



**ACT**  
Government

Chief Minister and Treasury

Policy Statement 03/2012  
Issued: November 2012

# WORKING WITH VULNERABLE PEOPLE (BACKGROUND CHECKING) POLICY

## Purpose

1. This policy articulates the principles by which the Working with Vulnerable People (Background Checking) Act 2011 (WWVP Act) is to be managed within the ACT Public Service (ACTPS).

## Application

2. This policy applies to all directorates and their officers and employees.

## Background

3. The Strategic Board has decided that a whole of Government policy is to be developed on matters relating to the introduction of the WWVP Act so that all ACTPS staff are treated consistently.

## Principles

4. Positions captured by the WWVP Act will require the incumbent to hold a current registration card.
5. Action must be taken by directorates if staff in those positions are refused registration or offered conditional or role-based registration in accordance with the policy below.
6. Officials are reminded that under the values and behaviours, ACTPS code of conduct and section 9 of the Public Sector Management Act 1994 (the PSM Act) they are obliged to treat each other with respect. Situations may arise where employees receive a conditional, role-based or negative registration result. Their privacy is to be respected and is not a matter for conjecture by staff.

## **Specific Matters**

### **Identification of Positions**

7. The WWVP Act determines positions that are captured. A guide is attached to assist directorates identify positions, however the decision regarding who is covered is ultimately up to the Office of Regulatory Services (ORS).
8. Agencies will identify positions that are captured under the WWVP Act. A list of positions (or categories of positions) will be provided to the Chair of People and Performance Council (PPC) to facilitate consistency in identifying positions across directorates. Any questions concerning whether a position is captured under the WWVP Act is also to be directed to the Chair of PPC to resolve possibly with the ACT Government Solicitor or ORS.

### **Registration**

9. Registration for positions captured by the WWVP Act will commence for the appointment of new employees from 8 November 2012. Accordingly, effective immediately all positions should be advertised on this basis that they 'may require registration', pending directorates completing their identification processes. Once the identification process has been completed by a directorate, only identified positions should be advertised on the basis that they 'will require registration'. All letters of offer should clearly state that the offer and/or commencement of employment is conditional upon a successful candidate being registered.
10. Existing employees will be processed as agreed with ORS. After registration, if directorates become aware of information that affects the registration of an employee, they can request that ORS conduct a reassessment.
11. Under the terms of the WWVP Act, people at the time of registration and during the registration period must inform ORS of any information that may affect registration status.

### **Payment of Registration**

12. Given that this is a new employment condition, directorates will be responsible for payment of registration fees for the first registration period (3 years) for all existing staff that are in an identified position at the time the obligation to register first applies. As the registration is granted to individual employees, is portable and tax deductible, it will be paid for by the employee thereafter. New staff offered employment from 8 November 2012 will be responsible for payment of first and subsequent registrations.

## Conditional and role-based registrations and refusals

13. In the event of a conditional or role-based registration, directorates will assess the duty statement of the position to see how this impacts the person's ability to undertake the duties of their employment with a view to one of the following actions:
  - A deliberate decision that no change is required as the extent of the registration allows current duties to continue
  - Change the duty statement or functions
  - Redeployment, either internally or to another directorate
  - If none of the preceding actions are viable, retirement under the PSM Act on the basis that the person is no longer qualified to perform his or her duties.
14. In the event of a refused registration, directorates will assess the duty statement of the position with a view to one of the following actions:
  - Change duties or functions so that the person is no longer in an identified position and registration is not required
  - Redeployment, either internally or to another directorate, to a position that does not require registration
  - If none of the preceding actions are viable, retirement under the PSM Act on the basis that the person is no longer qualified to perform his or her duties.
15. For the purposes of clauses 13 and 14, retirement under the PSM Act cannot occur until any appeal period has expired, or an appeal has been decided by ORS, whichever is the latter.
16. From the time a negative result is issued (i.e. where the regular duties of the position can no longer be undertaken), until an action is taken under clause 13 and 14, the staff member will be placed either on alternative duties in a position that does not require registration or leave without pay while the impact of refusal is assessed. Staff may also access annual leave to cover this period.
17. Directorates will undertake any reviews, deliberations and actions in relation to staff refused registration or offered conditional or role-based registration as swiftly as practicable.

## **Legislative Reference**

Working with Vulnerable People (Background Checking) Act 2011  
Public Sector Management Act 1994

## **Policy Owner**

Director  
Public Sector Management Group  
Workforce Capability and Governance Division  
Chief Minister and Treasury

Date: 14 November 2012



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## Working with Vulnerable People (Background Checking) Do I need to register?

### Question 1:

**Are you or any employees within your directorate doing paid, unpaid or volunteer work within any of the categories of regulated activities listed in Schedule 1 of the *Working with Vulnerable People (Background Checking) Act 2011*?**

Working with children: See attached Schedule 1, Part 1.1

Working with vulnerable adults: See attached Schedule 1, Part 1.2 & 1.3

**Yes: Go to Question 2**

**No: A WWVP check is not required**

### Question 2:

**Do you or your employee's usual duties involve contact with a vulnerable person while the vulnerable person is accessing the regulated activity?**

**Contact** includes any form of contact that would reasonably be expected as a normal part of engaging in the regulated activity

**Contact** includes any form of:

- physical contact
- oral communication, whether face to face, by telephone\* or otherwise
- written communication including electronic communication or dealing with a record relating to the vulnerable person\*
- making a decision about a vulnerable person  
(but does not include contact incidental to engaging in the activity)

### Who is a vulnerable person?

- a) A child up to the age of 18 yrs; or
- b) An adult who is-
  - (i) Disadvantaged; **and**
  - (ii) Accessing a regulated activity in relation to the disadvantageExamples – ***disadvantaged***
  - 1) an adult with a physical or mental disability
  - 2) an adult who suffers social or financial hardship
  - 3) an adult who cannot communicate, or who has difficulty communicating in English

(\*See Question 3 for contact exemptions)

**YES: Go to Question 3**

**NO: A WWVP check is not required**

### Question 3:

#### Does an exemption apply?

Is the employee:

- Under 16 years old; or
- Engaged in the activity (other than an overnight camp for children) for not more than 3 days in any 4 week period **or** 7 days in any 12 month period or
- Registered under a corresponding law (another jurisdiction) with a similar activity and engages in the activity for less than 28 days in 12 months
- A close relative of each vulnerable person in the activity; or
- Engaged in the activity as a volunteer and
  - (a) is a close relative of a vulnerable person taking part in the activity; and
  - (b) is a close relative of each vulnerable person taking part in the activity; or
- An employer or supervisor of a vulnerable person, unless the vulnerable person is engaged in a regulated activity; or
- Engaged in the activity
  - (i) in the same capacity (e.g. work colleague)

- (ii) as a school student on work experience/training
  - (iii) as a police officer or AFP appointee under *Australian Federal Police Act 1979* (Cwlth)
  - (iv) as a registered health professional or practitioner under the *Health Professionals Act 2004*
  - (v) as a lawyer;
  - (vi) as a staff member, volunteer or approved provider under *the Aged Care Act 1997* (Cwlth)
  - (vii) as a financial services licensee under the *Corporations Act*;
  - (viii) for a declared state of emergency
  - (ix) for a Territory or national event and the Commissioner for Fair Trading declares that the person is not required to be registered
- \*If your **only** contact with a vulnerable person is through:
    - (i) Providing information over the telephone
    - (ii) Working with a record
    - (iii) Providing a service at a public counter, shopfront or telephone for the Commonwealth or Territory

**YES: If an exemption applies a WWVP Check is not required**

**NO: If no exemption applies a WWVP Check is required**