

Australian Capital Territory

Children and Young People (Kinship and Foster Carers Risk Assessment) Guidelines 2023 (No 1)

Disallowable instrument DI2023–202

made under the

Children and Young People Act 2008, Section 514B (Approved carers—Director-General may approve)

EXPLANATORY STATEMENT

These guidelines address the areas that the Director-General may consider when assessing information under s514B of the *Children and Young People Act 2008* (CYP Act).

The Risk Assessment Guidelines are made pursuant to section 514B (Approved carers – Director-General may approve) of the CYP Act, which allows the Minister to make guidelines about matters the Director-General must consider under subsection (3) (c) (ii) of the CYP Act.

The CYP Act contains provisions for the Director-General to approve certain persons as approved carers.

The *Working with Vulnerable People (background checking) Act 2014* (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 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.

S514B (3) (c) (ii) of the CYP Act provides:

- a) 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 can be a more culturally appropriate response to children in out-of-home care, and aims 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.
- b) allows 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.
- c) ensures the paramount consideration in those arrangements remains the safety, welfare and protection of vulnerable people and the best interests of children and young people.

The CYP Act’s policy intent, in establishing these guidelines, is to promote the best interests of the child or young person by identifying the people who are best able to support them. Within the guidelines, 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.