

WORKING WITH VULNERABLE PEOPLE

BACKGROUND CHECKING POLICY

Purpose

1. This policy provides guidance on the management of *the Working with Vulnerable People (Background Checking) Act 2011* (WWVP Act) in ACT Government employment.

Application

2. This policy contains a set of whole-of-government instructions issued by the Head of Service under the *Public Sector Management Act 1994* (PSM Act), which binds all employees and officers engaged under that Act.
3. Although not engaged under the PSM Act, directorates should ensure that all labour hire staff hold a WWVP registration if their position is captured under the WWVP Act, as part of contract/procurement arrangements.

Background

4. The WWVP Act requires people who provide or engage in certain regulated activities and/or services for vulnerable people (children and disadvantaged adults) to be registered with the Office of Regulatory Services (ORS). There are a number of positions across ACT Government that are captured by the registration requirements.
5. The WWVP Act commenced on 8 November 2012 and has a staged implementation depending on the type of activity or service people work in.

Identification of Positions

6. The WWVP Act sets out criteria to assist with the identification of positions that may be captured under the Act. The ORS website sets out a number of questions to assist directorates with this process:
http://www.ors.act.gov.au/community/working_with_vulnerable_people_wwvp.
7. Any concerns regarding whether a position is captured under the WWVP Act should to be directed to ORS.
8. Once directorates have identified positions that are captured under the WWVP Act (WWVP identified positions), details of the positions are to be forwarded to Shared Services for identification in the HR system.

Registration

9. Employees holding WWVP identified positions are required to be registered in accordance to the timeline set out in section 3 of the WWVP Act.
10. When recruiting to a new position (including Higher Duties and temporary transfer positions) that require a WWVP registration, the selected candidate should not commence in the role without a WWVP registration.
11. Action must be taken by directorates if employees in WWVP identified positions:
 - have their registration suspended or cancelled;
 - are granted conditional or role-based registration;
 - are refused registration
 - are employed in identified position and refuse to register; or
 - surrender their registration.
12. Under the terms of the WWVP Act, employees must inform ORS of any information that may affect their registration status the time of registration. Those who hold WWVP registrations must also inform ORS if they experience any change in circumstance that may affect their registration.

Refusal to Register

13. In the event that an employee refuses to register, directorates will assess the duty statement of the position with a view to the following actions:
 - change duties or functions so that the person is no longer in a WWVP identified position and registration is not required; or
 - redeployment to a position that does not require registration.
14. If none of the preceding actions are viable, the employee may be suspended with pay according to section 287D of the *Public Sector Management Standards 2006* (PSM Std) until a decision on the registration is made by ORS.

Conditional Arrangements

15. 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 employee's ability to undertake their duties. The following actions may be taken:
 - a decision that no change is required as the extent of the registration allows

current duties to continue;

- a change in duty statement or functions so that the employee is no longer in a WWVP identified position and registration is not required;
- a redeployment, either internally or to another directorate, to a position that does not require registration;
- a suspension with pay according to section 287F of the PSM Std, while the preceding actions are taken; or
- where a suitable position is not found or accepted, action to retire under section 144 of the PSM Act, on the basis that the employee is no longer qualified to perform their duties may then be undertaken.

Refused, Cancelled or Suspended Registrations

16. In the event of a refused, cancelled or surrendered registration, directorates will assess the duty statement of the position with a view to taking the following actions:

- a change duties or functions so that the employee is no longer in a WWVP identified position and registration is not required;
- a redeployment, either internally or to another directorate, to a position that does not require registration;
- a suspension with pay according to section 287F of the PSM Std, while the preceding actions are taken; or
- where a suitable position is not found or accepted, action to retire under section 144 of the PSM Act on the basis that the person is no longer qualified to perform their duties, may then be undertaken.

Suspension with Pay

17. Section 287 of the PSM Std provides for periods of suspension from employment with pay in the following circumstances:

- where WWVP registration has been suspended by ORS, an employee may be suspended with pay while actions to change duties or redeploy are being undertaken until a position is found and accepted, or a final decision by ORS is made; or
- where WWVP registration has been refused, cancelled, surrendered or has a

condition placed that cannot be met – an employee may be suspended with pay for a period of up to six weeks to undertake actions to change duties or redeploy.

Retirement under the PSM Act

18. For the purposes of paragraphs 14 and 15, retirement under section 143 of the PSM Act cannot occur until the end of a period of suspension with pay.

Reappointment

19. Where the employee seeks external review of a negative registration decision, and the decision is overturned, there is provision to reappoint under section 117 PSM Act.

Payment of registration

20. Directorates are responsible for payment of registration fees for the first registration period (three years) for all existing staff in WWVP identified positions at the time the obligation to register first applies.
21. Individuals employed after the time an obligation to register first applies to the position (including those commencing Higher Duties or temporary transfer positions) will be responsible for the payment of their own registration.

Advertising of positions

22. All WWVP identified positions should be advertised on the basis that they 'will require registration'. All letters of offer for the positions captured under current or previous stages should clearly state that the offer and/or commencement of employment is conditional upon a successful candidate being registered.
23. Where positions have been identified as captured in future stages, letters of offer should clearly state that ongoing employment will be conditional upon successful registration, which will be payable by the employee, as and when required under the WWVP Act.
24. All letter of offer should state that new employees are responsible for the payment of registration fees.

Legislative Reference

25. The key principles of this policy are aligned with the following authorised sources:

- Working with Vulnerable People (Background Checking) Act 2011
- Public Sector Management Act 1994
- Public Sector Management Standards 2006

Bronwen Overton-Clarke
Commissioner for Public Administration
on behalf of Kathy Leigh, Head of Service

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