



ACT
Government

Chief Minister and Treasury

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Royal Commission into Institutional
Responses to Child Sexual Abuse
GPO Box 5283
Sydney NSW 2001
solicitor@childabuseroyalcommission.gov.au

To whom it may concern

Issues Paper 1 – Working with Children Check

In response to the Issues Paper released by the Royal Commission into Institutional Responses to Child Sexual Abuse, this letter outlines the Working with Vulnerable People Background Checking scheme being implemented by the ACT Government.

Working with Vulnerable People Check

The *Working With Vulnerable People (Background Checking) Act 2011* (WWVP Act) commenced on 8 November 2012. It is the primary law in the ACT, which provides for background checking as part of a risk assessment of people working with, or wanting to work with, children or vulnerable adults in the ACT.

A person is defined as being vulnerable if they are a child under the age of 18 years or an adult who is experiencing disadvantage and accesses a regulated activity or service in relation to the disadvantage. This definition has the advantage of establishing a basis for the determination of the types of services or activities that might attract background checking. The definition also recognises people's changing circumstances, as they will not be considered vulnerable at all times.

For the purposes of the WWVP Act, an employer is an agency, organisation or individual who engages an employee or volunteer in a regulated activity or service. An employee is a person who is engaged by an employer to provide one or more regulated activities or services to vulnerable people and receives money from an employer for providing the regulated activities or services to vulnerable people and receives money from an employer for providing the regulated activities or services. A volunteer is engaged to provide a regulated activity or service to vulnerable people and does not receive payment for providing the activity or service (apart from any payment for expenses).

The registration scheme has been designed to provide flexibility following the outcome of a risk assessment. There are four potential outcomes of the risk assessment:

1. General registration: Where there is no evidence of risk, or an acceptable risk, of harm to vulnerable people. This type of registration allows a person to move between all regulated activities for up to three years without the need to reapply.
2. Conditional registration: Where identified risk/s requires treatment to be acceptable. Specific conditions may be imposed on a person's registration. For example, a person may not be able to transport vulnerable people as a result of drink driving offences.
3. Role-based registration: Is a specific type of Conditional Registration where certain employer/workplace-based measures are required to treat identified risks. This registration restricts a person to engaging in specified regulated activities with a stated employer. For example, a person may only work as a counsellor in a particular drug and alcohol program.
4. Negative risk assessment: Is issued when the Commissioner for Fair Trading conducts a risk assessment on a person and is satisfied that the person poses an unacceptable risk of harm to a vulnerable person. A negative risk assessment means that a person will not be registered to work with vulnerable people attending or accessing a regulated activity. It is an offence to work with vulnerable people without a registration. Appeals can be made in writing to the Commissioner who can re-consider the decision. Formal reviews of decisions are conducted by the ACT Civil and Administrative Tribunal (ACAT).

The ACT Government is taking a staged approach to implementation. Volunteers and employees working specifically with children are required to be registered in the first year of the implementation phase (by 7 November 2013). Other regulated activities to follow in subsequent years include: community and disability services, housing services, emergency services and mental health services. Section 12 of the WWVP Act outlines exemptions or where a person is not required to be registered to engage in a regulated activity or service.

A review of the implementation of the WWVP Act will take place 2016.

Exchange of Criminal History Information for People Working with Children

In November 2008, COAG agreed to trial an interjurisdictional Exchange of Criminal History Information for People Working with Children (ECHIPWC). In November 2009, a MOU was signed by all jurisdictions establishing arrangements for a trial of ECHIPWC.

The criminal history information that is exchanged includes: spent convictions; pending charges; non-conviction charges including acquittals and withdrawn charges and further information held by police services to clarify the circumstances of the offence or alleged offence. This information is not released for a standard Police Criminal History Check.

Following the trial all jurisdictions supported the permanent continuation of ECHIPWC through an Intergovernmental Agreement (IGA). The ACT and South Australian Governments were recently nominated as participants in the IGA. Tasmania is also

developing an expanded scheme similar to the ACT and have signalled their intention to nominate for participation in the IGA. Subject to approval, this would signify the national supply and receipt of criminal history information under the exchange.

A National Scheme

The ACT's expanded background checking scheme, incorporating both children and vulnerable people, is the first in Australia. In any consideration of a national scheme, the ACT would support a broadening of scope to recognise that vulnerable people, as well as children, require safeguards from sexual, physical and other abuse.

Further information

Further information on implementation of the Working with Vulnerable People Check is available at the ACT Office for Regulatory Services website:

http://www.ors.act.gov.au/community/working_with_vulnerable_people

The *Working with Vulnerable People (Background Checking) Act 2011* and the *Working with Vulnerable People (Background Checking) Regulation 2012* are available from the ACT Legislation Register at: <http://www.legislation.act.gov.au>

Further information on the development of the Working with Vulnerable People Check is available at the ACT Community Services Directorate website:

<http://www.dhcs.act.gov.au/home/publications/wwvpc>

Yours sincerely



Pam Davoren
Deputy Director-General

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