



Tara Cheyne MLA

Assistant Minister for Economic Development
Minister for the Arts
Minister for Business and Better Regulation
Minister for Human Rights
Minister for Multicultural Affairs

Member for Ginninderra

21/33241

Mr Jeremy Hanson CSC MLA

Chair

Standing Committee on Justice and Community Safety (Scrutiny)

ACT Legislative Assembly

London Circuit

CANBERRA ACT 2601

11 May 2021

Dear Mr Hanson

I refer to the Standing Committee on Justice and Community Safety (Scrutiny) (the Committee) Report 3 in which the Committee examined and provided comments on Disallowable Instrument DI2021-4 (the Instrument) being the Working with Vulnerable People (Background Checking) Risk Assessment Guidelines 2021 (No 1) (the Guidelines) made under section 27(1) of the *Working with Vulnerable People (Background Checking) Act 2011* (the Act).

The Committee questioned whether the human rights implications of the Instrument could have been more directly addressed by referencing the provisions of the Instrument rather than explanatory material for the overarching legislation. The Committee considered that the Explanatory Statement for this Instrument ought to have substantively addressed the human rights issues engaged by the Guidelines, by reference to the substantive guidelines, rather than by referring to explanatory material relating to amendments to the WWVP Act on which the new guidelines are premised.

I acknowledge that the Committee considers that the Explanatory Statement for the Instrument could have more directly addressed human rights matters. I also note the Committee's reflection that in recent years Explanatory Statements for subordinate legislation, such as this Instrument, have increasingly addressed human rights issues to the Committee's satisfaction.

ACT Legislative Assembly London Circuit, GPO Box 1020, Canberra ACT 2601

+61 2 6205 0100

 cheyne@act.gov.au

 @In_The_Taratory

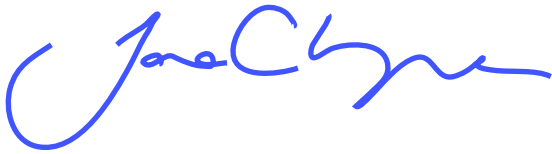
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In light of the Committee's comments, I will ensure that explanatory statements for future instruments for which I have responsibility more clearly address human rights issues. In the interim, I have attached a further analysis of the Instrument.

Thank you for the opportunity to provide comments to the Committee and for reinforcing the importance of human rights in the ACT.

Sincerely

A handwritten signature in blue ink, appearing to read 'Tara Cheyne', with a stylized, cursive script.

Tara Cheyne MLA

Attachment

The Risk Assessment Guidelines set out the process and factors for the Commissioner to consider when assessing individual applications for registration under the Working with Vulnerable People Act. The Act and Guidelines serve an important and legitimate objective of protecting vulnerable persons from harm through careful risk-based screening of people seeking to work with vulnerable persons.

The human rights of vulnerable persons and the applicant are core elements in the decision-making process. The Working with Vulnerable people background checking scheme and Guidelines engage and may limit rights of applicants including the right to work, right to privacy, and right to equality. However, these limitations are reasonable and proportionate to achieve the important objective of protecting vulnerable people from serious harm.

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

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

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

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

For these reasons the Guidelines are consistent with rights protected in the Human Rights Act 2004.

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