



Government of South Australia

Department of Human Services

# Working with Children Check Guidelines



# Working with Children Check Guidelines

## Contents

<b>1. Introduction</b>	<b>4</b>
<b>2. Objects and principles</b>	<b>4</b>
<b>3. Automatic prohibition from working with children – <i>prescribed offences</i></b>	<b>5</b>
Spent convictions	6
<b>4. Conducting a working with children check</b>	<b>6</b>
<b>5. Assessable information</b>	<b>7</b>
Consents	7
Types of assessable information	7
Other information determined by the Registrar to be assessable information	9
Protected information	10
Obtaining and using assessable information	10
<b>6. Persons automatically not prohibited from working with children</b>	<b>11</b>
<b>7. Persons presumed to pose an unacceptable risk to children – <i>presumptive disqualification offences</i></b>	<b>11</b>
Invitation to demonstrate exceptional or other circumstances	11
Assessing exceptional or other circumstances	12
Guidance for determining whether circumstances exist to disregard offence	13
Guidance for determining exceptional circumstances	13
Outcome of assessment of exceptional or other circumstances	14
<b>8. Risk assessment process – all other assessable information</b>	<b>15</b>
What is a risk assessment?	15
Risk context	15
When a risk assessment is undertaken	15

Initial assessment.....	16
Treatment of low risk assessable information .....	17
Information that requires a detailed risk assessment.....	17
<b>9. Standards pursuant to section 4(2)(b) of the Act .....</b>	<b>18</b>
Weighting information sources .....	18
<b>10. Risk assessment criteria pursuant to section 4(2)(d) of the Act.....</b>	<b>22</b>
Analysing risk .....	22
<b>11. Administrative decision making .....</b>	<b>28</b>
How should decision makers exercise discretionary powers? .....	28
Principles of procedural fairness .....	29
Invitation to respond to information.....	29
Circumstances where procedural fairness requirements are displaced .....	30
<b>12. Outcome of a risk assessment .....</b>	<b>30</b>
Not prohibited .....	31
Prohibited .....	31
Prohibition notice .....	31
Reasons for decisions .....	31
Review.....	32
<b>13. Conducting additional working with children checks: monitoring.....</b>	<b>32</b>
<b>14. Benchmarks pursuant to section 4(2)(c) of the Act .....</b>	<b>33</b>
<b>15. Appendices.....</b>	<b>34</b>
Appendix 1 – Category 1: Categories of prescribed offences .....	34
Appendix 2 – Category 2: Categories of presumptive disqualification offences.....	37
Appendix 3 – Category 3: Information that requires a detailed risk assessment .....	40
Appendix 4 – Category 4: Low risk assessable information .....	41

# 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 in respect of a person 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 for 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).

They provide the framework for how the central assessment unit will conduct a working with children check for the purposes of the Act; i.e. how the central assessment unit will identify and assess assessable information against the risk assessment criteria to determine whether the person is, or is not, to be prohibited from working with children.

The Guidelines are intended to be subject to continuous improvement and will be reviewed periodically to determine whether they are meeting the requirements of the Act and Regulations.

## 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.

A working with children check is not a determination of a person's suitability to work with children. A working with children check that does not result in a person being prohibited from working with children is not proof of good character or that the person does not pose a risk to children. It is an assessment of one person's prior conduct, it is a point in time assessment of past behaviour in order to predict future risk.

The fact that a working with children check is conducted in relation to an employee does not satisfy an employer's obligation to ensure that a workplace is safe for children. It is one part of a range of strategies to be employed by employers and the community to keep children safe.

Employers and caregivers cannot rely on working with children check to absolve them of responsibility for safeguarding children. Organisations and employers 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 prohibition from working with children operates pursuant to a statutory prohibition under section 15(1) of the Act. It is not based on an assessment undertaken by the central assessment unit as to whether or not the person poses an unacceptable risk to children or a determination of the central assessment unit pursuant to section 26(5) of the Act, as to whether or not the person should be prohibited from working with them.

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 or territory prohibition is identified in relation to the person, the central assessment unit cannot continue to conduct a working with children check in relation to the application.

Additionally, where the central assessment unit is conducting a working with children check and the person to whom the application relates becomes a prohibited person (through the

identification of a prescribed offence or interstate or territory prohibition), the central assessment unit cannot continue to conduct a working with children check in relation to the application.

The central assessment unit will notify the person 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.

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

For persons prohibited from working with children in South Australia because of an interstate or territory prohibition (however described) there is no right of review in South Australia. The person may seek a review of the original decision in the jurisdiction in which the decision was made. If a decision is changed, the applicant 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 or offence may apply for a working with children check, noting that a spent conviction or offence may form assessable information or otherwise 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 a person.

Where a presumptive disqualification offence, as defined in section 26A of the Act, is identified, the central assessment unit will assess:

- information provided by the person regarding the circumstances of the presumptive disqualification offence to determine whether the offence may be disregarded in determining whether the person poses an unacceptable risk to children; and/ or
- whether information provided by the person demonstrates the existence of exceptional circumstances that may be capable of satisfying the central assessment unit that the person does not appear, or no longer appears, to pose an unacceptable risk to children.

If either of the above are satisfied, 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.

The central assessment unit will conduct a risk assessment where any other assessable information is identified in relation to the applicant.

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.

## 5. Assessable information

---

### Consents

When signing an application form for a working with children check, the applicant consents to the central assessment unit obtaining assessable information in relation to the person from police, courts, government agencies or other relevant bodies to assist the central assessment unit make a determination 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 to determine whether or not a person the person poses an unacceptable risk to children:

#### *Criminal history information*

- Information that relates to offences of which the person has been found guilty;
- 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*;
- 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 – *Notification of abuse or neglect* – of the *Children's Protection Act 1993*;
- Information that relates to a notification made pursuant to Chapter 5 Part 1 – *Reporting of suspicion that child or young person may be at risk* – of the *Children and Young People (Safety) Act 2017*;
- Information (whether or not obtained under the *Children's Protection Act 1993* or the *Children and Young People (Safety) Act 2017*), held by the 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. This may information submitted with the application, or obtained or supplied as a part of the assessment process;
- Information the Registrar may require a public sector agency or other specified persons 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;
- Any other information determined by the Registrar, in accordance with any requirements set out in these 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 this section;
- 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 this section;
- Whether or not an appeal has been lodged or finally determined in respect of the relevant matter;
- 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**

Where the central assessment unit is in possession of information that does not meet the statutory definition of assessable information, Regulation 8(f) provides that the Registrar may make a determination that any other information is to be assessable information in accordance with any requirements set out in these Guidelines.

Information that has been classified as criminal intelligence, information provided to the central assessment unit by an employer subject to requirements of section 19 of the Act, or information provided to the central assessment unit by certain persons pursuant to section 40 of the Act may be other information.

In making a determination that other 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 a person is, or is not, to be prohibited from working with children.

## Protected information

Regulation 3 provides protected information is information that may, if disclosed,

- prejudice a criminal investigation or 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*; or
- 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 has been abused or neglected or is at risk of harm; or identify 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; 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 the Guidelines, classify specified information as protected information.

In making a determination to classify specified information a protected information, the Registrar must be satisfied that the information will prejudice an investigation or identify or endanger certain persons as described above.

## 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 in respect of whom the working with children check is to be conducted.

However, the central assessment unit 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 findings, 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 a 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.

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. (collectively referred to as exceptional or other circumstances)

### ***Appendix 2 – Category 2: Categories of presumptive disqualification offences***

#### **Invitation to demonstrate exceptional or other circumstances**

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 before the central assessment unit decision maker and

invite them to make submissions in relation to these matters and provide any further information.

The central assessment unit will not ask the person about, nor will they be required to respond to, any other assessable information that may exist in relation to the applicant at this stage.

The burden is on the person the subject of the application to demonstrate that the circumstances of the relevant offence should be disregarded in determining whether the person is an unacceptable risk to children or that such exceptional circumstances exist in relation to the person that the person does not pose an unacceptable risk to children.

A person who has not previously had a working with children check, or has not had a check within the preceding five years, will be given thirty calendar days to make a written submission and/ or provide further information in relation to the application, from the date of the central assessment unit's letter inviting a response.

A person who has had a working with children conducted within the preceding five years, where the central assessment unit determined they are not prohibited from working with children, will be given seven calendar days to make a written submission and/ or provide further information in relation to the application, from the date of the central assessment unit's letter inviting a response.

If the person does not respond to the invitation within the time provided, the central assessment unit must determine the person poses an unacceptable risk to children and is prohibited from working with them.

The central assessment unit will issue the person a prohibition notice prohibiting the person from working with children.

The central assessment unit is not required to consider or assess any further information in relation to an application for a working with children check made by the person.

## **Assessing exceptional or other circumstances**

Where person responds to an invitation from the central assessment unit to make a written submission and/ or provide further information in relation to the application, the central assessment unit will consider the submissions and/ or information to assess whether:

- the circumstances of the presumptive disqualification offence are such that the offence may 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 application to make out that exceptional or other circumstances described above.

When assessing whether the person has rebutted the presumption, the Central assessment unit will only consider the applicant's submissions in regard to the above matters and the information already before it in relation to those matters.

## **Guidance for determining whether circumstances exist to disregard offence**

A person with a presumptive disqualification offence may rebut the presumption that they pose an unacceptable risk to children if they provide information and evidence to demonstrate that the circumstances of the relevant offence or charge are such that that offending or alleged offending do not indicate that the person will pose a risk to children. This will require assessment of the relevant circumstances on a case-by-case basis.

Factors to be considered as to whether the circumstances of the presumptive disqualification offence committed, or alleged to have been committed, by the person are such that the offence should be disregarded in determining whether the applicant poses an unacceptable risk to children may include but are not limited to:

- the offending was in response to an abusive domestic violence relationship;
- the person was acting in self-defence to, or defending another, against an unprovoked assault; or
- the person committed the offending under the direction/duress of a person in authority (e.g. a family member).

## **Guidance for determining exceptional circumstances**

Alternatively, a person with a presumptive disqualification offence may rebut the above presumption if they provide information and evidence that satisfies the central assessment unit of exceptional circumstances in relation to him or her that demonstrates that he or she does not appear, or no longer appears, to pose an unacceptable risk to children, despite the relevant offending or charge.

In order to be exceptional, such circumstances must, at the very least, be unusual or in the nature of exception and of such significance that it justifies displacing 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 leading to a presumed prohibition.

Exceptional circumstances that may exist in relation to the person such that the person does not appear, or no longer appears, to poses an unacceptable risk to children may include, but are not limited to:

- the applicant has voluntarily completed a supervised intervention program (treatment, rehabilitation, behaviour management).

Independent evidence must exist which verifies the exceptional or other circumstances, either provided by the applicant or identified by the central assessment unit. The word of the person the subject of the application is not sufficient.

The age of the offence or that a person has not offended since the presumptive disqualification offence are, in and of themselves, factors not capable of satisfying the central assessment unit that the person should not be presumed to pose a risk to children and/or that the relevant offending should be disregarded for the purposes of assessing risk to children.

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 with 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 the person poses an unacceptable risk to children and should be prohibited from working with them. The central assessment unit is not required to consider or assess any further information in relation to an application for a working with children check made by that person.

The central assessment unit will issue the applicant a prohibition notice prohibiting the person from working with children.

If a person with a presumptive disqualification offence provides information capable of demonstrating either 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 may assess other assessable information in relation to that person.

## 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 (including criminal history, any child protection information or any disciplinary or misconduct information) identified in relation to the person, conducted by the central assessment unit.

The central assessment unit will not make any presumption of outcome as a starting point.

The intent of the risk assessment process is not to decide whether a person is guilty or innocent or to reinvestigate a matter; but rather to determine whether a person poses an unacceptable risk to children. The most important consideration in making a working with children check determination is the best interests of children, having regard to their safety and protection.

### **Risk context**

The risk to be assessed is the risk to children posed by persons who work with them.

It is not the role of the central assessment unit to determine whether an applicant did or did not do something based on the information before them, a working with children check is not an investigatory process; it is a consideration whether the behaviour indicates the applicant presents a risk to children.

In considering whether an applicant poses an unacceptable risk to children, the central assessment unit will consider the nature and degree of any risk identified and possible harm that may flow if the perceived risk eventuated.

In determining if there is an unacceptable risk to children, the central assessment unit does not need to be satisfied that it is likely the person will cause harm to a child 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 the applicant.

As described above, this 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.

Where a person who has been found guilty of a presumptive disqualification offence for the purposes of the Act satisfies the central assessment unit that exceptional or other circumstances exist in relation to them or their relevant offence, such that the relevant offence may be disregarded and/or the person does not, or no longer, appear to pose a risk to children, the central assessment unit will proceed to conduct a risk assessment in relation to the person, taking into account other assessable information.

A person who has had a working with children check where the central assessment unit determined they were not to be prohibited from working with children is subject to ongoing monitoring for new assessable information. This may lead to a statutory prohibition, the identification of a presumptive disqualification offence or other assessable information that may result in a re-assessment and possible prohibition of a person wanting to work with children.

## **Initial assessment**

To identify risk the central assessment unit will consider all assessable information in relation to the applicant, which includes criminal history information, disciplinary and misconduct information, child protection information or other information.

The existence of potential sources of risk is identified through the initial assessment process, where the central assessment unit will, as far as is reasonably practicable, actively seek to obtain assessable information in relation to the person in respect of whom the working with children check is to be conducted.

Where there is no assessable information in relation to a person in respect of whom a working with children check is conducted, the central assessment unit must determine that the person is not to be prohibited from working with children.

For assessment purposes, assessable information has been categorised according to seriousness and relevance in the context of prohibiting persons who pose an unacceptable risk to children from working with them and may be managed in accordance with the processes below:

- Information that requires a detailed risk assessment (Category 3 information)
- Low risk assessable information (Category 4 information)

***Appendix 3 – Category 3: Information that requires a detailed risk assessment***

***Appendix 4 – Category 4: Low risk assessable information***

## Treatment of low risk assessable information

As part of a risk assessment, a central assessment unit decision maker must review the assessable information before them, assess it, and determine if collectively it demonstrates, on the balance of probabilities, that the person poses an unacceptable risk to children.

Low risk assessable information represents information of a type that predominantly involves offending or behaviour that is less serious or has less relevance to children and accordingly less weight may be attached to it as part of the assessment process.

In accordance with the Standards outlined at Part 9 of these Guidelines, category 4 information is information that has been weighted to assist the central assessment unit decision maker conduct a risk assessment.

Where **only** low risk assessable information is identified in relation to a person in respect of whom a working with children check is conducted, the central assessment unit may determine that the person is not to be prohibited from working with children, without further assessing the information against the risk assessment criteria set out at Part 10 of these Guidelines.

The identification of low risk assessable information alone, is unlikely to require closer or further analysis that is undertaken in a detailed risk assessment. An applicant who has only low risk assessable information may be not prohibited from working with children.

However, where category 3 information that requires a detailed assessment has been identified in relation to an applicant category 4 low risk assessable information may be used or form part of a risk assessment.

## Information that requires a detailed risk assessment

A detailed risk assessment must be undertaken where category 3 assessable information is identified in relation to the person, or where a presumptive disqualification offence has been identified and the person has satisfied the central assessment unit exceptional or other circumstances exist.

Where the person has rebutted the statutory presumption that they pose an unacceptable risk to children, a detailed risk assessment must follow.

A detailed risk assessment is conducted by 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.

Where category 3 assessable information has been identified in relation to the person the subject of the working with children check low risk assessable information may be used or form part of a risk assessment, bearing in mind its weighting.

### ***Conducting a risk assessment***

It is not possible to outline every potential consideration or outcome. The tables below identify the minimum considerations in the event assessable information examined during the risk assessment requires further scrutiny.

Any conclusions reached, about a person's risk to children, will be based on information and evidence obtained by the central assessment unit decision maker.

### ***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 application, should they be prohibited from working with children following a risk assessment are not relevant considerations in assessing whether they pose an unacceptable risk to children;
- the role of the person the subject of the application – a working with children check outcome is portable between roles and employers. Any stated role of the person at the time of application or throughout the assessment process bears no weight as to whether the applicant poses an unacceptable risk to children; and/ or
- 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 alone is not relevant for the 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 suitability for employment; this is an employer's responsibility.

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

---

### **Weighting information sources**

As part of a risk assessment, a central assessment unit decision maker must review the assessable information before them, assess it, and determine if it meets the standard of proof required, and demonstrates that an applicant poses an unacceptable risk to children.

The standard of proof required when conducting a risk assessment as part of a working with children check is the civil standard, i.e.: does the person pose an unacceptable risk to children on the balance of probabilities.

In other words, if, following an analysis of the information, the central assessment unit decision maker determines that it is more probable than not, that an applicant poses an unacceptable risk to children, the central assessment unit will determine an applicant is to be prohibited from working with them.

The weight given to information for the purposes of making this assessment 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 in regard to abuse sustained by a child is of 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 will evaluate the evidence in accordance with the guidelines provided in *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 (evidence) before the decision maker might include:

- Regulatory or agency reports – e.g. Department for Child Protection investigation or outcome rationale reports;
- Professional reports/assessment – e.g. reports from medical professionals, psychologists, police reports;
- Applicant submissions – submitted as part of the application process or during risk assessment process;
- Statutory declarations; or
- Court documents (Sentencing remarks, Court Orders)/ police documents.

**Table 1 – Weighting Information Sources**

<b>Weighting Information Sources</b>		
<b>Characteristic</b>	<b>Greater weight</b>	<b>Lesser weight</b>
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	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.	Information is not closely connected, appropriate or relevant to determining whether the applicant poses does not pose an unacceptable risk to children.
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"> <li>• Applicant found to be perpetrator</li> <li>• Resulted in court order</li> </ul>	<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 Screening 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>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 the quality of the evidence, 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 or evidence. The central assessment unit decision maker must consider the substance of the information and have regard to:

- the nature, gravity and 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;
- the length of time that has passed since the event occurred;
- the vulnerability of the victim at the time of the event including the age of the victim, the age of the person at the time of the event, 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 time of the event;
- the person's criminal, child protection, disciplinary or misconduct and/or other relevant history, including whether there is a pattern of concerning conduct;
- the person's conduct since the event;
- all other relevant circumstances in respect of the information including offending, child protection, disciplinary or misconduct and/or other information or other relevant history, and the impact on their eligibility 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 the information indicates the person the subject of the application is presents a risk to children, the central assessment unit decision maker may consider the information in accordance with the guidance provided in the Table 2.

The risk assessment criteria should inform a thorough and balanced assessment of risk. The 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 an application. Nor is the table intended for use as a checklist. The particulars of the information may suggest additional matters relevant to the assessment of risk or that some of the contextual factors are not relevant.

**Table 2 – Risk Assessment Criteria**

<b>Risk Assessment Criteria</b>			
<b>Criteria</b>	<b>Increase Risk</b>	<b>Decrease Risk</b>	<b>Guidance and other factors to consider</b>
<p>The <b>nature</b> 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><b>Nature</b> 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 <b>gravity</b> 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><b>Gravity</b> 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>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>

Risk Assessment Criteria			
Criteria	Increase Risk	Decrease Risk	Guidance and other factors to consider
	<p>Offending, abuse or misconduct was prolonged</p> <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>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>
<p>The <b>circumstances</b> 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><b>Circumstances</b> 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"> <li>• occurred in circumstances involving an abuse of power or breach of trust;</li> <li>• was pre-meditated or wilful;</li> <li>• occurred in the presence of a child.</li> </ul>	<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 <b>length of time that has passed</b> 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</p>

Risk Assessment Criteria			
Criteria	Increase Risk	Decrease Risk	Guidance and other factors to consider
			significant time ago and when the applicant was an adolescent, as opposed to if the applicant was an adult at the time of offending.
Age of the applicant at the time of the offence, event or occurrence	Adult	Adolescent (13 to 17 years old) Child	Time since the offending and age of offender when offence occurred should be considered together. Level of maturity of offender at time of offending may be taken into consideration.
The <b>vulnerability of the victim</b> 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 <b>person's relationship to the victim or position of authority over the victim</b> 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 <b>criminal, child protection, disciplinary or misconduct and/or other relevant history</b>	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	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	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"> <li>• Violent behaviour or assault</li> </ul>

### Risk Assessment Criteria

Criteria	Increase Risk	Decrease Risk	Guidance and other factors to consider
	<p>Multiple notifications for offence, abuse, risk occurrence</p> <p>Chronic abuse, multiple allegations or substantiations of abuse</p>	<p>notification type which indicates that the underlying contributing factors to the concerning abuse, incident, risk occurrence have been addressed.</p> <p>Chronicity of abuse – single allegation or substantiation of abuse</p>	<ul style="list-style-type: none"> <li>• Indecent or sexual behaviour</li> <li>• Failing to provide care for someone</li> </ul> <p>“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.</p> <p>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.</p>
Whether there is a <b>pattern of concerning behaviour</b>	<p>Multiple offences whether similar or not</p> <p>Offence, abuse or misconduct commenced as a child and continued into adulthood</p> <p>Behaviours of risk that recur</p>	Single offence or misconduct	
<p>The <b>person’s conduct since the event</b></p> <p>Consider:</p> <ul style="list-style-type: none"> <li>• changes in circumstances since the</li> </ul>	<p>Breaches of court orders</p> <p>Rejects responsibility or minimises actions</p> <p>Little remorse expressed and/or if expressed aimed at perceived personal benefit</p>	<p>Improved management of mental health, illness, problematic alcohol and/or drug use</p> <p>Maturity or demonstrated change in behaviour</p>	<p>Sexual offending has recognised high recidivism rates.</p> <p>Likelihood of recidivism may introduce considerations and risk assessments that are compiled for criminal justice purposes that have little relevance to “real world” re-</p>

**Risk Assessment Criteria**

Criteria	Increase Risk	Decrease Risk	Guidance and other factors to consider
<p>information</p> <ul style="list-style-type: none"> <li>• attitude towards event</li> <li>• treatment or rehabilitation undertaken by applicant</li> </ul>	<p>Failure to complete mandated treatment or engage with professional supports</p> <p>Likelihood of recidivism and prospect of rehabilitation</p> <p>Multiple withdrawals or non-graduation from voluntary treatment</p>	<p>Greater social support, stability or community engagement</p> <p>Evidence of change in socio-economic factors that influenced the circumstances that led to the offence or misconduct</p> <p>Expressed remorse, accepted responsibility and/or apologised upfront or at time of offence or conviction</p> <p>Shows insight into offending, abuse or misconduct and can articulate changes to attitude or behaviour to address offending or misconduct</p> <p>Steps taken to respond to issues of concern include - accepted treatment, successful completion of treatment program, counselling</p> <p>Demonstrated accepted need for change</p> <p>Demonstrated improvement in area of concern</p> <p>Evidence of change of behaviour</p>	<p>offending.</p> <p>Remorse should only be considered where assessed in by a qualified professional or stated in a Court document.</p>
<p>All <b>other relevant circumstances</b> in respect of their assessable information and the impact on their eligibility to be engaged in child related work</p>	<p>Case-by-case basis in consideration of the relevance and possible impact on child</p>		

# 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?**

Central assessment unit decision makers may only exercise their discretionary powers in accordance with the legislative provisions conferring the power and in accordance with the objects and principles of the Act.

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 procedures;
- consider only relevant considerations and ignore irrelevant ones;
- act reasonably and on reasonable grounds;
- make decisions based on supporting evidence;
- give adequate weight to matters of great importance but not give excessive weight to matters of no great importance;
- give proper consideration to the merits of the case;
- provide the person affected by the decision with procedural fairness; and
- exercise their discretion independently and not under the dictation of a third person or body.

A failure to act within the power provided or to comply with general administrative law principles may result in the South Australian Civil and Administrative Appeals Tribunal overturning a decision, or taking other action in respect of the decision.

## Principles of procedural fairness

Procedural fairness requires government decision makers act fairly when making an administrative decision. It is concerned with the procedures used by a decision maker, rather than the final outcome reached. It expects that fair and proper procedure be used when making a decision.

Procedural fairness has two components – the hearing rule and the bias rule. The bias rule demands that a decision maker will not handle matters in which they have an actual or reasonably perceived conflict of interest or bias. The 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 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) of the Regulations.

## Invitation to respond to information

The central assessment unit will provide persons who may be affected by a decision the opportunity to respond to assessable information before a determination is made to prohibit the person from working with children.

The central assessment unit will write to the applicant and invite them to make a written submission and/ or provide further information, about why they should not be prohibited from working with children.

Such assessable information is information a central assessment unit decision maker may rely, or place greater weight on, and is likely to result in a decision to prohibit the applicant from working with children.

The central assessment unit will ensure the applicant:

- is made aware of the assessable information relation to them, before preparing their reply; and
- has a reasonable chance to consider their position and the opportunity to reply in a way that is appropriate for them in their circumstances.

A central assessment unit decision maker will contact the applicant where they intend to make a determination to prohibit a person from working with children. Where, on the information before them, the central assessment unit decision maker intends to make a determination to not prohibit the applicant, the central assessment unit decision maker is not required to write to the applicant and invite them to make a submission.

Excluding *protected information* or information classified as *criminal intelligence*, assessable information the central assessment unit has in regard to the person the subject of the application that may result in an determination to prohibit should be

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

The person the subject of the application will be given thirty calendar days to make a written submission and/ or provide further information in relation to the application, from the date of the central assessment unit's letter inviting a response.

If the person does not respond to the invitation within the time provided, the central assessment unit decision maker will continue to conduct the risk assessment and make a determination based on the information before them. The failure or refusal of a person to make submission or provide further information will not be taken into account for the purposes of assessing whether or not the person poses an unacceptable risk to children.

When assessing information before them the central assessment unit decision maker will have regard to any submissions made by the applicant, and give proper and genuine consideration to that person's case.

### **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 decision maker is not, when conducting a working with children check, required to afford a person procedural fairness where:

- the Registrar, based on the assessable information available to them, is of the opinion 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
- the *assessable information* consists of or includes information relating to a *prescribed offence* with which the person to whom the working with children check relates has been charged, but that has not yet been determined
- the person is a prohibited person

## 12. Outcome of a risk assessment

---

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.

There are two outcomes of a working with children check.

## 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

The central assessment unit determines, in accordance with the Act, the regulations and these Guidelines, that the person poses an unacceptable risk to children and the central assessment unit determines that the person is to be prohibited from working with children.

The central assessment unit will issue a *prohibition notice* to the person prohibiting the person from engaging in child-related work.

## Prohibition notice

A *prohibition notice* will be issued as soon as is reasonably practicable after the Central assessment unit makes the determination the person who is the subject of the application poses an unacceptable risk to children and is prohibited from working with children. It will remain in force until it is revoked in accordance with the Act.

Unless the central assessment unit is not required to give detailed reasons due to reliance on criminal intelligence or protected information (as explained further below), the *prohibition notice* will set out the reasons why the Central assessment unit determined that the person to whom the prohibition notice relates is to be prohibited from engaging in child-related work. It will also provide information on how the person to whom the prohibition notice relates can seek a review of the decision to issue the notice by the South Australian Civil and Administrative Tribunal.

## Reasons for decisions

Giving reasons for a decision should enable the people affected by the decision to understand why a particular decision was made. Generally speaking, where the central assessment unit determines that a person is to be prohibited from working with children, it will provide that person with the reasons for that decision.

However, 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 simply provide reasons for the decision that it would be contrary to the public interest to allow the person to work with children.

## Review

Persons prohibited from working with children as a result a prescribed disqualification offence and issued a prohibition notice may apply to the central assessment unit to have the prohibition notice revoked.

A person who has been issued a prohibition notice prohibiting them from working with children may apply to the central assessment unit to have the prohibition notice revoked.

They may also apply directly to the South Australian Civil and Administrative Tribunal (SACAT) to review the decision of the central assessment unit to issue the prohibition notice within 14 days after the applicant receives notice of the decision.

SACAT may allow an extension of time if it is satisfied that special circumstances exist and another party will not be unreasonably disadvantaged because of the delay in commencing proceedings.

## 13. Conducting additional working with children checks: monitoring

---

A person who is not prohibited from working with children is subject to ongoing monitoring of assessable information, which may lead to re-assessment, and possible prohibition of a person.

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

An additional working with children check may be conducted on the application of an employer of the person; or on the central assessment unit's own motion and must be conducted if the Minister so directs.

All working with children checks will be conducted in accordance with these Guidelines.

## 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 these Guidelines. The central assessment unit is committed to continuously improve the efficiency with which it processes applications, while ensuring risk assessments and decision making standards for determine whether or not the person poses an unacceptable risk to children 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 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. 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:

- |  |  |
|--|--|
| <ul style="list-style-type: none"> <li>• section 271.4 (trafficking in children)</li> <li>• section 271.7 (domestic trafficking in children)</li> <li>• section 272.8 (sexual intercourse with child outside Australia)</li> <li>• section 272.9 (sexual activity with child outside Australia)</li> <li>• section 272.10 (Aggravated – Child with mental impairment or under care etc.)</li> <li>• section 272.11 (persistent sexual abuse of child outside Australia)</li> <li>• section 272.12 (sexual intercourse with young person outside Australia – defendant in position of trust/authority)</li> <li>• section 272.13 (sexual activity intercourse with young person outside Australia – defendant in position of trust/authority)</li> <li>• section 272.14 (procuring child to engage in sexual activity outside Australia)</li> <li>• section 272.15 ('grooming' child to engage in sexual activity outside Australia)</li> <li>• section 272.18 (Benefitting from offence</li> </ul> | <ul style="list-style-type: none"> <li>• section 471.19 (using a postal or similar service for child abuse material)</li> <li>• section 471.20 (possessing, controlling, producing, supplying or obtaining child abuse material for use through a postal or similar service)</li> <li>• section 471.22 (aggravated offence—offence involving conduct on 3 or more occasions and 2 or more people)</li> <li>• section 471.24 (using a postal or similar service to procure persons under 16)</li> <li>• section 471.25 (using a postal or similar service to “groom” persons under 16)</li> <li>• section 471.26 (using a postal or similar service to send indecent material to person under 16)</li> <li>• section 474.19 (using a carriage service for child pornography material)</li> <li>• section 474.20 (possessing, controlling, producing, supplying or obtaining child pornography material for use through a carriage service)</li> </ul> |
|--|--|

- 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 471.16 (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 474.22 (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 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 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 474.19 (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 474.25A(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)
- 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)

- 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 103.2 (financing a terrorist)
  - Section 271.2 (offence of trafficking in persons)
  - Section 271.3 (Trafficking in persons - aggravated offence)

## Appendix 3 – Category 3: Information that requires a detailed risk assessment

Any of the following categories of offences:

- Common assault or stalking
- Fraud and deception offences against adult
- Drug trafficking offences not captured in Category 2
- Dangerous and negligent acts not captured in Category 2
- Pornography offences against adult
- Prohibited and regulated weapons offences against adult
- Property Damage – Arson
- Environmental pollution – Air, Water, Soil
- Liquor and tobacco offence against child

Child protection investigation outcomes where grounds of abuse – **physical, emotional or neglect** and where:

- abuse **substantiated** and the applicant is the alleged perpetrator
- risk of abuse **substantiated** and the applicant is the alleged perpetrator
- the applicant has been found to be **responsible for harm**

Child protection investigation outcomes where grounds of abuse – **sexual** and where:

- abuse **substantiated** and the applicant is the alleged perpetrator
- risk of abuse **substantiated** and the applicant is the alleged perpetrator
- the applicant has been found to be **responsible for harm**
- **unsubstantiated sexual abuse** allegation and the applicant is the alleged perpetrator

Child protection investigation outcomes where **likelihood of harm substantiated** and the applicant is the alleged perpetrator.

Child protection investigation outcomes where qualifying offence identified in relation to applicant.

## Appendix 4 – Category 4: Low risk assessable information

An following categories of offences:

- Police Incident Reports
- Crime Stoppers/Street Checks

Child protection investigation outcomes where grounds of abuse – **physical, emotional or neglect** and where:

- abuse **unsubstantiated** and the applicant is the alleged perpetrator
- risk of abuse **unsubstantiated** and the applicant is the alleged perpetrator

Child protection investigation outcomes where **likelihood of harm unsubstantiated** and the applicant is the alleged perpetrator.

Child protection reports closed no action (for any reason).

Child protection information where the applicant not the alleged perpetrator.

Child protection intakes screened:

- no grounds for intervention
- divert notifier action
- notifier only concern
- general practice
- adolescent at risk

Child protection intakes screened:

- extra-familial cases
- report on unborn
- interstate/ UHM
- Hague