

**DISCUSSION PAPER | AUGUST 2009**

# **A WORKING WITH VULNERABLE PEOPLE CHECKING SYSTEM FOR THE ACT**



**Consumer Advocacy and Quality Service  
Department of Disability, Housing  
and Community Services**

# **A Working with Vulnerable People Checking System for the ACT**

## **Discussion Paper**

Released for public consultation by

Katy Gallagher MLA  
ACT Minister for Community Services

**AUGUST 2009**

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## **HOW TO LODGE A SUBMISSION**

Interested parties are invited to lodge written submissions via post, email or facsimile.

The closing date for submissions to be made is **12 October 2009**.

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## **WORKING WITH VULNERABLE PEOPLE WEBSITE**

Interested parties can download electronic copies of this discussion paper at:  
[www.dhcs.act.gov.au/publications/wwvpc](http://www.dhcs.act.gov.au/publications/wwvpc)

Further background information and reference material is also contained on the website.

All submissions received in response to this discussion paper will be made available on the DHCS website unless otherwise requested.

An online forum will be hosted at:  
[www.bangthetable.com/workingwithvulnerablepeople](http://www.bangthetable.com/workingwithvulnerablepeople)

Interested parties may participate in the online forum at any time during the consultation period.

## **FOREWORD**

The ACT Government is committed to the support and protection of vulnerable people in the ACT. As announced in the *Canberra Plan 2008 – Towards Our Second Century*, the ACT Government will establish a centralised background checking and risk assessment system for people working with vulnerable people to reduce the risk of sexual, physical, emotional or financial harm or neglect.

In line with obligations under the *National Framework for Creating Child Safe Environments – Organisations, Employees and Volunteers*, checking systems for people working with children have been established or are currently under development in all Australian jurisdictions. The ACT Government also has obligations under the *ACT Human Rights Act 2004* to protect vulnerable people from harm. Given the similarities in the risk of harm faced by children and vulnerable adults, the ACT will extend the checking system to include people working with vulnerable adults.

Many organisations in the ACT community already recognise that background checking of employees or volunteers who are in contact with vulnerable people is an important part of creating a safe working environment. Currently each organisation is subject to the costs and liabilities of individual checking decisions.

Centralisation of checking has benefits for both organisations and individuals. Under the new Working with Vulnerable People (WWVP) Checking System, the ACT Government will set minimum and compulsory checking standards and will apply a consistent risk assessment framework and decision making process. For the first time in the ACT, employees and volunteers will be able to move between organisations without being rechecked. The ACT Government will also meet the cost of background checking, allowing organisations to direct more of their resources towards their clients.

The WWVP Checking System will be compliant with the *ACT Human Rights Act 2004* and will include review and appeal mechanisms for applicants.

This discussion paper presents options and proposals for the establishment of a WWVP Checking System in the ACT. I encourage you to consider the issues raised in the discussion paper and invite you to lodge a written submission expressing your views on a WWVP Checking System in the ACT that best meets the needs of vulnerable people and the people providing services.

**Katy Gallagher MLA**  
**Minister for Community Services**

## **EXECUTIVE SUMMARY**

It is proposed that a Working with Vulnerable People (WWVP) Screening Unit will be established within the Office of Regulatory Services, Department of Justice and Community Services. The unit will operate similarly to those established in Victoria, Western Australia and Queensland for working with children checks.

People seeking to work with vulnerable people in the ACT will be required to apply to be registered with the WWVP Screening Unit before commencing work. Provision will be made for people already working with vulnerable people when the new WWVP Checking System is phased in.

Subject to certain exemptions, unregistered people will generally be ineligible to work with vulnerable people.

The WWVP Screening Unit will be responsible for background checking and risk assessment for applicants and registered people. Screening will include a national criminal history check and possibly other forms of checking to the extent allowable in the ACT. Applicants will be required to consent for checks to take place.

Risk assessments will occur under prescribed guidelines by trained assessors. People deemed to pose an unacceptable risk will not be registered and will be prohibited from working with vulnerable people. People may also be deregistered if new information indicates an unacceptable risk to vulnerable people.

Successful applicants will be registered with the WWVP Screening Unit for up to five years and will be permitted to work with vulnerable people for the period of registration. Rechecking will not be required when registered people change employers or positions.

A WWVP card with a unique identification number will be issued to registered people. Employers and organisations will be required to validate the card holder's registration status via an online or telephone validation service prior to engaging that employee.

In limited circumstances, and with the support of an employer or organisation, unsuccessful applicants may make a further application for a position-based assessment. This type of assessment will take into account the specific nature of a particular position as well as any risk management strategies proposed by the employer or organisation. After consideration of this information, the WWVP Screening Unit may approve an applicant to work in a specific position. A WWVP Card will not be issued and the applicant may not change position or employers without further assessment.

The WWVP Checking System will comply with the ACT *Human Rights Act 2004*, the principles of natural justice and the *National Framework for Creating Safe Environments for Children*. Applicants will be informed of the reasons for decisions taken by the WWVP Screening Unit, may make their own submissions to the WWVP Screening unit and may correct information they believe to be inaccurate. Information concerning applicants or registered people will be held securely by the WWVP Screening Unit in accordance with privacy legislation and will not be disclosed to employers.

Unsuccessful applicants may request an internal review of WWVP Screening Unit decisions or may lodge an appeal with ACT Civil and Administrative Appeals Tribunal (ACAT).

It is estimated that around 10% of the ACT population (or 34,420 people) will be subject to background checking, with a rejection rate of around 0.2%.

## **SUMMARY OF QUESTIONS**

### **8.0 VULNERABLE PEOPLE IN THE ACT**

Q1) Do you support the proposed definition of vulnerable adult? Are there any other types of definition that should be considered?

### **9.0 WHO WILL BE CHECKED?**

Q2) Are there any activities that should be included or excluded from Annex A? Do you have any comments specific to any of the listed categories?

Q3) Are there any activities that should be included or excluded from Annex B? Do you have any comments specific to any of the listed categories?

Q4) Are there any engagement types that should be added or removed from the proposed list?

Q5) Are there any other forms of contact that should be included?

Q6) Do you have any comments on the checks that will be applied to supervision?

Q7) Do you have comments on the general exemption for age?

Q8) Do you support the application of an exemption for people in contact with vulnerable people for infrequent or short periods? Do you support the proposed threshold of 7 days in any 12 month period?

Q9) Do you support the application of an exemption for people who are 'closely related' to each (and every) vulnerable person they have contact with?

Q10) Do you support the application of an exemption for volunteers engaged in a regulated activity who are 'closely related' to a vulnerable person who ordinarily participates in that regulated activity?

Q11) Do you have any comments on excluding normal employee / employer relationships?

Q12) Are there any other exemptions that should be considered?

### **10.0 APPLICATIONS**

Q13) Do you have any comments on the proposal that unregistered persons can be engaged in a position pending the outcome of their application?

Q14) Do you have any comments on the involvement of employers or organisations in the application process?

### **11.0 WHAT WILL BE CHECKED?**

Q15) Do you have any comment on the inclusion of other types of information such as Apprehended Violence Orders, Child Protection Orders and past employment records in the checking process?

Q16) Do you have any comments on the proposal that applicants be required to provide a statutory declaration that they have not been convicted of certain types of offences outside of Australia?

### **12.0 RISK ASSESSMENT PROCESS**

Q17) Are there any additional risk assessment principles that should be applied?

Q18) Do you have comments on the proposed list of relevant criminal offences?

Q19) Do you have any comments on the list of questions to be considered as part of the risk assessment process?

Q20) Do you support the additional considerations applicable to non-conviction information? Are there any other considerations that should be included?

### **13.0 ASSESSMENT OUTCOMES**

Q21) Do you have any comments on the proposed registration period of five years?

Q22) Do you support the proposal for the WWVP Screening Unit to contact the employer or organisation to advise of the issuance of an interim negative notice or in the other circumstances proposed?

Q23) Do you support the application of a five year prohibition on re-applying for a WWVP Check unless there has been a material change in the information upon which the negative notice was issued? If not, why not?

### **14.0 PROHIBITED PEOPLE**

Q24) Do you have any comments on the inclusion of a mechanism for courts to make orders barring people from applying for or holding an approval to work with vulnerable people for specified periods of time?

## **15.0 REVIEW AND APPEAL**

Q25) Do you have any comments on the proposed right of internal review by the WWVP Screening Unit and the right of external merits review by ACAT and the proposed grounds for merits review?

## **16.0 PENALTIES**

Q26) Do you have any comments on the proposed list of offences and the application of penalties for the proposed offences?

## **17.0 COMPLIANCE CHECKS**

Q27) Do you have any comments on the proposed compliance activities?

## **19.0 THE WWVP SCREENING UNIT**

Q28) Do you have any comments on the estimated processing times for the risk assessment process?

## **21.0 IMPLEMENTATION PLAN**

Q29) Are there other factors that should be considered when determining the priority in which checks are phased in?

## **22.0 ACCOUNTABILITY**

Q30) Are there any other mechanisms to improve accountability that should be considered in this section or elsewhere in this discussion paper?

## **23.0 ADDITIONAL QUESTIONS**

Q31) Are there any other issues you wish to raise that have not been addressed in this discussion paper?

### **23.1 Vulnerable People and the Community**

Q32) Do you have any specific comments which you wish to raise about the proposed checking system?

### **23.2 Employees and Volunteers**

Q33) Do you have any specific comments which you wish to raise about the proposed checking system?

### **23.3 Employers and Organisations**

Q34) Do you have any specific comments on the proposed role of employers or organisations in the application process?

## **PART 1 - BACKGROUND**

## **1.0 INTRODUCTION**

The ACT Government announced in the 2008-09 Budget an allocation of \$4.118 million over four years to support the development and introduction of a checking system to screen people who work with children or vulnerable adults in the ACT.

The aim of the WWVP Checking System will be to reduce the incidence of sexual, physical, emotional or financial harm or neglect of vulnerable people in the ACT. Vulnerable people should expect to be safe within the ACT community, especially when receiving services that are required to relieve any relative disadvantage they may experience.

There have been several ACT reviews and initiatives that have recommended that further work be undertaken in the development and implementation of background checking in the ACT, including:

- Community Services and Social Equity Standing Committee, Report No 3 'The Rights, Interests and Wellbeing of Children and Young People' 2003;
- The Territory as Parent and The Territory's Children, ACT Government, 2004;
- Children and Young People Commissioner Position Paper, DHCS, 2004; and
- Issues Paper, ACT Children's Services Council, 2005.

Some community organisations have also made individual representations to the ACT Government seeking the establishment of a centralised checking system.

The introduction of the WWVP Checking System will address these recommendations and will also help address obligations arising for the ACT under the *National Framework for Creating Child Safe Environments – Organisations, Employees and Volunteers*.

The checking system will require employees and volunteers who work with vulnerable people to undergo periodic background checking and risk assessment. Individuals deemed to pose an unacceptable risk will be ineligible to work with vulnerable people.

The ACT will be the first Australian jurisdiction to establish a checking system that applies to people working with children and to people working with vulnerable adults.

Under new amendments to the *Human Rights Act 2004* (HRA) that came into force on 1 January 2009, all “public authorities”, including all ACT Government departments and any non-government organisations that perform “functions of a public nature” are required to act and make decisions in accordance with human rights. Failure to do so may leave a public authority liable to an action in the Supreme Court. The WWVP Checking System must therefore comply with the HRA.

WWVP checking potentially engages a number of rights protected in the HRA, including the right of children to the protection they need because of being a child (s.11(2)) and the right not to be subject to inhuman or degrading treatment (s.10(1)). Importantly, WWVP checks engage the right to protection of privacy and reputation (s.12) and the right to a fair trial (s.21) for people who are subject to WWVP checks.

Most rights are not absolute. In the case of WWVP Checks, the rights of persons subject to screening may be subject to reasonable limits, to the extent necessary to protect the rights of vulnerable persons to personal, social and financial security. Section 28 of the HRA outlines in further detail the relevant factors in deciding whether a proposed limitation is reasonable, and any final WWVP Check System must be a proportionate limitation on rights in accordance with s.28.

This discussion paper has been developed following consultations with a whole of ACT Government Employment Screening Working Group and with reference to the recommendations of previous ACT reports, the employment screening systems in place in other jurisdictions and consultations with the ACT Human Rights Commission, the Australian Federal Police and select community stakeholders.

## **2.0 THE RATIONALE OF BACKGROUND CHECKING**

The basic premise of background checking is that the past behaviour of an individual provides an indication of the possible future behaviour of that individual<sup>1</sup>. Examples or patterns of abusive or inappropriate behaviour can sometimes be evident in information available for assessment such as an individual's criminal record or employment history.

There have been documented cases in which a person with a history of abusive behaviour has gained access to vulnerable people because their previous history was not known to their employer or other vetting agency<sup>2</sup>. In the worst cases, these people have gone on to commit further abuse. Evidence suggests that around half of sex offenders gain access to their victims through children's organisations<sup>3</sup>.

An important element of background checking involves risk assessment. Risk assessment describes the process of evaluating available information to reach a conclusion about the risk of harm a person may pose to vulnerable people. A rigorous and transparent risk assessment process must form part of the background checking process to ensure that exclusion decisions are both proper and defensible.

The exclusion of people with a known history of certain behaviour is a fundamental part of creating safe working environments for vulnerable people. Background checking and risk assessment should however also be complemented by other organisation-based risk reduction activities such as codes of conduct and risk management plans to help lower the overall risk of harm.

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<sup>1</sup> *Creating Safe Environments for Children – Organisations, Employees and Volunteers National Framework. Schedule: An Evidence Based Guide for Risk Assessment and Decision-Making when Undertaking Background Checking*, June 2006, p2

<sup>2</sup> Birchard, M. (2004). *Birchard Inquiry*. London: Home Office.

<sup>3</sup> Statistics from the Victorian Child Exploitation Squad indicate that between 1988-1996, 43% of offenders gained access to child victims through children's organisations. Petratis, V and O'Connor, C, *Rockspider: The Danger of Paedophiles – Untold Stories*, Hybrid Publishers, Ormand, Victoria, 1999

### **3.0 CHECKS IN OTHER JURISDICTIONS**

All other Australian States and Territories have established or are in the process of developing centralised checking systems for people working with children. Operational systems have been established in NSW, Qld, WA, SA, Vic, and most recently, NT. A centralised checking system has also been introduced in the UK.

Essentially, there are two types of systems in operation: position-based systems and registration-based systems.

Position-based systems, such as that employed in NSW, assess the suitability of an applicant for a specific child-related position. The risk assessment process considers information concerning the history of the applicant as well as the specific risks inherent in a particular position. Applicants may only be approved to work in the specific position against which the assessment has taken place and must generally reapply for a check if moving to a new position or employer.

Registration systems, such as those in operation in Qld, WA, Vic and the UK, assess the suitability of an applicant to work in child related employment more broadly i.e. there is no assessment of suitability against a specific position. Successful applicants are registered with the checking unit and may change positions or employers without being rechecked during the period of registration.

There is no mutual recognition of checking outcomes across jurisdictions. While there are similarities across all checking systems, there are also fundamental differences relating to the definition of child related work, scope of people subject to checking, range of information considered as part of the assessment process, duration of approval notices and the level of fees charged to undertake an assessment.

As it is believed that “[w]here persons may be excluded from child related employment/volunteering in one State or Territory or particular organisations within a jurisdiction, they may gravitate towards other jurisdictions and agencies with less stringent screening provisions”<sup>4</sup>, it is important to consider the checking requirements in other Australian jurisdictions when developing a WWVP Checking System for the ACT.

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<sup>4</sup> CSMAC Agenda paper Item 2.2, 7 October 2004. p2

## **4.0 WHAT CHECKS ARE CURRENTLY IN PLACE IN THE ACT?**

No broad legislative framework exists within the ACT for WWVP checks. Government and non-government organisational policies vary regarding employee criminal history record checks.

There is some specific legislation in place mandating checks for certain occupational categories, including:

- Childcare operators – *Children and Young People Act 2008*; and
- Drivers of public motor vehicles – *Road Transport (Driver Licensing) Public Vehicle Licensing Guidelines 2006 (No 1)*.

Section 5.3, clause 68 of the *Public Sector Management Act 1994* requires that background checks, including a criminal history check, are undertaken for all ACT Government employees. Policies are also in place to ensure that employees that work with vulnerable people are assessed with particular attention to the risk of harm they may pose to vulnerable people. Categories of employment commonly subject to this type of checking include:

- Teachers;
- Child protection workers;
- Health care workers; and
- People involved in the delivery of community services.

Service funding agreements applicable to service providers funded by ACT Government generally include requirements to ensure that all people engaged by the organisation to work with vulnerable people are fit and proper people. Organisations are required to obtain a police check and personal references when engaging employees, volunteers or contractors who will, or will be likely to, have contact with vulnerable people.

The Commonwealth Government has introduced checks for certain people working in the aged care sector under the *Aged Care Act 1997*. Under Part 4.4 of the *Accountability Principles 1998* a person cannot be engaged in aged care as a staff member or volunteer, if they have been convicted of murder or sexual assault or convicted of, and sentenced to imprisonment for, any other form of assault.

Many individual organisations in the ACT community also recognise that background checking of employees or volunteers in contact with vulnerable people is an important part of creating a safe working environment. As checks are not mandatory, individual policies vary in terms of who is checked, what is checked, how often checks are conducted and what information will lead to an exclusionary decision. Any costs incurred to undertake background checks are either borne by the organisation or passed to the employee or volunteer. Organisations are of course also subject to the costs and liabilities that may arise from their individual checking decisions.

The ACT Government recognises that it is vitally important that the new WWVP Checking System does not increase financial costs, liabilities or administrative burdens on individuals or organisations. While the overall aim of the WWVP Checking System will be to reduce the risk of harm to vulnerable people, this must be achieved without discouraging individuals or organisations from providing much needed services to vulnerable people in the ACT community.

## **5.0 BENEFITS AND COSTS OF CENTRALISED BACKGROUND CHECKING**

The introduction of a WWVP Checking System in the ACT will have many benefits for vulnerable people, employees, volunteers, organisations and employers.

The WWVP Checking System will establish mandatory minimum checking standards that will apply across all regulated activities. Vulnerable people can be assured that all persons delivering vital services have been subject to a minimum level of checking. This is in contrast to the current system wherein decisions concerning whether or not checks should be conducted are left to individual service providers. Risk assessments conducted by the WWVP Screening Unit will also be based on a broader range of information than checks currently able to be undertaken by individual service providers.

Under a centralised checking system, risk assessments and decision making processes will be more consistent and open to review and appeal. From the perspective of persons subject to checking, this will lead to more considered and reliable checking outcomes as opposed to the current situation wherein individual service providers may take a different view concerning the risks presented by individual employees or volunteers.

For the first time in the ACT, registered persons will be able to move between employers or organisations without the need to be rechecked. This is of benefit to both registered persons and the employers or organisations with which they are engaged and will reduce duplication of the checking effort across the ACT community.

The ACT Government will assume the monetary and administration costs associated with background checking. This will allow service providers to direct more of their financial resources towards clients.

There are also inherent risks in background checking and decision making. The liability associated with checking decisions will effectively be transferred from individual service providers to the ACT Government which may translate into a lower risk environment for organisations in terms of justifying and defending checking decisions.

There will however be some cost in the centralising on checking. Some persons or organisations will become subject to periodic checking for the first time and will therefore incur an increased administrative overhead. It is also likely that some persons who become subject to checking will be prevented from working with vulnerable people in the future. This is consistent with the stated aim of the reducing risks for vulnerable people. Any costs associated with the actual checking process will as far as possible be borne by the ACT Government.

There is also a possibility that the introduction of checking requirements may deter some employees or volunteers from working with vulnerable people. On balance, the ACT Government considers that centralised checking will at the same time improve service delivery to vulnerable people through offsetting benefits that reduce the cost and frequency of checking for many other persons. There will be a range of exemptions that aim to moderate the impact of checking in circumstances where checking may be of little net benefit.

## **6.0 TIMELINES**

This discussion paper has been released for an eight week consultation period ending 12 October 2009.

It is anticipated that a consultation report will be released in late 2009 summarising the views expressed by stakeholders during the consultation period.

A WWVP Policy will be finalised and submitted for the consideration of Government and it is anticipated that legislation will be introduced into the ACT Legislative Assembly in early 2010.

It is expected that checking will be phased in over five years commencing in late 2010.

## **PART 2 – POLICY DETAIL**

## **7.0 VULNERABLE PEOPLE IN THE ACT**

It is proposed that the term 'vulnerable people' will include children and certain vulnerable adults.

### **7.1 Children**

To promote consistency across ACT legislation, it is proposed that the definition of 'child' applicable under WWVPC legislation will refer to the definition of 'child' under the *Legislation Act 2001*.

The *Legislation Act 2001* provides the following definition:

- **Child**, *if age rather than descendency is relevant, means an individual who is under 18 years old.*

### **7.2 Vulnerable Adults**

Given the similarities in the risk of harm faced by children and certain vulnerable adults, it is proposed that background screening will extend to people working with vulnerable adults in the ACT. As the ACT will be the first Australian jurisdiction to establish checking for people working with vulnerable adults, a suitable definition of vulnerable adult must be developed.

The policy journal, *Health Affairs*, (2007) provides a broad definition of vulnerability:

- *"Vulnerability, the susceptibility to harm, results from an interaction between the resources available to individuals and communities and the life challenges they face. Vulnerability results from developmental problems, personal incapacities, disadvantaged social status, inadequacy of interpersonal networks and supports, degraded neighbourhoods and environments, and the complex interactions of these factors over the life course. The priority given to varying vulnerabilities, or their neglect, reflects social values".*

While there is widespread usage of the term vulnerable person/adult in Australia and overseas, each definition reflects the different purpose for which it was initially drafted. A selection of these definitions is contained in Table 1, below.

*A Working with Vulnerable People Checking System for the ACT*

<b>Source</b>	<b>Definition</b>
<i>ACT Service Funding Agreement</i>	For the purposes of this Item 2, “vulnerable adults” may include adults by reason of age, frailty and/or intellectual disability.
<i>Spent Convictions Act 2000 (ACT)</i>	This Act contains exclusions applicable to persons working with children, aged persons or people with a disability.
<i>Vulnerable Persons Policy. QLD Department of Justice and Attorney-General</i>	<p>For the purposes of this policy the department has identified vulnerable people to include:</p> <ul style="list-style-type: none"> <li>• Aboriginal and Torres Strait Islander people;</li> <li>• Children, young people and their families;</li> <li>• People with a mental illness, intellectual disability, acquired brain injury, or cognitive impairment;</li> <li>• People who are affected by domestic or family violence;</li> <li>• People from culturally and linguistically diverse backgrounds and in particular people who have English as their second language; and</li> <li>• People who are homeless.</li> </ul>
<i>Criminal Procedure Amendment (Vulnerable Persons) Bill 2007 (NSW)</i>	<p>This Act relates to the giving of evidence by children and intellectually disabled persons. Intellectually impaired persons are defined as persons with:</p> <ul style="list-style-type: none"> <li>• an appreciably below average general intellectual function;</li> <li>• a cognitive impairment (including dementia or autism) arising from, or as a result of, and acquired brain injury, neurological disorder or a developmental disorder; or</li> <li>• any other intellectual disability.</li> </ul>
<i>Criminal Records (Spent Convictions) Act (NT)</i>	“vulnerable persons” includes children, aged persons and persons with a physical or intellectual disability or mental illness.
<i>Standard 3.3.1: Food Safety Programs for Food Service to Vulnerable Persons. Food Standards Australia New Zealand</i>	Vulnerable person means a person who is in a care facility listed in the Schedule or a client of a delivered meals organisation.

<p><i>No Secrets: Guidance on developing and implementing multi-agency policies and procedures to protect vulnerable adults from abuse (2000).</i> Department of Health and Home Office (UK)</p>	<p>People aged 18 and over who:</p> <ul style="list-style-type: none"> <li>• need community care services due to a mental disability, other disability, age or illness; and</li> <li>• may be unable to take care of themselves or protect themselves against serious harm or exploitation.</li> </ul>
<p><i>In Safe Hands: Implementing adult protection procedures in Wales (2000).</i> National Assembly for Wales.</p>	<p>As above.</p>
<p>Department of Constitutional Affairs (UK)</p>	<p>As above.</p>
<p>Safeguarding Vulnerable Groups Act 2006 (UK)</p>	<p>A vulnerable adult is a person aged 18 or over who:</p> <ol style="list-style-type: none"> <li>1) is living in residential accommodation, such as a care home or a residential special school;</li> <li>2) is living in sheltered housing;</li> <li>3) is receiving domiciliary care in his or her own home;</li> <li>4) is receiving any form of health care;</li> <li>5) is detained in a prison, remand centre, young offender institution, secure training centre or attendance centre or under the powers of the Immigration and Asylum Act 1999;</li> <li>6) is in contact with probation services;</li> <li>7) is receiving a welfare service of a description to be prescribed in regulations;</li> <li>8) is receiving a service or participating in an activity which is specifically targeted at people with age-related needs, disabilities or prescribed physical or mental health conditions or expectant or nursing mothers living in residential care (age-related needs includes needs associated with frailty, illness, disability or mental capacity);</li> <li>9) is receiving direct payments from a local authority/HSS body in lieu of social care services;</li> <li>10) requires assistance in the conduct of his or her own affairs.</li> </ol>

**Table 1:** Existing definitions of “vulnerable persons/adults” in use in Australia and the UK.

One option for defining vulnerable adults in the ACT would be to simply list broad categories of people who might generally be considered to be vulnerable, such as those listed under the Qld Department of Justice and Attorney-General, *Vulnerable People Policy* or the Northern Territory *Criminal Records (Spent Convictions) Act 2002*.

Consultations with the ACT Human Rights Commission and several community representative groups have however indicated that this style of definition is likely to be considered patronising or offensive to some people in the ACT. For instance, many people may not consider themselves to be vulnerable simply because they are physically disabled or of a particular cultural group.

An alternative option would be to link extant vulnerability with the receipt of social services that are associated with alleviating any disadvantage or vulnerability. Under this type of definition, people would only be considered vulnerable upon the acceptance or use of such services. This type of definition also has the potential to establish a sound basis for the determination of the types of services or activities that might attract background checking.

Given the concerns raised during consultations to date, a definition of vulnerable adult based upon the receipt of services that relieve disadvantage is preferred. To promote consistency with terms used in agreements supporting the delivery of services under the *Canberra Social Plan - Building Our Community*, it is proposed that the following definition be used:

- *“Vulnerable Adult” refers to people aged 18 or over that access services in the ACT, as defined under Regulations, to alleviate the effects of physical, social, financial and/or psychological disadvantage.*

The services to be ‘defined under Regulations’ are addressed Section 8.2.

Q1) Do you support the proposed definition of vulnerable adult? Are there any other types of definition that should be considered?

## **8.0 WHO WILL BE CHECKED?**

### **8.1 Context**

Initial consultations with community stakeholders have indicated that there is currently a range of approaches to determining who should be subject to background checking in any given organisation. Policies tend to reflect the specific nature of the work undertaken by the organisation and often specify the particular positions for which checking will apply. Conversely, in some cases, policies do not exist and screening decisions are taken on an ad hoc basis.

The WWVP Checking System must be generally applicable to all individuals and organisations in the ACT. It will not be possible to simply list every position or circumstance in which checking should apply.

A generic framework is required to assist individuals and organisations with the criteria that could be considered in determining who should be subject to checking under the WWVP Checking System. It is proposed that checking will generally apply to:

1. certain 'regulated activities'; and
2. undertaken by certain 'regulated people / organisations'; and
3. subject to certain general or specific exemptions.

All of these criteria must be considered when making a determination about whether or not a person should be subject to checking. For this reason, stakeholders may wish to consider all of these criteria before responding to the questions listed under each section below.

To aid understanding of the determination process, a simple diagnostic tool is included as Table 2, below. This tool will be further developed to reflect the outcomes of the consultation process and will be made available to prospective applicants of the WWVP Checking System. Each of the considerations listed in Table 2 are addressed in the sections to follow.

Question	Answer
<p><b>Q1. Do I participate in a regulated activity?</b></p> <p>Considerations:</p> <ul style="list-style-type: none"> <li>• Regulated activities as listed in Annex A</li> <li>• Regulated activities as listed in Annex B</li> </ul>	<p>Yes - proceed to Question 2.</p> <p>No – check is not required.</p>
<p><b>Q2. Am I a regulated person?</b></p> <p>Considerations:</p> <ul style="list-style-type: none"> <li>• Engagement type</li> <li>• Contact type</li> <li>• Supervision level (if applicable)</li> </ul>	<p>Yes - proceed to Question 3.</p> <p>No – check is not required.</p>
<p><b>Q3. Is there a general or specific exemption that applies to me?</b></p> <p>Considerations:</p> <ul style="list-style-type: none"> <li>• Age</li> <li>• Duration and frequency of contact</li> <li>• Family relationships</li> <li>• Co-participants</li> <li>• Employers and supervisors (if applicable)</li> <li>• Specific exemptions</li> </ul>	<p>Yes – check is not required.</p> <p>No – check is required.</p>

**Table 2:** *Simple Diagnostic Tool for Determining if Checks are Required.*

## **9.2 Regulated Activities**

The first step in determining whether or not an individual is subject to screening relates to ‘Regulated Activities’. Regulated activities are the occupations or services that will attract screening, subject to other considerations.

The administrative and financial burden that would be incurred by simply including all instances where a person may have some contact with vulnerable people would be unsustainable. It is therefore prudent to ensure that limited screening resources are targeted towards the activities where the risk of harm to vulnerable people is greatest.

### 9.2.1 People in Contact with Children

It is proposed that regulated people who are in contact with children will be checked if they are involved in the provision of the regulated activities listed at Annex A.

To promote national consistency, Annex A has been developed with reference to the activities that currently attract checking in other Australian jurisdictions.

Q2) Are there any activities that should be included or excluded from Annex A? Do you have any comments specific to any of the listed categories?

### 9.2.2 People in Contact with Vulnerable Adults

The ACT will be the first Australian jurisdiction to extend checking to people working with vulnerable people. It has not been possible to develop a list of regulated activities based upon those that attract checking in other Australian jurisdictions.

Section 7.2 of this discussion paper proposes that the definition of vulnerable adult in the ACT be linked to the receipt of services that relieve disadvantage. It naturally follows that activities related to the delivery of such services should be included in the checking system.

The summary report *Addressing Disadvantage in the ACT – Mapping of ACT Government Funded Services for the Disadvantaged* (2003) has been used as the primary basis for the development of a list of regulated activities at Annex B.

The report was produced by the ACT Chief Minister's Department and identifies and categorises government, government-funded and non-government services provided to disadvantaged people in the ACT during 2001-02. As part of the research, the ACT Council of Social Service (ACTCOSS) was commissioned to identify non government organisations that provide services for disadvantaged people and those in poverty that do not receive any ACT Government funding.

Although ACT Government Department structures have changed since the production of the report in 2003 (and hence funding or programs may now be delivered through different mechanisms), the broad groupings of services identified in the report appear to remain relevant.

In addition, the definition of vulnerable person used under the UK *Safeguarding Vulnerable Groups Act 2006* as contained in Table 1 has been referenced.

Q3) Are there any activities that should be included or excluded from Annex B? Do you have any comments specific to any of the listed categories?

### **8.3 Regulated People**

The term 'regulated people' refers to the range of ways in which people may work with vulnerable people, including engagement type, contact type and supervision arrangements.

#### **8.3.1 Engagement Type**

Broadly speaking, there are two main groups that work with vulnerable people in the ACT: employees and volunteers. However, the experience of other Australian screening jurisdictions is that it is necessary to specify a broader range of engagement types to remove any doubt about whether or not a particular individual should be subject to checking.

It is proposed that the following categories of engagement be included as part of the checking regime:

- employees;
- self-employed;
- contractors;
- sub-contactors;
- agents;
- religious officials;
- volunteers;
- the performance of unpaid community work after a court order;
- board members;
- students; and
- trainees.

The specification of these categories aims to lessen the chance that an individual can claim 'special status' and attempt to argue that they are neither an employee nor volunteer, and hence not subject to the WWVP Checking System. Specification also allows for modification of the scope of checking in the future if circumstances dictate that this is necessary to protect vulnerable people, or remove unintended consequences.

An alternative option to listing each of the categories above would be to include all people and then develop a list of exclusions. This approach is likely to result in a large list of exclusions and would be inconsistent with practices in other Australian jurisdictions. In line with normal legislative practice, the ACT Government seeks to specify inclusions and minimise the scope of exemptions (see Section 8.4 to follow).

Q4) Are there any engagement types that should be added or removed from the proposed list?

### 8.3.2 Contact Type

One of the defining aspects of the WWVP Checking System is that it will apply only to people who are in contact with vulnerable people.

There are two fundamental criteria associated with determining whether or not a person is in contact with vulnerable people that relate to the 'nature' of the contact and the 'regularity' of contact.

The key considerations in determining risks in the nature of contact is whether or not a person has an opportunity to directly harm an individual or influence a vulnerable person through building a relationship of trust or dependence. While there are obvious risks associated with direct physical contact, improvements in communication technologies have resulted in opportunities for relationships of trust and dependence to develop in the absence of any form of physical contact. There have been numerous instances reported in the media of people using communications technology to harm, or groom for harm, a vulnerable person.

Other forms of contact that may present some level of risk could involve having access to records concerning vulnerable people or making decisions that materially affect vulnerable people. While there may be no direct contact, there is the potential for the misuse of information or access gained while acting in these positions.

The WWVP Checking System is not intended to apply where contact with vulnerable people is irregular and incidental to normal activities. An example of this type of contact would be a plumber who is engaged to carry out emergency repairs at a school.

It is proposed that checking will only apply in circumstances where contact with vulnerable people is 'regular and systematic' (i.e. contact can be expected as part of the position). An example of this type of contact would be a school janitor who routinely carries out duties on school premises at times when students are expected to be present.

In line with these considerations, it is proposed that people will be checked when 'contact' with vulnerable people is 'regular and systematic' and involves:

- any form of physical contact;
- any form of communication;
- working within close proximity to vulnerable people;
- working with records relating to vulnerable people; and/or
- the making of decisions affecting vulnerable people.

Q5) Are there any other forms of contact that should be included?

### 8.3.3 Supervision

There is a range of approaches in other screening jurisdictions on this matter. Some jurisdictions such as Victoria specify that checking should only apply to people working with children in an unsupervised capacity. Other jurisdictions are silent on the matter (having the effect that people are checked in both supervised and unsupervised positions), while in South Australia checking is specifically extended to those who supervise people in contact with vulnerable people.

It is important to ensure that this matter is carefully considered to avoid the possibility that organisations could use their organisational structure to avoid checking altogether. For instance, if checking applied only to people with unsupervised contact with vulnerable people, and mechanisms were in place such that supervisors themselves had no contact with vulnerable people, then checking might not apply even though the organisation was delivering services to vulnerable people.

The *ACT Service Funding Agreement* for the delivery of services to the community under the '*Community Sector Funding Policy*' requires that:

- *"...the Organisation will obtain an AFP check each time it engages employees and volunteers or contractors (including employees of contractors) who will or will be likely to have contact with children and/or vulnerable adults...."*

Notably, the Agreement does not specify that checks should only apply to people who are unsupervised, having the effect that people in both supervised and unsupervised positions must be checked.

To avoid doubt, it is proposed that checking will apply to:

- all people in contact with vulnerable people whether or not they are supervised; and
- people who are responsible for undertaking supervision of people in contact with vulnerable people.

Q6) Do you have any comments on the checks that will be applied to supervision?

## **8.4 Exemptions**

### **8.4.1 General Exemptions**

A range of exemptions are proposed to limit the scope of checking in some areas with the aim of ensuring that it does not apply where it may be considered insensitive or inappropriate.

#### **8.4.1.1 Age**

It would be improper to impose checking requirements on very young people who themselves might be considered vulnerable. However, there is some evidence that patterns of abusive behaviour can be evident before a person reaches adulthood and checking should perhaps be considered for people under the age of 18 in some circumstances.

There is a range of different approaches to age-related exemption thresholds in other Australian jurisdictions. Limited exemptions have been established for volunteers under the age of 18 in Queensland and Western Australia. In Victoria, a broad exemption to all people under the age of 18, while in the Northern Territory this threshold has been lowered to the age of 15 years.

It is proposed that in the ACT checking should not be required for volunteers aged less than 18 years.

Employees under the age of 18 would be subject to checking, however it should be noted that there are limitations on the employment of people under the school leaving age of 15 under the *Education Act 2004* and *Children and Young Person Act 2008*. As a result, it would not be common for checking to apply to employees under the age of 15 years.

Q7) Do you have comments on the general exemption for age?

**8.4.1.2 Duration and Frequency of Contact**

The extension of checking to people who have infrequent or incidental contact with vulnerable people would impose a relatively high administrative burden on these people and could potentially result in unintended consequences, such as a decrease in the number of short-term volunteers or services available to assist vulnerable people. For instance, a person considering volunteering for a one-off event lasting an afternoon may be more likely to be deterred by the requirement for checking than a person who is a regular volunteer.

While other Australian jurisdictions have established exemptions for those in contact with vulnerable people for short periods only, a range of approaches have been taken, as illustrated in Table 3.

<b>Qld</b>	<b>WA</b>	<b>Vic</b>	<b>UK</b>
<p>An exemption applies if, over a 12 month period, contact occurs for less than:</p> <ul style="list-style-type: none"> <li>▪ eight consecutive days; or</li> <li>▪ once a week, each week, over four weeks; or</li> <li>▪ once a fortnight, each fortnight, over eight weeks; or</li> <li>▪ once a month, each month, over six months.</li> </ul>	<p>People who undertake child-related work on no more than 5 days in a calendar year may choose not to apply for a WWC Check.</p> <p>Short term visitors to WA. Exemption applies for the first 2 weeks in any 12 month period.</p>	<p>An exemption applies to visiting workers who do not ordinarily live or perform child related work in Victoria.</p>	<p>An exemption applies where activities take place for less than 3 days in a 30 day period.</p>

**Table 3:** *Summary of Exemptions for Limited Contact under other Registration Based Schemes in External Jurisdictions.*

Some jurisdictions such as Western Australia and Victoria also have specific exemptions for people who do not ordinarily perform work in the checking jurisdiction (i.e. interstate visitors). The ACT is located wholly within NSW and there is a reasonable proportion of the ACT workforce that resides outside of the ACT. For this reason, it is proposed that there will be no distinction made between ACT residents and those visiting from outside of the ACT.

The ACT Government considers that it is preferable that any exemption be simple and practical. For this reason it is proposed that checking will not be required for people who undertake regulated activities in the ACT on no more than 7 days in any 12 month period.

Q8) Do you support the application of an exemption for people in contact with vulnerable people for infrequent or short periods? Do you support the proposed threshold of 7 days in any 12 month period?

#### *8.4.1.3 Family Relationships*

It is not intended that the WWVP Checking System will apply to family relationships. It is therefore proposed that checking will not be required for:

- people who are 'closely related' to each (and every) vulnerable person they have contact with; and
- volunteers engaged in a regulated activity who are 'closely related' to a vulnerable person who ordinarily participates in that regulated activity.

For the purposes of the WWVP Checking System, it is proposed that 'closely related' will include a parent, spouse, step-parent, mother-in-law or father-in-law, grandparent, uncle or aunt, brother or sister (including half-siblings and step siblings, brother-in-law or sister-in-law and de-facto relationships).

The exemption will not apply in formalised care arrangements, such as kinship carers.

Q9) Do you support the application of an exemption for people who are 'closely related' to each (and every) vulnerable person they have contact with?

Q10) Do you support the application of an exemption for volunteers engaged in a regulated activity who are 'closely related' to a vulnerable person who ordinarily participates in that regulated activity?

#### *8.4.1.4 Co-participants*

There are situations where a person may be participating in an activity on the same basis as a vulnerable person. An example would be a soccer team with a mix of players aged between 16 and 18 years. Such a team would comprise both children and adults.

While it might be the case that persons such as the team coach would be subject to checking, it could be considered inappropriate to require that players be checked once they reach the age of 18 years simply to continue to participate in the activity with their team-mates.

For this reason a general exemption is proposed for people who are participating in an activity on the same basis as a vulnerable person.

#### *8.4.1.5 Employers and Supervisors*

It is proposed that employers or supervisors of vulnerable people will be checked when participating in regulated activities (Section 8.2).

There are however other instances when a person may employ or supervise a vulnerable person to undertake activities that are not part of the proposed checking system. For example, a 17 year old working in a fast food restaurant.

While there may be inherent risks involved with this type of contact, extending checking into normal employee / employer relationships would greatly expand the scope of checking in the ACT. Extension into this area may also act as an employment barrier for some vulnerable people. From the perspective of an employer, engaging one vulnerable person in a business would result in a need to be checked. Some employers might simply refuse to be checked and therefore make themselves ineligible to engage vulnerable people as employees or volunteers. This may result in a form of discrimination against vulnerable people and limit their employment opportunities.

In order to limit the scope of checking to regulated activities only and to avoid the possibility of introducing a form of discrimination against vulnerable people, it is proposed that checking will not apply to employers of vulnerable people or supervisors of volunteers who are vulnerable people, unless those people are also carrying out a regulated activity.

Q11) Do you have any comments on excluding normal employee / employer relationships?

#### 8.4.2 Specific Exemptions

There are some more specific persons or situations in respect of which checking may be inappropriate or unnecessary because other forms of checking are already in place or because checking might result in unintended consequences that limit opportunities for vulnerable people.

*A Working with Vulnerable People Checking System for the ACT*

It is proposed that checks will not be required for:

- sworn police officers (who have not been suspended);
- secondary school students on work experience placements;
- people volunteering in State and National events; and
- other groups as specified under regulations.

Q12) Are there any other exemptions that should be considered?

## **9.0 APPLICATIONS**

### **9.1 A New System**

Currently, applicants for a national police check must submit forms to the Australian Federal Police along with an application fee. In many cases, checks are organised by an employer or volunteer organisation with the consent of the applicant.

The proposed WWVP Checking System will involve changes to current practice. For instance, the onus for organising background checks will shift from the employer to the employee or volunteer, and successful applicants will be required to physically attend the WWVP Screening Unit for a photo to be taken (Section 12.1). These changes are outlined in more detail in the sections below.

### **9.2 Timing**

The ACT Government is conscious that employers and organisations need to engage employees or volunteers in an efficient and timely manner. A key aim of the WWVP Checking System will be to avoid introducing delays or unnecessary administrative burdens into the engagement process.

Registered people will be able to be engaged by employers immediately because a risk assessment will have already been undertaken by the WWVP Screening Unit. Employers will however be required to verify the outcome of the check as outlined in Section 12.1.

It is proposed that unregistered people will be required to submit an application to the WWVP Screening Unit prior to commencing duties. Applicants may work in a position pending the outcome of their application but must cease duties immediately if the WWVP Screening Unit issues either a negative notice (Section 12.3) or an interim negative notice (Section 12.2).

An alternative position would be to require that the results of applications are known before an applicant may commence duties. This option is not preferred as it would delay the engagement process for some period depending upon the complexity of the application. However, in recognition that there is some inherent risk in engaging a person before the results of their application is known, individual employers and organisations will be free to require that results are known before a person may act in a position if this is considered appropriate.

Applicants may withdraw an application at any time by notifying the WWVP Screening Unit in writing.

Q13) Do you have any comments on the proposal that unregistered persons can be engaged in a position pending the outcome of their application?

### **9.3 Existing Employees or Volunteers**

The checking system will impose a new obligation on some people who are already working with vulnerable people. In order to allow sufficient time for these people to comply with the new system, applications for registration will be required to be submitted on a date to be determined as part of a phased implementation of the system. While relatively long grace periods may apply in some cases, it is anticipated that checking will be fully phased in within five years of implementation.

### **9.4 Information Requirements**

It will be necessary for applicants to supply sufficient information to the WWVP Screening Unit for background checks to be undertaken. This information is likely to include:

- personal information (e.g. name, previous names);
- contact details, including previous addresses;
- sufficient proof of identity;
- a description of the work to be undertaken by the applicant;
- consent for background checking and ongoing monitoring to be undertaken (if applicable);
- consent for the WWVP Screening Unit to contact the applicant's employer in limited circumstances (e.g. if the application is withdrawn or unsuccessful); and
- a signature.

In addition, to limit the incidence of frivolous applications and to enable the WWVP Screening Unit to contact employers or organisations in the event that an application is unsuccessful, information must also be provided by a prospective (or current) employer or organisation which includes:

- a declaration that the applicant has been offered, or is working in, a position which is likely to require that a check be undertaken;
- the contact details of the employer or organisation; and
- a signature of a responsible person in the organisation.

Depending upon the range of information that will ultimately become part of the risk assessment process, applicants may also be required to provide a declaration about whether or not they have previously been involved in certain conduct (e.g. overseas criminal history).

Q14) Do you have any comments on the involvement of employers or organisations in the application process?

## **10.0 WHAT WILL BE CHECKED?**

### **10.1 Australian Records**

Checking will include a national criminal history check that will contain any disclosable information concerning convictions, findings of guilt, certain spent convictions (to the extent allowable under the ACT *Spent Convictions Act 2000* and similar legislation in other States and Territories), pending matters and limited other information (such as being listed on a register of sex offenders). This is the same information currently obtained by employers or organisations conducting their own background checks.

The information contained in a national criminal history check has been tested in a court of law (or is before a court of law).

There are other types of information available that may not have been tested in a court or similar but can nonetheless be useful in determining whether or not there is a risk that an individual may harm a vulnerable person. The Human Rights and Equal Opportunity (HREOC) publication *‘On the Record: guidelines for the prevention of discrimination in employment on the basis of criminal record’*, makes the point that:

- *“The more information available to the employer, the greater the likelihood that an employer can exercise reasonable judgment in assessing the connection between the criminal record and the inherent requirements of the job”.*

It is important to be aware that the determinations of the WWVP Screening Unit are concerned only with estimating risk and are not tantamount to a finding of guilt or innocence.

The establishment of a WWVP Screening Unit will enable the ACT to fully participate in the COAG *Inter-jurisdictional Exchange of Criminal History for People Working with Children* initiative. The initiative will allow Australian jurisdictions to exchange an enhanced range of criminal history information including that related to charges, acquittals and factual information concerning the circumstances of individual cases. Full participation can be achieved while remaining compliant with the provisions of the ACT *Human Rights Act 2004* and other applicable legislation.

There is also a range of other types of information that could potentially be useful in the assessment process, including Apprehended Violence Orders, Child Protection Orders and past employment records.

Q15) Do you have any comment on the inclusion of other types of information such as Apprehended Violence Orders, Child Protection Orders and past employment records in the checking process?

## **10.2 Overseas Records**

The ACT Government would prefer that overseas criminal history information is available for consideration. However, it is recognised that the inclusion of such information is often problematic and impractical. There can be long delays in obtaining overseas criminal history checks and offences in some countries are not necessarily equivalent to those in Australia.

All persons entering Australia are subject to a character test by the Commonwealth Department of Immigration and Citizenship. Applicants may be asked to provide police certificates for each country they have lived in for 12 months or more over the past 10 years since turning 16. A person will fail the character test where:

- they have a substantial criminal record;
- they have, or have had, an association with an individual, group or organisation suspected of having been, or being, involved in criminal conduct;
- having regard to the person's past and present criminal conduct, the person is found not to be of good character;
- having regard to the person's past and present general conduct, the person is found to be not of good character; or
- there is a significant risk that the person will engage in criminal conduct in Australia, harass, molest, intimidate or stalk another person in Australia, vilify a segment of the Australian community, or incite discord in the Australian community or in a segment of that community, or represent a danger to the Australian community or a segment of that community.

Given the difficulty in obtaining criminal history information and the fact that checks are already undertaken by the Commonwealth Government upon entry to Australia, it is proposed that:

- applicants will be required to provide a statutory declaration that they have not been convicted of certain types of offences outside of Australia; and
- individual employers or organisations may ask applicants to provide a police certificate from their country of origin, if concerns still exist.

Q16) Do you have any comments on the proposal that applicants be required to provide a statutory declaration that they have not been convicted of certain types of offences outside of Australia?

### **10.3 Self-disclosure and Ongoing Monitoring**

Due to the periodic nature of background checking, there is some risk that a registered person may commit a relevant offence that does not become known to the WWVP Screening Unit until renewal of the registration.

For this reason, it is proposed that registered people will be required by law to immediately self-disclose any relevant change in their criminal record to the WWVP Screening Unit. Penalties for non-compliance would apply, including dismissal. Any notified change of significance would trigger a reassessment. People may be deregistered if a risk assessment based on the new information indicates an unacceptable risk to vulnerable people.

In the future, ongoing monitoring of criminal records may be introduced for registered people in the ACT. This system would closely reflect current arrangements between the Queensland Commission for Children and Young People and Child Guardian and the Queensland Police Service that enable the exchange of limited information concerning criminal records. In effect, the Queensland Commission for Children and Young People and Child Guardian is automatically alerted by the Queensland Police Service to any substantial change in the criminal record of registered persons held. The establishment of such a capability in the ACT is a significant project and would take some years to develop.

## **11.0 RISK ASSESSMENT PROCESS**

Risk assessment describes the process of evaluating available information to reach a conclusion about the risk of harm a person may pose to vulnerable people. The basic premise of risk assessment is that past behaviour is a reasonable indicator of possible future behaviour. A rigorous and transparent risk assessment process must form part of the background checking process to ensure that exclusion decisions are both proper and defensible.

### **11.1 Risk Assessment Principles**

There are a number of Schedules under the *National Framework for Creating Safe Environments for Children*, including '*An Evidence-based Guide for Risk Assessment and Decision Making when Undertaking Background Checking*'. While the Schedule has been developed for the purpose of assessing risk for people working with children, the principles espoused are equally applicable for assessing people working with vulnerable adults.

In accordance with the Risk Assessment Schedule, it is proposed that the principles guiding risk assessment will include:

- the paramount consideration is the wellbeing of vulnerable people and their protection from harm;
- risk assessment will be conducted by people who are appropriately trained and properly supported;
- risk assessment will be recognised as one of a range of organisational strategies to protect vulnerable people;
- risk assessment will be evidence based, where evidence exists;
- in all situations risk assessment will be ethical and defensible;
- assessment and decision making processes will be efficient and timely;
- assessment and decision making processes will follow principles of natural justice and procedural fairness;
- the risk assessment procedure will be transparent, documented, and consistently applied;
- risk assessment processes will be accompanied by provisions for review and appeal against decisions; and
- the privacy of people will be strictly protected, and sensitive and personal information will be protected from inappropriate disclosure.

The risk assessment principles will guide the drafting of risk assessment manual for use by the ACT WWVP Screening Unit. The risk assessment manual will promote consistent risk assessment processes and decision making outcomes.

Q17) Are there any additional risk assessment principles that should be applied?

## **11.2 Relevant Information**

The aim of WWVP Checks is to reduce the incidence of sexual, physical, emotional or financial harm or neglect of vulnerable people.

In accordance with anti-discrimination principles, information about a person should only be considered by an employer where that information relates to the person's ability to undertake 'the inherent requirements' of the job. For this reason, it is proposed that only offences or information relevant to the likelihood of an applicant causing sexual, physical, emotional or financial harm or neglect of vulnerable people will be considered as part of the risk assessment process. Other information, such as an applicant's driving record for instance would not be considered.

In the context of criminal history information, it is proposed that relevant offences should include:

- sexual offences;
- offences against a person;
- offences involving violence;
- offences involving dishonesty or fraud;
- offences relating to property;
- offences involving possession of, or trafficking in, a drug of dependence or controlled drug;
- arson;
- firearms offences;
- offences against an animal; and
- incitement, conspiracy or intent to commit any of the above offences.

Q18) Do you have comments on the proposed list of relevant criminal offences?

## **11.3 Factors for Consideration**

A very simple risk assessment system might involve checking for relevant information, and if any information was found (e.g. any sexual offence), applicants would be automatically deemed unsuitable. While this type of assessment would be quick and cheap, it would have little regard for the actual level of risk presented by the applicant.

It is proposed that risk assessment in the ACT should involve a more thorough analysis of any background information obtained. The Schedule, *An Evidence-Based Guide to Risk Assessment and Decision Making When Undertaking Background Checking*, states that:

- *“Natural justice and procedural fairness demand that there is a rationale for excluding persons from child-related employment/volunteering. Equally, organisations must be accountable for the decisions they make and good governance requires that there are policies and guidelines which provide clear foundations for decision making”.*

The Schedule also provides a list of questions that should be considered when assessing available information. In the context of WWVP Checks, these questions are:

- *What is the nature, gravity and circumstances (where known) of the offence or charge and how is this relevant to employment/volunteering with vulnerable people? (NOTE: It is proposed that seriousness of any particular offence will be determined based upon both the maximum penalty available and any penalty actually imposed).*
- *How long is it since an alleged offence occurred?*
- *What was the age of the victim of the offending behaviour?*
- *What was the age difference between the person and any victim?*
- *How serious is the applicant’s criminal history based upon all the information available (for example, whether there is a pattern of offending)?*
- *Have the applicant’s circumstances changed since an offence was committed?*
- *What is the attitude of the applicant to their previous offending behaviour, and what relevant information can be provided by the applicant?*
- *What are the findings of any assessment reports following attendance at treatment or intervention programs?*
- *Has the offence been decriminalised in Australia or was it an offence overseas but not in Australia?*

In addition, if non-conviction charges or information are considered (for example, information obtained through participation in the COAG *Inter-jurisdictional Exchange of Criminal History for People Working with Children* initiative), guidelines concerning the relevance and standards of proof to be applied will need to be made in legislation so that the WWVP Screening Unit can be satisfied about the truth or accuracy of this information. It is proposed that these considerations should include:

- The credibility of the person who made the original allegations or provided the original information;
- The scope and outcome of any investigation conducted;
- Views of officials who conducted the investigation;

- The answers (if any) of the person to police during interview, the formal statement (if any) to police and the evidence (if any) of the person in cross-examination;
- Whether the alleged conduct was a “one off” or part of a pattern; and
- Any other information which might point to good character or the fact the allegation or information is inaccurate or untrue.

Q19) Do you have any comments on the list of questions to be considered as part of the risk assessment process?

Q20) Do you support the additional considerations applicable to non-conviction information? Are there any other considerations that should be included?

#### **11.4 Expert Advice**

Particularly complex risk assessments may require a broad mix of knowledge, skills and experience in order to make a reasonable determination. The experience of other Australian jurisdictions indicates that input can sometimes be required from lawyers, criminologists, psychologists, sociologists and others with experience with particular vulnerable groups.

Given the small size of the WWVP Screening Unit in the ACT, these skills may need to be sourced across the ACT Government or externally.

In order to ensure that required expertise is available, it is proposed that provision should be made in legislation to allow the WWVP Screening Unit to seek confidential external advice from relevant experts. In practice, the WWVP Screening Unit would assess and make decisions concerning the vast majority of applications. Advice could however be sought from experts in specialist areas in particularly complex cases. All expert advice would be considered by the WWVP Screening Unit as part of the risk assessment process and the final determination would remain with the WWVP Screening Unit.

#### **11.5 Position Based Assessments**

In some specific cases it may be considered beneficial for an employee or volunteer with a criminal history or a behavioural history to be registered to work with vulnerable people. For instance, some types of counsellors may have a behavioural history similar to which their clients are at risk.

The WWVP Checks System is not intended to hinder the recruitment and retention of suitable employees or volunteers or to constrain the delivery of suitable services to vulnerable people. There is also a general obligation under the ACT *Human Rights Act 2004* not to unnecessarily restrict the employment opportunities of people on the basis of their criminal record.

For these reasons it is proposed that the registration system will be supported by an optional position based assessment system.

In practice, applicants who have been unsuccessful in becoming registered with the WWVP Screening Unit will have the option of making a further application for a position based risk assessment. The position based assessment will not be available to all applicants and will be restricted to situations where:

- the applicant has the express written support of a prospective employer or organisation to be engaged in a particular position;
- the employer or organisation provides a thorough description of the proposed position including:
  - the risk to vulnerable people inherent in the employing organisation;
  - the risk inherent in the position being offered to the applicant; and
  - any risk management strategies in place;
- the applicant is able to demonstrate benefits for the applicant, the employer/organisation and vulnerable people if the WWVP Screening Unit was to grant a specific approval to work in the particular position;
- the applicant consents to ongoing monitoring and compliance checks by the WWVP Screening Unit; and
- the applicant and the employer or community organisation agree in writing that the applicant would not be moved to any other position or change the nature of their work within the organisation for the period of any approval granted by the WWVP Screening Unit.

After an assessment of all required information, the WWVP Screening Unit may make a determination concerning the suitability of the applicant to work in a specific position for a specific period (Section 12.4).

## **12.0 ASSESSMENT OUTCOMES**

### **12.1 Positive Notices**

In cases where there is little or no information indicating a risk to vulnerable people, applicants will be registered with the WWVP Screening Unit. Registered people will be permitted to work or volunteer with vulnerable people for the duration of their registration and may move between employers or volunteer positions without being rechecked.

The WWVP Screening Unit will write to successful applicants advising of a pending registration and request attendance at the WWVP Screening Unit for a WWVP Card to be issued. It is proposed that WWVP Cards will provide employers and registered people with the following information:

- the name of the registered person;
- a photo of the registered person taken at the WWVP Screening Unit immediately prior to the card being issued;
- the signature of the registered person;
- the date of registration expiry;
- information on steps to take if a card is lost/stolen or has been found;
- anti-counterfeit measures, such as a security imprint;
- a unique number to assist in card validation;
- information for employers or organisations concerning validation of WWVP Cards; and
- the contact details of the WWVP Screening Unit.

To guard against the improper use of WWVP Cards, it is proposed that employers and organisations will be required to check the validity of WWVP Cards prior to engaging a registered person. The WWVP Screening Unit will provide an online or telephone validation service to enable employers or organisations to use the unique number printed on each WWVP Card to check that it remains valid.

Registrations cannot be maintained indefinitely as national police checks are specific events that attract a specific fee and are therefore only conducted at the time of registration. Periodic renewal of registration is required to ensure that any new offences which have not been self-disclosed by the applicant can be taken into account as soon as possible. Other benefits of periodic registration include:

- limiting the opportunity for fraud (i.e. approvals have a pre-determined expiry date);
- providing some certainty to employers and organisations that approval holders have been subject to a thorough assessment relatively recently;
- creating an opportunity to re-assess old information in light of new research; and

- creating an opportunity to remove approvals from persons who no longer require them, thereby reducing the number of registered people (e.g. short-term volunteers).

While shorter registration periods would reduce the risk of a person with a recent relevant criminal offence maintaining a registration, the length of validity of an approval impacts on the cost of operating the WWVP Screening Unit and the administrative overhead applicable to registered people. There has been a trend towards extending the period of validity of registrations in other jurisdictions. Registrations in Qld, WA and Vic are valid for 2, 3 and 5 years respectively. It is proposed that registrations will remain valid for a period of five years in the ACT. As proposed in Section 10.3, registered people will be required to self-disclose any new criminal offences to the WWVP Screening Unit.

Q21) Do you have any comments on the proposed registration period of five years?

## **12.2 Interim Negative Notices**

In cases where an initial assessment indicates a risk to vulnerable people, it is proposed that the WWVP Screening Unit will issue an interim negative notice and advise the applicant in writing of a proposal to issue a negative notice. The advice will include the reasons for proposing the negative notice and require that the applicant immediately cease participation in all regulated activities pending a final determination.

People receiving an interim negative notice will have an opportunity to correct any information they believe to be incorrect and/or make a submission to the WWVP Screening Unit providing any additional information that they believe to be relevant. The WWVP Screening Unit will consider any additional information provided by the applicant and make a final determination to issue either a positive notice or a negative notice.

To reduce the risk of harm to vulnerable people, it is proposed that the WWVP Screening Unit will inform the employer or organisation nominated on the application form of the proposal to issue a negative notice and advise that the applicant must be removed from all contact with vulnerable people pending a final determination. The WWVP Screening Unit will also contact the employer if:

- there is some doubt as to whether or not the applicant has actually been offered a position;
- the application is withdrawn;
- the application is deemed withdrawn due to irregularities or lack of a response from the applicant;
- a negative notice is subsequently issued; or
- a positive notice is subsequently issued.

Q22) Do you support the proposal for the WWVP Screening Unit to contact the employer or organisation to advise of the issuance of an interim negative notice or in the other circumstances proposed?

### **12.3 Negative Notices**

Background checking and risk assessment takes place within an exclusionary framework. Applicants deemed to pose an unacceptable risk of harm to vulnerable people will receive a negative notice and will not be registered with the WWVP Screening Unit. It is proposed that the WWVP Screening Unit will advise applicants of a negative notice in writing and provide a statement of reasons for issuing the negative notice.

The WWVP Screening Unit will also provide information concerning the rights of the applicant to seek a review or to appeal the decision.

To limit the number of potentially frivolous applications, it is proposed that people who have received a negative notice will be prohibited from reapplying to the WWVP Screening Unit for registration for a period of five years unless there has been a material change in the information upon which the negative notice was issued (e.g. a conviction has been quashed or pending charges have resulted in an acquittal).

Q23) Do you support the application of a five year prohibition on re-applying for a WWVP Check unless there has been a material change in the information upon which the negative notice was issued? If not, why not?

### **12.4 Position-Based Approvals**

It is proposed that the process for issuing position-based approvals will be similar to those used for general registrations, except that a WWVP Card will not be issued and the applicant will not be permitted to change position or employers without making an application for a further assessment.

In summary:

- The WWVP Screening Unit will advise both the applicant and the supporting employer/organisation in writing of the outcome of a position-based assessment;
- In the event of a negative assessment, the WWVP will advise of the reasons for the determination and provide information concerning the rights of the applicant to seek a review or to appeal the decision;

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- In the event of a positive determination, an approval will be granted for the applicant to work in a particular position for a particular period of time (up to five years); and
- Any approval issued by the WWVP Screening Unit may also include specific conditions which must be met by the parties (e.g. the employer may be required to conduct periodic audits against the proposed risk management plan and report outcomes to the WWVP Screening Unit).

## **13.0 PROHIBITED PEOPLE**

One of the key aims of screening is to ensure that unsuitable people are not able to work with vulnerable people. Therefore, background checking and risk assessment must necessarily take place within an exclusionary framework.

As outlined in previous sections of this discussion paper, it is proposed that the exclusionary framework supporting the introduction of WWVP checks will be based on the following fundamental tenets:

- People seeking to work or volunteer with vulnerable people in specified positions must apply to be registered with the WWVP Screening Unit and undergo a risk assessment;
- People who have received an interim negative notice or negative notice from the WWVP Screening Unit, will not be registered and will be ineligible to work with vulnerable people; and
- People who have been issued a negative notice will be prohibited from reapplying for registration for a period of five years, unless there has been a material change in the information upon which the negative notice was issued (e.g. a conviction has been quashed or pending charges have resulted in an acquittal).

In addition, it is proposed that ACT courts should have powers to make orders barring people from applying for or holding an approval to work with vulnerable people for specified periods of time. The inclusion of this proposal will assist in reducing risks for vulnerable people by establishing a mechanism through which people who are a known risk to vulnerable people can be removed from participating in regulated activities as soon as possible.

Q24) Do you have any comments on the inclusion of a mechanism for courts to make orders barring people from applying for or holding an approval to work with vulnerable people for specified periods of time?

## **14.0 REVIEW AND APPEAL**

The principles of procedural fairness and natural justice demand that the decisions of the WWVP Screening Unit are open to independent scrutiny and review.

It is proposed that any decision made by the WWVP Screening Unit may be subject to an internal review by the WWVP Screening Unit or to merits review by ACAT (and ultimately judicial review in the Supreme Court) upon the request of the applicant.

It is proposed that the grounds for internal and merits review in ACAT will include:

- inaccuracy of the information on which the WWVP Screening Unit has relied;
- relevance of conviction information, non-conviction information or other information;
- the availability of new information that was not previously considered by the WWVP Screening Unit;
- whether the WWVP Screening Unit is acting consistently or making decisions in accordance with the *Human Rights Act 2004 (ACT)*; and
- whether the WWVP Screening Unit decision is correct and preferable.

It is proposed that the procedure for review will include:

- a right of access to all information used by the WWVP Screening Unit, except in circumstances where, in ACAT's view, disclosure would, or could be reasonably expected to, prejudice, an existing investigation of a breach of criminal law;
- a power of ACAT to compel the production of information from the relevant law enforcement bodies or WWVP Screening Unit;
- both rights above to extend to "circumstances" information and to relevant inter-jurisdictional bodies;
- a right for the applicant to independent representation; and
- a right of the applicant to supply additional information or witnesses to support their case.

Q25) Do you have any comments on the proposed right of internal review by the WWVP Screening Unit and the right of external merits review by ACAT and the proposed grounds for merits review?

## **15.0 PENALTIES**

In line with other jurisdictions, it is proposed that the legislation for the WWVPC checking system will include specific penalties for certain matters that aim to protect the integrity of the checking system. These matters could include:

- forging or altering of a WWVP Card;
- inappropriate use of a WWVP Card (including using someone else's card or loaning a card to another person);
- failure by employer or organisation to validate WWVP Card;
- providing false or misleading information to the WWVP Screening Unit;
- making multiple and simultaneous applications for assessment;
- working with vulnerable people without a valid assessment notice (or without having applied for an assessment notice);
- failure to immediately cease working with vulnerable people after withdrawal of application, receipt of an interim negative notice, receipt of a negative notice or cancellation of registration;
- failure of employer or organisation to remove a person from working with vulnerable people if it is known that person has withdrawn an application, has been issued with an interim negative notice, issued with a negative notice or has had their registration cancelled; and
- failure of registered person to disclose a new criminal offence to the WWVP Screening Unit.

Q26) Do you have any comments on the proposed list of offences and the application of penalties for the proposed offences?

## **16.0 COMPLIANCE CHECKS**

The WWVP Screening Unit will be required to undertake a range of supporting activities in order to monitor and promote compliance with the WWVP Checking System.

Proposed compliance activities include:

- sending letters to select employers/organisations seeking confirmation that:
  - all people that are required to have checks have been checked and approved;
  - people with negative notices are not employed; and
  - prohibited people are not employed.
- physical spot checks of select employers/organisation;
- investigating public complaints or information that allege a breach of WWVP legislation; and
- referring breaches of WWVP legislation for prosecution.

Q27) Do you have any comments on the proposed compliance activities?

## **17.0 SUPPORTING SAFE ENVIRONMENTS FOR VULNERABLE PEOPLE**

WWVP checks are only one component of reducing the abuse of vulnerable people in the ACT. A large part of the onus of supporting the creation of safe working environments rests with organisations and individuals who work with vulnerable people.

The *National Framework for Creating Safe Environments for Children* contains a specific Schedule on *Guidelines for Building Capacity of Child-Safe Organisations*. While the guidelines are specifically concerned with children, the principles contained in the guidelines are equally applicable to organisations working with vulnerable adults. The guidelines provide an overview of foundation practices and strategies that should be employed to support the creation of safe environments, including:

- systems to ensure adaptation, innovation and continuous improvement;
- governance and culture;
- participation and empowerment of vulnerable people;
- human resources management; and
- education and training.

It is proposed that the WWVP Screening Unit will promote awareness of the National Framework in dealings with applicants and will support employers and organisations by entering into a partnership with the ACT Human Rights Commission and other interested bodies to:

- establish a web link to the National Framework;
- produce and distribute fact sheets concerning the National Framework;
- develop materials to assist individuals and workplaces to adhere to the National Framework; and
- monitor voluntary compliance with the National Framework.

If ongoing monitoring demonstrates that voluntary compliance with the National Framework is at an unacceptably low level, the WWVP Screening Unit could consider a more active role in the future. This could include conducting training workshops or recommending that certain elements of the National Framework be mandated in the ACT by law.

## **18.0 THE WWVP SCREENING UNIT**

### **18.1 Location**

The WWVP Screening Unit will be located in the Office of Regulatory Services, Department of Justice and Community Safety.

### **18.2 Number of Checks**

Based on checks undertaken in comparable Australian jurisdictions, it is estimated that around 7% of the ACT population works with children in a capacity that may attract screening.

As the ACT is the first jurisdiction to check people who work with vulnerable adults, it is more difficult to estimate the number of people that work with vulnerable adults who will be subject to screening. Pending the outcome of consultations and finalisation of a WWVP Policy, it is currently assumed that a further 3% of the ACT population will be screened.

In total, it is estimated that around 10% of the ACT population (or 34,420 people) will be subject to background checking, with a rejection rate of around 0.2%.

Assuming that approvals will be valid for a period of up to 5 years, the WWVP Screening Unit will be required to process approximately 6,884 applications annually.

### **18.3 Processing Times**

Based on data obtained from comparable screening jurisdictions, it is currently anticipated that:

- 87% of applicants will have no criminal history. These applications will be processed within 2 days from the date of receipt by the WWVP Screening Unit – however total turnaround time will be subject to the time taken to receive the national criminal history check;
- 12% of applicants will have a minor offence recorded. These applications will be processed within 5 days - however total turnaround time will be subject to the time taken to receive the national criminal history check;
- 1% of applicants will have a significant criminal history which may require a complex risk analysis. In these cases, assessments may take up to 28 days to be completed.

Processing times will be greatly influenced by the time taken to acquire relevant information, the complexity of the risk analysis and whether or not certain review or right of reply options are exercised by applicants. Processing times may therefore be significantly longer in some cases.

Q28) Do you have any comments on the estimated processing times for the risk assessment process?

#### **18.4 Record Keeping**

Records will be held securely within the WWVP Screening Unit in compliance with privacy legislation and *Territory Records Act 2002* will not be made available to employers.

Applicants will have a right to request access to their own information used by the WWVP Screening Unit as part of the risk assessment process.

## **19.0 COMPATIBILITY WITH OTHER ACT LEGISLATION**

The WWVP Checking System will need to operate in the context of other applicable legislation already in place in the ACT and Commonwealth. The checking system will therefore be compliant with other applicable ACT and Commonwealth legislation including:

- *Human Rights Act 2004;*
- *Discrimination Act 1991;*
- *Privacy Act 2000 (Cwth);*
- *Public Sector Management Act 1994;*
- *Spent Convictions Act 2000; and*
- *Territory Records Act 2002.*

## **20.0 IMPLEMENTATION PLAN**

It will not be possible to conduct all checks in the first year of operation of the WWVP Screening Unit. Checks will therefore need to be phased in over a reasonable period to avoid capacity constraints that might lead to delays in checks being conducted. It is proposed that the WWVP Checking System will be implemented in a number of phases over 5 years having regard for the:

- categories of people and activities regulated under legislation;
- risk of harm to vulnerable people;
- level of checking already undertaken (if any); and
- operational capacity of the WWVP Screening Unit.

As mentioned in Section 9.2, a grand-parenting clause will be included as part of the legislation to allow people already working with vulnerable people to prepare for background checking.

Q29) Are there other factors that should be considered when determining the priority in which checks are phased in?

## **21.0 ACCOUNTABILITY**

As with all public regulatory activities, it is important to ensure that operations are transparent and open to public scrutiny.

The WWVP Screening Unit will be required to report annually as part of the *Office of Regulatory Services* Annual Report. The report will include data relating to the number of checks conducted, rejection rates, reviews and appeals as well as the outcomes of any reviews or appeals.

It is proposed that a review of the operation of the WWVP Screening Unit will be undertaken three years after the commencement of operation, and periodically thereafter.

Q30) Are there any other mechanisms to improve accountability that should be considered in this section or elsewhere in this discussion paper?

## **22.0 ADDITIONAL QUESTIONS**

Q31) Are there any other issues you wish to raise that have not been addressed in this discussion paper?

### **22.1 Vulnerable People and the Community**

Q32) Do you have any specific comments which you wish to raise about the proposed checking system?

### **22.2 Employees and Volunteers**

Q33) Do you have any specific comments which you wish to raise about the proposed checking system?

### **22.3 Employers and Organisations**

Q34) Do you have any specific comments on the proposed role of employers or organisations in the application process?

## Annex A

### **PROPOSED REGULATED ACTIVITIES: PEOPLE WORKING WITH CHILDREN**

CATEGORY	PROPOSED REGULATED ACTIVITIES
<p><b>Child Protection and Community Services</b></p>	<p>Child protection services, community services or accommodation provided for children or young people under the <i>Children and Young Persons Act 2008</i>.</p> <p>Including, for example:</p> <ul style="list-style-type: none"> <li>• Member of Children and Youth Services Council;</li> <li>• Family group conference facilitator;</li> <li>• Kinship carers (<i>the family relationship exemption will not apply to kinship carers</i>);</li> <li>• Foster carers;</li> <li>• Residential care service;</li> <li>• Care provided under a therapeutic protection order;</li> <li>• Researchers;</li> <li>• Assessors;</li> <li>• Performance of duties by officers of the ACT Government.</li> </ul>
<p><b>Youth Justice</b></p>	<p>Youth justice places or services, including for example:</p> <ul style="list-style-type: none"> <li>• Remand centres;</li> <li>• Detention centres;</li> <li>• Transfer of detainees;</li> <li>• Youth residential centres;</li> <li>• Youth supervision centres;</li> <li>• Youth training centres;</li> <li>• Youth detention officers;</li> <li>• Health service appointments;</li> <li>• Probation services.</li> </ul>
<p><b>Child Care Services</b></p>	<p>Child care services defined under the <i>Children and Young Persons Act 2008</i>, including:</p> <ul style="list-style-type: none"> <li>• Child care;</li> <li>• Family day care schemes.</li> </ul> <p>Commercial baby sitting or child minding (not including an informal arrangement entered into for private or domestic purposes).</p>

<p><b>Educational Institutions</b></p>	<p>Educational institutions for children, specifically:</p> <ul style="list-style-type: none"> <li>• Pre-schools;</li> <li>• Public schools;</li> <li>• Non-government schools;</li> <li>• TAFE colleges;</li> <li>• Other institutions providing secondary school subjects;</li> <li>• Other institutions providing children’s study or training programs;</li> <li>• Other registered training organisations.</li> </ul>
<p><b>Accommodation Services</b></p>	<p>All forms of residential accommodation, including for instance:</p> <ul style="list-style-type: none"> <li>• Social housing;</li> <li>• Homestays (e.g. student exchange);</li> <li>• School boarding houses;</li> <li>• Refuges;</li> <li>• Hostels;</li> <li>• Respite services; and</li> <li>• Supported accommodation.</li> </ul>
<p><b>Health</b></p>	<p>Health services as prescribed by the Minister for Health.</p>
<p><b>Clubs, Associations or Movements</b></p>	<p>Clubs, associations or movements (including cultural, recreational, sporting) that provide services or activities for, or directed at, children or whose membership mainly comprises children. Includes cadet programs.</p>
<p><b>Religious Services &amp; Representatives</b></p>	<p>Religious organisations</p>
<p><b>Transport Services</b></p>	<p>Publically funded or commercial transport services specifically for, or that may be used by, children.</p> <p>Includes driving instructors</p>
<p><b>Coaching and Tuition of Any Kind</b></p>	<p>Commercial coaching or tuition services of any kind for children (not including an informal arrangement entered into for private or domestic purposes)</p>
<p><b>Counselling and Support Services</b></p>	<p>Counselling or support services for children</p>
<p><b>Overnight Camps</b></p>	<p>All overnight camps for children</p>

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<b>School Crossing Services</b>	School crossing services
<b>Commercial Entertainment or Party Services Specifically for Children</b>	Providing commercial entertainment or party services for children that are not merely incidental to, or in support of, other business activities
<b>Commercial Gym or Play Facilities Specifically for Children</b>	Providing commercial gym or play facilities for children that are not merely incidental to, or in support of, other business activities
<b>Commercial Photography Services Specifically for Children</b>	Providing commercial photography services specifically for children that are not merely incidental to, or in support of, other business activities
<b>Commercial Talent or Beauty Competitions Specifically for Children</b>	Commercial talent or beauty competitions for children that are not merely incidental to, or in support of, other business activities.
<b>Other</b>	Any other contact prescribed by regulation.  Administration of the Act supporting the establishment of Working with Vulnerable People Checks.

## Annex B

### **PROPOSED REGULATED ACTIVITIES: PEOPLE WORKING WITH VULNERABLE ADULTS**

CATEGORY	PROPOSED REGULATED ACTIVITIES
<b>Homelessness</b>	<p>Services provided to persons who are homeless, including:</p> <ul style="list-style-type: none"> <li>• Crisis accommodation;</li> <li>• Short/Medium term accommodation;</li> <li>• Accommodation support;</li> <li>• Provision of transport;</li> <li>• Provision of food;</li> <li>• Drop in centre; and</li> <li>• Support/coordination/brokerage/referral.</li> </ul>
<b>Home and Community Care</b>	<p>Services provided to enhance the independence of persons and to avoid their premature admission to long term residential care, including:</p> <ul style="list-style-type: none"> <li>• Domestic assistance</li> <li>• Social support;</li> <li>• Nursing care;</li> <li>• Allied health care;</li> <li>• Personal care;</li> <li>• Centre-based day care;</li> <li>• Provision of food;</li> <li>• Case management;</li> <li>• Case planning, review and co-ordination; and</li> <li>• Transport counselling, information and support.</li> </ul>
<b>Disability Services</b>	<p>Services provided to disabled persons, including:</p> <ul style="list-style-type: none"> <li>• Accommodation support;</li> <li>• Community support; and</li> <li>• Community access/advocacy information and print disability information and other services.</li> </ul>
<b>Housing</b>	<p>Housing services, including:</p> <ul style="list-style-type: none"> <li>• Public housing (including tenancy management, asset management, administration of housing assistance);</li> <li>• Community housing;</li> <li>• Advice/advocacy; and</li> <li>• Community linkages and support.</li> </ul>

<p><b>Family Services</b></p>	<p>Community services delivered to families in need of assistance, including;</p> <ul style="list-style-type: none"> <li>• Provision of support;</li> <li>• Assessment/counselling;</li> <li>• Network development;</li> <li>• Crisis intervention;</li> <li>• Provision of information and advice;</li> <li>• Provision of emergency relief;</li> <li>• Parenting skills; and</li> <li>• Foster care.</li> </ul>
<p><b>Alcohol and other Drug Treatments</b></p>	<p>Services delivered as part of alcohol or drug treatments:</p> <ul style="list-style-type: none"> <li>• Residential services;</li> <li>• Needle and syringe projects;</li> <li>• Healthcare;</li> <li>• Counselling/methadone treatment/withdrawal services; and</li> <li>• Detox support.</li> </ul>
<p><b>Mental Health</b></p>	<p>Mental health services, including:</p> <ul style="list-style-type: none"> <li>• Assessment/treatment/care;</li> <li>• Support/assistance;</li> <li>• Supported accommodation;</li> <li>• Crisis assessment;</li> <li>• Respite;</li> <li>• Rehabilitation;</li> <li>• Residential support;</li> <li>• Information/referral;</li> <li>• Education/training;</li> <li>• Enhance mental health capabilities;</li> <li>• Social/recreation;</li> <li>• Suicide awareness;</li> <li>• Counselling/advocacy;</li> <li>• Early intervention;</li> <li>• Health care;</li> <li>• Self help; and</li> <li>• Representation service.</li> </ul>
<p><b>Vocational Education and Training</b></p>	<p>Vocational education and training (VET) for persons with special needs, including:</p> <ul style="list-style-type: none"> <li>• Pathways to employment;</li> <li>• Adult English Language, Literacy and Numeracy Service; and</li> <li>• Industry Training Service.</li> </ul> <p>Does not include VET services accessible to all ACT residents.</p>

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<b>Older Persons</b>	<p>Services provided to persons with age related needs involving a level of care, assistance or dependency.</p> <p>Does not include services covered by the Commonwealth <i>Aged Care Act 1997</i>.</p>
<b>Health</b>	Health service as prescribed by the Minister for Health.
<b>Youth at Risk</b>	Services for persons aged 18 and over that aim to reduce the likelihood of involvement in crime.
<b>Respite</b>	All respite services.
<b>Coaching and Tuition of Any Kind</b>	Commercial coaching or tuition services of any kind for, or directed at, persons who have special needs (not including an informal arrangement entered into for private or domestic purposes).
<b>Adult Justice</b>	<p>Services delivered in adult justice places, including:</p> <ul style="list-style-type: none"> <li>• prison;</li> <li>• remand centre;</li> <li>• young offender institution;</li> <li>• secure training centre;</li> <li>• detention centre; and</li> <li>• probation services.</li> </ul>
<b>Clubs, Associations or Movements</b>	Clubs, associations or movements (including cultural, recreational, sporting) that provide services for persons with special needs or whose membership mainly comprises persons who have special needs.
<b>Community Services</b>	<p>General services provided to relieve disadvantage, including:</p> <ul style="list-style-type: none"> <li>• Advocacy;</li> <li>• Counselling;</li> <li>• Facilitation of community links;</li> <li>• Support;</li> <li>• Education;</li> <li>• Information;</li> <li>• Financial relief; and</li> <li>• Refugee assistance.</li> </ul>
<b>Emergency Services</b>	Emergency services personnel.