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

ELEVENTH ASSEMBLY

**WORKING WITH VULNERABLE PEOPLE (BACKGROUND CHECKING)
AMENDMENT BILL 2025**

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

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WORKING WITH VULNERABLE PEOPLE (BACKGROUND CHECKING) AMENDMENT BILL 2025

The Bill **is** 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*.

OVERVIEW OF THE BILL

The Working with Vulnerable People (Background Checking) Amendment Bill 2025 (Bill) amends the *Working with Vulnerable People (Background Checking) Act 2011* (WWVP Act). The amendments strengthen protections for children in the WWVP Act by requiring that where another Australian jurisdiction has issued a negative notice or cancelled a registration to work with children, this is automatically and immediately recognised in the ACT. A negative notice refers to the outcome of a person's application for clearance to work with children, when the application outcome was that clearance was rejected. Where a person has an existing registration and circumstances have arisen that lead to the registration being revoked, their registration has been cancelled.

Data from Access Canberra suggests that over the last 3 financial years, 4.17 per cent of the total applicants for WWVP registration in the ACT also held a Working with Children Check (WWCC) in another jurisdiction. This indicates that the workforce is fluid and people in other states and territories sometimes cross jurisdictional borders to work with children. This Bill will form part of a framework across Australian states and territories to make clear that individuals who are banned in one jurisdiction are also banned in all other jurisdictions.

The purpose of the Bill is to ensure that individuals who have sought a WWCC in another jurisdiction and received a negative notice, or those who have had their registration to work with children in another jurisdiction cancelled, will be automatically unable to be registered to work with children in the ACT.

The Bill will also reduce any delay that arises in existing processes, by ensuring the recognition of a negative notice from another jurisdiction is automatic. The existing process of conducting a risk assessment where a person has a negative notice from another state or territory causes unnecessary delay in cases where the applicant will most likely be refused registration in the ACT. This is because a negative notice in another jurisdiction is a relevant factor in determining the outcome of an application under the WWVP Act, and the consistency of risk assessment schemes around Australia will most likely lead to a similar decision to refuse or cancel registration. However, there can be delays in sharing updated information to other jurisdictions and any delay exposes children to unnecessary risk.

Under the existing legislation, applicants in the ACT are generally allowed to work without registration while being risk assessed. The Bill will ensure such a situation

does not arise when a person has already received a negative notice from another jurisdiction.

This Bill enhances the existing background checking scheme by:

- a) Stating that a person is not eligible to be registered to engage in a regulated activity involving children in the ACT, if they have received a negative notice in another jurisdiction or their registration for engaging in a regulated activity involving children was cancelled under another jurisdiction's corresponding law (new section 17(2A)).
- b) Requiring the commissioner to refuse to register a person to engage in restricted activities involving children, if they become aware that the person has a negative notice issued or registration cancelled by another jurisdiction (new section 40(1)(aa)).
- c) Amending the *Working with Vulnerable People (Background Checking) Regulation 2012* (the Regulation), to support the amendments to the primary legislation. For example, requiring WWVP applicants to disclose if they have been issued a negative notice in another jurisdiction (new section 4A of the Regulation).

The WWVP Act currently refers to 'corresponding laws' made in other jurisdictions. This allows the ACT to recognise equivalent legislation in other jurisdictions for several purposes relevant to the WWVP Act. To assist with transparency and clarity, the amendments to the Regulation will prescribe the relevant WWCC legislation in force from time to time in other Australian jurisdictions as 'corresponding law'.¹¹

The Bill also incorporates two key safeguards:

- a) *Inconsistent corresponding offences application*: Under new section 22A, the commissioner may, on written application by a person, grant an exemption from automatic recognition of a negative notice or registration cancellation under a corresponding law of another jurisdiction if the commissioner is satisfied on reasonable grounds that:
 - i. the individual received a negative WWCC notice under a corresponding law, or the applicant's registration under a corresponding law was cancelled, because of an adult conviction or finding of guilt for an offence; and
 - ii. the disqualifying offence that led to the negative notice or registration cancellation was a *non-corresponding offence*, which is defined as an offence for which a conviction or finding of guilt would, under the corresponding law, result in the convicted person not being eligible, or

¹¹ The use of 'in force from time to time' means that subsequent amendments to corresponding laws will be incorporated into the legislative definition of corresponding law.

ceasing to be eligible, to be registered to engage in a regulated activity involving children; and the offence does not substantially correspond to the ACT's list of Class A disqualifying offences; and

- iii. the applicant has demonstrated that because of the operation of new section 17(2A) the negative notice or cancellation results in an adverse effect on the applicant in the ACT, to an extent that is an unreasonable limitation on the person's rights under the *Human Rights Act 2004*.

This provision is intended to allow for individual consideration in situations where the law in another jurisdiction is significantly different from the ACT (for example, because the law in another state subsequently changes) and it would be an unreasonable limitation on a person's rights to be automatically ineligible for registration to work with children in the ACT due to an offence that would not usually lead to automatic disqualification in the ACT. Even in these situations, it will not mean that the person will be registered to work with children in the ACT, only that their particular circumstances and potential risk may be considered on an individual basis as part of the usual assessment process in the same way as someone who did not have a negative notice or cancellation under a corresponding law.

- b) **5-year restriction on re-application**: New section 22(5) clarifies the existing 5-year restriction on reapplying for registration also applies to a negative notice or registration cancellation of another jurisdiction.

This Bill aligns with the principle of upholding the best interests of children and supports ongoing decision-making under the WWVP Act to ensure that the safety, welfare and protection of children, as a subset of vulnerable people, are paramount.

The passing of the Bill in the ACT will also contribute to a national deterrence approach, sending a unified message that individuals who have a WWCC application rejected – or registration cancelled – in one state or territory, will be unable to work with children anywhere else in Australia.

Overview of the WWVP scheme in the ACT

The WWVP Act is a background screening scheme that aims to reduce the risk of harm or neglect to vulnerable people in the ACT. All people in the ACT who work or volunteer in a regulated activity with vulnerable people, including children, are required to hold a current Working with Vulnerable People (WWVP) registration.

Although the WWVP scheme provides a screening mechanism that is used for several purposes, this Bill only intends to amend the WWVP Act as it relates to children. The WWVP Act defines vulnerable people to include a child who is an individual aged under 18 years.

A background check and risk assessment are conducted prior to registration under the WWVP Act. Applicants are required to provide information on their criminal history, all non-conviction information and any other relevant information. Relevant information is currently shared across jurisdictions via the WWCC National Reference System (NRS).

An ACT WWVP risk assessment is one element in evaluating a person's suitability to engage in child-related work. Another, separate element is the relevance of any disqualifying offence. All WWCC laws specify the factors that must be considered when undertaking risk assessments.² These factors are broadly similar and include:

- a. the nature and circumstances of the offence or other conduct (for example, its seriousness, the length of time since it occurred, its relevance to child-related work, and the age and vulnerability of the victim)
- b. the applicant's characteristics at the time of the offence and since (for example, their age at the time of the offence, their conduct following the offence and the patterns in their criminal history overall)
- c. the risk of recurrence (for example, the likelihood that the offending conduct will be repeated and the likely impact on children if the conduct is repeated).

Applicants who are eligible to be registered but have been assessed as posing an unacceptable risk will not be registered. This decision to refuse registration amounts to what can be described as 'a negative notice'.

In some circumstances, individuals are ineligible to be registered under the WWVP scheme. Specifically, a person will be automatically excluded if they have committed a Class A disqualifying offence. Class A includes murder and other homicide offences, offences including intent to cause harm to a child or other vulnerable person, sexual offences against a child or other vulnerable person, offences involving abduction of a child or other vulnerable person, and bestiality. These offences are derived from the WWCC National Standards and NDIS Worker Screening Intergovernmental Agreement.

Three types of WWVP registration are currently issued:

- *general registration* allows individuals to move between all regulated activities for up to 5 years without the need to reapply
- *conditional registration* imposes specific conditions on an individual's registration; for example, not being able to transport vulnerable people

² *Working with Vulnerable People (Background Checking) Act 2011* section 30(1)

Child Safety (Prohibited Persons) Act 2016 (SA) section 26A

Working with Children (Screening) Act 2004 (WA) section 12

Worker Screening Act 2020 (VIC) section 64

Working with Children (Risk Management and Screening) Act 2000 (QLD) Division 9

Registration To Work with Vulnerable People Act 2013 (TAS) section 28

Care And Protection of Children Act 2007 (NT) section 191

Child Protection (Working with Children) Act 2012 No 51 (NSW) section 15(4).

- *role-based registration* is similar to conditional registration, the condition being that the person only engages in certain activities, and potentially for a particular employer; for example, a person with a criminal record is registered but may only work as a counsellor in a particular correctional centre.

Negative notices are currently issued in the ACT for the following reasons:

- in response to an application where risk assessment finds that a person poses an unacceptable risk
- where the applicant was ineligible due to a Class A disqualifying offence

An existing WWVP registrant may also have their registration cancelled if, following registration, the person engages in activities that would result in a risk assessment that a person poses an unacceptable risk, or is convicted of a disqualifying offence.

The commissioner can also issue conditional registrations with the restriction that the person cannot work with children (or must observe any other condition), where appropriate.

Regardless of the basis of the negative notice or registration cancellation, or the decision to impose conditions, the person generally cannot re-apply for a period of 5 years.³

The Bill will facilitate the recognition of negative notices and registration cancellations from other jurisdictions. Specifically, the Bill captures any person who has received a negative notice, or the equivalent of a negative notice for engaging in regulated activities involving children under a corresponding law or had their registration for engaging in regulated activities involving children under a corresponding law cancelled. This drafting approach is intended to capture the substance of the decision by another jurisdiction, rather than depending upon whether it is formally called a negative notice under the law of the jurisdiction.

CONSULTATION ON THE PROPOSED APPROACH

The ACT Government is working closely with the WWCC Reform Taskforce and the National Office for Child Safety (NOCS) in the Attorney-General's Department, to advance and improve national consistency of WWCCs. NOCS is progressing a National Action Plan, Measure 3 under the *National Strategy to Prevent and Respond to Child Sexual Abuse 2021-2030*.

All Australian governments have agreed to work together to enhance national arrangements for sharing child safety and wellbeing information, including to progress the development of a National Child Safety and Wellbeing Information Sharing Scheme.

³ *Working with Vulnerable People (Background Checking) Act 2011* (ACT), ss 22 and 47A.

This work aims to:

- a) benchmark the current state of implementation of the National Standards for WWCC
- b) produce a map of disqualifying and other relevant offences, in the context of the WWCC National Standard Benchmarking and the National Continuous Capability Checking project
- c) deliver a discussion paper outlining inclusion and accessibility for WWCC processes across jurisdictions.

On 15 August 2025 at the Standing Council of Attorneys-General (SCAG), Commonwealth, state and territory Attorneys-General agreed the following:

to urgently work towards implementation, by the end of 2025, of mutual recognition of negative notices (WWCC declines and revocations) so that a person denied a WWCC or whose WWCC has been revoked in one jurisdiction cannot be granted or hold a WWCC in another jurisdiction.

In response to SCAG's decision, the Attorney-General's Department formed the WWCC Reform Taskforce to implement these reforms and advise SCAG going forward.

Access Canberra – the ACT regulatory body that implements the WWVP scheme – the Justice and Community Safety Directorate, and the Health and Community Services Directorate, worked closely to develop the Bill to achieve its policy intent and reduce any unintended consequences.

CLIMATE IMPACT

The amendments are not expected to have a significant impact on climate change or impact emissions reduction efforts.

CONSISTENCY WITH HUMAN RIGHTS

The Bill has been carefully considered in the context of the *Human Rights Act 2004* (HRA), with close consideration of the rights of children and young people.

The Bill also gives specific attention to the overarching object described in section 7 of the *Children and Young People Act 2008* (CYP Act) to protect the safety, welfare and wellbeing of children and young people by ensuring those who seek to work or volunteer in child-related activities in the ACT do not pose an unacceptable risk of harm.

Rights engaged

The Bill engages the following rights:

- right to protection from torture and cruel, inhuman or degrading treatment (s 10 HRA) (promoted)
- right to protection of the family and children (s 11 HRA) (promoted)
- right to life (s 9 HRA) (promoted)
- right to work and other work-related rights (s 27B HRA) (limited)
- right to equality and non-discrimination (s 8 HRA) (limited)
- right to a fair trial (s 21 HRA) (limited)

Several rights are promoted through amendments that seek to recognise negative notices or registration cancellations of other jurisdictions, which will then automatically prevent a person from engaging in activities involving children in the ACT.

The ACT Government acknowledges the amendments in the Bill engage and limit the human rights of a section of the ACT community – those being the rights of individuals considered to pose an unacceptable risk of harm to children and young people due to a negative notice or a registration cancellation from another jurisdiction recognised by this Bill.

The rights limited have been carefully considered with respect to section 28 of the HRA (human rights may be limited) to determine whether the limitations are proportionate and can be demonstrably justified, and whether the Bill employs the least restrictive means available to achieve the purpose of protecting the rights of children and young people in the ACT community.

Rights promoted

The Bill promotes the following rights:

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

Right to protection of the 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 engages the right to family and children as it strengthens safeguards to protect children by ensuring negative notices and registration cancellations that prevent a person from working with children in other jurisdictions are recognised in the ACT.

The Bill also incorporates international human rights standards for children and young people, including international conventions such as the Convention on the Rights of the Child (CRC). Article 3 (1) of the CRC states that 'in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.'

Article 3 of the CRC reflects the unique vulnerability of children and the obligation to prioritise their safety. The purpose of the Bill is to prioritise the safety of children. In *E v United Kingdom*, 33218/96 (26 November 2002), the Court held that 'a failure to take reasonably available measures which could have had a real prospect of altering the outcome or mitigating the harm is sufficient to engage the responsibility of the State'. In *ES v Slovakia*, 8227/04 (15 September 2009), the Court extended this liability to cover not just inaction by individual workers, but also procedures within a system of government that led to inadequate protection.

In *A v United Kingdom* 95599/94 (23 September 1998), the European Court of Human Rights held that the State has a positive duty to protect people (particularly the young and vulnerable) from physical harm when such harm amounts to torture and cruel, inhuman or degrading treatment. The ACT Government therefore has a positive duty to ensure the protection of children (s 11 (2) HRA), including children's right to protection against torture and cruel, inhuman or degrading treatment (s 10 HRA).

The Bill retains access to the existing exemption for those who are seeking to apply for a WWVP registration as a kinship carer in the ACT.⁴ This exemption will apply for applicants who have a negative notice or cancellation, regardless of whether that was issued in the ACT or from another jurisdiction. Consequently, the Bill promotes the cultural rights of Aboriginal and Torres Strait Islander children and young people in the ACT (s 27 HRA). This reflects the important role that kinship carers play in supporting Aboriginal and Torres Strait Islander children and young people to maintain connection to family, culture and community.

The different treatment for kinship carers is not extended to foster carers. This further protects the rights and interests of children by ensuring each foster carer is appropriately suitable to care for the most vulnerable children in the ACT. It is unlikely that any existing foster carers will be affected by the introduction of the Bill, as the requirements under the WWVP scheme have not changed. Previously, in cases where a person applying for foster care in the ACT had a negative notice or cancellation from another jurisdiction, a complex risk assessment process that applies nationally consistent standards would have likely determined the person posed an unacceptable risk in the ACT.

⁴ *Children and Young People Act 2008* (ACT) subsection 514B (3)(c).

Right to protection from torture and cruel, inhuman or degrading treatment (s 10 HRA)

Section 10 of the HRA establishes that:

- (1) No-one may be:
 - (a) tortured; or
 - (b) treated or punished in a cruel, inhuman or degrading way.
- (2) No-one may be subjected to medical or scientific experimentation or treatment without their free consent.

The Bill promotes section 10 by preventing individuals who pose an unacceptable risk to children and young people from gaining WWVP registration to work with children. It will immediately exclude individuals who have received a WWCC negative notice or registration cancellation in another jurisdiction from registering under the ACT WWVP scheme.

The Bill will strengthen this absolute right by contributing to a national policy position to implement a unified and consistent approach to the protection of children through mutual recognition of negative notices and registration cancellations. The Bill supports the need for a uniform approach to protecting children through the WWVP Act and equivalent WWCC schemes, as recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse.

The Bill seeks to reflect the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* by ensuring the government has sufficiently robust legislation to ensure vulnerable people – including children – are not treated in a cruel, inhuman or degrading way by preventing the registration of individuals who pose an unacceptable risk of harm to them.

The Bill promotes this right because it works to reduce the likelihood of preventable harm for children and seeks to protect their rights and dignity by limiting their exposure to people who pose a risk to their safety, welfare and wellbeing.

Right to Life (s 9 HRA)

Section 9 of the HRA, draws on the *International Covenant on Civil and Political Rights* (ICCPR) and establishes the following:

- (1) Everyone has the right to life. No-one may be arbitrarily deprived of life.
- (2) This section applies to a person from the time of birth.

The United Nations Human Rights Committee (UNHRC) has issued a general comment stipulating that the right creates a positive obligation on state parties who are aware of a real and immediate risk to life to take reasonable action to protect

individuals.⁵ The position of the UNHRC is reflected in international judicial interpretation of the right.⁶

The right also creates special obligations to protect and respond to risks posed to cohorts with specific vulnerabilities, including those who may be at risk of domestic and gender-based violence, LGBTIQA+ people, Aboriginal and Torres Strait Islander people, and people with disability.⁷

Children are a clear example of such a cohort. The ACT Government and the Legislative Assembly have been alerted to a real and immediate risk to life through various public reports of people who pose a risk to children being allowed to continue to work with them. The Bill promotes the right to life because it works to reduce the likelihood that the right will be violated by limiting children's exposure to people who pose a risk to their life and safety.

Rights Limited

The HRA acknowledges that few rights are absolute, and rights may be subject to reasonable legal limits that can be demonstrably justified in a free and democratic society. Section 28 of the HRA outlines factors to consider in determining whether a limitation is reasonable and proportionate, including the nature of the right, the importance and extent of the limitation, the relationship between the limitation and its purpose, and the availability of less restrictive means to achieve the intended purpose.

While the amendments in the Bill promote the rights of children to protection, they also place some limitations on other rights in the HRA.

The Bill limits the following rights:

- right to work and work-related rights (s 27B HRA)
- right to equality and non-discrimination (s 8 HRA)
- right to a fair trial (s 21 HRA).

These limitations are accompanied by appropriate safeguards. The safeguards operate to ensure any restrictions on rights are proportionate and justified, are the least restrictive approach possible, and align with the Bill's overarching objectives to ensure the protection of children from harm by people entrusted to care for them.

Section 27B - Right to Work and Work-Related Rights

1. *Nature of the right and the limitation (s 28(2)(a) and (c))*

⁵ Human Rights Committee, *General Comment No. 36: Article 6: Right to life* (2019) ('General Comment No. 36'), [20].

⁶ *Osman v United Kingdom* [1998] ECHR 101, [115]–[116].

⁷ General Comment No. 36, [23]–[24]; *Edwards v United Kingdom* (2002) 35 EHRR 487.

Section 27B(1) of the HRA states that everyone has the right to work, including the right to choose their occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law.

The right to work in s 27B(1) derives from Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). In its General Comment on the right to work, the UN Committee on Economic, Social and Cultural Rights (CESCR) has described the right to work as 'essential for realising other human rights and an inseparable and inherent part of human dignity'. This right recognises the significance of earning a living and adopting a trade, occupation or profession to a person's role in society and their family.

However, the right to work is not an unconditional guarantee of employment. Rather, it requires government to undertake actions to facilitate employment. This includes safeguarding the right of everyone to the opportunity to gain their living by work that they freely choose or accept. This right also implies that people should not be unjustly deprived of work, which consequently requires adequate protection from unfair dismissal.

The right to work includes a non-discrimination component, which provides that everyone is entitled to enjoy the right to work and other work-related rights without discrimination. The right to equality and non-discrimination in the HRA provides that everyone is entitled to enjoy their rights without discrimination of any kind, and that everyone is equal before the law and entitled to the equal protection of the law without discrimination. Discrimination refers to any treatment that – either directly or indirectly – causes detriment to individuals in a range of prohibited areas, including employment. The *Discrimination Act 1991* (ACT) provides that it is unlawful to discriminate either directly or indirectly against a person because of a protected attribute, including an irrelevant criminal record. The discrimination component of the right to work is addressed separately in more detail in the 'right to equality and non-discrimination' analysis, below.

Currently, there are existing limitations on the conditions and requirements of working with children in the ACT. These are governed by the WWVP Act. 'Work' can include paid work or work in a volunteer capacity.

The Bill will limit the right to work by allowing for immediate recognition in the ACT of a negative notice or registration cancellation from another jurisdiction. This may result in someone seeking to work in the ACT having their options limited to exclude working with children, or someone currently working in a child-related activity in the ACT being required to stop working in that position.

While a person who does not hold a WWVP registration for working with children may not work in certain child-related activities, this does not impact their ability to be

employed in other areas. A reasonable parallel here would be the requirement to hold vocational or tertiary qualifications to engage in various trades and professions.

2. *Legitimate purpose (s 28(2)(b))*

The Bill strengthens protections for children in the WWVP Act by requiring that negative notices or registration cancellations issued in other Australian jurisdictions are automatically and immediately recognised in the ACT.

WWCC schemes currently in place across each Australian jurisdiction aim to protect the safety of children from those who would pose an unacceptable risk of harm. This Bill will allow for mutual recognition of negative notices and registration cancellations from other jurisdictions.

This Bill strengthens existing WWCC schemes nationally, including by protecting children from coming into contact with, or being placed in the care of, a person who might pose a risk of harm to them.

The Bill makes it clear that a person with a negative notice or registration cancellation that prevents them working with children in another jurisdiction will not be cleared to work with children in the ACT. This will prevent people from circumventing restrictions placed on them in other jurisdictions by entering the ACT. It will also minimise delays arising from the assessment of multiple complex applications, which will enhance the protection of children and young people from harm.

A national policy position has been developed to ensure prompt, consistent and equal protection for children across all jurisdictions. The collective nature of this approach is embedded in the purpose of the Bill. Consistency of mutual recognition across all jurisdictions is essential to achieving the intended purpose.

This is important as presently, individuals with a negative notice or registration cancellation in one jurisdiction can move to another jurisdiction and apply, or if they already have WWCC clearance in a second jurisdiction, can continue to work with children in the ACT. Automatic recognition of negative notices and registration cancellations is necessary to address this gap, to protect children and send a clear message to people who care for children that if they are banned in one jurisdiction, they are banned in all. In a small jurisdiction like the ACT, an individual moving to evade the consequences of a negative notice from another jurisdiction presents a real and serious risk of harm to children and young people.

3. *Rational connection between the limitation and the purpose (s 28(2)(d))*

Abuse or harm directed to a child by a person in a position of power, trust or care is particularly traumatising. Governments have an important role in ensuring children are protected by the people approved to provide them care.

There are currently WWCC schemes in place across each jurisdiction in Australia that aim to protect children's rights. To strengthen the respective schemes, this Bill will form part of a national framework to allow for mutual recognition, to immediately recognise a negative notice or registration cancellation from another jurisdiction. This may result in someone currently working in a child-related activity in the ACT being required to stop working in that position, or a person seeking to work in the ACT having their work options limited to exclude working with children.

Limiting any opportunity for a person who presents an unacceptable risk to children to work or engage directly with children, no matter how briefly, establishes a rational connection between the limitation of the right and a legitimate purpose.

The Bill establishes that receiving a negative notice or registration cancellation for working with children in another jurisdiction will prevent a person from working with children in the ACT. This will prevent people who have been assessed as posing an unacceptable risk to children in another jurisdiction from intentionally seeking to circumvent restrictions on them by subsequently seeking clearance to work with children in the ACT. This is likely to be a significant problem in the ACT, given the shared border with NSW and the number of people holding registration in both jurisdictions. The effect of this Bill is that a negative notice arising from either a rejection or revocation of a WWCC in another jurisdiction will take immediate effect in the ACT.

This limitation will ensure there is no delay in the protection of children arising from multiple applications to register to work in different jurisdictions. Currently, even when a person has a negative notice or registration cancellation from another jurisdiction, they can apply in the ACT under the WWVP Act, leading to an additional extensive risk assessment process. This only causes delay, as the ACT application will very likely lead to a negative notice in the ACT. This is because the ACT will seek information about the person from other states and territories, including criminal records. The impact of that information on the level of risk the person poses is very likely to lead to the same outcome, as the risk assessment tool is applied in a nationally consistent way.

4. Proportionality (s28 (2)(e))

The Bill seeks to limit the rights of people who have received a negative notice in another jurisdiction through the least restrictive means possible, to achieve the policy intent of protecting children from abuse.

A person who is not able to be registered under the WWVP Act is not able to work in any child related activity, but they will remain eligible to apply for a WWVP registration to work with other categories of vulnerable people.⁸ The Bill's amendments will mean

⁸ In the WWVP Act: **vulnerable person** means—

- (a) a child; or
- (b) an adult who is—

people who have received a negative notice for working with children in another jurisdiction will be limited in their choice of work in the ACT but will not unjustly deprived of work more broadly.

The limitation to the right to work is restricted in the following ways:

- a. The limitation does not apply to all people, only people who have received with a negative notice or who have had their registration cancelled in another jurisdiction.
- b. A negative notice or registration cancellation is provided to a person following a determination that the person poses an unacceptable risk of harm to children. The risk assessment process is broadly consistent across jurisdictions and aligns with national standards to ensure both consistency and integrity. There is ongoing work to further harmonise national processes.

The limitation does not apply to all work, only to work that involves children as defined in the WWVP Act. Work with other vulnerable people included in the WWVP scheme remains possible and is not impacted by this Bill. Work in areas not involving children may be facilitated through a conditional registration.

- c. Mutual recognition of negative notices and registration cancellations from other jurisdictions will not impact the operation of the current exemptions. This includes exemptions for kinship carers under the *Children and Young People Act 2008*.⁹
- d. The Bill will also not impact exemptions for conditional role-based registration where a person has relevant experience of incarceration. Individuals who cannot be registered to work with children in the ACT (including where they may have a negative notice or registration cancellation from another jurisdiction) may still apply for a conditional or role-based registration to work in other areas, such as drug and alcohol counselling for adults. This recognises the significance of earning a living and adopting a trade, occupation or profession that is suited to a person's role in society and their family, while maintaining the scheme.¹⁰

Two key safeguards have been incorporated into the Bill to restrict the limitation on the right to work and ensure it is proportionate.

- (i) disadvantaged; and
- (ii) accessing a regulated activity in relation to the disadvantage.

Examples—disadvantaged

- 1 an adult with a physical or mental disability
- 2 an adult who suffers social or financial hardship
- 3 an adult who cannot communicate, or who has difficulty communicating, in English.

⁹ *Children and Young People Act 2008* (ACT) subsection 514B (3)(c).

¹⁰ *Working with Vulnerable People (Background Checking) Act 2011* (ACT) section 42B.

An ‘inconsistent corresponding offence’ application (new section 22A)

The first safeguard regarding the right to work addresses the concern that another jurisdiction may amend its list of disqualifying offences (equivalent to the Class A offences in the ACT) in the future to include less relevant ones. While the current list of offences for automatic ineligibility to hold a WWCC in other jurisdictions adequately balances human rights, this may not remain the case if new offences are added.

Should this occur, under the mutual recognition approach, the ACT would have to recognise a negative notice from another jurisdiction even if that jurisdiction’s list of criminal offences no longer appropriately balances the promotion of the rights of children and young people and the protection of the right to work (and freedom from discrimination based on irrelevant criminal records).

To ensure the ACT is not bound to recognise future amendments made by other jurisdictions to include new disqualifying (Class A equivalent) offences that are not human rights compliant, the exemption from section 17(2A) under new section 22A allows a person who has been negatively impacted by its operation to be able to make a case to have an application for a WWVP registration considered in the ACT.

This mechanism will allow an individual to make a written application to the Commissioner for Fair Trading (who holds statutory authority under the WWVP Act for assessing WWVP applications). The commissioner may grant an exemption from the operation of section 17(2A) if they are satisfied on reasonable grounds that:

- a. the individual received a negative WWCC notice under a corresponding law, or the applicant’s registration under a corresponding law was cancelled, because of an adult conviction or finding of guilt for an offence; and
- b. the disqualifying offence that led to the negative notice or registration cancellation was a *non-corresponding offence*, which is defined as an offence for which a conviction or finding of guilt would, under the corresponding law, result in the convicted person not being eligible, or no longer being eligible, to be registered to engage in a regulated activity involving children; and the offence does not substantially correspond to the ACT’s list of Class A disqualifying offences; and
- c. the applicant has demonstrated that because of the operation of new section 17(2A) the negative notice or cancellation results in an adverse effect on the applicant in the ACT, to an extent that is an unreasonable limitation on the person’s rights under the *Human Rights Act 2004*.

Where the Commissioner for Fair Trading is satisfied on reasonable grounds that all the above criteria apply, an individual may be granted an exemption to apply for WWVP registration in the ACT. Their application would then be assessed in the same manner and on the same basis as any other applicant. The application may be

subsequently accepted (either entirely or with conditions), refused, or considered ineligible.

The intent of this safeguard is to limit the impact on human rights in the future. It is targeted to apply to potential future amendments to the list of Class A disqualifying criminal offences (or equivalent) in other jurisdictions that would lead to an automatic negative notice, potentially permanently preventing a person from being registered to work with children.

If another jurisdiction makes amendments to its list of Class A disqualifying offences (or equivalent) after the ACT has incorporated that jurisdiction's laws as a corresponding law under the WWVP Act, an individual may use the 'inconsistent corresponding offence application' to raise a concern if they later wish to apply for ACT registration. Grounds for such an application are defined narrowly in the Bill and restricted to situations where the individual received a negative notice due to the addition of an inconsistent disqualifying criminal offence in another jurisdiction that is substantially different from the ACT list of Class A offences, and for which recognising the negative notice or cancellation was an unreasonable limit on the person's human rights.

5-year restriction for re-application (new section 22(5))

New section 22(5) clarifies that the existing 5-year restriction period before a person can re-apply for registration also applies to a negative notice or registration cancellation under a corresponding law. This ensures a person who receives a negative notice or registration cancellation in another jurisdiction is not permanently barred from applying for clearance to work with children in the ACT, if their circumstances have changed. This ability to re-apply in the ACT will be available to any eligible individuals.

Currently, when a decision is made to refuse or cancel a person WWVP registration on the basis of a risk assessment, the person can seek an internal review of the decision (see Schedule 2, WWVP Act). This provides an opportunity to ensure the initial decision was fair.

Once a decision has been made to refuse or cancel WWVP registration in the ACT (either initially or after an internal review), a person is excluded from reapplying for 5 years. Allowing a person to re-apply after 5 years provides an opportunity for them to demonstrate that they no longer pose an unacceptable risk to children.

The ACT WWVP scheme currently ensures most individuals are not unfairly excluded from working with children and are afforded an opportunity to be re-assessed, either through internal review or by allowing them to re-apply based on changed circumstances.

The Health and Community Services Directorate has assessed that currently, the ACT's right to internal review and re-application periods are sufficiently similar to other

jurisdictions (noting that other schemes are structured differently and adopt different wording). Presently, the risk assessment process in all states and territories is underpinned by a substantially similar and comprehensive risk assessment tool, as outlined above. Ongoing work, led by the WWCC Reform Taskforce within the Attorney-General's Department, is seeking to better align the criteria and risk assessment, with the goal being national harmonisation. Further work on consistency with rights of internal review (and re-application exclusion periods) is also occurring, and SCAG is expected to meet in late 2025 to provide oversight and guide this work.

The ACT's approach in setting a 5-year exclusion period after a negative notice or registration cancellation will not affect an individual's right to seek internal review or merits review, or to re-apply in the jurisdiction of the original decision. Some jurisdictions allow broader categories of decisions to be reviewed than the ACT and some have shorter exclusion periods before a person can re-apply. Individuals can access those alternatives when they are reasonably available. Further, where the person can go back to the original jurisdiction, it is considered appropriate that they do so, in part because the original jurisdiction has the most complete information to conduct a risk assessment.

The limitation on the right to work is directly connected to the purpose of protecting children from adults who may pose them an unacceptable risk of harm. Based on the Bill's narrow framing and the mechanisms that have been incorporated, the limitation is considered a proportionate means to achieving the Bill's objective – to protect children's safety.

Section 8 – Right to equality and non-discrimination

1. Nature of the right and the limitation (s28(2)(a) and (c))

The right to equality and non-discrimination in the HRA provides that everyone is entitled to enjoy their rights without discrimination of any kind, and that everyone is equal before the law and entitled to the equal protection of the law without discrimination.

Discrimination refers to any treatment that, either directly or indirectly, causes detriment to individuals in a range of prohibited areas, including employment. The *Discrimination Act 1991* (ACT) provides that it is unlawful to discriminate either directly or indirectly against a person because of a protected attribute, including an irrelevant criminal record.

An irrelevant criminal record is one relating to an offence, or alleged offence, where a person has been charged but proceedings have not been finalised, or the charge has lapsed or been withdrawn.¹¹ It also includes a record where the person has:

- been acquitted of the alleged offence

¹¹ *Discrimination Act 1991* (ACT) Dictionary (definition of 'irrelevant criminal record').

- had the conviction quashed or set aside
- been served with an infringement notice
- a conviction but the circumstances of the offence are not directly relevant to the situation in which discrimination arises
- a spent conviction.

The intended purpose of the right to recognition and equality before the law is to ensure people are not discriminated against in employment due to unrelated criminal offences, for example a hairdresser being terminated for a conviction for a historic driving offence.

Currently, criminal offences are relevant in different ways to a person seeking to register under the WWVP scheme to work with children in the ACT. For employment in a range of child-related activities, a person in the ACT must be registered under the WWVP scheme. A person is automatically ineligible to apply for registration if they have received an adult conviction of a Class A disqualifying offence/s. Class A disqualifying offences include serious violent and sex offences against a child.

If a person has an adult conviction of a Class B disqualifying offence, they will also be excluded from registration, unless there are exceptional circumstances that justify their registration. Class B disqualifying offences include offences such as manslaughter, neglect of a child and robbery.

A person may also be refused a WWVP registration for working with children in the ACT, even if they do not have any Class A or B disqualifying offences, if available information indicates the risk of harm to children and young people is too high. This decision is currently made under a rigorous risk assessment framework, which takes into account a range of factors such as the nature and severity of any non-conviction criminal offences, the relevance of those offences to the proposed role, patterns of past behaviour, time elapsed since the conduct occurred, previous registration history, and any other information that may indicate a potential risk to the safety and wellbeing of vulnerable people. These decisions, made by the Commissioner for Fair Trading, are subject to review by ACAT. ACAT and the commissioner, as public authorities under the HRA, are required to consider and act consistently with human rights in exercising their statutory powers under the Act.

While the ACT scheme currently discriminates against a person based on the nature and extent of their criminal record by denying them WWVP registration, the scheme is not incompatible with this right because only criminal offences that are relevant to the care of children have an impact on the assessment of a person's risk.

The right to freedom from discrimination based on an irrelevant criminal record is relevant to the consideration of this Bill because the amendments will extend the scheme and limit the rights of people to work in the ACT, where they have received a negative notice or registration cancellation for WWCC from another jurisdiction. The right to non-discrimination would be limited if another jurisdiction were to change its list of disqualifying (Class A equivalent) offences to include offences that would not be

considered relevant criminal offences in the ACT. Under the mutual recognition scheme, the ACT would still be required to recognise such a negative notice or registration from another jurisdiction.

At present, the offences leading to automatic ineligibility for a WWCC are broadly consistent across jurisdictions.

The relevant offences in the ACT scheme align with the National Standards for Working with Children Checks (National Standards).¹² Currently, the National Standards facilitate a consistent approach to the consideration of offences for WWCC under all state and territory schemes. State and territory Ministers responsible for the different WWCC schemes have endorsed the intergovernmental National Standards through the Standing Council of Attorneys-General and the Community Services Ministers Forum, committing to ongoing implementation in their respective jurisdictions.

The National Standards are part of ongoing efforts to standardise and align a single list of criminal offences that automatically disqualify a person from holding a WWCC across all jurisdictions and impact how a risk assessment is undertaken.

There is now broad consistency in the treatment of offences across jurisdictions and in line with National Standard 14, including:

- a. murder and attempted murder
- b. serious assault against a child
- c. sexual offences in relation to a child including incest
- d. child pornography-related offences
- e. abduction or kidnapping offences against a child involving a sexual or abusive element
- f. bestiality and serious animal cruelty offences.

2. Legitimate purpose (s28(2)(b))

The legitimate purpose of the Bill is set out above.

The criminal offences that are central to the limitation have been determined following a detailed risk assessment framework based on National Standards. These restrictions increase children's safety and mitigate risks of exploitation. For example, they cover offences involving intentional violence (murder/sexual assault) and criminal offences against vulnerable people, such as sexual exploitation of children.

3. Rational connection between the limitation and the purpose (s28(d))

This Bill increases the protection of children from people who have received a negative notice or registration cancellation based on an adult conviction or finding of

¹² [National-Standards-for-Working-with-Children-Checks.pdf](https://www.nationalstandards.gov.au/national-standards-for-working-with-children-checks.pdf)

guilt for a relevant criminal offence prohibiting them from working with children in another jurisdiction.

Preventing contact with people who are recognised as creating an unacceptable risk for children, due to their relevant criminal record, is central to the purpose of the Bill and is in the best interests of children, which is of paramount importance.

The introduction of mutual recognition of negative notices will improve the existing system, enabling the immediate effect of negative notices and registration cancellations in all jurisdictions. It will eliminate any opportunity for ongoing exposure of children to a person with a negative notice or registration cancellation. This is particularly relevant in instances when a person has concurrent WWCC clearances across jurisdictions and receives a negative notice or registration cancellation in one of those jurisdictions. There is anecdotal evidence that this is presently an issue in the ACT, as it is a small territory surrounded by NSW. The Bill will allow for the negative notice or registration cancellation from another jurisdiction to automatically take effect in the ACT, reducing the risk to children and minimising delay.

4. Proportionality (s 28(2)(e))

As outlined above, the basis upon which negative notices and registration cancellations are determined across jurisdictions is largely comparable. In particular, the disqualifying (Class A equivalent) offences leading to automatic ineligibility for a WWCC are broadly consistent. While the currently prescribed offences are considered appropriate, there is a concern this situation could change if another jurisdiction were to change its list of disqualifying (Class A equivalent) offences to include ones that would not be considered relevant criminal offences in the ACT. Under the mutual recognition scheme, the ACT would be required to recognise such a negative notice or registration cancellation from another jurisdiction.

The mechanisms outlined above are intended to address this risk and prevent the automatic application of a potentially discriminatory law in the ACT. The Bill will limit the impact on human rights that may arise if other jurisdictions amend their WWCC legislation in the future, while upholding the integrity of the mutual recognition scheme.

As with the limitation on the right to work, the extent of the limitation on the right to equality and non-discrimination has been restricted as much as possible. The ACT WWVP scheme, unlike schemes in other jurisdictions, provides protection for the broader community, encompassing a range of vulnerable people. The scope of the limitation has been narrowed so only those seeking to work with children in the ACT will be affected by the recognition of their negative notice or registration cancellation from another jurisdiction. Existing processes are available for applying to work with other vulnerable groups. This includes the current provisions for 'role based' registrations and kinship carers.

In addition, the Bill provides for 2 key safeguards that are relevant to the right to non-discrimination:

- Inconsistent Corresponding Offences application: Where an individual might become ineligible for a WWCC in another jurisdiction due to a disqualifying (Class A equivalent) offence that the ACT would consider irrelevant, this person may be able to apply to the Commissioner of Fair Trading for an exemption from new section 17(2A). This safeguard is set out in detail above.
- 5-year restriction on re-application period: Where an individual receives a negative notice or cancellation in another jurisdiction (and thus becomes ineligible to work with children in the ACT), this person may re-apply in the ACT 5 years after the other jurisdiction's decision to issue a negative notice or cancel a registration. This safeguard is set out in detail above.

Section 21 – Right to a fair trial

1. Nature of the right and limitation (s28(2)(a) and (c))

Section 21 of the HRA protects the right to a fair trial. The right to a fair trial is of paramount importance to upholding the rule of law. It recognises that an individual's rights and obligations, as recognised by law, ought to be decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

The right to a fair trial includes all stages of proceedings in a court or tribunal and has been extended to include review processes in administrative decision-making.¹³ The right is concerned 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 decision maker be unbiased and independent. This is particularly important when the decisions of government may negatively impact human rights, such as the right to work and freedom from discrimination.

Currently in the ACT, access to an internal review of decisions made under the WWVP Act is restricted. There is no right of review where a person is ineligible because of a Class A disqualifying offence. An automatic exclusion from registration due to a conviction of a Class A disqualifying offence is appropriate, as evidence of such offences can be objectively determined through reviewing a person's criminal record and no exercise of discretion by a government decision-maker is required. Class A offences are those that place a child at very high risk of serious harm. In relation to other decisions to refuse or cancel – or place conditions on – a person's WWVP registration in the ACT, there is access to internal review processes.

Access to internal review under the WWVP Act does not affect the broader right to judicial review of administrative decisions under the Administrative Decisions Judicial

¹³ *Thomson v ACT Planning and Land Authority (Administrative Review)* [2009] ACAT 38. See ACT Government Right to a Fair trial Fact Sheet: [Fact Sheet - N - s 21 - Fair trial - Human Rights Education](#).

Review Act (ADJR Act), or section 75(v) of the Constitution. The right to a fair trial guarantees the right to have ‘rights and obligations recognised by law, decided by a competent, independent and impartial court or tribunal after a fair and public hearing.’¹⁴ Existing rights of judicial review under the ADJR Act satisfy this right.

The considerations of procedural fairness that are applied in deciding whether to issue a person a negative notice or cancellation are similar across all jurisdictions. The National Office for Child Safety (NOCS) is a federal body that oversees the various WWCC schemes to support consistency. This includes developing the National Standards to ensure consistency across disqualifying offences and assessment processes. This work is ongoing with a national commitment for further harmonisation. Currently, there are comparable processes for issuing negative notices and cancellations, accessing internal review and the application of common law principles of procedural fairness¹⁵ across all jurisdictions.

Each jurisdiction provides applicants an avenue to a full review through an impartial tribunal in the respective jurisdiction (apart from NSW, which provides the initial appeal process internally, with an avenue for a reassessment of the review decision for disqualification decisions).¹⁶ In the ACT, a negative notice or cancellation received on the basis of a Class A disqualifying offence is not reviewable, while a negative notice or cancellation arising from a risk assessment can be reviewed by ACAT. Some jurisdictions offer a review process for negative notices or cancellations due to disqualifying offences. The Bill will not affect a person’s ability to access these review mechanisms in other jurisdictions.

The right to a fair trial may be limited by this Bill because the amendments will introduce an automatic recognition of a negative notice or registration cancellation for working with children received in other jurisdictions. The Bill means a person who has a negative notice or registration cancellation from another jurisdiction will not be able to dispute that it applies in the ACT. The mutual recognition of a negative notice or registration cancellation from another jurisdiction will not be a reviewable decision.

2. Legitimate purpose s 28(2)(b)

The legitimate purpose of the Bill has been set out in detail above, in relation to the right to work.

¹⁴ Ibid.

¹⁵ *Kioa v West* (1985) 159 CLR 550

¹⁶ *Child Safety (Prohibited Persons) Act 2016* (SA), Part 6, section 43.

Working with Children (Screening) Act 2004 (WA) subsection 19(10) (b).

Worker Screening Act 2020 (VIC) subsection 69 (2) (b) (c).

Working with Children (Risk Management and Screening) Act 2000 (QLD) Division 6, section 531.

Registration To Work with Vulnerable People Act 2013 (TAS) section 53.

Care And Protection of Children Act 2007 (NT) section 194.

Child Protection (Working with Children) and Other Legislation Amendment Act 2025 No 56 (NSW) section 28, Division 3 section 30B.

3. Rational connection between the limitation and the purpose (s28(2(d))

The Bill supports a broader national approach to improve the protection of children. The ‘banned in one, banned in all’ approach aims to increase safety through more efficient and effective recognition of negative notices. The limitation on the right to a fair trial is designed to reduce delays in screening, which compromise the protection of children from a significant risk of harm.

The Bill will also reduce duplication as a negative notice or registration cancellation in one jurisdiction will be upheld in another. Reducing duplication in risk assessment processes will enhance efficiency, which will also ensure that fresh applications for registration are processed more quickly, further strengthening the protection of children and young people from risk of harm.

4. Proportionality (s28(2)(e))

The right of an applicant to a fair trial is potentially limited because applicants will not be provided an opportunity to dispute the decision of the ACT to recognise another jurisdiction’s negative notice or registration cancellation.

The limitation on the right to a fair trial is restricted in the following ways:

- a. The scope of the limitation has been reduced as much as possible. Only those who have an existing negative notice or have had a registration cancelled for working with children under a corresponding law and seek to work with children in the ACT will be affected. Applications to work with other groups in the ACT remain possible.
- b. The approach to assessing and determining negative notices and registration cancellations across jurisdictions are largely consistent with National Standards and are specific about the unacceptable risk that must underpin a negative notice or registration cancellation.
- c. Most jurisdictions have a process for disputing decisions about negative notices or registration cancellations, which applicants can access.
- d. An aggrieved person may still seek to have judicial review of a decision on the grounds that it was afflicted by jurisdictional error.

In addition, the Bill provides for two key safeguards that are relevant to the right to a fair trial.

- **Inconsistent Corresponding Offences application:** As outlined above, new section 22A provides a mechanism for an applicant to make an application for exemption from section 17(2A) on the grounds that a corresponding law is inconsistent with a territory law. While this is not a review mechanism, it provides an applicant with an opportunity to make a case to have an application for a WWVP registration considered in the ACT.

- 5-year restriction on re-application: As outlined above, where an individual receives a negative notice or registration cancellation in another jurisdiction (and thus becomes ineligible to work with children in the ACT), then this person may re-apply in the ACT 5 years after the other jurisdiction's decision to issue a negative notice or cancel a registration.

These safeguards are not intended to replace access to internal review, merits review or a lesser re-application exclusion period, where a more favourable option is reasonably open to the applicant in the jurisdiction from which they received the negative notice or registration cancellation. For example, some jurisdictions currently allow more decisions to be reviewed than in the ACT, and some jurisdictions provide a shorter re-application exclusion period.

Where the person can seek review in the original jurisdiction, it is considered appropriate that they do so, as the original jurisdiction has the most complete information upon which they can appropriately determine a current risk assessment.

In addition to review rights in their original jurisdiction, the Bill allows people with negative notices or registration cancellations from other jurisdictions to re-apply in the ACT after 5 years. This safeguard means that a decision from another jurisdiction will not lead to permanent exclusion in the ACT. This safeguard promotes an individual's right to a fair trial where there are potential differences or inadequacies in the review processes in their original jurisdiction.

Least restrictive means reasonably available

Other options to be less restrictive were considered but were assessed as not possible as they would undermine the policy intent of mutual recognition. In particular, the ability for all applicants with negative notices from other states or territories to apply anew in the ACT based on broad-ranging 'exceptional circumstances' was explored. This option was considered not possible because mutual recognition would no longer be automatic, which would undermine the Bill's objective to strengthen clarity and create national consistency. A review option would also undermine the automatic nature of the recognition, which would introduce delays. This would not meet the intended policy objective of providing immediate and strengthened protections for children and young people.

Another less restrictive option considered was to provide individuals with a mechanism in the ACT for internal review of the original decision regarding the negative notice from another jurisdiction. However, to maintain a cohesive and secure mutual recognition scheme, it is critical no jurisdiction operates in a way that weakens the collective safeguards created through national harmonisation. Offering a review mechanism for decisions made in other jurisdictions compromises the scheme and provides opportunities for 'forum shopping', in which individuals may routinely seek review in ACT as an avenue to avoid the consequences of a national scheme of mutual recognition.

In addition, another internal review mechanism would create practical difficulties, as it would then require an ACT body to review the original decision making of another state government body, tribunal or court. An ACT body (whether the directorate or an independent and impartial tribunal) is not an appropriate body to conduct an investigation and/or re-assessment of another jurisdiction. Such a process would also potentially undermine mutual respect between the ACT and other states and territories.

Both review options were considered not feasible as they would create significant delays, which would undermine the ability of the mutual recognition scheme to clearly and quickly ensure that those who are at risk of working with children are not registered to do so under the WWVP Act. Consequently, there was no less restrictive option available.

WORKING WITH VULNERABLE PEOPLE (BACKGROUND CHECKING)
AMENDMENT BILL 2025

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004*, I have examined the Working with Vulnerable People (Background Checking) Amendment Bill 2025.

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*.

Tara Cheyne MLA
Attorney-General

CLAUSE NOTES

Clause 1 Name of Act

This technical clause provides for the long title of this Act. This clause specifies that the name of the Act is the *Working with Vulnerable People (Background Checking) Amendment Act 2025*.

Clause 2 Commencement

This technical clause provides that the Act will commence on the day after notification.

Clause 3 Legislation amended

This Act amends the *Working with Vulnerable People (Background Checking) Act 2011* and the *Working with Vulnerable People (Background Checking) Regulation 2012*.

Part 1 Working with Vulnerable People (Background Checking) Act 2011

Clause 4 Application for registration new section 17 (2A)

The clause makes a person who has received a negative notice or cancellation for working with children under a corresponding law ineligible to hold a WWVP registration allowing them to engage in regulated activities involving children in the ACT.

Clause 5 New section 22 (5)

This clause extends the existing 5-year restriction on a person re-applying after an ACT negative notice or cancellation to negative notices or cancellations received under a corresponding law, in some situations.

Clause 6 New section 22A

This clause provides for an exemption from section 17(2A). New section 22A enables a person (applicant) with a negative notice or cancellation under a corresponding law to make a written application for a WWVP registration for working with children in the ACT under certain limited circumstances.

To grant the exemption, the Commissioner for Fair Trading must be satisfied on reasonable grounds that:

First, the negative notice or cancellation under a corresponding law was the result of an adult conviction or finding of guilt for an equivalent of Class A disqualifying offence in the corresponding law, meaning an offence that results in automatic and non-discretionary disqualification.

Second, they must show that the disqualifying offence is a non-corresponding offence.

Finally, they must demonstrate that because of the operation of section 17(2A), the negative notice or cancellation results in an adverse effect on the applicant in the ACT, to an extent that is an unreasonable limitation on the applicant's rights under the *Human Rights Act 2004*.

This clause outlines that the application must (a) be in writing; (b) include any information prescribed by regulation; and (c) comply with any requirements prescribed by regulation.

This clause states the Commissioner may (a) by written notice, require an applicant to give the Commissioner information the Commissioner reasonably needs to decide the application, within a stated time, at a stated place; and (b) if the applicant does not comply with a requirement in the notice—refuse to consider the application further.

This clause defines non-corresponding offence to mean an offence mentioned in a corresponding law (a) for which a conviction or finding of guilt would, under the corresponding law, result in the convicted person not being eligible, or stopping being eligible, to be registered to engage in a regulated activity involving children; and (b) that does not substantially correspond to a Class A disqualifying offence.

This exemption is not available to individuals who have received a negative notice or cancellation from other jurisdictions based on a risk assessment where there was an equivalent Class B disqualifying offence or general risk assessment process.

Individuals who have received a negative notice on these grounds may instead re-apply in the ACT after 5 years.

Clause 7 Risk assessments Section 32 (3) (b) and note

The clause allows the Commissioner for Fair Trading to dispense with a risk assessment where a person applied to work with children and had received a cancellation or negative notice from another jurisdiction under a corresponding law, in line with the existing power to do so for people who have committed Class A disqualifying offences.

Clause 8 Negative notices New section 40 (1) (aa) and note

The clause requires the Commissioner for Fair Trading to refuse to register a person to work with children where they have received a cancellation or negative notice under a corresponding law, in line with their existing obligation to do so for people who have committed a Class A disqualifying offence.

Clause 9 Registration Section 41 (2) (b) (iv)

This technical clause rewords omits section 42A (b) (iv) to replace reference to '(Conditional registration—class A disqualifying offence)' with '(Conditional registration—class A disqualifying offence or negative status under corresponding law)'.

Clause 10 Section 42A

The clause automatically applies the condition that a person must not engage in a regulated activity involving children if the person has a negative notice or cancellation under a corresponding law.

Clause 11 Section 56A heading

This clause changes the title of section 56A to ‘Automatic cancellation—class A disqualifying offence or negative status under corresponding law’.

Clause 12 Section 56A (1) (b) and note

This clause has the effect of providing for the automatic cancellation of a registration where the person becomes ineligible under section 17 (2A), as is the case currently for people who for people who have committed Class A disqualifying offences.

Clause 13 Regulation-making power New section 71 (2A)

This clause expands the regulation-making power in the Act as it relates to the definition of corresponding law to allow corresponding laws to be prescribed as in force from time to time, instead of just as in force at the time of prescription. It also provides that a law of another jurisdiction prescribed for the definition of corresponding law, paragraph (b), does not need to be notified under section 47 (6) of the Legislation Act when amended in the other jurisdiction.

Part 2 Working with Vulnerable People (Background Checking) Regulation 2012

Clause 14 New section 4A

This clause amends the regulation to require applicants to disclose negative notices or cancellations for working with children under a corresponding law through a written statement accompanying their application.

Clause 15 New section 7

This clause prescribes the WWCC legislation of each other Australian state and territory under the definition of corresponding law as in force from time to time.