

Mrs Giulia Jones MLA
Chair
Standing Committee on Justice and Community Safety
GPO Box 1020
CANBERRA ACT 2601

Dear Mrs Jones

I write in response to comments on the *Working with Vulnerable People (Background Checking) Amendment Bill 2019* (the Bill) from the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) in Report 30. I will address each of the comments separately.

Discretion of the Commissioner to accept applications

The *Working with Vulnerable People (Background Checking) Act 2011* (the Act) provides that the Commissioner must consider applications for registration. The amendments proposed by the Bill do not alter the requirement for the Commissioner to accept and consider an application. Procedural fairness dictates that a person has the right to have their application risk assessed by the Commissioner and in undertaking a risk assessment, the Commissioner has the opportunity to consider all available matters, including disqualifying offences. People who may be captured under the provisions of a Class A disqualifying offence are not prevented from making a first application for registration under the Act to participate in a regulated NDIS activity. In assessing the relevant disqualifying offence information, the Commissioner can ensure that there is no mistake in identity that would otherwise result in the person being disqualified. Where a person has received a negative notice, due to a disqualifying offence, the Bill proposes that person not be permitted to make a subsequent application for registration for a regulated NDIS activity. The person may still apply for general registration under the scheme, pending a full risk assessment. A detailed communication strategy and advice at the point of application will be developed to ensure that applicants are adequately informed of their rights and potential outcomes where a disqualifying offence is to be considered.

The Explanatory Statement has been revised to clarify this point ([Attachment A](#)), however, I have not amended the Bill.

Clarification on interplay of Relevant Offences, Disqualifying Offences and non-conviction information.

The Parliamentary Counsel's Office and relevant officers in both the Community Services Directorate and Access Canberra have reviewed the comments from the Committee. It was concluded that the

concepts of *relevant offences* and *disqualifying offences* do have separate functions under the proposed amendments and both draw on non-conviction information to achieve the stated outcome.

An application for registration to participate in a regulated NDIS activity may be determined entirely on the presence of a Class A disqualifying offence and the Commissioner's only discretion for registration in this case is the consideration of mistaken identity. The evidence for exceptional circumstances in the case of Class B disqualifying offences are most likely identified through the consideration of non-conviction information.

Amendments have been made to the Bill ([Attachment B](#)) to clarify the definition of non-conviction information to expressly permit the Commissioner's consideration of non-conviction information as it relates to a person's disqualifying offence. A Supplementary Explanatory Statement is provided at [Attachment C](#).

Clarification regarding the potential to prescribe disqualifying offences by regulation

This Bill has been introduced to meet a Government commitment to the national approach to consistent worker screening for the National Disability Insurance Scheme. However, the Government also understands that other national harmonisation work on worker screening is underway and future amendments will be required to align our scheme with national policy. I acknowledge the Committee's concerns about prescribing disqualifying offences through regulation and have amended the Bill to remove this provision. This has been noted in the amended Bill ([Attachment B](#)) and the Supplementary Explanatory Statement at [Attachment C](#).

Limitation of Human Rights

Some of the provisions in the Bill will impact the human rights of a small number of potential registrants under the Working with Vulnerable People Scheme (WWVP Scheme). The intent of the WWVP Scheme is the protection of vulnerable people from harm and abuse. In seeking to deliver that outcome, the rights of vulnerable people were weighed against the rights of those whose rights will be limited by the new provisions. For these amendments, the person's right to protection from harm was determined to be the prevailing right.

I would particularly like to acknowledge the limitation of a person's right to a fair trial, as the Committee observed, where an applicant is not advised of the reasons for a negative notice due to the details of the investigation being exposed may negatively impact the current and on-going investigation. The person would still have the right to seek a review of the decision from the Civil and Administrative Appeals Committee.

The Explanatory Statement has been revised to acknowledge the Committee's concern about this and the other limitations of the rights of potential applicants and to note the justification for each limitation. Moreover, in response to the Committee's suggestion, information on the Human Rights impacts has been expanded in the section on human rights.

Clarification of requests for reconsideration of registration

The Committee questioned the intent of amendments to Section 44 of the Act, reconsideration of conditional registration. The policy directive for clarifying the reconsideration of registration provision arose during the Review of the Act. Repeated requests for reconsideration impose an

operational burden without providing comparable benefit in terms of procedural fairness for the applicant.

The provision does not remove any existing appeal rights, nor does it limit procedural fairness. This clause operates in relation to the new section 44(1)(a) placing the onus on the applicant to provide new information they hold and believe relevant when making the request for reconsideration. Clause 44 removes the requirement for the Commissioner to consider information a person has given in relation to the reconsideration of their conditional registration. The amendment allows the discretion of the Commissioner to determine the relevance of the information and whether or not to consider it.

This provision closes an administrative loop which allowed for successive requests to be made for reconsideration without the requirement for any new or changed information. This set of provisions seeks to streamline the process and find an appropriate balance between procedural fairness and administrative efficiency. The purpose of this provision has been clarified in the Revised Explanatory Statement ([Attachment A](#)).

I hope this response addresses the Committee's concerns and thank you for drawing these matters to my attention.

Yours sincerely

Chris Steel MLA