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

BACKGROUND CHECKING LEGISLATION AMENDMENT BILL 2022

**EXPLANATORY STATEMENT
and
HUMAN RIGHTS COMPATIBILITY STATEMENT
(*Human Rights Act 2004*, s 37)**

**Presented by
Rachel Stephen-Smith MLA
Minister for Families and Community Services**

BACKGROUND CHECKING LEGISLATION AMENDMENT BILL 2022

The Bill **is not** a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

Background

The *Working with Vulnerable People (Background Checking) Act 2011* (WWVP Act) commenced on 8 November 2012. It is the primary law that provides for background checking as part of a risk assessment of people working with, or wanting to work with, children or vulnerable adults in the ACT.

The WWVP Act's policy intent is to reduce the risk of harm to vulnerable people by preventing contact with people who have a relevant criminal history or involvement in the criminal justice system. It strikes a balance between the right of vulnerable people to protection and the entitlement of people to work in their chosen profession, trade or calling. In striking that balance, the focus is on the assessment of risk and the best interest of vulnerable people is the paramount consideration.

A person is considered vulnerable if they are a child under the age of 18 years or an adult who is experiencing disadvantage and is accessing a regulated activity or service related to that disadvantage.

The WWVP Scheme regulates a wide range of activities relating to vulnerable people. It also accommodates two national initiatives relating to children and people with disability:

- National approach for National Disability Insurance Scheme Worker Screening Check (NDISWC) under the NDIS Quality and Safeguarding Framework, and
- National Standards for Working with Children Checks (WWCC) as recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse

The WWVP Act requires registration for persons who are engaged in a 'regulated activity'. This includes any activity conducted, or service provided, by a kinship carer or foster carer under the *Children and Young People Act 2008* (CYP Act).

While the WWVP Act is the primary law for background checking and risk assessment, it is not the only law. The CYP Act deals with the placement in out-of-home care of children and young people who are the subject of care and protection orders. The system for out-of-home care involves, and has always involved, its own form of background checking and risk assessment.

Under the CYP Act, the Director-General of the Community Services Directorate (CSD) is required to place children and young people who cannot live with their birth parents with an ‘approved carer’, who may be either a foster carer or kinship carer. To become an ‘approved carer’, an applicant must satisfy the Director-General that they are an appropriate person to care for children or young people. To be an ‘appropriate person’, the applicant must undergo a suitability assessment that shares many of the features of the scheme under the WWVP Act.

The CYP Act’s policy intent, in establishing this framework, is to promote the best interests of the child or young person by identifying the people who are best able to support them. Within that framework, regard must be had to criminal history and related information, but it must also be had to other matters, including existing relationships with the child or young person.

OVERVIEW OF THE BILL

The Background Checking Legislation Amendment Bill 2022 (the Bill) builds on previous amendments by including provisions to allow consideration of unique family circumstances, particularly those of Aboriginal and Torres Strait Islander people, to support the Territory’s alignment with national standards and obligations and to resolve minor operational issues.

The Bill:

- a. builds on legislative amendments made in 2020 by extending the application of WWCC and NDISWC disqualifying offences to corresponding interstate offences and historic offences,
- b. supports the Territory’s continued alignment with the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse and clarifies processes by removing access to the external merits review provision for applicants with Class A disqualifying offences,
- c. provides the director-general the ability to defer the WWVP registration requirement for ‘approved carers’ in exceptional circumstances by relying instead on the existing holistic risk assessment under the CYP Act that is a more culturally appropriate response to children in out-of-home care, and
- d. addresses technical and operational issues to ensure that the WWVP Scheme is operating as intended, allowing greater readability, usability and ease of administration.

The proposed amendments aim to strengthen safeguards and ensure that appropriate and adequate consideration is given to the particular circumstances of those who may be involved in out-of-home care activities. The amendments allow more flexibility to make arrangements to support a child or young person’s existing familial connection or placement and to promote stability and continuity of these arrangements over time.

The amendments continue to ensure the paramount consideration in those arrangements remains the safety, welfare and protection of vulnerable people and the best interests of children and young people.

CONSULTATION ON THE PROPOSED APPROACH

Access Canberra, the regulatory body that implements the WWVP scheme, and CSD worked closely to develop the Bill to achieve its policy intent and reduce any unintended consequences.

Targeted key stakeholder consultation was also undertaken with peak bodies and community service providers on the proposed amendments in the Bill. Feedback from these consultations has informed the development of this Bill.

CONSISTENCY WITH HUMAN RIGHTS

Rights engaged

Every decision to grant, withhold, or revoke registration under the WWVP Scheme has the capacity to engage the human rights of applicants and vulnerable people.

The policy intent of the WWVP Act and the CYP Act is to protect and promote the rights of children and young people, who may have contact with adults in the course of any regulated activities. In doing so, it may limit rights of persons who wish to work in their chosen profession, trade or calling if they are found to pose an unacceptable risk.

The Bill aligns with the Territory's policy and commitment provided in the *Children and Young People's Commitment 2015-2025* to ensure that the fundamental human rights of all children and young people in the ACT are promoted and protected. The principles contained in the Commitment are aligned with the *Human Rights Act 2004* (ACT) and a range of international human rights treaties, including the United Nations Convention on the Rights of the Child.¹ Some of these core principles that guide Territory's overall law making and policy development include promotion of Aboriginal and Torres Strait Islander cultural rights, protection of the best interests of the child, and respect for the views of the child. These principles underpin the Practice Standards for Child and Youth Protection Services and they encourage an holistic approach to case management in out-of-home care.

The Bill engages the following rights in the *Human Rights Act 2004* (HRA):

- right to recognition and equality before the law (s.8)
- right to protection of the family and children (s.11)
- right to privacy and reputation (s.12)
- right to a fair trial (s.21)
- right to culture and other rights of Aboriginal and Torres Strait Islander peoples and other minorities (s.27)
- right to work and other work-related rights (s.27B)

A restriction on a person's capacity to engage in a profession, trade or calling will engage the right to privacy (s.12) and, potentially, the right to work (s.27B(2)).

A decision-making process which affects that capacity will engage the right to fair trial, at least in terms of the obligation to provide procedural fairness (s.21). Where a decision is based on a person's criminal history, it will also engage the right to

¹ The United Nations Convention on the Rights of the Child (UN CRC) provides basic rights of children and the obligations of governments to fulfil those rights. Article 30 protects the rights of children to engage and participate in their culture and cultural practices.

equality (s 8) and the right to work (s 27B(5)), as it may involve discrimination on the grounds of criminal record (s 8).

The Bill engages each of these rights. The principal limitations arise in relation to the measures that promote clarity and coherence in the application of WWCC and NDISWC arrangements and the measures that provide for greater readability, usability and ease of administration.

The Bill also engages, and its measures promote, the rights of families and children to protection (s 11) and the rights of Aboriginal and Torres Strait Islander children and young people to maintain, control and protect culture and kinship ties (s.27(2)).

The reasonable limits test requires that any limitation on a human right must be authorised by a Territory law, be based on evidence, and be reasonable to achieve a legitimate aim. In deciding whether a limit is reasonable, relevant factors must be considered, such as the nature of the right affected, the nature and extent of the limitation, its purpose, and its relationship or proportionality to that purpose, and any less restrictive means that may be reasonable available to achieve that purpose.

For the reasons set out below, the limitations on human rights in the Bill are considered to be proportionate and justified in the circumstances. A central theme in those reasons is the proposition that every decision to withhold or revoke registration is directed to the safety, welfare and protection of vulnerable people and is sustained by an assessment, on a global or individual basis, of the risks posed by an applicant.

Rights Promoted

The Bill promotes the following rights:

Right to protection of family and children (s 11)

Section 11 of the HRA establishes that:

- (1) The family is the natural and basic group unit of society and is entitled to be protected by society.
- (2) Every child has the right to the protection needed by the child because of being a child, without distinction or discrimination of any kind.

The Bill protects and promotes the rights of children to protection as it clarifies the application of the WWCC and NDISWC arrangements to interstate offences and historic offences, which correspond to the offences that are listed as disqualifying offences in the WWVP Act.

The amendments that introduce a degree of flexibility in out-of-home care circumstances protect the rights of children to family as they allow assessments of risk to be made within the longstanding framework for approval of foster carers and kinship carers under the CYP Act. This flexibility is intended to reduce the regulatory burden on carers, and particularly kinship carers, resulting from duplication in two separate background screening schemes that reside in the CYP Act and WWVP Act.

As the best interests of children and young people continue to be protected by well-established processes for the approval of carers under the CYP Act, there is no limitation on the right of every child to the protection of the state (s.11(2)). At the same time, the stability of placements, the reduction in regulatory burden, and the sustainability of out-of-home care will respect and promote the rights of children and young people to family (s.11(1)).

Right to cultural and other rights of Aboriginal and Torres Strait Islander peoples and other minorities (s.27)

Section 27(2) protects the distinct rights of Aboriginal and Torres Strait Islander peoples in relation to their traditional lands, cultural heritage, language and knowledge and natural resources.

The introduction of flexibility in the treatment of out-of-home care will protect the rights and interests of Aboriginal and Torres Strait Islander children and young people by ensuring that those who cannot be cared for by their biological parents remain, as far as possible, connected to their wider family, community and culture.

The Bill seeks to recognise that assessments and decisions in relation to kinship carers may more appropriately and effectively be made by the Director-General CSD.

Rights Limited

The amendments in the Bill directly limit the following rights:

- right to equality before the law (s.8)
- right to a fair trial (s.21)

The amendments also broadly limits the following rights:

- right to privacy and reputation (s.12)
- right to work and other work-related rights (s.27B).

The limitation on the rights to privacy and to work are closely linked to the limitations on the right to equality. They arise from the same measures and they affect the same interests, being the interests of applicants to engage in an activity and pursue their chosen profession, trade or calling, without arbitrary interference from government.

Rights directly limited

Right to recognition and equality before the law (s.8)

Section 8 of the HRA establishes that:

- (1) Everyone has the right to recognition as a person before the law.
- (2) Everyone has the right to enjoy his or her human rights without distinction or discrimination of any kind.

- (3) Everyone is equal before the law and is entitled to the equal protection of the law without discrimination. In particular, everyone has the right to equal and effective protection against discrimination on any ground.

Nature of the right affected (s.28(a))

Section 8 prohibits discrimination “on any ground” including “other status”. There is some support for the proposition that the expression “other status” is broad enough to encompass the fact that a person holds a criminal record (*BDB v Netherlands* CCPR/C/35/D/273/1988; *Thlimmenos v Greece* (2001) 35 EHRR 15). For present purposes, it is assumed that the scheme in the WWVP Act does engage section 8.

Legitimate purpose (s.28(b))

Each of the measures in the Bill is directed to the protection of children and young people and other vulnerable people against the risk of harm posed by those who are convicted or found guilty of certain serious offences.

The measures ultimately enhance the protection of individuals, by strengthening the Commissioner’s risk assessment powers, by expanding the list of disqualifying offences to take into account corresponding historic offences and interstate offences and by placing limits on a person’s ability to appeal the Commissioner’s decision.

The nature and extent of the limitation (s.28(c))

The proposals relating to interstate and historic offences, and external merits review, will affect very few individuals. Further, applicants who cannot be registered to work with children or in the NDIS may still apply for a conditional or role-based registration to work in other areas, such as drug and alcohol counselling for adults.

The proposal relating to interstate and historic offences confirms the intended operation of the framework for the NDISWC and WWCC initiatives. That framework involves automatic disqualification of applicants who have convictions or findings of guilt for a list of serious offences. While the scheme for automatic disqualification imposes significant limitations on the rights to equality and to fair trial, the list has been part of the legislation since 2020. In practice, the measures in this Bill will extend the list of disqualifying offences to encompass those that correspond to the offences in the existing list but will not expand the types of offences covered.

Rational connection between the limitation and the purpose (s.28(d))

As noted, the scheme for disqualifying offences was introduced into the WWVP Act to support the National approach for National Disability Insurance Scheme Worker Screening Check (NDISWC) and the National Standards for Working with Children Checks (WWCC). The latter were developed in response to recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse. The concept of disqualifying offence which those standards adopt, and the categories of offences which they describe, are based the existence of a connection between the offence and the presence of risks to persons with disabilities and children and young people.

The proposals maintain, and are firmly anchored within, that rational connection.

This approach is supported by the recommendations made by the Royal Commission and subsequent national agreements resulting in the National Standards and the NDIS Worker Screening Framework.

To achieve national consistency and ensure the safety of our most vulnerable people, it is inappropriate for people convicted or found guilty of certain serious criminal offences to be able to work with children and young people or with NDIS recipients. Further, it is inappropriate for people already registered to continue to hold registration if they are convicted or found guilty of those offences. The assumption is that a person convicted of a serious offence against children will pose, and will continue to pose, an unacceptable risk to vulnerable people.

As the purpose is for the protection of individuals from people who present the greatest risk of harm, the limitation is an important component of achieving the objective of preventing harm to vulnerable people across Australian jurisdictions.

Proportionality (s.28(e))

The list of disqualifying offences and framework for automatic disqualification has been established on the basis that those offences reflect such a high level of risk to relevant cohorts of vulnerable people that it justifies a blanket rule that people who commit these offences should be ineligible for registration under the WWVP Act.

The measure is reasonably justified for the purposes of section 28 of the HRA and contains adequate safeguards to ensure it is the least restrictive means of achieving the aim of preventing harm to vulnerable people.

First, while it may be possible to address risk through consideration of the individual circumstances of each applicant, the potential consequences for a vulnerable person of any error in that risk assessment will be immediate and may be catastrophic. The proposal to review the list of disqualifying offences and improve connections between the offences and regulated activities is an important safeguard and will support human rights compatibility. Provision to issue a disallowable instrument by the Minister has been provided as a safeguard to limit concerns about the ‘arbitrary’ application of this measure. The disallowable instrument extends the meaning of “disqualifying offence” to include a relevant offence under a corresponding law. An offence might be considered a “corresponding offence” under a “corresponding law” if it contains the same physical and mental elements (in a code jurisdiction) or it had the same gist or gravamen (in a non-code jurisdiction). It might be an offence “of the same kind” or “of the same character” as an offence in Schedule 3.

The purpose of a rule which deems a “corresponding offence” to be a “disqualifying offence” is to allow a decision-maker or a court to determine from time to time whether that test was met. The purpose of a declaration is to allow that determination to be made clear in advance of the decision in a way that could be applied consistently across different applicants and decision makers. The purpose of the

disallowable instrument is to allow that determination to be made in the form of a list of particular laws (from time to time) which is considered by the Assembly and promulgated for the benefit of applicants and decision-makers.

Second, while it may be possible to restrict the framework for disqualifying offences so that it is limited to offences against existing laws in force in the Territory, any lack of coverage or lack of clarity in relation to interstate offences and historic offences could expose vulnerable people and children and young people to unnecessary risk. It would also undermine the integrity of the interjurisdictional arrangements which are intended to be established under the National Standards for WWCC and NDISWC.

The inclusion of interstate and historic offences in the disqualifying offences is necessarily strict to protect the rights and freedoms of vulnerable people so that they can be safe from harm and fully connect and contribute to society. Any less restrictive measures would compromise the intent and objectives of the WWVP scheme and increase the unacceptable risk that a person may pose to a vulnerable person.

Moreover, as with any other applicant who triggers the disqualifying offence scheme, while these people will not be able to work or volunteer with children, or work with NDIS providers, they may still seek a conditional or role-based registration under the WWVP Act as long as they do not work with children or in the NDIS.

The amendments allow a number of the offences to be omitted from the list of disqualifying offences. This is to ensure the offences remain relevant to the objective of protecting vulnerable people from harm. Without the removal of these offences, a person automatically becomes ineligible to apply for WWVP registration without even been assessed for the relevancy of the crime to WWVP. This is a safeguard to ensure any limitation on human rights are reasonable and proportionate.

Right to fair trial (s.21)

Section 21 of the HRA establishes, among other things, that:

- (1) Everyone has the right to have any rights and obligations recognised by law decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

The right to a fair trial includes all proceedings in a court or tribunal and all stages of proceedings. It is concerned among other things with procedural fairness, that is, the right of all parties in proceedings to be heard and respond to any allegations and the requirement that the court be unbiased and independent.

The Bill provides an explanation to support the editorial amendment made to items 5 and 6 in schedule 2 which are relevant to the availability of merits review process. These items should have been renumbered when the Act was republished to reflect the insertion by the *Working with Vulnerable People (Background Checking) Amendment Act 2020* (A2020-29) of new paragraph (aa) into section 40 (1). While

A2020-29 does not amend the Act to make the decision under paragraph (aa) reviewable and the editorial renumbering error does not affect the law as stated above, this Bill provides further explanation into the policy rationale for the withdrawal of the merits review process as a consequence.

The editorial amendment also aims to support and better align with Recommendation 29 of the Royal Commission into Institutional Responses to Child Sexual Abuse in its *Working with Children Checks* report. The report enquired into what institutions and government could do to better protect children against child sexual abuse and related matters in institutional contexts in the future.

Recommendation 29 of the report focused on restricting rights to appeal or review on the premise that it would be inappropriate for people convicted of certain serious criminal offences to be able to challenge a decision to refuse or cancel a WWCC. The assumption is that a person convicted of a serious offence against children will always pose an unacceptable risk to children.

The amendment addresses recommendation 29 and removes reviewability rights for applicants to the ACT Civil and Administrative Tribunal (ACAT), where the Commissioner decides to refuse to register a person to engage in a regulated activity involving children or a NDIS activity, due to unacceptable risk and ineligibility.

It is considered that the measure is reasonable and proportionate limitation on an applicant's right to procedural fairness having regard to the legitimate aim of protecting vulnerable people from harm.

While the amendment better aligns access to external merits review with Recommendation 29, it also reflects circumstances in which there can be no practical utility in access to that review.

There is no less restrictive means of achieving the objective because according to the legislation, where an applicant is ineligible for registration as a result of a Class A offence, a tribunal is bound to reach the same decision as the original decision-maker, as there is no discretion in the legislation and therefore no capacity for the tribunal to come to a different conclusion from the original decision-maker.

The amendment is consistent with the principle that a person who wishes to challenge an administrative decision will not be entitled to relief, or a court will be entitled to refuse relief, in circumstances where there is no dispute as to the underlying facts and where the outcome is dictated by the terms of the legislation. In such cases, it has been held that where there can be no change in the outcome, even if procedural fairness was provided, the denial of procedural fairness is immaterial (see *Re Minister for Immigration and Multicultural Affairs; Ex parte Lam* (2003) 514 CLR 1 and *Hossain v Minister for Immigration and Border Protection* (2018) 264 CLR 123).

The Bill recognises that decisions under the WWVP Act that are based on the presence of a Class A disqualifying offence are decisions where the outcome is

dictated by the terms of the legislation. A person with a conviction or finding of guilt for such an offence is simply not eligible for registration and this is the case no matter the ameliorating factors of their offence or personal circumstances (see *Singh v Commissioner for Fair Trading* [2021] ACTSC 324).

The amendment does not remove all reviewability rights available to an applicant. Applicants will still be able to appeal against an automatic refusal under s40(1)(b) of the WWVP Act in circumstances where they have class B disqualifying offence or on errors of fact relating to risk assessment of an applicant with disqualifying offence.

Rights broadly limited

Right to privacy (s. 12)

Section 12 of the HRA establishes that:

- (1) Everyone has the right not to have their privacy interfered with unlawfully or arbitrarily.
- (2) Everyone has the right not to have their reputation attacked unlawfully.

The proposals relating to interstate and historic offences and external merits review both limit the right to privacy. However, as those limitations will be prescribed by law—and as the law will be accessible, its effect foreseeable and any discretion confined—any interference with those rights will be “lawful” for the purposes of section 12. For the reasons set out above, in the justification for the limitations on the rights to equality (s. 8) and to fair trial (s. 21), any limitation on the right to privacy is not “arbitrary” for the purposes of section 12.

(The question of whether the interference with the right to privacy is “arbitrary” is best answered by reference to the discussion in relation to the rights in sections 8 and 21. Those rights have a more definite content and are engaged in a more specific and concrete way. Any limitation on those rights which satisfies the reasonable limits test will also satisfy the reasonable limits test in relation to the right in section 12.)

Accordingly, the proposals satisfy the reasonable limits test in section 28.

Right to work (s. 27B)

Section 27B establishes, among other things, that:

- (1) Everyone has the right to work, including the right to choose their occupation or profession freely, accepting that the practice of a trade, occupation or profession may be regulated by law.

The proposals relating to interstate and historic offences and external merits review also restrict the capacity of a person to engage freely in some areas of employment.

It is widely recognised that worker screening to protect the safety of children and young people and vulnerable people imposes reasonable limits on the right to work.

For the reasons set out above, in the justification for the limitations on the rights to equality (s. 8) and to fair trial (s. 21), any limitation on the right to work are justified.

(The question of whether any interference with the right to work is reasonable is best answered by reference to the discussion in relation to the rights in sections 8 and 21. Those rights have a more definite content and are engaged in a more specific and concrete way. Any limitation on those rights which satisfies the reasonable limits test will also satisfy the reasonable limits test in relation to the right in section 12.)

Accordingly, the proposals satisfy the reasonable limits test in section 28.

Background Checking Legislation Amendment Bill 2022

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Background Checking Legislation Amendment Bill 2022**. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly is consistent with the *Human Rights Act 2004*.

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Shane Rattenbury MLA
Attorney-General

CLAUSE NOTES

Part 1 Preliminary

Clause 1 Name of Act

This is a technical clause that names the short title of the Act. The Amendment Bill 2022 makes amendments to the *Working with Vulnerable People (Background Checking) Act 2011*.

Consequential amendments are also required in the *Children and Young People Act 2008*.

Clause 2 Commencement

This clause provides that the Act, other than the below sections, will commence by written notice or, if there is no written notice, six months after the notification day.

Clause 3 Legislation amended

This clause provides that the Bill amends the *Working with Vulnerable People (Background Checking) Act 2011* and makes consequential amendments to the *Children and Young People Act 2008*.

Part 2 - Consequential Amendments to the Children and Young People Act 2008

Clause 4 Approved carers - director-general may approve Section 514B (3)

This clause requires that an applicant for approval as an “approved carer” must hold a WWVP registration or, for a kinship carer, must have applied for registration in accordance with section 16 of the WWVP Act.

It also confers on the director-general an exceptional discretion which can be exercised where a particular applicant is considered an appropriate person to care for a particular child or young person, based on the specific screening arrangements in the CYP Act and independently of the general screening arrangements in the WWVP Act.

This discretion can only be exercised where the director-general is satisfied that the applicant is an appropriate person to provide that care, having regard to the “suitability information” in section 65 of the CYP Act and, in particular, to any relevant criminal history (s 65(1)(a)), any child concern reports (s 65(1)(g)) and any proven experience or capacity in providing services to children and young people (s 65(1)(f)).

The exceptional discretion by the director-general can only be exercised in exceptional circumstances where the director-general is satisfied that the applicant:

- is a ‘significant person’ within the meaning of section 14
- is a person who has familiar relationship to the child or young person,

- is a person who, in the circumstances, does not pose an unacceptable risk to the child or young person, and
- it would be in the best interest of the child or young person to have the person authorised as their kinship carer or foster carer.

To determine the ‘familiar relationship’, consideration must be given to the length, degree and the extent of the relationship in the assessment process. It must be assessed whether the person has spent extensive periods of time with the child or young person that can be attributed as active engagement and without which the child or young person is likely to be deprived if the engagement discontinues.

Part 3 Working with Vulnerable People (Background Checking) Act 2011

Clause 5 Section 11B

This clause makes an addition to Section 11B to allow operation of a corresponding provision. The corresponding provision is to extend the meaning of “disqualifying offence” to include a relevant offence under a corresponding law of another state.

As the *Crimes Act 1900* and the *Criminal Code 2002* may differ from equivalent legislation in other jurisdictions, the corresponding provision better supports assessment and decision-making in circumstances where an offence was committed in another jurisdiction.

This clause also allows the Minister to make disallowable instruments from time to time. The purpose of the DI would be to make a list of particular laws which are deemed to meet the test of “corresponding law” in the Act.

Clause 6 When is a person required to be registered? Addition of new section 12(2) (ia)

This clause allows accessibility of court interpreters for a vulnerable person who cannot communicate or who has difficulty communicating in English in s12(j), of court interpreters to address immediate and ongoing engagement in a regulated activity without requiring to be registered.

Clause 7 New section 12(2) (na)

This clause removes the registration requirement in instances where the Director-General places a child or young person who is the subject of a care and protection order with an “approved carer”.

Clause 8 Section 12 (5), definition of close relative

This clause removes the provision that previously excluded Kinship carers from the definition of close relative due to its relevance.

Clause 9 Section 16

This clause makes an addition to the provision to recognise circumstances where the Director-General has deemed an individual as an ‘approved carer’ in line with provisions and suitability assessments under the *Children and Young People Act 2008*, section 514B (3) (b) (ii).

Clause 10 Independent advisors appointment Section 34 (3)

This clause extends the length of appointment to 5 years to coincide with the term of a registration which were amended as part of the 2020 amendments to the Act.

Clause 11 Conditional registration—class A disqualifying offence Section 42A, note 2

This clause amends the subsection reference made in section 11 that applies to kinship carers for class A disqualifying offence to be taken as a class B disqualifying offence.

Clause 12 Child protection services Schedule 1, section 1.1 (2), note, new dot point

This clause adds a new note to clarify the WWVP Act’s recognition of the director-general approved carers.

Clause 13 Migrants, refugees and asylum seekers Schedule 1, section 1.9, new note

This clause adds a note that about no WWVP registration requirements for court interpreters for a vulnerable person who cannot communicate or who has difficulty communicating in English as per s12(j), to address immediate and ongoing engagement in a regulated activity.

Clause 14 Class A disqualifying offences Schedule 3, part 3.2 heading, note

This clause substitutes the note that applies to kinship carers for class A disqualifying offence to be taken as a class B disqualifying offence.

Clause 15 Schedule 3, part 3.2, Item 2

This clause removes the reference to attempted murder in item 2, as the inclusion of “attempt” in relation to *one* disqualifying offence has the effect of displacing the operation of s 189* of the *Legislation Act* for the rest of schedule 3.

*Section 189 of the *Legislation Act 2001* provides that a reference in a law to an offence against an ACT law includes an offence against the provisions of the Criminal Code which relate to ancillary offences, being the extensions of criminal responsibility (Part 2.4), including attempt, complicity, conspiracy and incitement, and the offence of accessory after the fact (s 717).

Clause 16 Schedule 3, part 3.2, Item 67, column 4

This clause removes the condition in Column 4 of item 67 that the complainant was a child under 13 years.

Item 67 includes the offence against s 62(2) of the Crimes Act, being the offence of sexual intercourse involving a child or young person who is under 16 years with whom the offender has a familial relationship, for example as father, brother or stepbrother.

**Clause 17 Class B disqualifying offences
Schedule 3, part 3.3, Item 21 and 24**

This clause removes the Item 21 offence of inflict actual bodily harm and Item 24 offence of assault occasioning actual bodily harm.

Clause 18 Schedule 3, part 3.3, item 67, column 4

This clause removes the condition in Column 4 of item 67.

Clause 19 Schedule 3, part 3.3, items 81, 84, 86, 91, 96, 120, 126, 135 and 136

This clause removes Items 81, 84, 86, 91, 96, 120, 126, 135 and 136 from the Class B disqualifying list, as it allows assessment of applications and its relevancy to the nature of work to be undertaken by the applicant. Without removal of these offences, a person automatically becomes ineligible to apply for WWVP registration without even been assessed for the relevancy of the crime to WWVP.

Clause 20 Dictionary, definition of kinship care activity

This clause removes the definition of kinship care activity from the Act.