

OFFICIAL



Working with Children Check Guidelines

July 2024





Working with Children Check Guidelines

Contents

1.	Introduction	3
2.	Objects and principles	3
3.	Automatic prohibition from working with children – <i>prescribed offences</i>	4
	Spent convictions	5
4.	Conducting a working with children check	5
5.	Assessable information	5
	Consents	5
	Types of assessable information	6
	Other information determined by the Registrar to be assessable information	8
	Protected information	8
	Obtaining and using assessable information	9
6.	Persons automatically not prohibited from working with children	9
7.	Persons presumed to pose an unacceptable risk to children – <i>presumptive disqualification offences</i>	10
	Invitation to make submissions relevant to a presumptive disqualification offence	11
	Guidance for determining whether circumstances exist to disregard offence – section 26A(1)(c)(i)	11
	Guidance for determining exceptional circumstances - section 26A(1)(C)(ii)	12
	Outcome of assessment of exceptional or other circumstances	13
8.	Risk assessment process – all other assessable information	14
	What is a risk assessment?	14
	Risk context	14
	When a risk assessment is undertaken	15
	Assessment of assessable information	15
	Determining unacceptable risk	16
9.	Standards pursuant to section 4(2)(b) of the Act.....	18
	Weighting information sources	18
10.	Risk assessment criteria pursuant to section 4(2)(d) of the Act	22
	Analysing risk	22
11.	Administrative decision making	29
	How should decision-makers exercise discretionary powers?	29
	Principles of procedural fairness	30
	Invitation to respond to assessable information	30
	Circumstances where procedural fairness requirements are displaced	31
12.	Outcome of a risk assessment	31



Not prohibited	31
Prohibited.....	32
Review of central assessment unit decisions	33
Application for revocation of a prohibition notice	33
13. Conducting additional working with children checks	35
14. Benchmarks pursuant to section 4(2)(c) of the Act	35
15. Exercise of the Registrar’s power to grant a temporary exemption to work on re-application..	35
16. Appendices	37
Appendix 1 – Category 1: Categories of prescribed offences.....	37
Appendix 2- Category 2: Categories of presumptive disqualification offences	40





1. Introduction

The Working with Children Check Guidelines ('the Guidelines') are made pursuant to section 4 of the *Child Safety (Prohibited Persons) Act 2016* ('the Act').

A working with children check consists of the central assessment unit assessing assessable information in relation to a person against the prescribed risk assessment criteria to determine whether or not the person poses an unacceptable risk to children.

On completing a working with children check, the central assessment unit must determine whether the person is, or is not, to be prohibited from working with children. Persons who pose an unacceptable risk to children are to be prohibited from working with them.

The Department of Human Services Screening Unit performs the functions and exercises the powers of the central assessment unit for the purposes of the Act.

The Guidelines are to be read as a whole and in conjunction with the Act and the *Child Safety (Prohibited Persons) Regulations 2019* ('the Regulations').

The Guidelines provide the framework for how the central assessment unit will conduct a working with children check for the purposes of the Act. They provide guidance as to how the central assessment unit will identify and assess assessable information relevant to a person in order to determine whether the person is, or is not, to be prohibited from working with children.

The Guidelines are subject to periodic review so as to ensure they continue to meet the requirements of the legislative scheme.

2. Objects and principles


In performing its functions under the Act, the central assessment unit must have regard to, and seek to give effect to, the objects and principles of the Act.

The Act's primary objective is to minimise the risk to children posed by persons who work with them. It is a further object of the Act to provide a framework for the prohibition of persons who pose an unacceptable risk to children from working with them.

The paramount consideration in respect of the administration, operation and enforcement of the Act must be the best interests of children, having regard to their safety and protection.

Working with children is a privilege not a right. A working with children check is not a determination of a person's suitability to work with children or in a particular setting. A working with children check that does not result in a person being prohibited is not proof of good character or that the person does not pose *any* risk to children. It is a point-in-time assessment involving predictive reasoning that entails reaching a conclusion about the risk of a future event occurring based on the correlation between that event and past events of a certain class.

The fact that a working with children check is conducted in relation to a person does not satisfy an employer's obligation to ensure that a workplace is safe for children. Ensuring a person has a



current working with children check is one part of a range of strategies to be undertaken by employers and the broader community to keep children safe.

Employers (however defined), organisations, and caregivers cannot rely on the existence of a working with children check to absolve them of their legal obligations relevant to the safeguarding of children. Such persons and bodies must have in place comprehensive strategies to ensure child safe environments.

3. Automatic prohibition from working with children – *prescribed offences*

The following persons are automatically prohibited from working with children:

- a person who has been ***found guilty***, as defined in section 5(2) of the Act of a prescribed offence committed as an adult pursuant to section 15(1)(c) of the Act; or
- a person who, under a law of the Commonwealth, or of another State or Territory, is prohibited from working with children (however described) pursuant to section 15(1)(b) of the Act.

The above circumstances enliven an automatic statutory prohibition under section 15(1) of the Act; such prohibitions are not based on an assessment undertaken by the central assessment unit as to whether or not the person poses an unacceptable risk to children. There is no discretionary capacity for the central assessment unit to change the outcome of an automatic statutory prohibition.

The prohibition applies irrespective of whether a person has applied, or intends to apply, for a working with children check in South Australia.


Where a person submits an application for a working with children check and a prescribed offence or interstate prohibition is identified in relation to the person, the central assessment unit cannot continue to conduct the working with children check.

Additionally, where the central assessment unit is conducting a working with children check and the person to whom the application relates *subsequently becomes* a prohibited person, upon learning of that circumstance the central assessment unit cannot continue to conduct the working with children check.

The central assessment unit will notify the person to whom the check relates, in writing, that the person is subject to a statutory prohibition from working with children pursuant to section 15(1)(b) or section 15(1)(c) of the Act as the case may be.

Persons prohibited from working with children as a result of a prescribed offence have no avenue to review the prohibition.

For persons prohibited from working with children in South Australia because of an interstate prohibition (however described) there is no right of review in South Australia. The person may be



permitted to seek a review of the original decision in the relevant interstate jurisdiction. If a decision is changed such that the person is no longer prohibited in the relevant interstate jurisdiction, the person may apply for a working with children check in South Australia.

Appendix 1 – Category 1: Categories of prescribed offences

Spent convictions

An offence of which a person is convicted where that conviction is spent pursuant to the *Spent Convictions Act 2009* or a corresponding law within the meaning of that Act is excluded from the definition of *prescribed offence*.

The statutory prohibition no longer applies if the prescribed offence for which the person was convicted becomes spent.

A person with a spent conviction (however defined) may apply for a working with children check. It is to be noted, however, that spent convictions may form assessable information and be taken into account for the purposes of a working with children check.

4. Conducting a working with children check

To conduct a working with children check the central assessment unit will, as far as is reasonably practicable, actively seek to obtain assessable information in respect of the person the subject of the check.


The central assessment unit will conduct a risk assessment based on the identified assessable information relevant to the person the subject of the check.

On completing a working with children check in respect of a person, the central assessment unit will determine whether the person is, or is not, to be prohibited from working with children. If the central assessment unit determines that a person is to be prohibited from working with children, the central assessment unit must issue a notice to the person prohibiting the person from engaging in child-related work.

5. Assessable information

Consents

When an application for a working with children check is lodged, the person to whom the check relates will be asked to consent to the central assessment unit obtaining assessable information



in relation to the person from police, courts, government agencies or other relevant bodies for the purpose of conducting the check.

The person must provide the abovementioned consent before the application will be considered valid.

If, following the working with children check, the person is not prohibited, the central assessment unit will continue to monitor and obtain new assessable information relevant to the person in accordance with the Act, Regulations and Guidelines.

Types of assessable information

The central assessment unit may consider the following assessable information in relation to a person as part of a working with children check:

Criminal history information


- Information that relates to offences of which the person has been found guilty; and
- Information that relates to offences with which the person has been charged.

Disciplinary and misconduct information

- Information that relates to disciplinary proceedings in which the person was a defendant or respondent;
- Information that relates to disciplinary action taken against the person;
- Information that relates to findings of misconduct made against the person;
- Information that relates to the cancellation of an approval of a foster parent under the *Family and Community Services Act 1972*; and
- Information that relates to the cancellation of an approval of an approved carer under the *Children and Young People (Safety) Act 2017*.

Child protection information

- Information that relates to a notification made pursuant to Part 4 Division 1 of the *Children's Protection Act 1993*;
- Information that relates to a notification made pursuant to Chapter 5 Part 1 of the *Children and Young People (Safety) Act 2017*; and
- Information (whether or not obtained under the *Children's Protection Act 1993* or the *Children and Young People (Safety) Act 2017*) held by an administrative unit of the Public Service that is responsible for assisting the Minister in the administration of the *Children*



and *Young People (Safety) Act 2017* and that relates to harm caused, or a risk of harm, to a child.

Other information

The central assessment unit may also consider the following:

- Information provided by the person for the purposes of a working with children check;
- Information the Registrar may require a public sector agency or other specified person to provide to the central assessment unit pursuant to sections 36 or 37 of the Act;
- Information provided to the central assessment unit by the Commissioner of Police pursuant to section 39 of the Act;
- Information that relates to a restraining order under the *Criminal Procedure Act 1921* issued against the person;
- Information that relates to an intervention order, associated order or interim intervention order under the *Intervention Orders (Prevention of Abuse) Act 2009* issued against the person; and
- Any other information determined by the Registrar, in accordance with any requirements set out in the Guidelines, to be assessable information.

The information identified above is considered assessable information:

- Whether or not the relevant conviction, offence or conduct occurred before or after the commencement of section 8 of the Act;
- Whether or not the relevant offence or conduct was committed or occurred in South Australia or elsewhere;
- Regardless of the outcome of the charges;
- Whether the information was obtained before or after the commencement of section 8 of the Act;
- Whether or not an appeal has been lodged or finally determined in respect of the relevant matter; and
- Regardless of the outcome of any proceedings, action or appeal to which the information relates.



Other information determined by the Registrar to be assessable information

Regulation 8(f) empowers the Registrar to determine, in accordance with any requirements set out in these Guidelines, information to be assessable information where that information does not otherwise meet the definition of assessable information found within the legislative scheme.

Such information could comprise, but is not limited to, information relevant to criminal investigations, information provided by an employer pursuant to the requirements of section 19 of the Act, or information provided pursuant to section 40 of the Act.

In making a determination that information is assessable information, the Registrar must be satisfied that the information has a bearing on the central assessment unit's assessment of whether or not the person poses an unacceptable risk to children.

Protected information


Regulation 3 defines **protected information** as information that may, if disclosed,

- prejudice a criminal investigation;
- prejudice an investigation or assessment being conducted, or likely to be conducted, under the *Children's Protection Act 1993* or the *Children and Young People (Safety) Act 2017*;
- identify, or enable the identification of, a child who has been abused or neglected or is at risk of harm;
- identify a parent, guardian or family member of a child who has been abused or neglected or is at risk of harm;
- identify, or enable the identification of, a person who has made a report or notification that a child may be being abused or neglected, or may be at risk of harm (whether under the *Children's Protection Act 1993*, the *Child and Young People (Safety) Act 2017* or otherwise); or
- endanger a person's life or physical safety or wellbeing.

Classifying specified information as protected information

Regulation 4 provides that the Registrar may, in accordance with any requirements set out in these Guidelines, classify specified information as protected information.

The power to classify specified information as protected information has been delegated to the Deputy Registrar of the central assessment unit.



Classifying information as protected is only undertaken when one or more of the *protected information* definition criteria in regulation 3 are met.

Protected information is not disclosed to any person, subject to an authorisation or requirement to do so by law.

Where a working with children check is in-part determined on an assessment of protected information, that part of the assessment will not be disclosed to the person the subject of the check in the central assessment unit's reasons for decision. Where a working with children check is wholly determined on an assessment of protected information, the central assessment unit has the option of not providing the person the subject of the check with any grounds or reasons for the decision other than it would be contrary to the public interest to allow the person to work with children.

The decision to classify certain information as protected information is not a reviewable decision pursuant to section 43 of the Act, and therefore is not subject to review by the South Australian Civil and Administrative Tribunal ('the Tribunal').

Obtaining and using assessable information

The central assessment unit should, as far as is reasonably practicable, actively seek to obtain assessable information in relation to the person the subject of the working with children check.


The central assessment unit is not required to assess all assessable information relating to a person.

The fact that the central assessment unit may not assess all assessable information in relation to a person in the course of a working with children check will not, of itself, invalidate the working with children check, or a decision of the central assessment unit made in relation to the working with children check.

In conducting a working with children check, the central assessment unit is not bound by the rules of evidence. It may adopt, as in its discretion it considers appropriate, any finding, decision or judgment of a court or other tribunal, and may otherwise inform itself as it thinks fit.

6. Persons automatically not prohibited from working with children

Except where the person is a prohibited person, the central assessment unit must, in a case where there is no assessable information relating to the person in respect of whom a working



with children check is conducted, determine that the person is not to be prohibited from working with children.

The central assessment unit will write to the person advising that the person is not prohibited from working with children.

7. Persons presumed to pose an unacceptable risk to children – *presumptive disqualification offences*

A person who has been found guilty of a presumptive disqualification offence will be presumed to pose an unacceptable risk to children.

The Act seeks to prohibit from working with children, as a class, those persons who are found guilty of a presumptive disqualification offence even where there is no other evidence of risk to children and no matter how draconian the consequences might appear to such persons.


Where it is identified that a person has been found guilty of a presumptive disqualification offence as defined by section 26A of the Act the central assessment unit must determine that the person is to be prohibited from working with children, unless the person satisfies the central assessment unit that:

- the circumstances of the presumptive disqualification offence are such that the offence should be disregarded in determining whether the person poses an unacceptable risk to children; or
- such exceptional circumstances exist in relation to the person that the person does not appear, or no longer appears, to pose an unacceptable risk to children.

The burden is on the person the subject of the check to satisfy the central assessment unit that one of the above grounds for rebutting the presumption of risk is established.

For the avoidance of doubt, if the person the subject of the check fails to establish one of the abovementioned grounds, the central assessment unit has no residual discretion to determine that the person is not to be prohibited. The central assessment unit must determine that the person is to be prohibited from working with children and issue a prohibition notice to the person.

If one or both of the abovementioned grounds are satisfied (that is, the presumption is rebutted), the central assessment unit will proceed to identify and assess any other assessable information



against the prescribed risk assessment criteria to determine whether or not the person poses an unacceptable risk to children.

Invitation to make submissions relevant to a presumptive disqualification offence

Where the central assessment unit identifies that a person has been found guilty of a presumptive disqualification offence, the central assessment unit will write to the person outlining the relevant information and invite them to make submissions for the purposes of section 26A(1)(c) of the Act.

Where relevant, other assessable information (unrelated to the presumptive disqualification offence) may also be put to the person as this can influence the existence or absence of exceptional circumstances pursuant to section 26A(1)(c)(ii) of the Act. Where such other assessable information is put to the person by the central assessment unit, it must be clearly identified as separate from the presumptive disqualification offence.

The central assessment unit will afford the person a reasonable period of time, according to the particular circumstances and demands of the case, within which to make submissions.

If the person does not respond to the invitation within the time specified, and no extension is otherwise granted, the central assessment unit must determine that the person is to be prohibited from working with children and issue a prohibition notice to the person.


Guidance for determining whether circumstances exist to disregard offence – section 26A(1)(c)(i)

A person with a presumptive disqualification offence may rebut the presumption that they pose an unacceptable risk to children if they provide information which satisfies the central assessment unit that the circumstances of the offence are such that that it should be disregarded in determining whether the person poses an unacceptable risk to children. The central assessment unit will assess the relevant circumstances of offences on a case-by-case basis.

In determining whether the circumstances of the presumptive disqualification offence should be disregarded, the central assessment unit will consider whether the circumstances of the offence are *capable* of rationally affecting the assessment of risk to children.

Factors to be considered when assessing the circumstances of the presumptive disqualification offence may include but are not limited to:

- the age of the offence, its contextual triviality, and any penalty imposed by the sentencing court;
- the role or conduct of the person in the broader context of the offending. For example, where a person has been found guilty of trafficking in a controlled drug contrary to section



32 of the *Controlled Substances Act 1984*, reliable information indicating the person played a minor role as part of a broader criminal enterprise *may* (in combination with other considerations) be sufficient to warrant disregarding the offence in determining whether the person poses an unacceptable risk to children;

- the existence of any victims of the offence and its impact on them;
- whether the offending arose in the context of an abusive relationship;
- whether there is information indicating the person was acting in self-defence or otherwise defending another against an unprovoked assault or attack; or
- whether the person committed the offending under the direction of a person in authority or otherwise under duress.

For a ***person who has been found guilty of a presumptive disqualification offence*** by operation of section 26A(3)(b), namely where they have been charged with a prescribed offence that has not yet been finally determined, the exception in section 26A(1)(c)(i) is unavailable.

Guidance for determining exceptional circumstances - section 26A(1)(C)(ii)

A person who has been found guilty of a presumptive disqualification offence may rebut the presumption if they provide information which satisfies the central assessment unit that such exceptional circumstances exist in relation to the person that demonstrates that the person does not appear, or no longer appears, to pose an unacceptable risk to children.

Exceptional circumstances about a person are those that are out of the ordinary course, unusual, special or uncommon, such that they justify displacement of the statutory presumption that the person poses an unacceptable risk to children. Such exceptional circumstances are not limited to the circumstances of the offence or charge upon which the presumption arises.

Circumstances that may contribute to a finding of exceptional circumstances in relation to a person may include, but are not limited to, the following:

- periods of voluntary good behaviour (no offending or other misconduct);
- evidence of employment and/or volunteering;
- evidence of educational and/or vocational training;
- demonstrated personal growth and/or insight;
- demonstrated reformed behaviour and/or lifestyle stability; and

- 
- evidence of successful engagement with therapy and/or counselling.

Importantly, circumstances informing the exceptional circumstances assessment must be individual to the person. Circumstances that are exceptional for one person may not be exceptional for another; the assessment is in some measure predicated on the starting point of the person in question.

Circumstances must also, either individually or collectively, address and mitigate the underlying risk/s inherent in the presumptive disqualification offence that led to the statutory presumption arising. Information evincing sustained, self-motivated change will generally be afforded greater weight than that of short-term and/or third-party ordered compliance (e.g. measures required to be undertaken as part of parole conditions).

Information from independent sources that support or confirm the existence of exceptional circumstances should be provided by the person. Submissions that rely solely on the word of the person will, in most cases, be insufficient.

The test for what amounts to exceptional circumstances must not be set so high that it becomes near impossible to satisfy.

In assessing the person's circumstances, the paramount consideration of the central assessment unit must be the best interests of children, having regard to their safety and protection.


Outcome of assessment of exceptional or other circumstances

If a person who has been found guilty of a presumptive disqualifying offence **does not** satisfy the central assessment unit that:

- the circumstances of the presumptive disqualification offence are such that the offence should be disregarded in determining whether the person poses an unacceptable risk to children; or
- such exceptional circumstances exist in relation to the person that the person does not appear, or no longer appears, to pose an unacceptable risk to children,

the central assessment unit must determine that the person should be prohibited from working with children and will issue the person a prohibition notice. The central assessment unit is not required to consider any further assessable information in relation to the person for the purposes of the application.

If a person who has been found guilty of a presumptive disqualification offence provides information that **does** satisfy the central assessment unit of either of the above grounds, the central assessment unit will conduct a risk assessment on any other assessable information in



relation to the person and, if an unacceptable risk is not identified, will determine that the person is not to be prohibited from working with children.

8. Risk assessment process – all other assessable information

What is a risk assessment?

A risk assessment is an evaluation of whether a person poses an unacceptable risk to children in light of any assessable information identified in relation to the person. The implementation of risk assessments recognises the general principle that past events or conduct can be a reliable basis for determining the probability of future events or conduct occurring.

As a starting point, the central assessment unit will not make any presumption of outcome.

It is not the role of the central assessment unit to determine whether the person the subject of the check did or did not do something based on the information before it (noting the unit does need to consider the likelihood of the occurrence); a working with children check is not an investigatory process, it is an assessment of past conduct (or alleged conduct) and whether that conduct indicates the person presents an unacceptable risk to children.

Risk context

The risk to be assessed is the risk to children posed by persons who work with them. The working with children check statutory scheme is highly pre-emptive and protective; the central assessment unit's task is not to wait for a risk to be realised before prohibiting a person from working with children. There is no punitive or deterrent aspect to a risk assessment. The effect the prohibition may have on a person the subject of a working with children check is not a relevant consideration in determining unacceptable risk.

As stated, the intent of the risk assessment process is not to decide whether a person is guilty or innocent or to reinvestigate any matter; but rather to determine whether a person poses an unacceptable risk to children. A risk assessment for the purposes of a working with children check is an administrative decision-making process in the nature of an inquiry about the person's past conduct (or alleged conduct) and the risks to children that may flow from that conduct.

In undertaking this assessment, the central assessment unit will consider the nature, degree, and likelihood of any risk identified and possible harm that may flow if the perceived risk eventuated.

The central assessment unit does not need to be satisfied that it is likely the person will cause harm to children in the future. Risk must be unacceptable; it does not need to be likely.



When a risk assessment is undertaken

The central assessment unit will conduct a risk assessment where assessable information is identified in relation to a person the subject of a working with children check.

Conducting a risk assessment is subject to the central assessment unit identifying:

- that the person is already prohibited from working with children pursuant to sections 15(1)(b) or (c) of the Act; or
- that the person has been found guilty of a presumptive disqualification offence for the purposes of the Act and has not rebutted the statutory presumption that they pose an unacceptable risk to children.

The central assessment unit will not conduct a risk assessment in these circumstances.

As stated, where a person who has been found guilty of a presumptive disqualification offence (as defined by the Act) satisfies the central assessment unit that the presumption has been rebutted in accordance with section 26A(1)(c)(i) or (ii) of the Act, the central assessment unit will proceed to conduct a risk assessment in relation to the person, taking into account other assessable information.

Continuous monitoring

A person who has had a working with children check resulting in the central assessment unit determining that they were not to be prohibited from working with children is subject to continuous monitoring for new assessable information.


New assessable information may lead to a statutory prohibition, the raising of a statutory presumption of unacceptable risk, or the central assessment unit determining that an additional working with children check is necessary to determine whether the person poses an unacceptable risk to children.

Assessment of assessable information

The existence of risk is identified through the assessment of assessable information in relation to the person the subject of the check.

Assessable information includes a person's criminal history, child protection information, disciplinary/misconduct information, or other information defined under section 8 of the Act.

The process involves a central assessment unit decision-maker reviewing and assessing the assessable information before them and determining whether, either individually or collectively, it indicates that the person poses an unacceptable risk to children.



Where there is no assessable information relevant to the person, the central assessment unit must determine that the person is not to be prohibited from working with children.

Factors to be considered as part of a risk assessment

It is not possible to outline every potential risk factor or outcome. The tables in Guidelines 9 and 10 are to be used as a guide when considering assessable information that may have a range of implications and requires further scrutiny.

The decisions of the central assessment unit will not be arbitrary or capricious; they will be reasoned decisions based on careful weighting of all of the assessable information relevant to a person and a rational assessment of future risk.

Factors not to be considered as part of a risk assessment

When conducting a risk assessment the following factors should not be taken into consideration:


- the impact of a prohibited outcome on the person – the rights of, or personal impact on, the person the subject of the check are not relevant considerations in assessing whether they pose an unacceptable risk to children;
- the role of the person the subject of the check – a working with children check outcome is portable between roles and employers. Any stated role of the person at the time of the check bears no weight as to whether the person poses an unacceptable risk to children; and
- lived experience – it is acknowledged that some individuals, by virtue of their history, have valuable lived experience to share with children, and that a person can make significant changes in their life; this experience, however, is not relevant for a risk assessment. The role of the central assessment unit is to determine whether, based on assessable information, a person poses an unacceptable risk to children; it is not to assess a person's suitability for employment, which is an employer's responsibility.

Determining unacceptable risk

The process of conducting a working with children check involves assessing assessable information and the emanating risk issues as one task in order to determine the 'degree of concern' that the information evokes about the person and the risk they pose to children.

The assessment of risk involves a species of predictive reasoning that entails reaching a conclusion about the risk of a future event occurring based on the correlation between that event and past events of a certain class.

The outcome is binary; either the person is determined to pose an unacceptable risk or they are not. No conditions can be imposed upon a working with children check (such as supervision) in an



attempt to alleviate the concerns underpinning an identified unacceptable risk; the result is that a person is prohibited or not prohibited.

The standard of proof required when determining unacceptable risk is the statutory standard of reasonable satisfaction. This is a standard which cannot be measured against, or equated to, an evidential standard of proof.

When determining whether a person poses an unacceptable risk to children, the decision-maker does not necessarily need to be satisfied that it is likely, to any standard or level of satisfaction (such as the balance of probabilities), that the person *will* cause harm to a child in the future, merely that there is a possibility of future harm to children, and that the potential consequences to children would be serious *if* the perceived risk eventuated.

The requisite likelihood of future risk is that which is not fanciful, remote, theoretical or speculative; it must be appreciable.

The decision-maker *may* make positive findings of fact in relation to foundational facts but is not required to do so before determining that an unacceptable risk exists. If the decision-maker is minded to make positive findings of fact about conduct that would amount to a serious criminal offence then such findings ought be made on a standard equating to the balance of probabilities, paying regard to the considerations expressed in *Briginshaw v Briginshaw* [1938] HCA 34; (1938) 60 CLR 336, concerning the need for careful scrutiny of evidence and the degree of comfortable satisfaction required.


The decision-maker is entitled to consider the totality of the assessable information (after careful scrutiny and weighting) and the related risk factors, even if no individual act is proved to a standard equating to the civil standard (balance of probabilities) and find that the information cumulatively raises 'issues of concern' such that an unacceptable risk exists.

Where the possible future harm is serious then even a minimal chance or possibility that it will occur would usually be sufficient to regard that outcome, or risk to children, as unacceptable.

Unacceptable risk based upon unproven allegations

In conducting a working with children check in relation to a person, the central assessment unit is entitled to consider allegations of unproven events or conduct that relate to the assessable information categories specified in section 8 of the Act. This includes, but is not limited to, information that relates to offences with which the person has been charged, disciplinary proceedings in which the person was a defendant or respondent, and child protection allegations which did not result in a substantiation of harm.

Before considering the risk arising from unproven allegations, the central assessment unit must first assess the likelihood of their occurrence and place such weight on the information as is



commensurate with that assessment. This is not a task that can or must be calculated with mathematical precision.

Unproven allegations will attract some reduction in weight to account for the possibility that the events or conduct did not occur.

Where the central assessment unit forms the view that alleged events or conduct did not occur, they cannot be taken into account in the further assessment of risk.

Where the possibility that alleged events or conduct occurred is great (or conversely, the possibility that they occurred is slim), the information may be taken into account in the assessment of risk, however, the weight placed on the information will not be as high as that which is afforded to proven outcomes.

The likelihood of the truth or correctness of a proposition about past events or conduct where the available information is incomplete or contradictory increases with the strength of the evidence.

Guidance for the determination of weight to be placed on information is provided in guideline 9 and Table 1 of these Guidelines.


9. Standards pursuant to section 4(2)(b) of the Act

Weighting information sources

The weight given to information for the purposes of a working with children check relates to the quality, relevance and seriousness of the information. In the context of a risk assessment, it is the emphasis or degree of reliance a decision-maker may place on the information before them.

Information that is of low quality (i.e. incomplete, vague, circumstantial or uncorroborated) will be given less weight than evidence that is direct, unrefuted or supported by other information from a reliable source. For example, information provided by an independent witness or notifier regarding abuse sustained by a child will attract greater weight than information offered by a person whose evidence may be compromised in some way.

To determine the weight to be given to assessable information in a risk assessment, the central assessment unit may evaluate the information in accordance with *Table 1 – Weighting Information Sources*. These factors should be used as a guide only; they are not intended to be an assessment checklist.



Possible information before a decision-maker might include:

- Regulatory or agency reports – e.g. Department for Child Protection notifications or investigation or outcome rationale reports;
- Professional reports or assessments – e.g. reports from medical professionals, psychologists, or police;
- Person’s submissions – submitted as part of the application process or during the risk assessment process;
- Affidavits, witness statements, or statutory declarations; or
- Court documents – e.g. certificates of record, transcripts, evidence tendered, sentencing/summing up remarks, judgments, or court orders.




Table 1 – Weighting Information Sources

Weighting Information Sources		
Characteristic	Greater weight	Lesser weight
Reliability of information	<p>Competent, reliable and credible witness/ notifier statement</p> <p>Information that has been corroborated</p> <p>Evidence was tested in a court of law</p> <p>Unbiased or unconnected witness/ notifier</p> <p>Information obtained from regulatory agency or government agency</p> <p>Report, statement or document from professional with relevant expertise or experience</p> <p>Consistent with information provided by applicant, in application, and by other sources</p> <p>‘Substantiated’ or ‘responsible for harm’ outcome following child protection investigation</p> <p>Substantiated findings of misconduct</p>	<p>Inconsistent with objective facts of a matter (where known)</p> <p>History of fraud or deception</p> <p>Information obtained from a source with conflict of interest</p> <p>Unsubstantiated outcome following child protection investigation</p> <p>Personal experience or opinions, anecdotal information</p>
Relevance of information	<p>Information is closely connected or has the ability to prove or support a determination that an applicant poses or does not pose an unacceptable risk to children.</p>	<p>Information is not closely connected, appropriate or relevant to determining whether the applicant poses does not pose an unacceptable risk to children.</p>
Source of information (How the information was obtained)	<p>Information obtained from regulatory agency or government agency as part of information gathering for assessment</p> <p>Mandated notifier</p> <p>Obtained from employer or individual as part of mandatory reporting obligations under the Act (Section 19 or 40 notices)</p>	<p>Anonymous tip off</p> <p>Non-mandated notifier</p>

Weighting Information Sources

Characteristic	Greater weight	Lesser weight
Nature, extent and outcome of investigation	<p>Full investigation, with witness statements</p> <p>Independent investigation</p> <p>Child protection investigation completed which resulted in an outcome or finding of abuse unsubstantiated, abuse substantiated, or applicant responsible for harm.</p> <p>Action taken following abuse substantiated or responsible for harm finding, e.g.</p> <ul style="list-style-type: none"> • Applicant found to be perpetrator • Resulted in court order 	<p>Unproven allegations will carry significantly less influence in the assessment of risk as there was insufficient evidence for a conviction</p> <p>Incomplete investigation</p> <p>Did not proceed to investigation because of insufficient evidence</p> <p>Child protection investigation closed no action (for any reason)</p> <p>Applicant resigned before investigation complete</p>
Submissions from applicant (Including any evidence given by the applicant in an investigation in relation to the information)	<p>Submissions consistent with other information provided by applicant, in their application, and by other sources utilised by the central assessment unit</p> <p>Submission provides rationale for actions, cause or circumstances, supported by evidence where available</p> <p>Submission outlines change in circumstances and reasons for change.</p>	<p>Submissions inconsistent with objective facts of a matter (where known)</p>



10. Risk assessment criteria pursuant to section 4(2)(d) of the Act

While the weight given to information relates to its *quality*, or the degree of reliance the central assessment unit decision-maker may place on the information before them, the risk assessment criteria is concerned with the *content* of the information.

Events or conduct referenced in this section includes alleged (unproven) events or conduct.

The central assessment unit decision-maker should consider the substance of the information and have regard to:

- the person's criminal, child protection, disciplinary or other relevant history, including whether a pattern of concerning conduct is identified;
- the nature, gravity and circumstances of the events or conduct detailed in the information and how those factors are relevant to children or child-related work;
- the length of time that has passed since the events or conduct occurred;
- the person's conduct since the events or conduct occurred;
- the vulnerability of any victim at the time of the events or conduct including the age of the victim, the age of the person at that time, the age difference between the person and the victim and the person's relationship to the victim or position of authority over the victim at the material time; and
- all other relevant circumstances identified in the assessable information including, but not limited to, those pertaining to conduct which may be indicative of child grooming, poor boundary recognition, prurient interests, or other behaviour that may pose a risk to children and impact on the person's suitability to be engaged in child-related work.

In weighing up the risk assessment criteria, the paramount consideration must be the best interests of children, having regard to their safety and protection.

Analysing risk

To determine whether assessable information indicates the person the subject of the check presents a risk to children, the central assessment unit decision-maker may consider the guidance provided in Table 2 of these Guidelines.



Incorporation of the risk assessment criteria in Table 2 should form part of a thorough and balanced assessment of risk. Risk factors should be considered in their totality. They have not been recorded in any particular order and recording does not indicate priority or weight to be applied to a check. Nor is the table intended for use as a checklist. The particulars of assessable information may suggest additional matters relevant to the assessment of risk or that some contextual factors are not relevant.



Table 2 – Risk Assessment Criteria

Risk Assessment Criteria			
Criteria	Increase Risk	Decrease Risk	Guidance and other factors to consider
<p>The nature of the information including criminal offences, child protection information or disciplinary or misconduct information, and how this is relevant to children or child- related work</p> <p>Nature refers to the basic or inherent features, character or qualities of the information</p>	<p>Abuse of power or breach of trust</p> <p>Pre-meditated or wilful</p> <p>Committed against a child or in the presence of a child</p> <p>Use of force, coercion or weapon</p> <p>Unlawful deprivation of personal liberty</p> <p>Sexual or violence offence or misconduct</p> <p>Include fraud type offences</p> <p>Nature of offence or misconduct translates as risk to working with children</p> <p>Any child protection information where ground/s of abuse is sexual</p> <p>Any child protection information where ground/s of abuse is physical and child is under 2 years of age</p>	<p>Error of judgement – that is uncharacteristic (i.e. no other pattern of similar conduct)</p>	<p>If there is no identifiable victim, this does not necessarily diminish the offence or misconduct.</p> <p>Non-sexual offence or non-violent offence that is not fraud type misconduct, extreme misjudgements without accepting responsibility etc. – should be considered on a case-by-case basis.</p> <p>Lack of training or support does not necessarily mitigate a breach of common standards of behaviour and should be considered on a case-by-case basis.</p>
<p>The gravity of the information including criminal offences, child protection information or disciplinary or misconduct information, and how this is relevant to children or child- related work</p> <p>Gravity refers to the seriousness of the information</p>	<p>Term of imprisonment imposed (including suspended sentence)</p> <p>Placed on a sex offender or violent offender register</p> <p>Dismissal, termination, reprimand or reduction in remuneration</p> <p>Evidence of behaviour escalating in severity or seriousness</p> <p>Offending, abuse or misconduct was prolonged</p>	<p>Applicant ceased offending or misconduct without external intervention</p> <p>Nature of offence, child protection information or misconduct is not relevant to working with children</p>	<p>Severity of the penalty imposed – if imprisonment is not imposed, this does not necessarily mean the risk is not high. There are many very serious types of misconduct/offending that do not result in imprisonment for many reasons, e.g. first offence, agreement to do treatment, early plea etc.</p> <p>Sentencing remarks should be considered.</p> <p>Applicant is subject to current court orders - consider with nature of the offence. In some cases the Court Orders may have nothing to do with misconduct that will have a bearing on risk.</p>

Risk Assessment Criteria			
Criteria	Increase Risk	Decrease Risk	Guidance and other factors to consider
	<p>Significant impact on victim including serious injuries</p> <p>Outcome of child protection investigation results in abuse or risk of abuse/ likelihood of abuse substantiated or responsible for harm outcome</p>		
<p>The circumstances of the information including criminal offences, child protection information or disciplinary or misconduct information, and how this is relevant to children or child-related work</p> <p>Circumstances refers to the facts or conditions connected with the relevant information</p>	<p>Left scene of crime or attempted to cover-up offence</p> <p>Unprovoked or planned</p> <p>Information indicates incident occurred on a second or subsequent occasion;</p> <p>Information indicates event:</p> <ul style="list-style-type: none"> • occurred in circumstances involving an abuse of power or breach of trust; • was pre-meditated or wilful; • occurred in the presence of a child. 	<p>Accident</p> <p>Offered assistance to victim</p> <p>Nature of offence, child protection information or misconduct is not relevant to working with children</p>	<p>Diminished capacity – if a person suffers mental health issues or substance abuse issues and in that state behaves, in a way, that puts people at risk (e.g. violence/ indecent assaults etc.), then this becomes a weighted factor for risk unless there is evidence that these issues have been addressed.</p>
<p>The length of time that has passed since the event occurred</p>	<p>Offending, incident, misconduct is recent.</p>	<p>Significant period of time since offending, incident, misconduct occurred with no similar offending, incidence or misconduct.</p>	<p>Sexual offending has recognised high recidivism rates.</p> <p>The relevance of a conviction being spent should be assessed on a case-by-case basis.</p> <p>Time since the offending and age of applicant when offence occurred should be considered together. For example, lesser weight may be given where the offending occurred a significant time ago and when the applicant was an adolescent, as opposed to if the applicant was an adult at the time of offending.</p>
<p>Age of the applicant at the time of the offence, event or occurrence</p>	<p>Adult</p>	<p>Adolescent (13 to 17 years old)</p> <p>Child</p>	<p>Time since the offending and age of offender when offence occurred should be considered together.</p>

Risk Assessment Criteria			
Criteria	Increase Risk	Decrease Risk	Guidance and other factors to consider
			Level of maturity of offender at time of offending may be taken into consideration.
The vulnerability of the victim at the time of the event including the age of the victim, the age difference between the person and the victim	Victim is under 18, elderly or person with disability Victim was intoxicated, asleep or otherwise vulnerable during the event		
The person's relationship to the victim or position of authority over the victim at the time of the event	Formed a personal relationship with victim Abuse of power or breach of trust and care Person was in a position of authority over the victim e.g. guardian, carer, teacher		
The person's criminal, child protection, disciplinary or misconduct and/or other relevant history	Multiple convictions or allegations for the same type of offence or misconduct Multiple convictions or allegations for different offences or misconduct of relevance Multiple outcomes for the same type of offence, abuse, risk occurrence Multiple notifications for offence, abuse, risk occurrence Chronic abuse, multiple allegations or substantiations of abuse	Significant crime free period relative to criminal offending or misconduct which indicates that the underlying contributing factors to the concerning offending/ misconduct have been addressed. Significant abuse, incident or risk occurrence free period relative to notification type which indicates that the underlying contributing factors to the concerning abuse, incident, risk occurrence have been addressed. Chronicity of abuse – single allegation or substantiation of abuse	Weighting should be less for offending or misconduct that is of little relevance to risk to children. E.g. Some disorderly or traffic offence. Greater weight should be given to information that involves: <ul style="list-style-type: none"> • Violent behaviour or assault • Indecent or sexual behaviour • Failing to provide care for someone "Abuse/ incident/ risk occurrence free" periods on their own are not mitigating especially regarding sexual offending. E.g. A person may have had significant jail/ parole/ probation time and therefore the fact that they have not been recorded as behaving in a concerning manner may not be actual indicative of resolution of underlying factors and therefore has little value in mitigating risk.

Risk Assessment Criteria

Criteria	Increase Risk	Decrease Risk	Guidance and other factors to consider
			Consider possible relationship between any factors revealed in the child protection information and factors evident in other available information concerning the applicant that point to potential risk of harm.
Whether there is a pattern of concerning behaviour	Multiple offences whether similar or not Offence, abuse or misconduct commenced as a child and continued into adulthood Behaviours of risk that recur	Single offence or misconduct	
The person's conduct since the event Consider: <ul style="list-style-type: none"> • changes in circumstances since the information • attitude towards event • treatment or rehabilitation undertaken by applicant 	Breaches of court orders Rejects responsibility or minimises actions Little remorse expressed and/or if expressed aimed at perceived personal benefit Failure to complete mandated treatment or engage with professional supports Likelihood of recidivism and prospect of rehabilitation Multiple withdrawals or non-graduation from voluntary treatment	Improved management of mental health, illness, problematic alcohol and/or drug use Maturity or demonstrated change in behaviour Greater social support, stability or community engagement Evidence of change in socio-economic factors that influenced the circumstances that led to the offence or misconduct Expressed remorse, accepted responsibility and/or apologised upfront or at time of offence or conviction Shows insight into offending, abuse or misconduct and can articulate changes to attitude or behaviour to address offending or misconduct Steps taken to respond to issues of concern include - accepted treatment, successful completion of treatment program, counselling Demonstrated accepted need for change	Sexual offending has recognised high recidivism rates. Likelihood of recidivism may introduce considerations and risk assessments that are compiled for criminal justice purposes that have little relevance to "real world" re-offending. Remorse should only be considered where assessed in by a qualified professional or stated in a Court document.



Risk Assessment Criteria			
Criteria	Increase Risk	Decrease Risk	Guidance and other factors to consider
		Demonstrated improvement in area of concern Evidence of change of behaviour	
All other relevant circumstances in respect of their assessable information and the impact on their eligibility to be engaged in child-related work	Case-by-case basis in consideration of the relevance and possible impact on child		



11. Administrative decision making

A central assessment unit determination as to whether a person is, or is not, to be prohibited from working with children is an administrative decision that requires the exercise of discretion. In other words, the decision-maker has a choice about what decision to make and why.

How should decision-makers exercise discretionary powers?

The discretionary powers exercised by central assessment unit decision-makers are constrained by the requirements of the conferring legislative provisions and should be exercised in accordance with the objects and principles of the legislative scheme.

Central assessment unit decision-makers will act reasonably and impartially and will not make decisions based on their personal values.

In exercising discretionary powers, central assessment unit decision-makers will have regard to specific requirements of the Act, Regulations and Guidelines as well as any other policies of the central assessment unit. They will satisfy general administrative law requirements to:

- act in good faith and for a proper purpose;
- comply with legislative provisions;
- consider only relevant considerations and ignore irrelevant ones;
- act reasonably and on reasonable grounds;
- make decisions based on supporting assessable information;
- give appropriate weight to assessable information consistent with its importance;
- give proper consideration to the merits of the case;
- provide the person affected by the decision with procedural fairness as required by the legislative scheme; and
- exercise discretion independently and not under the direction or influence of a third person or body.

A failure to act within the confines of the power or otherwise comply with general administrative law principles may result in the Tribunal setting the decision aside or taking other action in respect of the decision.



Principles of procedural fairness

Over the years courts have developed rules to ensure that administrative decisions made by government decision-makers are made fairly. These rules are embodied in the general term of *procedural fairness* (sometimes known as *natural justice* or *due process*). The law recognises that decision-makers have a duty to act fairly, in the sense of according procedural fairness, in the making of administrative decisions which affect rights, interests and legitimate expectations, subject only to the clear manifestation of a contrary statutory intention.

The Act contains a contrary manifestation as section 11 provides that except as may be required by the regulations, neither the central assessment unit nor the Registrar are required to provide procedural fairness in exercising powers or performing functions under the Act. This means the common law requirement to provide procedural fairness has been abrogated and, in its place, a statutory requirement to provide procedural fairness exists in relation to the relevant exercise of powers or performance of functions.

Procedural fairness has two main components – the fair hearing rule and the rule against bias.

The fair hearing rule requires that someone who will be affected by a prospective administrative decision must be heard, whether through oral or written submissions, before the decision is made. The rule against bias demands that a decision-maker will not handle matters in which they have an actual or reasonably perceived conflict of interest or bias.


The central assessment unit and the Registrar (as the case requires) are required to provide persons procedural fairness in exercising powers or performing functions under the Act as set out in regulation 10(1)(a) and (b) of the Regulations.

Invitation to respond to assessable information

Where the central assessment unit identifies assessable information in relation to a person that may result in the person being prohibited, the central assessment unit will take reasonable steps to notify the person of the assessable information and provide them with a reasonable opportunity to respond before a final decision on the working with children check is made.

Where the central assessment unit intends to make a determination to not prohibit the person the subject of the check, no such steps to notify the person of assessable information will be made.

Excluding information classified by the Registrar as *protected information*, or information classified by the Commissioner of Police as *criminal intelligence*, assessable information of concern to the central assessment unit should be disclosed to the person the subject of the check.



A summary of such information is sufficient; original documents and the identity of confidential sources do not have to be provided.

The person the subject of the check will be given a reasonable period of time (according to the particular demands and circumstances of the case) to make a written submission and/or provide further information they wish to be considered before a decision is made.

The relevant central assessment unit decision-maker will have regard to any submissions made by the person and give them proper and genuine consideration in the determination of the check.

If the person does not respond to the invitation within the time specified, and an extension of time has not otherwise been granted, the central assessment unit will proceed with the risk assessment and make a decision based on the assessable information before it.

The failure or refusal of a person to make submissions or provide further information will not be considered adversely against them in determining whether they pose an unacceptable risk to children.

Circumstances where procedural fairness requirements are displaced


Except insofar as there is a statutory requirement to provide reasons for a decision to prohibit a person from working with children, the central assessment unit is not, when conducting a working with children check, required to afford a person procedural fairness where:

- the Registrar is of the opinion (based on available assessable information) that the person to whom the working with children check relates poses an immediate and serious risk to the safety of a child or children; or
- the person is a prohibited person.

12. Outcome of a risk assessment

Not prohibited

The central assessment unit determines the person does **not** pose an unacceptable risk to children and is **not** prohibited from working with children.



The central assessment unit will write to the person advising that the person is not prohibited from working with children.

Prohibited

Based upon a finding that the person poses an **unacceptable risk** to children, the central assessment unit determines that the person is to be **prohibited** from undertaking child-related work.

The central assessment unit will issue a **prohibition notice** to the person prohibiting the person from engaging in child-related work and take reasonable steps to notify any known employers of the person about the prohibition in accordance with section 41 of the Act.

Prohibition notice

A prohibition notice will be issued as soon as is reasonably practicable after the central assessment unit makes a determination that the person the subject of the check is prohibited from undertaking child-related work.

Prohibition notices remain in force until revoked in accordance with the Act.

Unless the central assessment unit is not required to give reasons due to reliance on criminal intelligence or protected information (as explained further below), the prohibition notice will set out the reasons explaining the central assessment unit's decision to prohibit the person.


The prohibition notice will also provide information on how the person can seek a review of the decision by the Tribunal.

Reasons for decisions

The central assessment unit has a statutory obligation to give reasons for its decisions to prohibit persons from working with children / engaging in child-related work.

The purpose of administrative decision reasons is to inform; good reasons should enable the person affected to understand why a particular decision was made. The reasons of administrative decision-makers are not to be construed minutely and finely with an eye keenly attuned to the perception of error.

In cases where the central assessment unit determines to prohibit a person from working with children on the basis of information that is classified by the Commissioner of Police as criminal intelligence or information that is classified by the Registrar as protected information, the central assessment unit may, according to the particular circumstances of the case:

- 
- omit and/or redact those portions of the assessable information affected by the classification/s from the reasons as the central assessment unit considers appropriate; or
 - not provide any grounds or reasons for the decision other than that it would be contrary to the public interest to allow the person to work with children.

Review of central assessment unit decisions

A decision of the central assessment unit to issue or revoke a prohibition notice is reviewable by the Tribunal. A person seeking review of such decision/s may lodge an application with the Tribunal within 14 days after receiving notice of the relevant decision (or such longer period as the Tribunal may allow).

Extensions of time to lodge an application for review may be granted where the Tribunal is satisfied that special circumstances exist and another party will not be unreasonably disadvantaged because of the delay in commencing proceedings.

Application for revocation of a prohibition notice

A person who has been issued a prohibition notice may, in appropriate circumstances, apply to the central assessment unit to have the prohibition notice revoked.


An application for revocation of a prohibition notice is made pursuant to section 33 of the Act. Applicants must satisfy the central assessment unit that:

- the prohibition notice was issued in error; or
- there is *fresh and compelling* assessable information that, if assessed in the course of the original working with children check, would have materially affected the determination under section 26(5) of the Act to prohibit the person from working with children.

Only once the central assessment unit is satisfied of either of the above criteria will a further working with children check be conducted as part of the section 33 application.

A decision of the central assessment unit regarding whether information is fresh and compelling is not reviewable.

Fresh assessable information is information which the person could not have reasonably provided to the central assessment unit during the course of the original working with children check, either because it did not exist at that time, or, with the exercise of reasonable effort it could not have been obtained (and provided to the central assessment unit) by the person at that time. The



following are some examples of information which may be considered as fresh assessable information, depending on the particular circumstances:

- Information indicating criminal and/or disciplinary charges have been withdrawn or otherwise discontinued;
- Information indicating a criminal finding of guilt or other disciplinary / misconduct finding has been quashed or otherwise reversed or amended;
- A report from a counsellor or psychologist who was unavailable at the time of the original working with children check;
- References or reports from persons who, at the time of the original working with children check, were unable to provide such reference or report about the person due to, for instance, being unavailable or not knowing the person at that time; and
- Documents for which the person would have had to pay a fee to obtain and the person was experiencing financial hardship at the time of the original working with children check.

Compelling assessable information should be credible and reliable, and relevant to the risks identified in the original working with children check such that had it been considered at that time, it would have materially affected the determination made. Information does not have to be determinative of the ultimate question of whether a person poses unacceptable risk to children, it merely needs to have had a significant or important effect on, or made such difference to, that determination.

Information must be both *fresh* and *compelling* in order to satisfy the requirements of section 33(1)(b)(ii) of the Act.

If the central assessment unit is satisfied that fresh and compelling assessable information has been provided, it will proceed to conduct another working with children check in relation to the person, taking into consideration all of the available assessable information and in accordance with the requirements of section 26 of the Act.

Upon completion of the working with children check:

- if the person is determined not to pose an unacceptable risk to children, the prohibition notice will be revoked and the person will be permitted to engage in child-related work.
- if the central assessment unit determines the person poses an unacceptable risk to children, a new prohibition notice will be issued pursuant to section 32 of the Act.



13. Conducting additional working with children checks

In addition to conducting working with children checks on application, the central assessment unit may, at any time, conduct additional working with children checks in relation to a particular person.

An additional working with children check may be conducted on the application of an employer of the person, on the application of a person prescribed by the regulations for the purposes of section 30(2) of the Act, or on the central assessment unit's own motion.

An additional working with children check in relation to a person must be conducted if the Minister so directs.


14. Benchmarks pursuant to section 4(2)(c) of the Act

The central assessment unit aims to conduct working with children checks in a timely manner and in accordance with obligations imposed under the Act, Regulations and the Guidelines. The central assessment unit is committed to continuously improving the efficiency with which it processes applications, while ensuring risk assessments and decision-making standards are maintained.

To ensure risks to children are minimised, once all necessary information is obtained from external parties, the central assessment unit will aim to process the application as soon as is reasonably practicable.

- process the majority of applications for which no risk assessment is required within 5 working days; and
- process the majority of working with children checks, for which a risk assessment is required, within 21 working days.

15. Exercise of the Registrar's power to grant a temporary exemption to work on re-application



Regulation 27(1)(a) of the Regulations allows re-applying working with children check applicants to work after their existing working with children check expires whilst their re-application is being processed. This temporary exemption is known as ‘work on re-application’.

To be eligible to work on re-application, applicants need to have submitted a new working with children check application¹ before their current clearance expires and cannot be prohibited.

Under regulation 27(1)(b) of the Regulations, the Registrar may approve a temporary exemption for a specific person who, through no fault of their own, had not made a valid application before their working with children check expired.

An applicant may request a temporary exemption in writing to the Registrar – either by post or via email - within 7 days after the person’s working with children check has expired, setting out the reasons why the application was not validly submitted by the expiry date. The Registrar will not accept such requests made after the person’s working with children check has been expired by more than 7 days.


The person must be able to demonstrate to the Registrar’s satisfaction that they have attempted to submit the application before the expiry of their current working with children check, but through no fault of their own, the application has not been fully submitted.

The Registrar may request that the person provide independent evidence to satisfy the Registrar that the person should be granted a temporary exemption.

The circumstances under which the Registrar may consider granting an exemption include, but are not limited to:

- Where a person has submitted a new application online but their employer has not paid for it or verified their identification before their working with children check expired.
- Where a person has submitted a new application online but the central assessment unit has not received their verified identity due to incorrect e-mail or postage delays.

¹ To be eligible to work on re-application the application must have been submitted, the applicant’s identification verified and the fee paid (were required) and the central assessment unit must have validated that the application has been made in accordance with section 27 of the Act, before the current clearance expires.

- 
- Where a person has not been able to submit their application due to a system failure.
 - Where the person has submitted a paper application to Services SA, but the central assessment unit has not received it.

The Registrar must not grant a temporary exemption in the following circumstances:

- Where the person has not had a working with children check conducted in relation to them in the preceding 5 years.
- Where the person is, or has ever been prohibited.
- To a person who has not submitted a valid application. While the person may have not submitted an application at the time of expiry of their working with children check, they must submit a valid application before a temporary exemption will be granted.

Temporary exemptions must be granted in writing.

16. Appendices

Appendix 1 – Category 1: Categories of prescribed offences

An offence against a following provision of the *Criminal Law Consolidation Act 1935 (SA)* where the victim is a child:

- section 11 (murder)
- section 13 (manslaughter)
- Part 3 Division 9 (kidnapping and unlawful child removal)
- Part 3 Division 11 (rape and other sexual offences)
- section 72 (incest)
- Part 3 Division 11A (child exploitation offences)
- section 270B (assault with intent) with intent to commit one of the above offences;

An offence against a following provision of the *Criminal Code* of the Commonwealth where the victim is a child:

- 
- section 271.4 (trafficking in children)
 - section 271.7 (domestic trafficking in children)
 - section 272.8 (sexual intercourse with child outside Australia)
 - section 272.9 (sexual activity with child outside Australia)
 - section 272.10 (Aggravated – Child with mental impairment or under care etc.)
 - section 272.11(persistent sexual abuse of child outside Australia)
 - section 272.12 (sexual intercourse with young person outside Australia – defendant in position of trust/authority)
 - section 272.13 (sexual activity intercourse with young person outside Australia – defendant in position of trust/authority)
 - section 272.14 (procuring child to engage in sexual activity outside Australia)
 - section 272.15 ('grooming' child to engage in sexual activity outside Australia)
 - section 272.18 (Benefitting from offence against this Division)
 - section 272.19 (encouraging offence against this Division)
 - section 272.20 (preparing or planning offence against this Division)
 - section 273.5 (possessing, controlling, producing, distributing or obtaining child pornography material outside Australia)
 - section 273.6 (possessing, controlling, producing, distributing or obtaining child abuse material outside Australia)
 - section 273.7 (aggravated offence—offence involving conduct on 3 or more occasions and 2 or more people)
 - section 471.19 (using a postal or similar service for child abuse material)
 - section 471.20 (possessing, controlling, producing, supplying or obtaining child abuse material for use through a postal or similar service)
 - section 471.22 (aggravated offence—offence involving conduct on 3 or more occasions and 2 or more people)
 - section 471.24 (using a postal or similar service to procure persons under 16)
 - section 471.25 (using a postal or similar service to “groom” persons under 16)
 - section 471.26 (using a postal or similar service to send indecent material to person under 16)
 - section 474.19 (using a carriage service for child pornography material)
 - section 474.20 (possessing, controlling, producing, supplying or obtaining child pornography material for use through a carriage service)
 - section 474.22 (Using a carriage service for child abuse material)
 - section 474.23 (possessing, controlling, producing, supplying or obtaining child abuse material for use through a carriage service)
 - section 474.24A (aggravated offence—offence involving conduct on 3 or more occasions and 2 or more people)
 - section 474.25A (using a carriage service for sexual activity with person under 16 years of age)
 - section 474.25B (child with mental impairment or under care, supervision or authority of defendant)



- section 471.16 (using postal or similar service for child pornography)
- section 471.17 (Possessing, controlling, producing, supplying or obtaining child pornography material for use through a postal or similar service)
- section 474.26 (using a carriage service to procure persons under 16 years of age)
- section 474.27 (using a carriage service to “groom” persons under 16 years of age)
- section 474.27A (using a carriage service to transmit indecent communication to person under 16 years of age)

An offence against section 233BAB of the Commonwealth *Customs Act 1901* (import/export of Tier 2 Goods) where they include items of child pornography.

However:

The offences below are not considered prescribed offences where:

- the victim is not less than 15 years and the offender not more than 18 years; or
- the victim is not less than 16 years and the offender not more than 19 years; and
- there is consent

An offence against a following provision of the *Criminal Law Consolidation Act 1935 (SA)* where the victim is a child:

- section 49 (unlawful sexual intercourse)
- section 56 (indecent assault)
- section 58 (acts of gross indecency)
- section 63 (production/dissemination child exploitation material)
- section 63A (possession of child exploitation material)
- repealed section 74 (persistent exploitation of child)

An offence against a following provision of the *Criminal Code* of the Commonwealth:

- section 272.8(1) (sexual intercourse with child outside Australia)
- section 474.19 (using a carriage service for child pornography material)




- section 272.9(1) (sexual activity with child outside Australia)
- section 471.16(1) (using postal or similar service for child pornography)
- section 471.17 (Possessing, controlling, producing, supplying or obtaining child pornography material for use through a postal or similar service)
- section 471.24(1) (using a postal or similar service to procure persons under 16)
- section 471.25(1) (using a postal or similar service to “groom” persons under 16)
- section 471.26 (using a postal or similar service to send indecent material to person under 16)
- section 474.20 (possessing, controlling, producing, supplying or obtaining child pornography material for use through a carriage service)
- section 474.25A(1) (using a carriage service for sexual activity with person under 16 years of age)
- section 474.26(1) (using a carriage service to procure persons under 16 years of age)
- section 474.27(1) (using a carriage service to “groom” persons under 16 years of age)
- section 474.27A (using a carriage service to transmit indecent communication to person under 16 years of age)

An offence against section 272.14 (procuring child to engage in sexual activity outside Australia) or section 272.15 (‘grooming’ child to engage in sexual activity outside Australia) of the *Criminal Code* of the Commonwealth where the sexual activity occurred, or was intended to occur, between the defendant and the victim and no other person.

Appendix 2- Category 2: Categories of presumptive disqualification offences

An offence against a following provision of the *Criminal Law Consolidation Act 1935 (SA)* where the victim is a child:

- Section 14 (criminal neglect)
- Section 33A (genital mutilation)
- Section 33B (removal of child from State for genital mutilation)
- Section 137 (robbery)
- Section 139A (dishonest communication with children)
- Section 142 (dishonest exploitation of position of advantage);



An offence against a following provision of the *Criminal Law Consolidation Act 1935 (SA)* where the victim is an adult:

- Section 11 (murder)
- Section 13 (manslaughter)
- Section 33A (genital mutilation)
- Section 39 (kidnapping)
- Section 48 (rape)
- Section 48A (compelled sexual manipulation)
- Section 51 (sexual exploitation of person with a cognitive impairment)
- Section 56 (indecent assault)
- Section 59 (abduction of male or female person)
- Section 60 (procuring sexual intercourse)
- Section 72 (incest)
- Section 270B of the *Criminal Law Consolidation Act 1935 (SA)* (assault with intent) with intent to commit one of the above offences;

An offence against a following provision of the *Criminal Law Consolidation Act 1935 (SA)*

- Section 7 (treason)
- Section 69 (bestiality)

An offence against section 37 of the *Summary Offences Act 1953 (SA)* (possession, production or distribution of extremist material);

An offence against section 13 of the *Animal Welfare Act 1985 (SA)* (ill-treat animal to cause death or serious harm);

An offence against a following provision of the *Controlled Substances Act 1984 (SA)*:

- Section 32 (trafficking)

- Section 33F (sale, supply or administration of controlled drug to child)
- Section 33G (sale, supply or administration of controlled drug in school zone);

An offence against a following provision of the *Criminal Code* of the Commonwealth:

- Section 72.3 (delivers places, discharges or detonates device - international terrorist activities)
- Section 80.1 (treason)
- Section 80.1AA (treason assist enemy to engage in armed conflict)
- Section 80.1AC (treachery)
- Section 80.2 (urging violence against the Constitution)
- Section 80.2A (urging violence against groups)
- Section 80.2B (urging violence against members of groups)
- Section 80.2C (advocating terrorism)
- Section 80.2D (advocating genocide)
- Section 83.1 (advocating mutiny)
- Section 91.1 (espionage - dealing with information concerning national security_)
- Section 91.2 (espionage - dealing with information etc communicated or made available to foreign principal)
- Section 91.3 (espionage - dealing with security classified material)
- Section 91.6 (aggravated espionage offences)
- Section 91.8 (espionage on behalf of foreign principal)
- Section 91.11 (soliciting or procuring espionage offence)
- Section 91.12 (prepare for espionage)
- Section 101.1 (terrorist acts)
- Section 101.2 (providing or receiving training connected with terrorist acts)
- Section 101.4 (possessing things connected with terrorist acts)
- Section 101.5 (collecting or making documents likely to facilitate terrorist acts)
- Section 101.6 (other acts done in preparation for, or planning, terrorist acts)
- Section 102.2 (direct activities of a terrorist organisation)
- Section 102.3 (membership of a terrorist organisation)
- Section 102.4 (recruiting for a terrorist organisation)
- Section 102.5 (training involving a terrorist organisation)
- Section 102.6 (getting funds to, from or for a terrorist organisation)
- Section 102.7 (providing support to a terrorist organisation)
- Section 102.8 (associating with a terrorist organisation)
- Section 103.1 (financing terrorism)
- Section 103.2 (financing a terrorist)
- Section 271.2 (offence of trafficking in persons)
- Section 271.3 (Trafficking in persons - aggravated offence)