

**2019**

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**WORKING WITH VULNERABLE PEOPLE (BACKGROUND CHECKING)  
AMENDMENT BILL 2019**

**REVISED EXPLANATORY STATEMENT**

**Presented by  
Chris Steel MLA  
Minister for Community Services and Facilities**

## **WORKING WITH VULNERABLE PEOPLE (BACKGROUND CHECKING)** **AMENDMENT BILL 2018**

### **Introduction**

This explanatory statement relates to the *Working with Vulnerable People (Background Checking) Amendment Bill 2018* (the Bill) as presented in the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate. It does not form part of the Bill and has not been endorsed by the Legislative Assembly.

The Statement must be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

### **Background**

The *Working with Vulnerable People (Background Checking) Act 2011* provides for worker screening, an essential part of the suite of protection mechanisms for ensuring the safety of all vulnerable people in the ACT.

The ACT has committed to participation in the National Disability Insurance Scheme (NDIS) and will transition fully to the Scheme from 1 July 2019. A key element of the safeguards under the Scheme which will remain the responsibility of the ACT is worker background screening. The ACT has signed an *Intergovernmental Agreement (IGA) on Nationally Consistent Worker Screening for the National Disability Insurance Scheme* to that end.

This Bill is only making the necessary changes to the Act in line with the NDIS Worker Screening Rule and some minor recommendations of the Working with Vulnerable People (WWVP) legislative review. There will be subsequent legislative amendments to ensure that the recommendations of the WWVP legislative review, undertaken during 2016, and the report of the Royal Commission into Institutional Responses to Child Sexual Abuse on working with children checks are implemented. This is the first of three proposed tranches of legislative change.

### **Overview**

The purpose of this Bill is to make amendments to the *Working with Vulnerable People (Background Checking) Act 2011* which will allow the ACT to implement its commitments under the IGA.

The primary changes arising through these amendments are the inclusion of a regulated activity specifically for the purpose of working and volunteering in the NDIS, the inclusion of disqualifying offences for NDIS activities, the inclusion of interim conditions for registration and the removal of registration cards. Further amendments to the Act will be sought later in 2019 to refine the use of disqualifying offences and to expand their application to the broader WWVP Scheme. While there are currently no disqualifying offences for the scheme more broadly, a person who is not registered due to a disqualifying offence may still be eligible for a registration to

engage in activities that are not NDIS activities, either generally or limited by conditions.

### **Human Rights Implications**

Some of the provisions included in this Bill will impact on the human rights of a small number of registrants under the Working with Vulnerable People Scheme (WWVP Scheme). In relation to limiting the human rights of an individual or group of individuals (s.28 of the Human Rights Act 2004) the following rights have been considered:

- Right to recognition and equality before the law (s.8)
- Right to privacy and reputation (s.12)
- Right to a fair trial (s.21)
- Right to the presumption of innocence (s.22)
- Right not to be tried or punished more than once (s.24)

### **Balance of rights**

The Bill aims to balance the rights of a person to work with a vulnerable person's rights to safety and protection from harm.

For the rights identified above the consideration of the first two of the factors for limitation apply generally.

- Right to life (s.9)
- Right to protection from torture and cruel, inhuman or degrading treatment etc (s.10)
- Right for the protection of the family and children (s.11)

**Nature of the right affected:** The above rights have been weighed against a person's right to protection from harm (s.9, s.10 & s.11). For the purpose of background checking, the person's right to protection from harm was determined to be the prevailing right.

As the amendments will strengthen the protection afforded to people who receive support or services from a registered NDIS provider, it will also strengthen the protections for children who constitute a subset of the former. As such, the amendments, as whole, will support the right of children to be protected.

The Bill 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.

**Importance of the purpose for limitation:** Background checking has a preventative effect in deterring individuals who pose a high risk of harm from seeking work in the sector. As the purpose is for the protection of individuals; that background checking is a tested mechanism for identifying and reducing the risk of harm; and that those whose rights are being limited present the greatest risk of harm, the limitation is an important component of achieving the objective of preventing harm to vulnerable people with a disability.

*Rights to be equal before the law (s.8) and not to be tried or punished more than once (s.24)*

Importance of the purpose for limitation: While the WWVP registration scheme is inherently discriminatory 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.

The regulatory impact statement for the NDIS Quality and Safeguarding Framework prepared by the Commonwealth Department of the Prime Minister and Cabinet found that the early identification and exclusion of those who pose a risk to vulnerable people should lead to a cumulative reduction in the incidence of abuse, violence and exploitation over time.

One of the contributing factors to the proposed benefits of a national approach to worker screening is that potential workers are assessed for risk before they start performing the activity (rather than being excluded after being found to have committed misconduct, or not excluded at all). For example, a person who has been excluded from participating in a regulated NDIS activity due to a disqualifying offence is not permitted to make subsequent applications to participate in an NDIS activity in the ACT or anywhere else in Australia. The applicant may make subsequent applications to participate in other regulated activities. The application is subject to standard risk assessment and potential conditions of registration.

*Right to privacy and reputation (s.12)*

The nature and extent of the limitation: Those who have been identified as posing the greatest future risk by virtue of their past behaviours will be subject to greater impact on their privacy than other applicants. The Bill will amend section 63A to enable the Commissioner for Fair Trading to share protected information to additional specified office holders (e.g. chief police officer in the ACT or another jurisdiction, the NDIS Quality and Safeguards Commissioner etc) the power is restricted by further amendment to sharing protected information only when the Commissioner is satisfied on reasonable grounds that the information is relevant to preventing harm, or a risk of harm to a vulnerable person or class of vulnerable people.

Where an applicant is required to disclose private information, this is for the express purpose of assessing whether that person poses an unacceptable risk of harm to vulnerable people.

Where the Commissioner is required to inform other relevant entities of an outcome, it is with the express purpose of preventing risk to vulnerable people. At various places of the Bill, the Commissioner will be authorised to inform the employer or prospective employer of an applicant about the status of the application, including when a negative notice is issued. This will avoid the employer breaching the legislation by engaging an unregistered employee in a regulated activity. The employer will not be advised of any information other than the registration status of the employee.

The Commissioner must ensure that relevant information is only shared with appropriate agents and is required to protect the person's right to privacy and reputation in all other dealings with reference to their private information.

Less restrictive means to achieve the outcome: The collection of relevant information relating to a person's behaviour and the sharing of information about a person is a core component of both the ACT Working with Vulnerable People Scheme and a national approach to worker screening. Any less restrictive means would compromise the initial risk assessment and increase the unacceptable risk that a person may pose to a vulnerable person both here and interstate.

Right to a fair trial (s.21)

The nature and extent of the limitation: Those who have been identified as posing the greatest future risk by virtue of their past behaviours may have their right to a fair trial limited. However, while there are circumstances where the reasons for a negative notice are not to be shared with an individual, this does not prevent an individual from seeking a review through the ACT Civil and Administrative Tribunal. An applicant who has been issued a negative notice may bring the matter before the Tribunal, under s.40(1) of the Act, as is their right, at which time the Tribunal may request the relevant information from the Commissioner to make the decision anew. The matter will then be for the ACAT to determine whether the information is to be shared with the person, if the ACAT decides to issue a negative notice.

Four decisions imposed by these amendments are subject to review:

- refuse to allow an unregistered person to engage in an NDIS activity;
- refuse to lift an interim bar;
- make person's registration subject to interim condition; and
- refuse to end person's suspension.

Less restrictive means to achieve the outcome: Given that there is a mechanism to overcome the potential limitation in this circumstance, there is no less restrictive means which achieves a procedural fairness outcome for the applicant and protects the integrity of active investigations or other matters that may be impacted by the disclosure.

Right to the presumption of innocence (s.22)

The nature and extent of the limitation: The use of strict liability offences is necessary to provide timely enforcement powers for the protection of vulnerable people, particularly as people may be permitted to work whilst an assessment is being made.

Less restrictive means to achieve the outcome: There is no less restrictive means of achieving this. All other means are not timely. The impact on rights is balanced against a need for a rapid punitive response to a failure to provide information that may protect a vulnerable person.

## Amendments

### **Clause 1 Name of the Act**

This is a technical clause and sets out the name of the new Act as the *Working with Vulnerable People (Background Checking) Amendment Act 2019*.

### **Clause 2 Commencement**

This clause provides that the new Act will commence on 1 July 2020. The 12 month period for commencement to occur is to enable sufficient time to implement systems to support this Act.

### **Clause 3 Legislation amended**

Clause 3 specifies that this Act amends the *Working with Vulnerable People (Background Checking) Act 2011*.

### **Clause 4 What is a regulated activity?**

#### **Section 8 (a), definition of regulated activity, paragraph (a)**

This clause adds an NDIS activity to the definition of regulated activity to implement a national approach to the background checking of workers operating in the National Disability Insurance Scheme.

### **Clause 5 What is a regulated activity?**

#### **New Section 8A**

This clause defines an NDIS activity as support or service provided to people with a disability by a registered NDIS provider under the *National Disability Insurance Scheme Act 2013*.

### **Clause 6 What is contact with a vulnerable person?**

#### **Section 10, definition of contact, new paragraph (b)**

Clause 6 provides a definition of contact generally which states that contact is more than incidental to engaging in the activity.

### **Clause 7 What is contact with a vulnerable person?**

#### **Section 10, definition of contact, new paragraph (d)**

Further definitions are included for a regulated NDIS activity. This definition refers to the Worker Screening Rules in which contact is physical, face-to-face, oral communication, written communication or electronic communication. Contact becomes more than incidental when physical contact with a person with disability or building rapport with a person with a disability is an integral and ordinary part of the performance of a person's duties. Having contact with multiple people with disability as part of service delivery or in specialist disability accommodation settings is also considered more than incidental contact.

### **Clause 8 Who is an employer?**

#### **Section 11**

Clause 8 clarifies the meaning of an employer.

### **Clause 9 When is a person required to be registered?**

#### **Section 12 (1)**

This clause amends Section 12 (1) to include key personnel, which are identified roles within an NDIS provider, as required to be registered under the Act. Key

personnel may not be captured by the definition of contact but have means to influence the activities of a person by virtue of their position. Key personnel for a registered NDIS provider is defined by an amendment to section 12 (4).

**Clauses 10 & 11 When is a person required to be registered?  
Section 12 (2) (b) and Section 12 (2A)**

Section 12 (2) states the circumstances where a person is NOT required to be registered to engage in an activity. This clause moves the exception of overnight camps from the list of circumstances and creates a new section which states that despite the conditions where a person is not required to be registered, if the activity involves an overnight camp for children or an NDIS activity in which the contact is more than incidental, then a person is still required to be registered to engage in those activities.

**Clause 12 When is a person required to be registered?  
Section 12 (4)**

This clause adds a definition for key personnel to Section 12(4) for the purpose of the Bill. The definition refers to section 11A of the *National Disability Insurance Scheme Act 2013*. Key personnel include people within registered NDIS providers who have executive decision-making responsibilities, have authority over or other means to influence; planning, directing or controlling the activities of a person.

**Clause 13 When unregistered person may be engaged in regulated activity-supervised employment  
New Section 15 (1) (b) (ia)**

Clause 13 adds the provision that Section 15 (1) applies to an unregistered person if the commissioner has not imposed an interim bar on the person while a risk assessment is completed. The purpose of the clause is to enable service providers to engage essential staff promptly if certain safeguards are in place.

**Clause 14 When unregistered person may be engaged in regulated activity-supervised employment  
New section 15 (2) (e)**

This clause adds to the provisions required for a person to engage in a regulated activity while unregistered. The new provisions include allowing a person who has registered under a corresponding law to engage while unregistered. This is in recognition of the national approach to worker background checking for NDIS activities. Additional provisions are also included to state that an employer is required to adequately manage any potential risk to vulnerable people from having an unregistered person engaging in the activity and to specify that person/s responsible for supervising the unregistered person are themselves registered to engage in an NDIS activity.

**Clause 15 When unregistered person may be engaged in regulated activity-supervised employment  
New section 15A**

This clause adds a new section allowing for the commissioner to refuse to allow an unregistered person to engage in an NDIS activity if the commissioner reasonably believes the person poses an unacceptable risk of harm to a vulnerable person (an

interim bar). The commissioner is required to advise the person in writing about the interim bar. The interim bar takes effect the day after the person has been advised.

The decision to apply an interim bar is a reviewable decision. A person may also apply to the commissioner to lift the interim bar if the commissioner has not advised of an outcome of the risk assessment and the bar has been in place for at least six months. The commissioner must either lift the interim bar or refuse to lift the interim bar. This decision is also reviewable.

An interim bar does impact on a person's right to work. This is an occasion where one person's rights have been limited in favour of another's. The commissioner must have reasonable belief that a person poses an unacceptable risk of harm to a vulnerable person before applying an interim bar.

**Clause 16    Meaning of application—pt 4**  
**New section 17A**

Clause 16 provides the definition of 'application' for Part 4. The definition notes that an application includes an application for renewal of registration.

**Clause 17    Application for registration**  
**Section 17**

This clause adds Sections 17 (3) and 17 (4) which allows a person to renew their registration up to the day that the current registration expires. If a person does make an application for renewal within that period, their current registration remains active until a new decision is made.

**Clause 18    Application for registration-contents**  
**Section 18 (1) (d)**

Clause 18 clarifies that employer information is required by people seeking to register for an NDIS activity. As part of the national approach to NDIS worker background checking, people engaging in this activity are required to provide additional information in their application.

**Clause 19    Application for registration-contents**  
**New section 18 (1) (d) (iv)**

This clause adds the requirement for a person intending to engage in a regulated NDIS activity to provide the registration number of the NDIS registered provider which will be their employer, on the application form.

**Clause 20    Application for registration-contents**  
**Section 18 (2) (a) (iii), note**

This clause states that the commissioner must notify a person's named employer: if the commissioner refuses to consider the person's application; that the person has withdrawn the application; that the Commissioner will not register the person; if there is a change in the person's registration status; or if a person's registration is suspended or cancelled or surrendered.

This provision may impact on a person's right to privacy. Information shared with an employer is to ensure that the employer does not breach Commonwealth law or ACT law to employ a person who is required to be registered but is not registered. This is



also to ensure that employers have sufficient information on which to undertake their own due diligence activities.

**Clause 21 Application for registration—contents**  
**New section 18 (2) (ba)**

Clause 21 requires a person to provide a written statement about whether they have been engaged in a regulated activity, where, in relation to that activity, allegations had been made or an investigation undertaken. If allegations have been made or an investigation has been undertaken the person is required to include the details in the written statement.

Examples of allegations are provided in the notes to the provision and include complaints or investigations related to non-compliance with an entity's conditions of registration or allegations or investigations of misconduct within a regulated activity.

**Clause 22 Application for registration—contents**  
**New section 18 (3), note**

Clause 22 removes references to approved forms and is consequential on the omission of section 69 Approved forms.

**Clause 23 Application for registration for NDIS activity—additional contents**  
**New section 18A**

This clause adds a new section to specify additional contents in the application required of a person seeking to be registered for a regulated NDIS activity. As part of the national approach to NDIS worker background checking, people engaging in this activity are required to provide additional information in their application. This information will support national information sharing and ongoing monitoring. These additional elements are designed to enhance the already strong protections for vulnerable people. Additional information sought by this provision includes:

- Section 18A (1) (a) (i) - consent to share information about a person's application status with the NDIS Quality and Safeguards Commission, the person's employer and other screening units operating under corresponding laws;
- Section 18A (1) (a) (ii) – consent to share information about the person with the NDIS Quality and Safeguards Commission or a law enforcement agency if the Commissioner believes the information is relevant to preventing harm or risk of harm to a vulnerable person
- Section 18A (1) (a) (iii) – consent for the commissioner to request information from another entity if the Commissioner believes the information to be relevant for determining the risk posed by the person to vulnerable people and whether that risk is acceptable.

This clause also requires a person seeking to engage in a regulated NDIS activity to self-disclose whether the person has previously been given a negative notice, either in the ACT or in a similar scheme in another jurisdiction; whether the person has ever had a civil penalty imposed upon them; whether the person has had family violence orders or protection orders made against them; and whether a care and protection order under the *Children and Young People Act 2008*, or equivalent in

another jurisdiction, has been made for a child for whom the person has had parental responsibility.

Offence provisions already exist in the Act for the provision of false or misleading information.

Section 18A (2) defines a law enforcement agency for the purpose of the Act.

**Clause 24 Application for registration-additional information  
New section 19 (3)**

This clause makes it a requirement for the commissioner to advise the person and the named employer if the commissioner refuses to consider the application further.

This provision may impact on a person's right to privacy. Information shared with an employer is to ensure that the employer does not breach Commonwealth law or ACT law to employ a person who is required to be registered but is not registered. This is also to ensure that employers have sufficient information on which to undertake their own due diligence activities.

**Clause 25 Application for registration-withdrawal  
New section 20 (1), note**

Clause 25 removes references to approved forms and is consequential on the omission of section 69 Approved forms.

**Clause 26 Application for registration-withdrawal  
New section 20 (1A)**

Clause 26 specifies that an applicant may not withdraw an application if the commissioner has imposed an interim bar on the person for a regulated NDIS activity. An interim bar is imposed if the commissioner reasonably believes that the person poses an unacceptable risk of harm to a vulnerable person. Preventing a person from withdrawing an application once an interim bar is imposed allows the commissioner to complete a risk assessment of a person. As part of the national approach to NDIS worker background checking, this prevents a person from initiating and withdrawing an application in multiple jurisdictions. The outcome of the risk assessment is captured on a national clearance database.

This provision may impact on a person's right to privacy. The capture of relevant information on the national database adds further to nationwide protections for vulnerable people.

**Clause 27 Offence—applicant fail to disclose change in relevant information  
New section 21A**

This clause adds a strict liability offence for a person who fails to tell the commissioner about a change in relevant information since applying for registration. The clause provides a definition of relevant information which is information pertaining to whether allegations or an investigation in relation to the person engaged in a regulated activity had been made or undertaken, and if so, the details of those allegations or investigations. It also includes whether there has been a change in any of the information under section 18A (b)(2) where a person is required

to self-disclose whether any penalties or negative notices have been imposed upon them.

The penalty under section 21A is 50 penalty units. Strict liability for failing to disclose a change in relevant information within 10 working days is necessary to provide timely enforcement powers for the protection of vulnerable people, particularly as people may be permitted to work whilst an assessment is being made.

**Clause 28    Restriction on reapplying for registration**  
**Section 22 (2) (a)**

This clause increases the time that must pass for a person to apply for registration following a negative notice or cancellation of registration from 3 years to 5 years. This is to align with the period of registration.

**Clause 29    Restriction on reapplying for registration**  
**New section 22 (2A)**

This clause restricts a person from reapplying to the commissioner for registration for an NDIS activity if the person had received a negative notice or had their registration cancelled due to the person having been convicted of a Class A disqualifying offence.

An exception to this rule is where a person can demonstrate mistaken identity or error of record in relation to Class A offences or exceptional circumstances in relation to Class B disqualifying offences. The consideration of non-conviction information is vital to the Commissioner's consideration of these issues.

This provision may impact on a person's right to equal treatment before the law and not be punished more than once. Disqualifying offences have been categorised as representing unacceptable risk and applied as proxies for patterns of behaviour. As the purpose is for the protection of individuals from those who present the greatest risk of harm, the limitation is an important component of achieving the objective of preventing harm to vulnerable people.

**Clause 30    Meaning of *criminal history***  
**Section 24**

This clause expands the definition of criminal history to include disqualifying offences. The clause states that a disqualifying offence includes a charge for an offence but does not include a charge that has otherwise ceased to have effect. It may have ceased to have effect through withdrawal, has been set aside, or the person has been acquitted, for example.

The purpose of background checking is to identify those people whose past behaviours indicate that there is a possible future risk of that person causing harm to a vulnerable individual during the course of a regulated activity. In this way, the ACT Government can exclude or impose restrictions on an individual working with vulnerable people to reduce the risk of harm to those people.

While the inclusion of many of these amendments will build on and enhance the rights of people with a disability to live free from harm and exploitation (s.10 of the *Human Rights Act 2004*), the inclusion of disqualifying offences with no rights of

appeal will limit the rights of individuals to natural justice and equality before the law (s.8 and 24 of the *Human Rights Act 2004*).

It is expected that the limitation of these rights will be confined to a small group of people in the ACT and will not prevent this group from seeking employment in other sectors.

While the establishment of disqualifying offences lays the foundation for application to all regulated activities, amendments at 26A will limit the application of disqualifying offences to registration for an NDIS activity, only. Further work will be undertaken in the future to finalise those offences that will apply more broadly to WWVP registrations as a result of recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse.

### **Clause 31    Meaning of *disqualifying offences* Section 26A**

This clause states that offences will be noted in a schedule to the Act (schedule 3, part 3.2, column 2; and schedule 3, part 3.3, column 2).

These amendments include only offences relating to registration for an NDIS activity. Further work will be undertaken in the future to finalise those offences that will apply more broadly to WWVP registrations as a result of recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse.

### **Clause 32    Risk assessment guidelines—criminal history New sections 29 (1) and 29 (2)**

This clause states that the risk assessment guidelines which guide the commissioner in undertaking risk assessment for a person seeking to register to engage in a regulated NDIS activity must include consideration of whether any offences for which a person has been previously convicted of, or has a current charge for, is a class A or class B offence. The guidelines must also provide for the consideration of several factors in relation to the offence.

The risk assessment guidelines must also provide guidance on whether exceptional circumstances might apply for a person who has been convicted or charged for a class B offence or has been charged for a Class A offence. Exceptional circumstances may include intimate relationship sexual offences where one party was under age or that are historical and those where community attitudes around the offence have changed. If a person is subsequently convicted of the Class A offences, it will result in the restriction on that person to engage in a regulated NDIS activity.

While there are currently no disqualifying offences for the scheme more broadly, a person who is not registered on account of a disqualifying offence may still be eligible for a registration to engage in activities that are not NDIS activities, either generally or limited by conditions.

The inclusion of disqualifying offences with no rights of appeal will limit the rights of individuals to natural justice and equality before the law (s.8 and 24 of the *Human Rights Act 2004*).

It is expected that the limitation of these rights will be confined to a small group of people in the ACT and will not prevent this group from seeking employment in other sectors. Disqualifying offences have been categorised as representing unacceptable risk and applied as proxies for patterns of behaviour. As the purpose is for the protection of individuals from those who present the greatest risk of harm, the limitation is an important component of achieving the objective of preventing harm to vulnerable people.

**Clause 33 Risk assessment guidelines—non-conviction information**  
**Section 30**

Clause 33 allows for the inclusion of disqualifying offences in the consideration of non-conviction information during risk assessment.

The consideration of non-conviction information is vital to the Commissioner's consideration of mistaken identity or error of record in relation to Class A disqualifying offences or exceptional circumstances in relation to Class B disqualifying offences.

**Clause 34 Commissioner may request information from an entity to conduct risk assessments**  
**Section 33 (1)**

This clause amends the Act to require a request to be in writing, if the Commissioner decides to request information under this section.

The Commissioner is required to consider relevant information that may have a bearing on whether the applicant poses an unacceptable risk to vulnerable people.

**Clause 35 Commissioner may request information from an entity to conduct risk assessments**  
**New sections 33 (3A) to (3C)**

Clause 35 creates a strict liability offence for an entity failing to comply with a request for information from the commissioner. Strict liability for failing to provide relevant information is necessary to provide timely enforcement powers for the protection of vulnerable people, particularly as people may be permitted to work whilst an assessment is being made. Clause 33 (3B) limits the application of the offence if the entity can demonstrate a reasonable excuse for not complying with the request.

**Clause 36 Independent advisors-advice**  
**Section 35 (2)**

This clause relates to the Commissioner's ability to ask an independent advisor about whether to give a person a role-based registration. The clause states that the Commissioner may ask one or more independent advisors for advice rather than requiring the Commissioner to do so.

**Clause 37 Proposed negative notices**  
**New section 37 (3A)**

This clause provides that the commissioner must not tell the person the reasons for a negative risk assessment if the information must not be given to a person under this Act or any other law applicable to the ACT. This could include where an active

investigation is underway and disclosing information to the person may compromise that investigation.

This provision may limit a person's right to a fair trial in relation to seeking review through the ACT Civil and Administrative Tribunal. However, as there may be scope for an applicant who has been issued a negative notice to bring the matter before the Tribunal, as is their right, and for the Tribunal to request the relevant information from the Commissioner, to remake the decision. The impact on this right is limited.

**Clause 38 Reconsideration of negative risk assessments**  
**Section 38 (1), note**

Clause 38 removes references to approved forms and is consequential on the omission of section 69 Approved forms.

**Clause 39 Negative notices**  
**New section 40 (4)**

Clause 39 requires a person engaging in a regulated NDIS activity while unregistered and who receives a negative notice, to notify their employer and each vulnerable person the person has contact with as part of engaging in an activity. People who are self-managing or plan managed participants of the NDIS are able to engage staff and volunteers to provide supports who are not formally screened or who have been denied registration through the national approach to worker background checking. As part of the national approach, it was agreed, people who have had a registration for an NDIS activity denied, are still required to advise each vulnerable person they engage with to ensure the vulnerable person can exercise their choice and control based on all the information. People continuing to work in a regulated disability activity, are still required to be registered generally, under the Act.

This provision may impact on a person's right to privacy. This disclosure is a balance of rights to ensure that people are advised of where risk may be present and allow individuals to make informed decisions about future engagement.

**Clause 40 Registration**  
**Section 41 (2) (b) and (c)**

This clause allows for the communication to a registered person of their unique registration number in addition to the advice they have been registered under the Act. The unique identifying number negates the need for a card. The absence of a card will result in employers checking for the most recent registration status.

**Clause 41 Registration**  
**Section 41 (3)**

This clause extends the period of registration from three to five years.

**Clause 42 Reconsideration of proposed conditional registration**  
**Section 44 (1), note**

Clause 42 removes references to approved forms and is consequential on the omission of section 69 Approved forms.

**Clause 43 Reconsideration of proposed conditional registration**

#### **New section 44 (1A)**

This clause requires a person, upon making a request for reconsideration of their conditional registration, to provide to the Commissioner any new or corrected information they have and believe is relevant to the decision.

The provision does not remove any appeal rights for a person seeking a reconsideration of their conditional registration nor does it limit the procedural fairness afforded to them. This provision closes an administrative loop which allowed for successive requests to be made for reconsideration without any new information to warrant a reconsideration. This provision seeks to streamline the process to find an appropriate balance between procedural fairness and administrative efficiency.

#### **Clause 44 Reconsideration of proposed conditional registration Section 44 (3)**

This clause operates in relation to the new section above placing the onus on the applicant to provide new information they hold and believe relevant when making the request. This clause removes the requirement for the Commissioner to consider information a person has given in relation to the reconsideration of their conditional registration. The amendment allows the discretion of the Commissioner to determine the relevance of the information and whether or not to consider it.

#### **Clause 45 Conditional registration—amendment Section 47 (1)**

This clause allows a person to make an application to have their conditional registration amended, including having the condition removed, if there has been a change in relevant information about the person since the condition was applied.

#### **Clause 46 Restrictions on reapplying for amendment of conditional registration New section 47A**

This clause restricts the period in which a person can make a reapplication for amendment of conditional registration to five years, if the person has already applied to the commissioner and had the application for amendment refused.

#### **Clause 47 Registration cards Division 6.2**

This clause removes the requirement to issue registration cards for a person registered under the Act. It also removes any offences relating to the improper use or failure to return a registration card.

#### **Clause 48 Commissioner may request information from entities about registered people Section 53**

This clause amends the Act to require a request to be in writing, if the Commissioner decides to request information under this section. Where the Commissioner requests information, it is for the express purpose of assessing whether that person poses an unacceptable risk of harm to vulnerable people.

#### **Clause 49 Commissioner may request information from entities about registered people**

### **New section 53 (3A) to (3C)**

This clause introduces an offence for an entity that fails to produce information after the Commissioner has made a request for information under the Act. This offence is a strict liability offence and carries a maximum penalty of 50 penalty units. Strict liability for failing to provide relevant information is necessary to provide timely enforcement powers for the protection of vulnerable people, particularly as people may be permitted to work whilst an assessment is being made. Clause 53 (3B) limits the application of the offence if the entity can demonstrate a reasonable excuse for not complying with the request.

### **Clause 50 Additional risk assessments Section 54 (1), new examples**

This clause provides new examples of where new relevant information might trigger an additional risk assessment. The examples include non-compliance by an approved care and protection organisation involving conduct by a registered person, or allegations of or an investigation into misconduct of a registered person within a regulated activity.

### **Clause 51 Additional risk assessments Section 54 (2), note**

This clause adds a note to the additional risk assessment provisions to state that if the commissioner decides to conduct an additional risk assessment, the commissioner may also decide to impose an interim condition on a person's registration, potentially limiting how a person engages in a regulated activity.

### **Clause 52 Interim conditional registration and offences New sections 54A and 54B**

This clause adds the power for the commissioner to apply an interim condition on a person's registration either at the time of registration, limiting how a person might engage in a regulated activity while unregistered; during registration renewal; or during an additional risk assessment that is being conducted for another reason. The interim condition can be applied if the commissioner reasonably believes that the person may pose an unacceptable risk but has not yet completed a full risk assessment.

If the commissioner imposes an interim condition the commissioner must advise the person in writing of the intention to impose a condition, including the reasons for the condition and the period in which a person may give reasons for why the condition should not be applied. This decision is reviewable.

If the commissioner, having reviewed information provided by the person, is satisfied the reasons for the condition still exist, the commissioner must write to the person to advise the person's registration is subject to a condition, what the condition is and the reasons for the condition. The commissioner must also advise the person's employer that the person's registration is subject to a condition and what the condition is. The commissioner must not tell the person's employer the reasons for the condition. A person's right to not have one's reputation unlawfully attacked is engaged by this provision.



This clause also makes it an offence if a person contravenes the requirements of an imposed interim condition. This offence is a strict liability offence and carries a maximum penalty of 50 penalty units. Strict liability for contravention of a requirement of an interim condition is necessary to provide timely enforcement powers for the protection of vulnerable people, particularly as people may be permitted to work whilst an assessment is being made.

It is not the intention for an interim condition to be applied for activities involving working with children.

**Clause 53    Offence—applicant fail to disclose change in relevant information**  
**New section 55A**

This clause makes it an offence for a person who is registered under the Act and who is aware of a change in relevant information relating to their registration but does not tell the commissioner within 10 days of the information changing.

Information relates to allegations or investigations which have been made or undertaken relating to a person's engagement in a regulated activity.

This clause adds a strict liability offence for a person who fails to tell the commissioner about a change in relevant information since registration. The clause provides a definition of relevant information which is information pertaining to whether allegations or an investigation in relation to the person engaged in a regulated activity had been made or undertaken, and if so, the details of those allegations or investigations.

The penalty under section 55A(1) is 50 penalty units. Strict liability for failing to disclose a change in relevant information is necessary to provide timely enforcement powers for the protection of vulnerable people, particularly as people may be permitted to work whilst an assessment is being made.

**Clause 54    Offence—fail to notify change of name or address**  
**Section 56 (1) (b)**

This clause removes the offence for failing to notify the commissioner of a change of address.

**Clause 55    Offence—fail to notify change of name**  
**Section 56 (1), note**

Clause 51 removes references to approved forms and is consequential on the omission of section 69 Approved forms.

**Clause 56    Suspension or cancellation of registration**  
**New section 59 (2) (a) (iii)**

This clause adds the requirement of the commissioner to advise a person, if their registration has been suspended, of the circumstances where the person may apply for a reconsideration.

**Clause 57    Suspension or cancellation of registration**  
**New section 59 (6) to (8)**

This clause relates to the circumstances where a person may apply to the commissioner to end a suspension. A person may apply to have the suspension lifted if a suspension has been in place for six months. If a person applies to have the suspension lifted the commissioner must either lift the suspension or refuse to lift the suspension. The commissioner must reasonably believe the suspension is necessary to continue the enforcement of the suspension. This decision is reviewable.

**Clause 58 and 59 Surrendering registration**  
**Section 60 (1), note and section 60 (2)**

Clause 55 removes references to approved forms and is consequential on the omission of section 69 Approved forms.

This clause also removes the requirement for a registration card or written statement if the card has been lost, stolen or destroyed, to accompany a person's surrender notice to the commissioner when surrendering registration.

**Clause 60 Commissioner may give information to particular entities**  
**Section 63A (1)**

This clause amends the prevention from harm or risk of harm, as the basis for sharing protected information by the commissioner, from a child or class of children to a vulnerable person or class of vulnerable people, which would include children. A child is, by virtue of being a child, considered to be a vulnerable person.

The clause also amends the list of entities the commissioner may give protected information to, including the Quality and Safeguards Commissioner, law enforcement agencies in the ACT and other jurisdictions, entities in other jurisdictions undertaking a corresponding function, the Senior Practitioner (established through the *Senior Practitioner Act 2018*) and other entities with oversight responsibilities in the ACT.

The clause also removes the limitations on the commissioner sharing information with the Chief Police Officer only in the course of specific investigations and replaces the limitation with the requirement that the Commissioner may share information where sharing is relevant to preventing harm or risk of harm to a vulnerable person or class of vulnerable people

This provision may limit a person's right to privacy. Where the Commissioner provides information, it is with the reasonable belief that it may prevent risk of harm to vulnerable people or person.

**Clause 61 Commissioner may give information to particular entities**  
**Section 63A (2)**

Clause 59 defines the NDIS quality and safeguards commissioner and the senior practitioner for Section 63A.

**Clause 62 Particular entities may give information to commissioner**  
**Section 63B (1)**

This clause amends the limitation on entities from sharing information with the commissioner only in relation to a child or class of children. The amendment enables entities to share information with the commissioner in relation to a vulnerable person

or class of vulnerable people which would include children. A child is, by virtue of being a child, considered to be a vulnerable person.

**Clause 63 Particular entities may give information to commissioner  
Section 63B (3), definition of entity, new paragraphs (d) to (g)**

This Clause adds the registrar-general, the regulator under the *Work Health and Safety Act 2011*, the road transport authority and the work safety commissioner to the definition of 'entity' for this section. These are entities in the ACT which may hold information relevant to the prevention of harm or risk of harm to a vulnerable person.

**Clause 64 Commissioner may give information to employers  
New section 63C**

New section 63C specifies the information that the commissioner may give to employers in relation to a registered person including a unique identify number for the person, the date the person's registration ends and whether registration is conditional.

It provides a definition of 'employer associated with a person' for this section. This supports an employer to conduct its own due diligence in relation to an employee to ensure the person holds the relevant registrations. It also protects the privacy of the person by stating that the commissioner need not tell the person what the person's condition is if they have a conditional registration.

**Clause 65 Approved forms  
Section 69**

This clause removes the requirement for an approved form.

**Clause 66 Schedule 2, table, new item 1A and 1B**

This clause adds the refusal to allow an unregistered person (through application of an interim bar) to engage in an NDIS activity and refusal to lift an interim bar to the table of reviewable decisions.

**Clause 67 Schedule 2, table, item 9**

This Clause removes item 9 (refuse to replace person's registration card) from Schedule 2 – Reviewable decisions and replaces it with the decision to make a person's registration subject to a condition.

Removal of refusal to replace person's registration card is a consequence of the omission or registration cards.

**Clause 68 Schedule 2, table, new item 11**

This clause adds the refusal to lift a person's suspension to the table of reviewable decisions.

**Clause 69 Schedule 3 Disqualifying Offences  
New schedule**

This clause adds a new schedule, schedule 3.

It adds Part 3.1 to include definitions for the Acts where offences included in the Schedule are located.

It adds Part 3.2, to list Class A disqualifying offences and the associated required conditions. These offences are defined at section 26A. This schedule includes offences where, for a regulated NDIS activity, a person will receive a negative notice if they have been convicted of a class A disqualifying offence and were 18 years of age at the time of the offence.

It adds Part 3.3, to list Class B disqualifying offences and the associated required conditions. These offences are defined at section 26A. This schedule includes offences where, for a regulated NDIS activity, a person will receive a presumed negative notice if they have been convicted or have charges against them of a class B disqualifying offence and were 18 years of age at the time of the offence.

While there are currently no disqualifying offences for the scheme more broadly, a person who is not registered on account of a disqualifying offence may still be eligible for a registration to engage in activities that are not NDIS activities, either generally or limited by conditions.

**Clause 70 Dictionary, note 2**

This Clause adds director-general, registrar-general, road transport authority and work safety commissioner to note 2 of the dictionary – terms defined by the Legislation Act.

**Clause 71 Dictionary, new definition of *application***

This clause adds several new terms to the dictionary.

**Clause 72 Dictionary, definition of *registration card***

Clause 72 removes *registration card* from the dictionary.

**Consequential amendments**

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

**Schedule 1, new item 4A**

Establishes infringement notice and penalty for 33 (3A) of 50 penalty units.

**Schedule 1, items 6, 7 and 10**

This clause removes infringement notices from offences relating to failure to produce a registration card, return a registration card and failure to notify change of name.

**Road Transport (Driver Licensing) Regulation 2000  
Section 138B (1) (b) (iii)**

This clause will be omitted as a consequence of the omission of registration cards.

**Working with Vulnerable People (Background Checking)  
Regulation 2012  
Dictionary, note 3**

This clause removes the note referring to registration cards. This is a consequence of the omission of registration cards.