Australian Capital Territory

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

Disallowable instrument DI2026–250

made under the

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

EXPLANATORY STATEMENT

This explanatory statement relates to the *Working with Vulnerable People (Background Checking) Risk Assessment Guidelines 2026* (the ***instrument***) as presented to the Legislative Assembly (the ***Assembly***). It has been prepared to assist the reader of the instrument. It does not form part of the instrument and has not been endorsed by the Assembly. The statement must be read in conjunction with the instrument. It is not, and is not meant to be, a comprehensive description of the instrument,

Background

Section 27 of the *Working with Vulnerable People (Background Checking) Act 2011* (the ***Act***) requires the Commissioner for Fair Trading (the ***Commissioner***) to make Risk Assessment Guidelines (the ***Guidelines***) about how the Commissioner will conduct risk assessments for the purposes of determining whether or not a person poses an unacceptable risk of harm to a vulnerable person accessing a regulated activity or service.

The Guidelines set out the process and factors for the Commissioner to consider when assessing individual applications for registration under the Act and conducting additional risk assessments on people who already hold a registration under the Act. The Act and Guidelines serve an important and legitimate objective of protecting vulnerable people from harm through careful risk-based screening of people seeking to work with a vulnerable person.

Australian Standard *AS ISO 31000:2018 Risk management–Guidelines* (the Risk Standard) is a principle which is observed within the Guidelines however the Risk Standard does not in and of itself influence decision making.

The Guidelines are a disallowable instrument under section 27 of the Act and must be presented to the Assembly not later than 6 days after its notification day, pursuant to section 64 of the *Legislation Act 2001* (the ***Legislation Act***).

Overview

In this revision of the Guidelines, criteria have been clearly set out for when a positive, unrestricted registration will be issued automatically and that automated affirmative outcomes are deemed to be decisions made by the delegated statutory decision-maker under the Act.

These registrations are automated affirmative outcomes that meet the requirements set within the Access Canberra Automated Affirmative Decision-Making Policy (AADM) and comply with guidance set out on the Commonwealth Ombudsman Better Practice Guide for Automated Decision Making.

While the process involves automated decision-making, it does not involve the use of artificial intelligence (AI), machine learning or generative AI. Decisions are made by applying predefined rules and criteria, rather than through AI-based assessment, interpretation or judgement.

Regulatory Impact Statement (RIS)

Section 34 of the Legislation Act provides that if a proposed subordinate law or disallowable instrument (the ***proposed law***) is likely to impose appreciable costs on the community, or a part of the community, then, before the proposed law is made, the Minister administering the authorising law must arrange for a RIS to be prepared for the proposed law.

A RIS is not required in this instance as this amendment is purely administrative, does not impose liabilities on a person and does not fundamentally affect the law's application or operation.

Consistency with Human Rights

The Standing Committee on Legal Affairs (Legislative Scrutiny Role) (the ***Committee***) terms of reference require consideration of human rights impacts, among other matters.

During the development of the Guidelines, due regard was given to their compatibility with human rights as set out in the *Human Rights Act 2004.*

Section 27B (1) of the *Human Rights Act 2004* (the ***HRA***) expressly provides that the practice of a trade, occupation or profession may be regulated by law. Section 28 of the HRA further identifies that human rights may be subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society.

Any engagement with or limitation on human rights is considered reasonable and justifiable.

The human rights of vulnerable people, applicants, and registrants are core elements in the decision-making process. The Working with Vulnerable People background checking scheme and Guidelines engage and may limit rights of applicants and

registrants, including the right to work, right to privacy, and right to equality. However, these limitations are reasonable and proportionate to achieve the important objective of protecting vulnerable people from serious harm.

The Guidelines establish a clear process for individualised risk assessment to be conducted in relation to each application and registration; with the applicant/registrant given the opportunity to respond and provide submissions prior to a final decision being made, ensuring that the applicant/registrant's right to procedural fairness is respected and that other rights are not unreasonably limited.

Tables 2 and 3 of the Guidelines represent the factors the Commissioner will consider when assessing the level of risk an applicant/registrant poses. These factors are drawn from the Act, and the Guidelines provide more detailed guidance as to how these factors are to be considered, ensuring that the assessment is clearly focused on determining the objective risk posed by an individual to vulnerable persons and that the reliability and relevance of evidence is carefully weighed.

The Act and Guidelines contain other safeguards to minimise the restriction of rights of applicants and registrants. The Commissioner acknowledges the valuable contributions individuals with lived experience offer in specific roles and can issue role-based registrations. The least restrictive conditional registration addressing an identified risk posed by an applicant or registrant will be granted wherever possible; whilst ensuring the best interest of vulnerable people is the paramount consideration in any decision outcome in accordance with section 6A of the Act.

When applying Schedule 3 of the Act, there are some serious offences which preclude registration in roles working with children or in the NDIS context as required by national schemes. These serious offences have a clear and rational link to the objective risk posed by a person. Where there is doubt about the categorisation of an offence the Guidelines provide that the Commissioner will consider the lowest categorisation of offence, thus allowing an applicant to make a case regarding exceptional circumstances and to allow registration where the person does not pose a risk to vulnerable people, following an individualised assessment.

Positive, unrestricted registrations are not subject to limitations or conditions and have no implications for the human rights of vulnerable people, applicants, or registrants.

The instrument is consistent with the Committee's Terms of Reference. In particular, the instrument:

- is made under a ministerial power found in the Act;
- is in accordance with the general objects of the Act under which the instrument is made;
- does not unduly trespass on rights previously established by law; and
- does not make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions.