, the primary source of information will be a criminal history check.

Any person holding a conditional or role-based registration (or equivalent) in another State or Territory will be subjected to the full risk assessment process. An issuing authority in another State or Territory, or previous employers may be contacted for further information.

If a person has held an equivalent registration (to work with children or vulnerable people) in another State or Territory that was cancelled or suspended, the Commissioner may contact the issuing authority to establish the circumstances. In such a situation, the applicant may provide a submission to the Commissioner in support of their application.

Non-conviction information

Another source of information which will be examined to assess whether or not a person presents an unacceptable level of risk is the applicant's non-conviction history. Consent to access this information is given in the application. The Commissioner will consider the following characteristics of any relevant offence, or alleged relevant offence, included in the *non-conviction information*[2]:

a) the nature, gravity and circumstances of the offence or alleged offence;
b) the relevance of the offence or alleged offence;
c) how long ago the offence or alleged offence was committed;
d) the age of the person and of the victim at the time of the offence or alleged offence;
e) the truthfulness, completeness and reliability of any information or evidence provided by the person who made the allegation or provided the initial information;
f) the nature, extent and outcome of any investigation into the offence or alleged offence;
g) any formal statement made by the applicant to a Police officer including any answer given in a recorded interview, in relation to the offence or alleged offence;
h) any evidence given by the person in a court proceeding for the offence or alleged offence;
i) whether this was the person's first offence or alleged offence; and
j) any submission made by the applicant addressing the above.

Details on how these factors will be considered and evidence which may be referred to or sought to support consideration, along with relative weight given to such information, can be found in Table 3.

Section 30(2) of the Act requires consideration of whether the person has exceptional circumstances that justify them being registered if their non-conviction information includes an outstanding charge for a disqualifying offence committed when they were an adult and they have applied for registration to engage in a regulated activity involving children or an NDIS activity.

The fact that an offence did not proceed to prosecution or may ultimately have been dismissed or quashed, does not necessarily mean that the offence did not occur. There are many reasons for which, following laying of charges, proceedings may not continue. The background checking unit will examine the context of the

[2] Non-conviction information is the following about an offence or an alleged offence: person has been charged for a relevant offence; the person has been charged with a relevant offence but the charge has lapsed, been withdrawn or discharged, or struck out; the person has been acquitted of an alleged relevant offence; the person has had a conviction for an alleged relevant offence quashed or set aside; the person has been served with an infringement notice for an alleged relevant offence; the person has a spent conviction for a relevant offence..

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circumstances surrounding any such alleged offence and will weigh up those circumstances in assessing the level of risk a person may present to vulnerable people.

Non-conviction information about alleged offences will generally carry less influence in the assessment of risk as there may not have been sufficient evidence for a conviction. The outcome of a risk assessment may be determined solely on the basis of any non-conviction information and, where appropriate such as where there is a history of alleged recurring relevant offences, the applicant may be asked to make a submission providing further information.

Other information

The consideration of other information provides for the assessment of risk where information obtained does not fall within the scope of criminal history or non-conviction information as defined in the Act. This may include information obtained from a range of sources such as: other government authorities (including, but not limited to, the Courts, Police, Care and Protection agencies, professional regulatory or registration authorities); employers; the applicant themselves; or other public sources such as a media report or tip off from a member of the public. Where an applicant has indicated that they were previously registered as a health professional or health practitioner, the Commissioner will contact the relevant regulatory or registration authority, or any relevant complaints bodies to obtain further information about any suspensions, cancellations or disciplinary action.

In considering information obtained from other sources the Commissioner will take into account:

a) how the information was obtained;
b) the relevance of the information;
c) the truthfulness, completeness and reliability of the information; and
d) any submission made by the applicant addressing the above.

Details on how these factors will be considered and evidence which may be referred to or sought, as well as relative weight applied to that information can be found in Table 4. Once an assessment of this has been undertaken, the information can then be applied (where appropriate) to Tables 2 and 3 to assist in further determining the level of risk. On occasions there will be intelligence available from trusted sources such as regulators in other jurisdictions, police, etc. On the basis of such intelligence, the Commissioner may conclude that it is more probable than not that an applicant's behaviour presents a risk of harm to a vulnerable person.

Weighting of non-conviction information and other information

The Commissioner is required to, where applicable, consider and assess information, other than criminal history, about a person. First and foremost, the Commissioner must be satisfied on reasonable grounds that such information is accurate (s28 (3)(b) of the Act) before considering it as part of a risk assessment. Where information is received from other than a law enforcement agency, regulatory agency, government entity, or other trusted source, the Commissioner will initially endeavour to validate that information through established, trusted and reliable sources. Tables 3 and 4 outline how the Commissioner will consider and weigh information from a variety of sources.

It is important to note that the standard of proof which is applied to decisions made under the WWVP Act is the *balance of probabilities*.

When considering the significance or severity of an offence or a person's conduct, information such as any relevant penalty applied is useful. Such information may not be readily available, however, in circumstances where there has been no charge, investigation, or subsequent judicial process. Where the Commissioner is satisfied on reasonable grounds that information about a person is accurate, while acknowledging that there has

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been no conviction or charges, a range of tools may be used to assist in assessing the gravity of the person's conduct. These tools include but may not be limited to: the list of offences in the Act's Schedule 3; or the National Offence Index (NOI). A *risk matrix*, such as that used by the ACT government may also be used to assist in determining the seriousness of consequences.

In some cases the applicant may have been the subject of charges but not prosecution, or indeed a matter may have been dismissed from court. In circumstances such as this the Commissioner may consider other information such as any relevant victim impact statements to assist in gauging the gravity of a person's conduct.

At all times, as per Section 6A of the Act, the "best interests of vulnerable people as the paramount consideration" will prevail in the consideration of risk and the determination of registration outcomes.

Additional Information and further considerations for a risk assessment

Section 19 of the Act provides that the Commissioner may request, in writing, that the applicant provide further information that is reasonably needed to decide an application. Such a request may include a request for the provision of documents. The Commissioner may refuse to consider an application further where the applicant does not comply with a request of this nature. In this event, the Commissioner will notify both the applicant and any named employer of the refusal to consider the application. Following an initial risk evaluation more information may be required to assist in better understanding the risk.

Sections 33 and 53 of the Act provide for the Commissioner to request information from any entity to provide information in relation to a risk assessment of a person. It as an offence under the Act for any entity that has been requested to provide information to refuse to do so (section 33 (3A), section 53 (3A)).

Following is a range of additional information and considerations which the Commissioner may also apply to a risk assessment.

Personal and/or professional referees

The Commissioner will generally give greater weight to references from referees who have known a person for an extended period of time *and* who appear to have specific knowledge of the offence/s and any subsequent change in behaviour or circumstances; or are qualified to make inferences about any change in behaviour or circumstances. Ideally any such referees will have knowledge of details of the matters that are being considered by the Commissioner not just the offences that might apply.

Lived experience

The Commissioner acknowledges that some individuals, by virtue of their history, have valuable lived experience to share with vulnerable people accessing a particular regulated activity or service, and that people can make significant changes in their lives. While these experiences may, in some circumstance, also increase the risk of harm, they may not automatically preclude registration depending on the regulated activity for which the person seeks registration.

Depending on the individual's circumstances, the applicant may need to demonstrate that these risks can be mitigated sufficiently to meet the requirements for a role-based or restricted registration. Such mitigation may include a need to engage with an employer or prospective employer to ensure that the they have knowledge and understanding of the risks involved and agree to possible mitigation measures.

Referral to Independent Advisors to the Commissioner

Independent Advisors are appointed by the Commissioner under section 34 of the Act to give independent advice to the Commissioner about any aspect of the risk assessment.

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The Commissioner may consult with one or more Independent Advisors prior to issuing a negative notice, and may also consult on any other application, if deemed necessary. An applicant/registrant will be advised when a case is to be referred to an independent advisor/s for advice.

The Commissioner's request for advice will provide a summary of the current status of the risk assessment and identify any specific matters of concern the Commissioner requires to be addressed by the advisor/s, which may be limited to an advisor's area of expertise or experience. The advisor/s will have access to all relevant information obtained about the person though all personal information will be de-identified. The advisor/s will be expected to provide advice within a reasonable timeframe and where requested, will be expected to provide a recommendation for registration as well as to address any specific concerns that are held by the Commissioner.

Giving consideration to exceptional circumstances

Where a person who has applied for or is registered to work in an NDIS activity or to work in a regulated activity involving children is found to have a conviction or finding of guilt for a Class B disqualifying offence or has an outstanding charge for a disqualifying offence consideration is to be given to whether the person has exceptional circumstances that justify the person being registered.

Exceptional circumstances are those that the Commissioner determines are unusual, uncommon or special, consideration of which may assist in determining whether or not a person poses an unacceptable risk of harm to vulnerable people. Commonly, these are circumstances that make the offender's criminal conduct more understandable, which may have the effect of reducing the severity of the person's crime. Exceptional circumstances are not limited to the circumstances of the offence leading to a presumed exclusion.

The word of the applicant alone is not sufficient when verifying and considering exceptional circumstances. Evidence must be provided by the applicant or will otherwise be identified by the Commissioner, where possible, to support or indeed refute any claim made by the applicant. The types of evidence which might be considered in relation to exceptional circumstances are: statements of facts; prosecution briefs; witness statements; reports from medical professionals; or court documents. References which the applicant may provide attesting to exceptional circumstances will generally carry less weight than other forms of evidence previously outlined. Where references are provided, greater weight may be given to those that demonstrate understanding of the actual nature of the offence/s the applicant or registrant has been responsible for.

There are a range of factors that may be considered as to whether exceptional circumstances might exist that justify the person being granted a registration for an **NDIS activity** or a **regulated activity involving children**. These include, but are not limited to:

- Factors related to the offence*:*
  The circumstances of the offence committed, or alleged to have been committed, by the person are such that the offence should be given less weight in determining whether the person poses a risk of harm to people with disability. Examples include, but are not limited to:
  - The offending was in response to extreme provocation by the victim.
  - The offending was in response to an abusive domestic relationship.
  - The applicant was acting in self-defence to, or defending another, against an unprovoked assault.
  - The applicant committed the offending under the direction/duress of a person in authority (e.g. a family member).
- Factors related to applicant (since offence):

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Exceptional circumstances exist in relation to the person that the person does not appear, or no longer appears, to pose a risk of harm to people with disability. Examples include, but are not limited to:

- The applicant has voluntarily and successfully completed a supervised intervention program (treatment, rehabilitation, behaviour management); evidence to support this might include a professional report from a treating specialist indicating a positive outcome of the intervention program.

- Irrelevant factors:
  - Age of offence and no offending since are not relevant factors when considering exceptional circumstances.

At all times, as per Section 6A of the Act, the "best interests of vulnerable people as the paramount consideration" will prevail in the consideration of risk and the determination of registration outcomes.

Interim Bar for people seeking registration for NDIS activities or for working with children

Section 15 of the Act provides for circumstances in which an unregistered person may be engaged in a regulated activity.

While a risk assessment of an **unregistered person engaged in an NDIS activity** or a **regulated activity involving children** is being undertaken, an interim bar may be imposed if the Commissioner reasonably believes that the person poses an unacceptable risk of harm to a vulnerable person (s15A). An Interim Bar has the effect of preventing the person from engaging in **NDIS activities** or **regulated activities involving children** until such time as the risk assessment is finalised and a decision is made about whether or not the person can engage in such activities.

An unregistered person must not withdraw an application in the event the Commissioner has imposed an interim bar on them (s20 (1A)).

The risk assessment process

The risk assessment process in the Guidelines is based on the risk Standard 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 the WWVP scheme, it involves the identification of risk sources, events, their causes (to the extent this can be determined) and potential consequences. The risk to be assessed by the Commissioner is the extent to which an applicant's background poses a threat of harm, be it sexual, physical, emotional, financial, neglect, or other, to a vulnerable person.

For the purposes of the Guidelines and risk assessment process, the definition of risk has been adopted from the ACT Civil and Administrative Tribunal matter of *Applicant 201915 v Commissioner for Fair Trading*[3] and means a "chance or the possibility", while harm is described in the decision of that same matter as a "physical injury or a 'moral' one, which in turn means an emotional or psychological harm."

The primary source of risk used in the process is the person's criminal history. Other sources of risk include: information about previous registrations; non-conviction information, and other information about the person which may become known to the Commissioner through the risk assessment process. These different types of information have been discussed in detail earlier in the Guidelines.

[3] ACT Civil & Administrative Tribunal *Applicant 201915 v Commissioner For Fair Trading (Occupational Regulation) [2019] ACAT 117*

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Risk analysis

This is the process of understanding the nature of risk, its characteristics, including the risk level. It is about establishing the likelihood and consequence of risk and, in the context of working with vulnerable people, the potential impact a person might have on a vulnerable person when working in a regulated activity. To assist in risk analysis consideration is to be given to a range of factors which are outlined in detail in Tables 2 and 3.

Risk evaluation

Risk evaluation is the process of comparing results of risk analysis with any established criteria and determining what additional action may be required. In this circumstance, the risk criteria which may be referenced to assist in decision making includes the tables of disqualifying offences in Parts 3.2 and 3.3 of the Act, the National Offence Index, and the Risk Matrix.

Decisions may be taken to mitigate risks and this is recognised in the decisions taken about registration, or not, of the person.

In the first instance, past offences identified through the criminal history check can be compared against Table 5 – "Relative severity of relevant offences and risk rating table". This table largely corresponds to the list of *relevant offences* which are outlined in Section 26 of the Act. These offences range in severity and as severity increases a different level of consideration ought be applied through the risk assessment process. The table aligns offences of increasing severity against likely registration outcomes and identifies likely circumstances in which cases might be referred to an Independent Advisor. The shading in the table is representative of the increasing relative severity and corresponds with some of the decisions or steps in the process. Note that this table is a guide only and does not represent all the factors that are required to be considered by Section 29 of the Act. The shading also corresponds with the varying levels of risk identified in the risk rating table which forms part of Table 5 and this first step will provide an initial rating of risk level.

The end result of the risk assessment process is to determine the level of risk posed by an applicant and, in particular, whether or not the applicant poses an *unacceptable risk of harm* to vulnerable people. In considering this, the Commissioner adopts observations from the Victorian Supreme Court case of *Department of Human Services v DR*[4] in which that Court reasoned that the term '*unacceptable risk'* is established if *"there is a sufficient likelihood of the occurrence of the risk which, having regard to all relevant circumstances, make it unacceptable."*[5] Further to this, the risk assessment process also adopts the observation from the same case in that *"Whether a risk is unacceptable will depend not only upon the likelihood of it becoming reality but also on the seriousness of the consequences if it does."*[6] This latter point reflects that it is the nature of the potential consequences that 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.

[4] Victorian Supreme Court Department of Human Services v DR [2013] VSC 579

[5] 2013 VSC 579 [60]

[6] 2013 VSC 579 [61]

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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 6A of the Act, the "best interests of vulnerable people as the paramount consideration" will prevail in the consideration of risk and the determination of registration outcomes.

Sections 40, 41 and 42 of the Act describe the various registration outcomes. The registration scheme has been designed to provide some flexibility in recognition of the fact that, **with the exception of NDIS activities and regulated activities involving children**, a person can potentially work across the remaining range of regulated activities. The outcome of the risk assessment, including consideration of any submissions made by the applicant, will influence the type of registration that can be issued.

A person meeting the criteria relating to disqualifying offences, and who is seeking registration for the purpose of either NDIS or working with children activities, will be excluded from registration for those purposes. Such an exclusion equates to a negative notice or an automatic restriction from being able to work in an NDIS activity or to work with children.

Non-adverse outcomes are referenced in section 41 of the Act, which outlines the requirements for issue of registrations following positive risk assessment. Registration of a person, and issue of a positive, unrestricted WWVP registration, is non-adverse as it provides the applicant with broad clearance to engage in regulated activities or services with vulnerable people. These registration types are not subject to limitations or conditions for the individual. Applications that meet all criteria below would result in an automated affirmative outcome that meets the requirements set within the Access Canberra Automated Affirmative Decision-Making Policy (AADM), specifically where the applicant:

a. satisfies all requirements for a complete application, including in-person or remote identity verification and payment of any applicable fee; and

b. does not have a relevant criminal history; and,

c. does not have relevant findings of misconduct; and,

d. has not identified any issues through self-disclosure; and,

e. does not have any issues considered relevant by Access Canberra; and,

f. has not previously been denied a Working with Children Check (WWCC) clearance or National Disability Insurance Scheme (NDIS) clearance, or had a clearance revoked.

Automated affirmative outcomes are deemed to be decisions made by the Commissioner for Fair Trading under the *Working with Vulnerable People (Background Checking) Act 2011*.

Broadly speaking, there are three different registration outcomes, one of which will apply to each application.

- **Positive +/- NDIS or WWCC**
    - The person does not present a risk of harm to vulnerable people, or any level of identified risk is acceptable or such low level that no mitigating measures need to be put in place.
    - The person will be able to work in regulated activities involving children *if* their criminal history does not include disqualifying offences. Note that if a person cannot work in regulated activities relating to children because of a disqualifying offence then that qualifies as a negative notice for that purpose and that outcome will be recorded on the National Reference System.

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- The person will be able to work in an NDIS activity *if* their criminal history does not include any disqualifying offences *and* registration for an NDIS activity was requested at the time of application with relevant details of the NDIS provider with whom the person intends to work/volunteer included in the person's application. Note that if a person cannot work in NDIS activities because of a disqualifying offence then that qualifies as a negative notice for that purpose and that outcome will be recorded on the National Worker Screening Database.
- The person is able to move between employers or volunteer positions without reapplying and can move between all other types of regulated activities.
- The registration will be valid for up to 5 years.

- **Positive with restrictions (including +/- NDIS or WWCC), or Role Based restriction**

  - Where the person is assessed as presenting a medium or higher level of risk, a Positive outcome with Restrictions or Role Based registration will be applied unless it has been identified that the risk is acceptable due to other mitigating factors.
  - In the Act, this outcome reflects:
    - s42A Conditional registration – class A disqualifying offence;
    - s42B Conditional registration – role based registration; and
    - s42C Role based registration – class B disqualifying offences and pending charges for any disqualifying offences. This section includes registration of kinship carers who have disqualifying offences which might otherwise prevent or limit registration
  - The person is able to work in some, but not all regulated activities for up to 5 years.
  - Depending on the risk assessment outcome the person may be able to work in regulated activities involving children *if* their criminal history does not include Class A disqualifying offences.
  - Depending on the risk assessment outcome the person may be able to work in an NDIS activity *if* their criminal history does not include Class A disqualifying offences *and* registration for an NDIS activity was requested at the time of application and relevant details of the NDIS provider with whom the person intends to work/volunteer were included in the person's application.
  - Restrictions imposed may be broad (Jon may only work in X, Y and Z regulated activities), or specific (Jane may not drive a vehicle with a vulnerable person as a passenger in the course of her role) and will be designed according to the specific risk/s identified during the risk assessment process.
  - The applicant can request reconsideration of any proposed restrictions. The Commissioner will consider any new or corrected information provided before making a decision.
  - The Commissioner will inform the employer (where named) of the restrictions placed on the individual's registration but not the reasons for doing so.
  - In most cases, restrictions are transferable across workplaces and do not require nomination of a specific employer.
  - If the outcome for a person is a Positive decision with a Role Based condition, then the following will apply:
    - Employer/workplace-based measures will be required to mitigate identified risks.
    - This type of registration restricts a person to engagement in a specified regulated activity and role and requires support and input from a named employer; for example, a person may only work as a counsellor in a particular mental health program.
    - The Commissioner will assess the organisational capability of the employer, and the controls in place to support that person in their employment, based on the information provided in support of the applicant.

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        - Role-based registration decisions will be made on a case-by-case basis in consultation with the applicant, and their employer.
        - A role-based registration is not transferrable across workplaces, and the person cannot move freely between regulated activities or employers.
    - If the person's circumstances change during the period of registration, the Commissioner also has the capacity to amend a person's registration, and may issue a registration free of specified conditions if there is new information about a person which leads to an assessment of reduced risk of harm.

- **Negative Notice**

    - Where a person has committed offences, or has a history of non-conviction or other information which results in an assessment that they pose an unacceptable risk of harm to vulnerable people accessing regulated activities or services, the Commissioner must propose a negative notice.
    - The notice will outline the reasons for the negative risk assessment and the process for requesting a reconsideration of the proposed negative notice. If reconsideration is requested the Commissioner will conduct a revised risk assessment and consider any new or corrected information provided.
    - If no further information is received, or any new or corrected information does not satisfy the Commissioner that the risk of harm is reduced, a negative notice must be issued.
    - If a person has disqualifying offences and they have been excluded from working in a regulated activity involving children or an NDIS activity as a result then this equates to a Negative Notice for the purposes of those regulated activities.

Figure 1 (at the end of the Guidelines) graphically depicts the decision outcomes described above and provides information about links to relevant sections of the Act.

Monitoring of registered people

Throughout the period of a person's registration, there will be ongoing monitoring by Access Canberra to ensure that the person continues to not present a risk of harm to vulnerable people. The Commissioner is able to receive information from any source about changes in relevant information about a registered person which might lead to concerns about whether or not the person presents a risk of harm. Furthermore, Section 55A (1) of the Act makes it an offence for a registered person to not notify the Commissioner of changes in relevant information within 10 days of those changes occurring. The Commissioner will use any such information in considering an additional risk assessment.

In addition to this, the background screening unit within Access Canberra has links to like agencies in other jurisdictions, as well as with policing agencies all of which can provide ongoing information about people that are registered in the scheme. Any changes in relevant information about a person sourced through these networks can also be used to trigger an additional risk assessment.

If the Commissioner becomes aware of a person who is registered to work in an NDIS activity or in a regulated activity involving children, being convicted or found guilty of a Class A disqualifying offence then, in accordance with section 56A of the Act, the Commissioner can automatically cancel that person's registration.

Additional risk assessment

If it is believed there is new relevant information about a registered person, the Commissioner will notify the person that an *additional risk assessment* will be conducted in accordance with the Guidelines. The person may make a submission to support their case.

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If the Commissioner is concerned that the new information represents circumstances in which the person may pose an unacceptable risk of harm to a vulnerable person then an Interim Condition may be imposed, or the person's registration may be suspended.

Upon completion of the additional risk assessment the person's registration will remain unchanged, or will be amended according to the level of risk determined by the Commissioner. This may result in a person who was previously registered having conditions imposed on their registration, or their registration may be cancelled.

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Definitions

Criminal history is described in Section 24 of the Act and means any conviction of, or finding of guilt for a disqualifying or relevant offence

National Worker Screening Database is administered by the NDIS Commission and supports the national portability of NDIS registrations through maintaining a register of current registrations and exclusions.

National Reference System lists negative decisions made in relation to working with children checks and is administered by the Australian Criminal Intelligence Commission.

NDIS activity means a support or a service provided to people with a disability by a registered NDIS provider under the NDIS Act.

NDIS worker screening check means the assessment of whether a person who works, or seeks to work, with a person with disability poses a risk to such a person.

NDIS worker screening unit means the person or body which is responsible for conducting NDIS worker screening checks for a State or Territory under its NDIS worker screening legislation. In the ACT this is the background checking unit within Access Canberra.

relevant information means but is not limited to: a registered person is suspected of having committed a relevant offence or disqualifying offence; a registered person has been charged with a relevant offence or disqualifying offence; a registered person has been found guilty or convicted of a relevant offence or disqualifying offence; a person has been acquitted of a previously pending charge for a relevant offence; a person's conviction for a relevant offence has been quashed; a matter has been dismissed from court.

relevant offence is defined in section 11A of the Act and means: a sexual offence; an offence against the person; an offence involving violence; and offence involving dishonesty or fraud; an offence relating to property; and offence involving possession of, or trafficking in, a drug of dependence or controlled drug; an offence against an animal; a driving offence; or a disqualifying offence.

Working with Vulnerable People unit means the administrative unit within Access Canberra which has responsibility for receiving and assessing applications for registration under the *Working With Vulnerable People (Background Checking) Act 2011.*

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Further Information

Further information can be located as follows:

Access Canberra website www.accesscanberra.act.gov.au

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

ACT Legislation Register: http://www.legislation.act.gov.au/a/2011-44/default.asp

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

Australian Government Response to the Royal Commission into Institutional Responses to Child Sexual Abuse; 'National Standards for Working with Children Checks':
https://www.childabuseroyalcommissionresponse.gov.au/sites/default/files/2019-12/FinalNationalStandards-WorkingwithChildrenChecks_0.pdf

Council of Australian Governments' "Intergovernmental Agreement on Nationally Consistent Worker Screening for the National Disability Insurance Scheme"

https://www.coag.gov.au/about-coag/agreements/intergovernmental-agreement-nationally-consistent-worker-screening

National Disability Insurance Scheme (Practice Standards – Worker Screening) Rules 2018
https://www.legislation.gov.au/Details/F2018L00887

NDIS Quality and Safeguards Commission: https://www.ndiscommission.gov.au

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

"National Standards for Working with Children Checks":
https://www.childabuseroyalcommissionresponse.gov.au/sites/default/files/2019-12/FinalNationalStandards-WorkingwithChildrenChecks_0.pdf

Reportable Conduct Scheme: https://www.communityservices.act.gov.au/ocyfs/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

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Table 1 - Factors to be considered by the Commissioner relating to criminal history of an applicant for an NDIS activity or regulated activity involving children (WWCC)

Factor	Consideration	Possible evidence	Impact on risk level
Class A disqualifying offence s 26A of Act	Conviction/Finding of guilt	Criminal history check	↑
	Charges* currently against applicant (exceptional circumstances to be considered)	Statement of facts/prosecution brief Submission by applicant Non-conviction information Regulatory or agency reports Court documents Police/witness statements Consideration of offence conditions	↔
	Are conditions in Schedule 3, part 3.2, column 4 of the Act met?		↔
	Charges made against applicant but later withdrawn or matter dropped		↔
	Matter against applicant dismissed		↔
	Was the applicant mistakenly identified in matter?	Statement of facts/prosecution brief Police/witness statements Submission by applicant Court documents	↓
Class B disqualifying offence S 26A of Act	Conviction /Finding of guilt	Criminal history check	↑
	Charges currently against applicant	Statement of facts/prosecution brief Submission by applicant Non-conviction information Regulatory or agency reports Court documents Police/witness statements	↔
	Are conditions in Schedule 3, part 3.3, column 4 of the Act met?		↔
	Applicant charged but charges later withdrawn or matter dropped		↔
	Applicant acquitted		↓
	Are there any exceptional circumstances?		↔
	Are there any relevant offence conditions?		↔

*** =** Exceptional circumstances to be considered where an applicant has Class A offence charges pending.

↑ = increase to the risk/significance ↓ = decrease to the risk/significance ↔ = risk level dependent on other circumstances of offence/alleged offence

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Table 2 – Summary of factors which the Commissioner must 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) *(S 29 (1) (a) of the Act)*	Abuse of power or breach of trust	Statement of facts/prosecution brief Criminal history check Non-conviction information Regulatory or agency reports Court documents	↑
	Pre-meditated or wilful action to harm		↑
	Committed against a vulnerable 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) *(S 29 (1) (a) of the Act)*	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	↔
	Pattern of escalating severity/seriousness	Criminal history check Police or witness statements	↑
	Extent of harm/injuries to victim/s: immediate and short lasting, or	Police or witness statements Victim impact statement	↔
	long term	Statement of facts/prosecution brief National Offence Index	↑
Circumstances of offence (or alleged offence, or matter about which information has been received) *(S 29 (1) (a) of the Act)*	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 Non-conviction information Regulatory or agency reports Court documents Victim impact statement	↔
	Diminished insight at time of offence/alleged offence, or matter about which information has been received		↔

Shading indicates features which must also be considered by the Commissioner in relation to non-conviction information

* 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

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- means no impact on the risk or significance

Table 2: Summary of factors which the Commissioner must consider in relation to an applicant's criminal history and their possible risk impact (continued)

Factor	Consideration	Possible evidence	Impact on risk level
Relevance of offence (or alleged offence/conviction, or matter about which information has been received) *(S 29 (1) (b) of the Act)*	Nature of offence/allegation/conviction is inherent to the requirements of the regulated activity	Information in application form Employer information Criminal history check	↑
	Nature of offence/allegation/conviction is not inherent to the requirements of the regulated activity		↓
How long ago the offence was committed *(S 29 (1) (c) of the Act)*	Lapse of time since last offence/alleged offence, or matter about which information has been received	Criminal history check Police or witness statements Regulatory or agency reports Court documents	
	less than 1 year		↑
	1-5 years		–
	≥ 5 years (except child sexual offence)		↔*
	Alleged/committed over extended time	Criminal history check Statement of facts/prosecution brief Non-conviction information	↑
	Repeated		↑
	Frequent		↑
	Spontaneous		–
	Time elapsed since imposition/completion of any related penalty	Regulatory or agency reports Criminal history check	↔
Age of applicant at time of offence (or matter about which information has been received) *(S 29 (1) (d) of the Act)*	<14 years	Criminal history check Statement of facts/prosecution brief Court documents Regulatory or agency reports	↑
	> 14 years		–
	Significant difference in age/mental capacity between applicant and victim		↑
Age of victim at time of offence (or matter about which information has been received) *(S 29 (1) (d) of the Act)*	< 18 years, or elderly	Statement of facts/prosecution brief Police/witness statements Victim impact statement Court documents Regulatory or agency reports	↑

Shading indicates features which must also be considered by the Commissioner in relation to non-conviction information

* 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

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Table 2: Summary of factors which the Commissioner must consider in relation to an applicant's criminal history and their possible risk impact (continued)

Factor	Consideration	Possible evidence	Impact on risk level
Change in circumstances since offence or matter about which information has been received *(S 29 (1) (e) of the Act)*	Mental health/illness/insight/problematic alcohol and/or other drug use: improvement or managed	Treatment plan Psychological/ other professional reports or assessments	↔
	Maturity or demonstrated change in behaviour	Referee report/s Submission by applicant	↓
	Greater social support or stability	Psychological/ other professional reports or assessments	↓
	Change in socio-economic factors that influenced circumstances that led to the offences, or matters about which information has been received	Submission by applicant Referee report/s Psychological/ other professional reports or assessments	↓
Person's attitude towards offence/conviction, or matter about which information has been received *(S 29 (1) (f) of the Act)*	Accepted responsibility and/or apologised	Court documents Submission by applicant Statement of facts/prosecution brief Psychological/ other professional reports or assessments Victim impact statement Referee reports	↔
	Expressed remorse		↔
	Pleaded guilty in related court proceedings		↔
	Expressed regret		–
	Timing of remorse/regret: Up front or at time of offence or conviction After significant lapse in time, or for possible personal benefit		↓ –
	Accepted treatment and/or need for change	Enrolment in/completion of treatment program	↓
	Multiple breaches of court orders	Criminal history check Court documents	↑

- means no appreciable change to risk/significance

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Table 2: Summary of factors which the Commissioner must consider in relation to an applicant's criminal history and their possible risk impact (continued)

Factor	Consideration	Possible evidence	Impact on risk level
Assessment of the person following any program of treatment or intervention for the offence *(S 29 (1) (g) of the Act)*	Demonstrated improvement in area of concern	Lapse of time since treatment Psychological/ other professional reports or assessments (including treatment report) Statement of facts/prosecution brief Referee report/s	↓
	Failure to complete mandated treatment, or failure to engage with professional support/treatment		↑
	Two or more withdrawals from, or non-completion of voluntary treatment	Applicant submission Psychological/ other professional reports or assessments (including treatment report)	↑
If offence, or matter about which information has been received, was committed outside Australia, is it an offence in Australia? *(S 29 (1) (h) of the Act)*	Equivalent offence, or circumstances of overseas matter about which information has been received	Criminal history check from other country Police or witness statements from other country Review of relevant law from other country	–
	Equivalence comparison – penalty imposed in foreign country vs. maximum penalty in Australia for similar/same offence		↔
Any other offences committed by the applicant, or other matters about which information has been received *(S 29 (1) (i) of the Act)*	Multiple convictions/allegations for same type of offence	Criminal history check Non-conviction information Regulatory or other agency reports Submission by applicant	↑
	Multiple convictions/allegations over time		↑
	Single offence or alleged offence, or matter about which information has been received		↓#
Any submission made by the person to the Commissioner in relation to matters in s 29 (1) (a) – (i) of the Act (outlined above)	Submission provides rationale for actions, cause or circumstances, supported by evidence, where available	Psychological/ other professional reports or assessments (including treatment report) Statutory declaration Referee report Statement of facts/prosecution brief Regulatory or agency reports	↓
	Submission outlines change in circumstances and reasons for change		↔
	Submission is inconsistent with objective facts of a matter, where known		↑

means this would need to be considered in the context of the severity of the offence, not only that it is a single offence

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Table 3 – Summary of factors which the Commissioner must consider in relation to an applicant's non-conviction information and relative weight applied

Note that factors in the shaded area of Table 2 must also be considered as part of consideration of non-conviction and other information

Factor	Consideration	Possible evidence	Relative weight given to info
Truthfulness, reliability, and completeness of information or evidence provided by the person who made the allegation or provided the initial information *(s 30 (1) (e) of the Act)*	Competent, reliable, and credible witness	Statement of facts/prosecution brief Court documents Complaint information or report Referee reports	↗
	Unbiased or unconnected witness		↗
	Informant has history of fraud or deception, or other dishonesty offence		↙
	Information about past history of applicant cannot be validated through reliable sources		nil
Nature, extent, and outcome of any investigation into the offence or alleged offence *(s 30 (1) (f) of the Act)*	Insufficient information for investigation	Statement of facts/prosecution brief Regulatory or agency reports Police/witness statements	↙
	Full investigation, with witness statements		↗
Formal statement made by applicant to police, including any answer given in a recorded interview *(s 30 (1) (g) of the Act)*	Formal statement is consistent with information provided by applicant in application form, and also any other submission provided to Commissioner	Statement of facts/prosecution brief Regulatory or agency reports Court documents Submission by applicant Police/witness statements Referee reports	↗
	Information provided by any other party to the Commissioner are consistent with those in the applicant's formal statement and in information provided by the applicant to the Commissioner		↗
Any evidence given by the person in a court proceeding for the offence or alleged offence	Information provided by applicant through application process is consistent with facts of the offence or alleged offence	Court documents	↗
Whether this was the person's first offence or alleged offence	Information provided by applicant through application process is consistent with facts of the offence or alleged offence	Statement of facts/prosecution brief Court documents	↗

↗ = increased weight given to information ↙ = decreased weight given to information

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Table 3 - Summary of factors which the Commissioner must consider in relation to an applicant's non-conviction information and relative weight applied (continued)

Note that factors in the shaded area of Table 2 must also be considered as part of consideration of non-conviction information

Factor	Consideration	Possible evidence	Relative weight given to info
Any submission made by the person to the Commissioner in relation to matters (outlined above) or in the shaded areas of Table 2	Submission provides rationale for actions, cause or circumstances, supported by evidence, where available	Psychological/ other professional reports or assessments (including treatment report) Statutory declaration Referee reports Statement of facts/prosecution brief Regulatory or agency reports	↗
	Submission outlines change in circumstances and reasons for change		↗
	Submission is inconsistent with objective		↙

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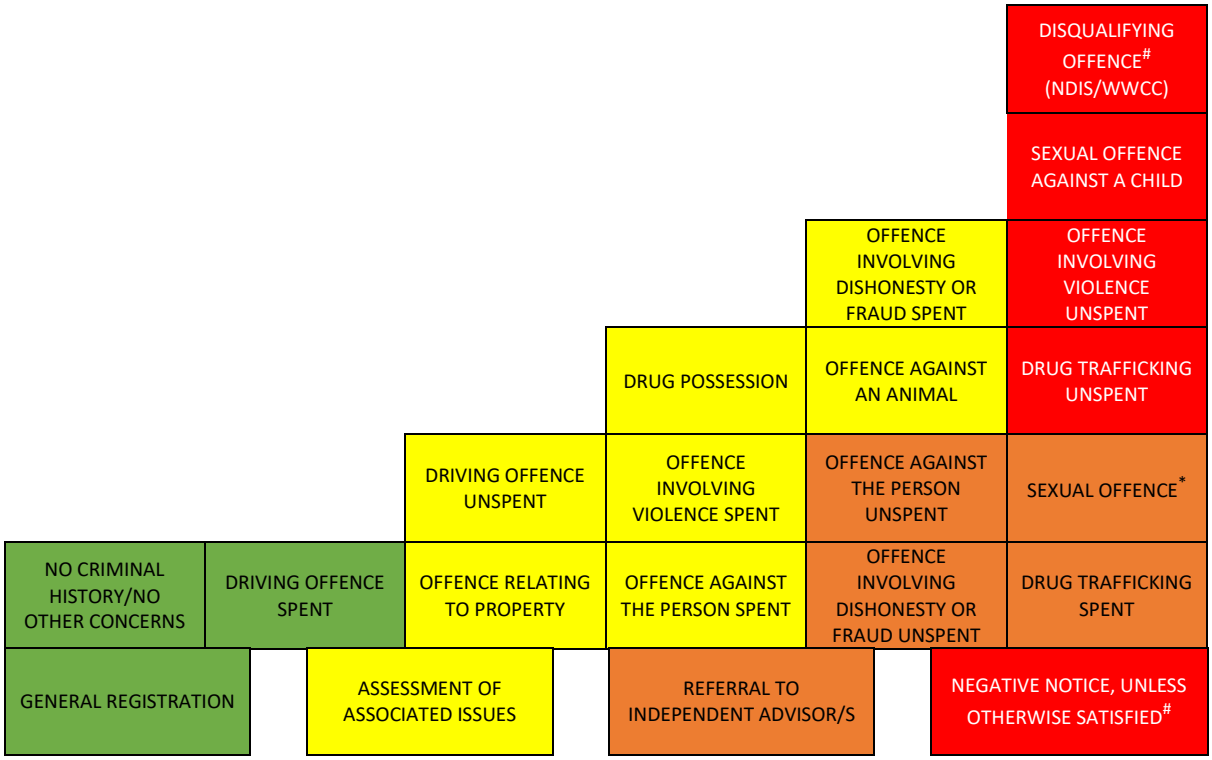
Table 4 – Summary of factors which the Commissioner must consider in relation to other information and relative weight applied

Factor	Consideration	Possible evidence	Relative weight given to info
How the information was obtained *(s 31 (a) of the Act)*	Obtained from a public authority	Statement of facts/prosecution brief Complaint information or report Court documents Police or witness statements Psychological/ other professional reports Submission by applicant	↗
	Anonymous tip off		↙
	Media report		↔
	Obtained from a source that does not know the person		↔
	Obtained from a source that knows the person		↔
Relevance of the information *(s 31 (b) of the Act)*	Directly relates to the person and alleged offence/s	Statement of facts/prosecution brief Complaint information or report Court documents Police or witness statements	↗
	Provides information about the offence or other offences which are likely to raise concerns about the level of risk to a vulnerable person		↔
	Information relates to the nature of the work proposed to be undertaken by the applicant		↗
Truthfulness, completeness and reliability of information *(s 31 (c) of the Act)*	Competent, reliable, and credible witness or informant	Statement of facts/prosecution brief Court documents Complaint information or report Referee reports	↗
	Unbiased or unconnected witness or informant		↗
	Informant has history of fraud or deception, or other dishonesty offence		↙
	Information about past history of applicant cannot be validated through reliable sources		nil

↔ = neutral weight given to information; dependent on other evidence

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Table 5 – Relative severity of relevant offences and risk rating table



*Urination/defaecation in public is not considered a sexual offence for the purposes of the risk assessment

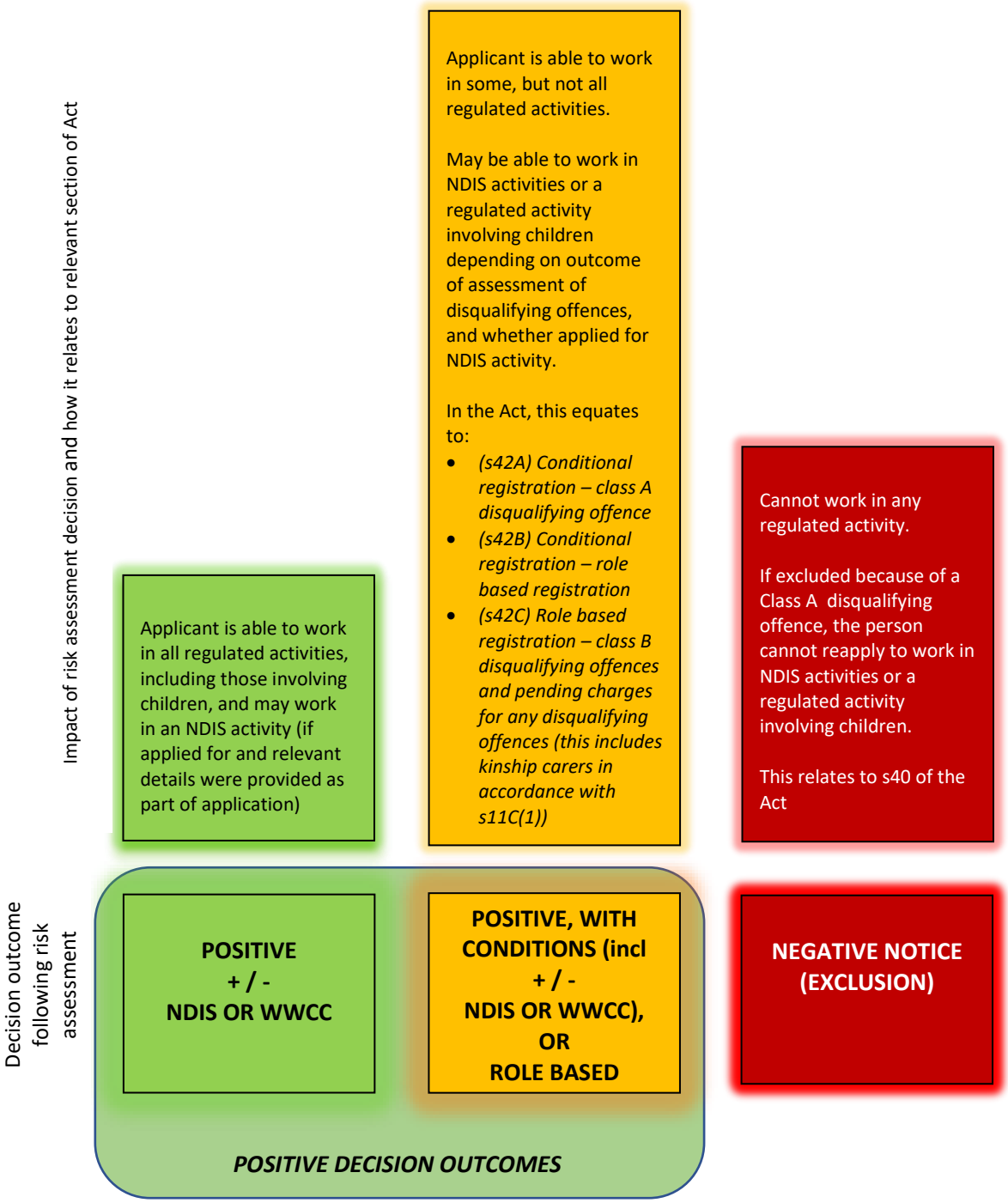
#For disqualifying offences, which apply to applications for **NDIS activities and for working with children**, consideration needs to be given to conditions specified in Schedule 3 of the Act, and also to any exceptional circumstances (where applicable).

Consequences

Likelihood	1 – Insignificant	2 – Minor	3 – Moderate	4 – Major	5 - Catastrophic
5 – Almost certain	Medium	High	High	Extreme	Extreme
4 – Likely	Medium	Medium	High	Extreme	Extreme
3 – Possible	Low	Medium	Medium	High	Extreme
2 – Unlikely	Low	Low	Medium	High	High
1 - Rare	Low	Low	Medium	Medium	Medium

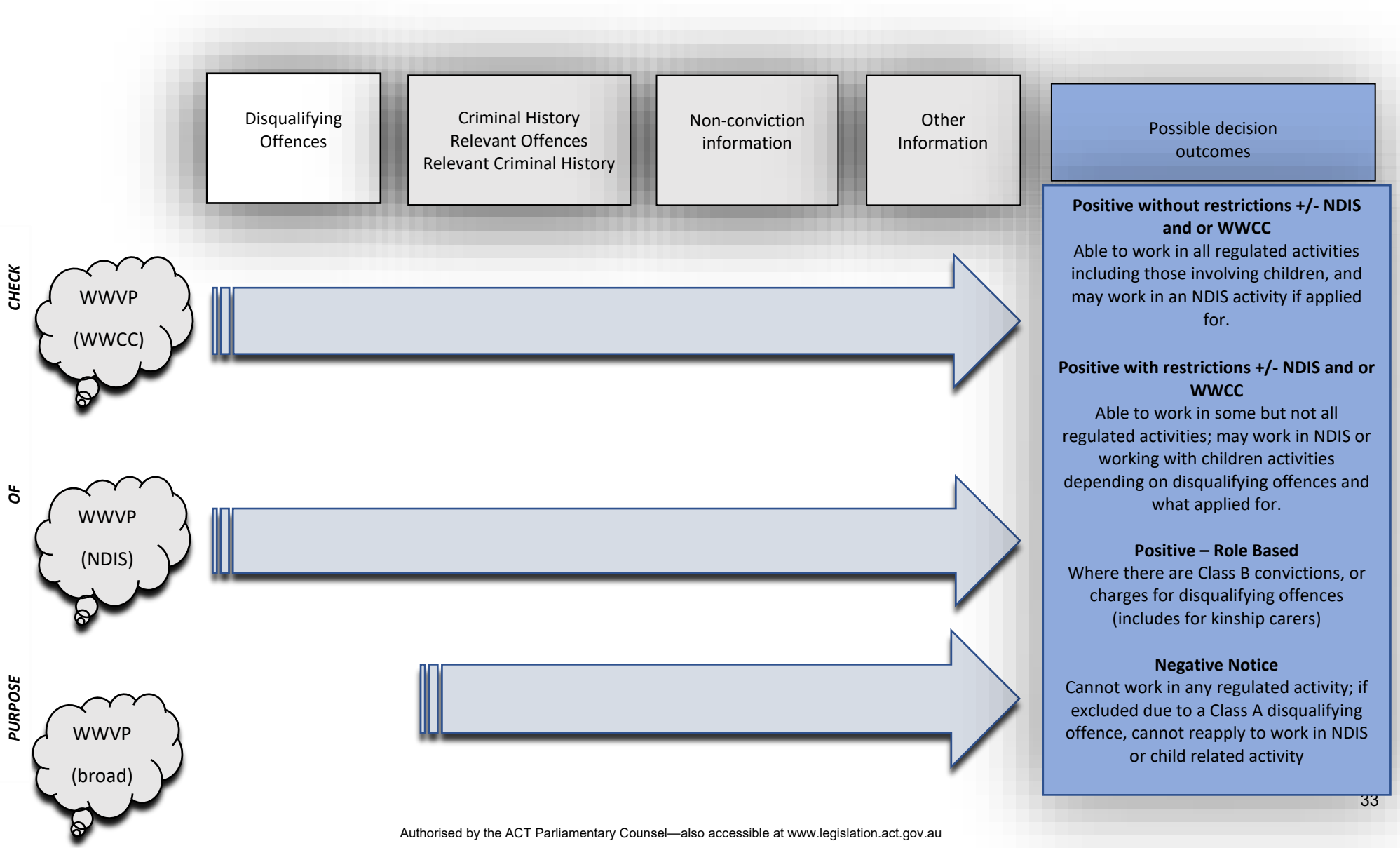
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Figure 1 – Decision outcomes summarised with reference to relevant section of Act



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Figure 2 -Information considered and possible decision outcomes for differing registration



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