



WORKING WITH VULNERABLE PEOPLE (BACKGROUND CHECKING) BILL 2010

INFORMATION BOOK

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DRAFT DOCUMENT - FOR INFORMATION ONLY

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THE ACT WORKING WITH VULNERABLE PEOPLE CHECKING SYSTEM

Why do we need working with vulnerable people checks?

The protection of the rights of children and vulnerable adults in the ACT is a pressing social need. The ACT Government considers creating a checking system for people who work with, or want to work with, vulnerable people, with appropriate safeguards, is consistent with section 28 of the *Human Rights Act 2004* (ACT).

The premise of background checking is that the past behaviour of an individual provides an indication of the possible future behaviour of that individual. Examples or patterns of abusive or inappropriate behaviour can sometimes be evident in information available for assessment, which includes an individual's criminal record or employment history.

Who is a vulnerable person?

A person is defined as being vulnerable if they are a child under the age of 18 years or an adult who is experiencing disadvantage and, as a result of the disadvantage, is accessing a regulated activity or service related to the disadvantage. Children due to their age are necessarily considered as vulnerable.

This definition has the advantage of establishing a basis for the determination of the types of services or activities that might attract background checking. The definition also recognises people's changing circumstances as people will not be considered vulnerable at all times. Rather, they are considered vulnerable at the time of receiving a service provided as part of a regulated activity.

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What does being registered to work with vulnerable people mean?

Being registered to work with vulnerable people means that you will be able to work or volunteer with vulnerable people in a regulated activity. A vulnerable person is a child, who due to their age is vulnerable, and adults who are accessing or attending regulated activities related to their disadvantage.

Who is an employer?

For the purposes of the Working with Vulnerable People (Background Checking) Bill 2010, an employer is an agency, organisation or individual who engages an employee or volunteer in a regulated activity or service.

Who is an employee?

For the purposes of the Working with Vulnerable People (Background Checking) Bill 2010, an employee is a person who is engaged by an employer to provide one or more regulated activities or services to vulnerable people and receives a monetary payment (remuneration) from an employer for providing those regulated activities or services.

Who is a volunteer?

For the purposes of the Working with Vulnerable People (Background Checking) Bill 2010, a person is a volunteer if the person is engaged to provide a regulated activity or service to vulnerable people and does not receive payment for providing the activity or service (apart from any payment for expenses).

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How will I know if I am working or volunteering in a regulated activity and will need to be registered?

Determining whether you are working or volunteering in a regulated activity and whether you will be required to be registered to work or volunteer with vulnerable people is a four step process:

1. Determine whether vulnerable people are accessing the regulated activity or service because they are children (who are vulnerable due to age) or, in the case of persons aged 18 years and over, because of their disadvantage (see question – Who is a vulnerable person?); **AND**
2. Determine whether the activity or service being provided for vulnerable people is a regulated activity (see the list of regulated activities at the end of this book); **AND**
3. Determine whether you are engaged in a regulated activity or service (see section 8 and section 9 of the Working with Vulnerable People Act for engagement and contact requirements); **AND**
4. Determine whether your engagement in the regulated activity or service is exempt from registration (see clause 11 of the WWVP Bill for exemption provisions).

Table 1 at the end of the Information Book provides examples of volunteers and employees and applies the four steps to determine whether an employee or volunteer is working in a regulated activity and will need to be registered to work with vulnerable people.

Attachment 1 to the Information Book provides the list of regulated activities as provided by the Working With Vulnerable People (Background Checking) Bill 2010.

If you are still unsure whether you are working in or will be working in a regulated activity, your current or prospective employer will be able to advise you.

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Can I work or volunteer with vulnerable people if I am not registered?

You must be registered if you are going to be working or volunteering with vulnerable people in a regulated activity or service on a regular basis.

However, if you have applied for registration and the Commissioner for Fair Trading has not made a decision about your registration, you may be engaged in a regulated activity to work or volunteer with a vulnerable person, if the named employer agrees and you are supervised at all time while undertaking the regulated activity.

There are exceptions from registration as described under section 11 of the Working with Vulnerable People (Background Checking) Bill 2011. For example:

- you will not be required to be registered if you engage in a regulated activity (other than an overnight camp) for no more than 3 days in any four week period and 7 days in any 12 month period.

For further information about the applicable exceptions, access the Bill at

www.legislation.act.gov.au

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Why aren't Aboriginal or Torres Strait Islander people identified separately in the Working With Vulnerable People Bill and other documents?

Aboriginal and Torres Strait Islander representatives consulted during the development of the Working With Vulnerable People (WWVP) Policy; WWVP Bill and the Risk Assessment Guidelines advised that they did not want Aboriginal and Torres Strait Islander people to be specifically identified as a separate cultural group. They believed the legislation and supporting documents should be inclusive and not differentiate any particular cultural groups.

What is a "risk assessment"?

Risk assessment describes the process of considering all available information and making a determination about the risk of harm to vulnerable people posed by a particular applicant. Risk assessment does not determine guilt or innocence. The Commissioner may seek advice from an Advisory Panel about your lived experience before making a decision about a role-based registration during the risk assessment process.

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Who will be doing the risk assessment and how will they make a decision about my registration?

Delegates of the Commissioner for Fair Training will be undertaking the background screening checks. The staff are located within the Office of Regulatory Services Working with Vulnerable People Background Checking Unit.

All risk assessment decisions must be guided by the Risk Assessment and Decision Making Guidelines. The information you provide with your application for registration will assist in determining whether you will be issued with a general, conditional, or role-based registration.

What happens to my personal information once I provide it with my application form?

Your personal information will be used to determine your suitability for registration to work or volunteer with vulnerable people who are accessing or attending a regulated service or activity.

Your information will be securely stored in line with the protections provided in the *Privacy Act 1988* (Commonwealth). Significant penalties apply for persons who misuse an applicant's protected information.

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Who will see my personal information?

The Background Screening Unit staff, who will be employed in a position of trust, will have access to the information you provide for the purposes of registration. If you ask for a risk assessment decision to be reviewed, other persons involved in the review process will be provided with your protected information however, they will also be bound by the *Privacy Act 1988* (Commonwealth) and will be subject to significant penalties if they breach their position of trust.

Do I have to consent to provide my personal information in order to have a risk assessment undertaken?

Applicants must provide their consent for a risk assessment to take place. If you do not provide your consent and personal identifying information (name, date of birth and address/es) a risk assessment cannot occur.

If you do not advise the Background Screening Unit of any conviction or non-conviction information, or, if applicable, other appropriate information that is relevant to the decision making process, an incorrect decision may be reached and you may be issued with a conditional or role based registration when you could be eligible for general registration.

Criminal history information will be considered as part of the risk assessment process where it is relevant to the requirements of working with vulnerable people.

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What is criminal history information?

Criminal history about a person means any conviction of, or finding of guilt against, the person for a relevant offence. A criminal history can include convictions for 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 a controlled drug; offences against an animal; and driving offences.

Criminal history information does not include parking tickets.

What is non-conviction information?

Non-conviction information means a person has been charged with an offence, or acquitted of an alleged offence, or had a conviction for the alleged offence quashed or set aside, or served with an infringement notice for the alleged offence, or has a spent conviction for the offence.

What is relevant information?

Relevant information is any supporting information you supply with your application, for example, supporting information from your employer, counsellor or other professional such as a clinical psychologist. Any information you supply must be considered during the risk assessment process.

The Background Screening Unit must not take into account any information unless satisfied on reasonable grounds that the information is accurate and applicable to your role.

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How far into my background will the Background Screening Unit look and what information will be sought for someone who has had no history in the recent past? (This section may be subject to change)

A person's history would not be checked beyond five years unless there was a 'trigger' to warrant further investigation. An example of a 'trigger' could be evidence of a relevant pattern in behaviour that has occurred during the previous five years, such as, ongoing allegations of inappropriate sexualised behaviours which have led to charges but not convictions.

Will my overseas convictions be considered by the Background Screening Unit? (This section may be subject to change)

The Background Screening Unit will not be pursuing information from overseas agencies/organisations. Unless there is evidence of ongoing behaviours occurring during the previous 5 years which will place vulnerable people at risk, the Background Screening Unit will not undertake further background checking during the application process.

For overseas offences to be considered by the Background Screening Unit, the conviction would need to be considered an offence in Australia and, if the overseas offence occurred in the 5 years prior to the application, there would need to be evidence of the applicant continuing to engage in a behaviour that would put vulnerable people at risk of harm or neglect.

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Why are disciplinary issues considered during screening?

Disciplinary issues are only considered as they may indicate a history of behaviours which could place a vulnerable person at risk of abuse or neglect. The only disciplinary actions considered during the background screening process are:

- resolved and substantiated allegation against an employee/volunteer relating to reportable offences, such as, the physical abuse of a vulnerable person, and the incident is relevant to the 'inherent requirements' of the person's role; and
- an unresolved allegation against an employee/volunteer in relation to a reportable offence and the alleged incident is relevant to the 'inherent requirements' of the person's role.

What happens if the Background Screening Unit seeks further information?

With your consent, the Background Screening Unit can seek more information which may assist in the risk assessment process. It is important that the Background Screening Unit is provided with a broad range of information so that both 'risk factors' (behaviours or circumstances which indicate a risk) and 'mitigating factors' (behaviours or circumstances which reduce the level of identified risk) may be considered in making a balanced determination.

The Background Screening Unit may also seek specialist information from a panel of experts when considering issuing a negative risk assessment notice.

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What happens if I cannot obtain the requested information within the required timeframes?

When you have applied for registration and are asked by the Background Screening Unit for more information and you find that the information requested is not readily available; or you are not in a position to provide it, for example, you are hospitalised, you can seek an extension of time to provide the requested information.

At times, you may need more time than you anticipated to provide further information in response to a Background Screening Unit notification of intent to issue a conditional or role-based registration. If you have advised the Background Screening Unit that you wish the decision to be reviewed and you need more than the agreed time to provide the required information, contact the Background Screening Unit to discuss the possibility of an extension of time. It will be helpful if you can tell the Background Screening Unit when you expect to receive the required information.

Not sure what to do? Contact the Background Screening Unit to discuss your options.

What happens if I get asked for more information and I don't want to provide it?

There is a possibility that you may be issued with a conditional registration, role-based registration or a negative risk assessment notice unnecessarily.

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Can I be registered if I have a criminal history?

It is not possible to determine whether a person will be eligible for registration without the Background Screening Unit being provided with conviction and non-conviction background information; information on the inherent requirements of your job (regardless of whether you are undertaking the job in a paid or unpaid capacity); and undertaking a risk assessment.

However, if you are concerned that you will not be eligible for registration, in the first instance talk to your employer and consider whether you would prefer to apply for a conditional or role-based registration.

The Commissioner may seek advice from an Advisory Panel about your lived experience before making a decision about a registration.

What can I do if I am not happy with the outcome of my risk assessment?

You will be informed, in writing, of any proposal to issue a negative notice, conditional registration, or role-based registration, including the reasons for the proposed decision. You can ask for a review of the decision before a final decision is made.

You can appeal final decisions made by the Commissioner to the ACT Civil and Administrative Appeals Tribunal.

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What do I do if I don't have a birth certificate or other formal identification information?

The risk assessment process involves the use of sensitive personal information. Therefore, the Commissioner must be sure your personal details are correct before the relevant checks occur. The Background Screening Unit needs documents which prove your **full name, date of birth and signature**. If you do not have the required documents, please contact the Background Screening Unit on 62073000 to discuss your matter further with a Manager.

What can my employer do to support my application for registration?

Background checking and risk assessment complements an organisation's recruitment practices and other policies to create safe working places for clients, employers, employees and volunteers.

With your consent, your employer can provide any information they believe will assist the assessor to determine your suitability for registration. This could include policies and procedures identifying organisational strategies which increase the safety of vulnerable people accessing or attending the regulated activity or service.

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What will my employer be told about the outcome of my application?

The Background Screening Unit will advise your employer of the conditions imposed on your registration if you are issued with a **conditional registration**. The Background Screening Unit cannot inform your employer of the rationale supporting the issuing of a conditional registration.

The processing of an application for a role-based registration can only occur if the identified employer is supportive of the applicant receiving a role based registration. For an identified employer to be supportive of a role based application the applicant must discuss their conviction and non-conviction history with their employer prior to submitting their application.

The Background Screening Unit will tell your employer if you are issued with a **negative risk assessment notice**. The Background Screening Unit cannot inform your employer of the rationale supporting the issuing of a negative risk assessment notice.

What type of registration will I receive?

Applicants will receive the most general type of registration for which they are eligible. For instance, an applicant who has applied for role-based or conditional registration may instead receive a general registration if eligible.

If an applicant only wants role-based or conditional registration, they can indicate this preference in their application form.

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What is general registration?

General registration allows you to move between all regulated activities without the need to be rechecked.

What is conditional registration?

Conditional registration imposes specific conditions on your registration, for example, you may not be able to transport vulnerable people due to your license being cancelled as a result of drink driving offences.

Applicants will receive the most general type of registration for which they are eligible. For instance, an applicant who has applied for conditional registration may instead receive a general registration if the applicant is eligible to receive a general registration.

You can ask for a review of a conditional registration decision if you don't agree with the decision.

What is role-based registration?

Role-based registration restricts you to engaging in specified regulated activities with a stated employer and you cannot move freely between regulated activities.

Applicants will receive the most general type of registration for which they are eligible. For instance, an applicant who has applied for role-based registration may instead receive a general registration if the applicant is eligible to receive a general registration.

You can ask for a review of a role-based registration decision if you don't agree with the decision.

The Commissioner may seek advice from an Advisory Panel about your lived experience before making a decision about a role-based registration.

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What is a negative risk assessment?

A negative risk assessment means that you will not be registered to work with vulnerable people attending or accessing a regulated activity. You can ask for a review of a negative risk assessment if you don't agree with the decision.

Can I reapply for registration after being issued with a negative risk assessment or after my registration has been cancelled?

You can only reapply for registration three years after being issued with a negative notice or cancellation of registration, or sooner if information on which a decision was made has changed.

What information do I need to have before I can ask for a review of the registration decision?

If you have new information you can ask for a review of registration decision.

What can trigger a reassessment of a person's registration?

Triggers for reassessment may include new information provided by a registered person (or in respect of a negative notice), or evidence has been provided of a breach of registration e.g. an offence has been committed that impacts on the inherent requirements of the person's engagement in the regulated activity (embezzles money and responsible for the financial affairs of disabled people).

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Why can an employer refuse to employ me and/or allow me to volunteer when I am registered to work with vulnerable people?

The decision of whether or not to employ a particular person in a particular employment role rests solely with the employer. The Background Screening Unit's decisions are of an administrative nature only and are not intended to influence an employment decision.

Why does a 'role based' registration identify what I cannot do rather than what I can do?

Determining what a person holding role-based registration can do, rather than what they can't do, is a complex process which would involve identifying every duty (across the whole organisation/agency) that the person may be involved in. There will be a lesser number of duties a person cannot do than can do. Therefore, it is less onerous on the employer when providing the Background Screening Unit with information supporting a person's application for 'role-based' registration.

How often does role-based registration need to be assessed?

Role-based registration, Conditional Registration and General Registration is to be renewed every three years. However, a person may ask the commissioner to reconsider the decision if new or corrected information becomes available at any time during the registration period.

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Why are the conditions of my registration listed on the back of my registration card? (This section may be subject to change)

The conditions imposed on a person's registration are listed on the back of the registration card as this is in keeping with usual practice for other licences in the ACT, for example, driving licences; security industry licences; and building licences.

Will Aboriginal and Torres Strait Islander Elders be required to apply for registration when carrying out cultural business?

If an Aboriginal or Torres Strait Islander Elder is carrying out cultural business **AND** the purpose of the cultural business is to provide a regulated activity to an individual vulnerable person or a group of vulnerable people which involves contact with vulnerable people **AND** exemption provisions do not apply, the Elder will need to be registered to provide the cultural business.

Discussions with Aboriginal and Torres Strait Islander representatives have indicated that Elders would not be deterred from providing cultural business by the need for background checking. The representatives further indicated that Aboriginal and Torres Strait Islander communities are unwilling to put youth at risk in the event a person is deemed unsuitable.

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Are employees of the Commonwealth, who work in the Act, obliged to seek registration to work with vulnerable people in the ACT?

The *Working with Vulnerable People (Background Checking) Act* will prohibit individuals from working with vulnerable people if they pose an unacceptable risk to vulnerable people as determined through background screening. The offences in the Act will apply to the individual.

The Act also applies offences to the employer obligations. However, offences attached to employer obligations cannot apply to the Commonwealth as the Commonwealth is not bound by ACT Legislation. For example, the Commonwealth, as an employer, could employ or engage a person in a regulated activity who does not meet the requirement for registration to work with vulnerable people and the Commonwealth would not be subject to the employer obligations prescribed by the Act.

Although the Commonwealth as an employer cannot be bound by the WWVP Act, the individual Commonwealth employee is obliged to be registered under the WWVP Act if engaging in a regulated activity or service and having contact with vulnerable people outside the exemption periods provided in section 11 of the Act. Where an individual acts in contravention of the WWVP Act, the individual would be in breach of the Act and the offences provided in the Act would apply, notwithstanding the fact that they are employed by the Commonwealth.

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Will people convening groups such as Alcoholics Anonymous and Narcotics Anonymous, be required to be registered?

The parent organisation holds responsibility for ensuring people who have contact with vulnerable people accessing a regulated activity and not eligible for exemption, is appropriately registered or supervised by a registered person. It is the employer's responsibility to ensure an employee/volunteer is supervised if it is a condition of their registration or while they are waiting on a registration decision.

It would not be unreasonable however for an employer to request proof of registration.

Will I need to be registered before I can apply for an employment or volunteer position?

This will depend on the requirements of the agency/organisation or sector. Some agencies/organisations or sectors may indicate in their employment advertisements seeking employees/volunteers, and/or their duty statements or selection criteria that they require their prospective staff to hold a specific form of registration. Other agencies/organisations or sectors may not require applicants to be registered prior to their employment.

If you are applying for role-based registration, then you must currently be volunteering or employed with an employer. If you are not able to provide the name of your employer, the Background Screening Unit will not be able to issue you with role-based registration as they will not be able to determine what your volunteering/employment role is, or will be, or whether your employer has the appropriate risk management policies and procedures in place.

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Are potential staff or volunteers able to be registered to work with vulnerable people prior to being employed?

If an applicant is seeking a general or conditional registration they can apply for registration without identifying an employer.

If an applicant is seeking role-based registration, they must have an identified employer as the employee and employer is required to provide the Background Screening Unit with details relating to the inherent requirements of the employees role. The employer must also provide the Background Screening Unit with the organisations/agency's risk management policies and procedures.

How do people currently unemployed gain a role based registration

A role-based registration cannot be finalised until an employer was involved at which stage the outcome of the assessment could be determined. Where appropriate, the Background Screening Unit would be able to provide an unemployed person with either a general or conditional registration.

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Will I need to be registered if I take on a work experience student or student placement?

Employers/supervisors who are engaged in a regulated activity will be required to be registered if they engage work experience students and student placements. They will be required to be registered to work with vulnerable people because they work in a regulated activity/service, not because they are engaging a student who may be under the age of 18 years.

Employers/supervisors who are not engaged in a regulated activity will not be required to be registered if they engage work experience students and student placements. They are not required to be registered to work with vulnerable people because their sector is not deemed to be regulated under Schedule 1 of the Bill. Examples of non-regulated activities include garages, building firms, accounting firms, law firms, hairdressers, bakeries.

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What happens if a complaint is made about a particular person to the WWVP Checking Unit?

The Office of Regulatory Services, within which the WWVP Checking Unit resides, has established procedures on complaint management which are publicly available on the Office of Regulatory Services website: <http://www.ors.act.gov.au/page/view/1050>.

Do regulated activity/service providers need to develop new risk and staff management policies and procedures?

The draft proposed Risk Assessment and Decision Making Guide (document set) comprises a *Risk Assessment and Decision Making Guide*, *Decision Making Guide Form*, *Application Form*, a *Guide for Employers on Creating Safe Environments for Vulnerable People*, and a *Risk Management Assessment Tool* for role-based registration.

The *Risk Assessment and Decision Making Guide* and *Decision Making Guide Form* are internal documents for use by the Background Screening Unit.

The *Application Form* is to be completed by applicants who wish to work with vulnerable people and, when identified, their employers.

The *Guide to Employers on Creating Safe Environments for Vulnerable People* provides employers with advice and information on strategies to manage risk and create a safe environment through 'best practice' standards.

THE ACT WORKING WITH VULNERABLE PEOPLE CHECKING SYSTEM

Do regulated activity/service providers need to develop new risk and staff management policies and procedures - Continued

The *Risk Management Assessment Tool* for role-based registration is being developed based on feedback from consultation. The aim of the *Risk Management Assessment Tool* is to enable employers to support employees through the assessment process required for role-based registration by providing organisations and agencies with the opportunity to provide the Background Screening Unit with evidence of organisational/agency risk mitigation and staff management standards. Organisations who have been accredited against recognised and acceptable industry set standards (ISS) will have in place high level risk management policies and procedures as well as other 'best practice' documentation.

There are a number of ISS utilised in the community, such as the three-yearly accreditation process under the Quality Management Standards that the Health Directorate requires from organisations that it funds. As it is anticipated that ISS accredited organisations and agencies will be able to provide the Background Screening Unit with the required documentation on a regular basis, these organisations and agencies will be recognised by the Background Screening Unit as being 'ISS accredited' for a role-based assessment purposes. These organisations and agencies will only be required to provide current proof of accreditation, the applicant's duty statement or list of duties for the position, and a signed and completed risk management assessment.

Acknowledgement of accreditation and the proposed process will be reflected in the draft Risk Assessment and Decision Making Guide as a component of organisational capability, and included in the Application Form for role-based registrations.

THE ACT WORKING WITH VULNERABLE PEOPLE CHECKING SYSTEM

Do regulated activity/service providers need to develop new risk and staff management policies and procedures - Continued

Organisations and agencies that are unable to fully mitigate risk will have capacity through the employer's guide to develop strategies to address this. It is intended that organisations and agencies experiencing difficulties in mitigating risks to vulnerable people or their staff will be assisted to attain 'best practice' standards during the implementation phase of the checking scheme.

Why can't agencies/organisations do their own risk screening of current and future employees/volunteers?

At present, non-government agencies/organisations are not able to receive protected criminal and non-criminal background information, for the purpose of undertaking current and prospective employee/volunteer background checking, from CrimTrac.

The Background Screening Unit has secured a contract with CrimTrac to provide protected criminal and non-criminal background information. Criminal and non-criminal background is one source of information that will be used by the Background Screening Unit to determine a person's suitability to work with vulnerable people.

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Why can't agencies/organisations do their own risk screening of current and future employees/volunteers - Continued

CrimTrac is an Australian Government agency which provides national information sharing solutions to support the effective operation of police services and law enforcement agencies across state and territory borders. CrimTrac's Inter-Governmental Agreement requires CrimTrac to deliver four key systems to improve information sharing for police and law enforcement agencies:

- an enhanced National Automated Fingerprint Identification System;
- a National Criminal Investigation DNA Database;
- a National Child Sex Offender System; and
- the National Police Reference System to provision rapid access to national operational policing data.

Why do we need risk assessment guidelines, application forms and regulations?

It is usual practice when a new State, Territory, or Commonwealth law is commenced for the Government to introduce notifiable instruments such as, operational guidelines, forms, and regulations under the parent Act.

Section 25 of the *Working with Vulnerable People (Background Checking) Act* (the parent Act) compels the Commissioner for Fair Trading to develop risk assessment guidelines which detail how risk assessments are to be conducted under the Act. The Act provides for the risk assessment guidelines to be a notifiable instrument.

THE ACT WORKING WITH VULNERABLE PEOPLE CHECKING SYSTEM

Why do we need risk assessment guidelines, application forms and regulations - Continued

Section 62 of the *Working with Vulnerable People (Background Checking) Bill 2010* permits the Commissioner for Fair Trading to approve forms for a particular purpose. The form provided under the Act is *the Risk Assessment Application Form*. This form is to be completed by the applicant and, when required, their employer, and provides the Background Screening Unit with the information required to undertake background screening. The Act provides for the forms to be notifiable instruments.

Section 64 of the *Working with Vulnerable People (Background Checking) Bill 2010* provides the Executive (the ACT Government) with the power to make regulations under the Act. The purpose of the regulation is to ensure all employees and employers are subject to the same information requirements needed to determine the appropriateness of role-based registration on the basis of the inherent requirements of the employment role. The Regulations provided under the parent Act are notifiable instruments.

What is the difference between a Notifiable Instrument and Disallowable Instrument?

Notifiable instruments are subordinate laws and are those that are declared by the authorising law (the *Working with Vulnerable People (Background Checking) Act*) to be notifiable.

THE ACT WORKING WITH VULNERABLE PEOPLE CHECKING SYSTEM

What is the difference between a Notifiable Instrument and Disallowable Instrument - Continued

The *Working with Vulnerable People (Background Checking) Bill 2010* prescribes which notifiable instruments must be notified following the passing by the Legislative Assembly of the *Working with Vulnerable People (Background Checking) Bill*. Notifiable instruments must be notified under the *Legislation Act 2001* but are not presented to the Legislative Assembly and are not disallowable.

Disallowable instruments are instruments which set fees and statutory instruments expressly declared to be disallowable by an Act, subordinate law or another disallowable instrument (such as appointments). Disallowable instruments must be notified under the *Legislation Act 2001* and be presented to the Legislative Assembly where they can be disallowed or amended. A statutory instrument is any instrument made under an Act, another statutory instrument, or any power given by an Act, by a statutory instrument, or otherwise by law. Statutory instruments include notifiable instruments, disallowable instruments, subordinate laws and commencement notices.

For legislative instruments to be enforceable they must be 'notified' on the legislation register as soon possible after they are made. The legislation register can be found at:

<http://www.legislation.act.gov.au>

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Which instruments are prescribed in the Working with Vulnerable People (Background Checking) Bill 2010 as being notifiable and disallowable?

The following instruments will arise from the passing of the *Working with Vulnerable People (Background Checking) Bill* by the ACT Legislative Assembly:

Notifiable Instruments

- Clause 11: *Requirement for registration* – A person declared by the commissioner as not being required to be registered for an event. A declaration is a notifiable instrument.
- Clause 25: *Risk assessment guidelines* - A risk assessment guideline is a notifiable instrument. The Bill provides for a guideline to apply, adopt or incorporate an instrument, as in force from time to time. The text of an applied, adopted or incorporated instrument, whether applied as in force from time to time or as at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47(5) or (6) is not disapplied (see s 47 (7)). The *Risk Assessment and Decision Making Guide* and *Decision Making Guide Form*; and the *Application Form*; are all notifiable instruments.
- Clause 62: *Approved forms* - An approved form is a notifiable instrument. An approved form is the *Application Form* found in the Risk Assessment Guidelines document set.

Disallowable Instruments

- Clause 7: *What is a regulated activity* - The Minister may declare that a stated activity or service is not a regulated activity. A declaration is a disallowable instrument.
- Clause 61: *Determination of fees* – The Minister may determine fees. A determination is a disallowable instrument.

THE ACT WORKING WITH VULNERABLE PEOPLE CHECKING SYSTEM

Which instruments are prescribed in the Working with Vulnerable People (Background Checking) Bill 2010 as being notifiable and disallowable - Continued

Other proposed subordinate legislation to be notified

- Regulations –
 - the information a person or employer must give to the commissioner which forms part of a risk management strategy for a role-based registration;
 - conditions on registration cards; and
 - the obligations of employers in relation to role-based people only; and
- Infringement Notice Regulations.

Documents to be provided on the Office of Regulatory Services (ORS) and Community Services Directorate (CSD) websites:

- the *Information Book* which provides commonly asked questions and their answers; and
- the *Risk Management Assessment Tool*

It is not usual for non-government stakeholders to be provided with the Consequential Amendments Bill and Infringement Notice Regulations as they are ACT Government administrative instruments which ensure consistency between all ACT legislation and the penalties imposed if non-compliance with the legislation occurs.

Community Services Directorate website: <http://www.dhcs.act.gov.au>

Office of Regulatory Services website: <http://www.ors.act.gov.au/>

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THE ACT WORKING WITH VULNERABLE PEOPLE CHECKING SYSTEM

Why can't sole traders, such as tutors, be provided with a time-limited, unalterable, working with vulnerable people checks certificate for display in their premises?

It is unlikely that a certificate, rather than a registration card, will be issued as the level of detail required for the identifying the person holding the registration card, is not possible on a certificate. For example, including a photograph and the signature of the holder on a certificate will not be possible.

Why am I being asked for my comments on the working with vulnerable people checking scheme?

Extensive stakeholder and broader community comments are being sought on the content and readability of the proposed draft Risk Assessment and Decision Making Guide (document set). These comments are assisting with improving understanding of the working with vulnerable people checking system as well as the useability of these documents for those applicants, organisations, and agencies who will be affected by the introduction of the checking system.

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THE ACT WORKING WITH VULNERABLE PEOPLE CHECKING SYSTEM

Why am I being asked for my comments on the working with vulnerable people checking scheme - Continued

Providing the proposed draft Regulations and proposed draft Government Amendments to stakeholders and the broader community for comments assists those interested in the working with vulnerable people checking scheme to:

- understand the scope of the proposed regulations. Comments on these proposed regulations will ensure the objectives of the *Working with Vulnerable People (Background Checking) Act* are attained without imposing unnecessary regulations on people applying for registration or providers of regulated activities for vulnerable people.
- understand the scope of the proposed government amendments. Comments on these proposed government amendments will provide an indication of whether these amendments satisfactorily address the issues raised during previous consultation processes.

Where can I find out more information?

Telephone: The Working with Vulnerable People Background Checking Unit
(02) 62073000

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

or

<http://www.ors.act.gov.au/>

Table 1 - Examples of applying the four steps to determine whether an employee or volunteer is working in a regulated activity and will need to be registered to work with vulnerable people

Volunteer	Application of the four steps	Employee	Application of the four steps
<p>A volunteer with an organisation that provides meals to older people works two days per week for four hours on each day. The volunteer uses their own car however, the organisation provides an allowance for the petrol used during the delivery of the meals.</p>	<p>1/Are vulnerable people accessing the regulated activity or service provided by the organisation: Yes, older people are accessing this service because of their disadvantage.</p> <p>2/Is the activity or service being provided for vulnerable people a regulated activity: Yes, Community Services are a regulated activity.</p> <p>3/Is the volunteer engaged in a regulated activity or service: Yes, the volunteer is providing a regulated activity/service as provided in Schedule 1 of the Working with Vulnerable People (Background Checking) Bill 2010.</p> <p>4/Is the volunteer’s engagement in a regulated activity or service subject to exemptions: No, the volunteer’s contact with vulnerable people exceeds the exemption periods.</p> <p>This example indicates that the volunteer <u>will be required</u> to be registered to work with vulnerable people.</p>	<p>A minister of religion is employed by a religious organisation to provide activities and services to the church’s congregation and the broader community.</p>	<p>1/Are vulnerable people accessing the regulated activity or service provided by the minister: Yes, it is likely vulnerable people will be present in the congregation and the broader community.</p> <p>2/Is the activity or service being provided for vulnerable people a regulated activity: Yes, Religious Organisations are a regulated activity.</p> <p>3/Is the minister engaged in a regulated activity or service: Yes, the minister is providing a regulated activity/service as provided in Schedule 1 of the Working with Vulnerable People (Background Checking) Bill 2010.</p> <p>4/Is the minister’s engagement in a regulated activity or service subject to exemptions: No as this example minister is providing (at a minimum) a weekly church service and the minister’s contact with vulnerable people exceeds the exemption periods.</p> <p>This example indicates that the minister <u>will be required</u> to be registered to work with vulnerable people.</p>

Table 1 - Examples of applying the four steps to determine whether an employee or volunteer is working in a regulated activity and will need to be registered to work with vulnerable people - Continued

Volunteer	Application of the four steps	Employee	Application of the four steps
<p>A 17 year old occasionally babysits the children of family friends.</p>	<p>1/Are vulnerable people accessing the regulated activity or service provided by the community service: The regulated activities provided in Schedule 1 of the Working with Vulnerable People (background Checking) Bill 2010 includes a <i>Childcare service or another commercial service that provides child care</i>. The Bill defines a <i>childcare service</i> as a childcare centre or a family day care scheme, and a <i>commercial service</i> as those services which provide formalised child care arrangements e.g. a nanny service.</p> <p>The babysitter is not providing a childcare service or commercial childcare service.</p> <p>2/Is the activity or service being provided for vulnerable people a regulated activity: No, informal babysitting arrangements are not identified as a regulated activity.</p> <p>3/Is the babysitter engaged in a regulated activity or service: No, the babysitter is not providing a childcare service or commercial childcare service.</p> <p>4/Is babysitter's engagement in a regulated activity or service subject to exemptions: This question is not applicable. The previous questions determined that the babysitter is not working in a regulated activity.</p>	<p>A Chemist has agreed to support a seventeen year old student on one week's work placement in the Chemist's shop.</p>	<p>1/Are vulnerable people accessing the regulated activity or service provided by the Chemist: Vulnerable people, including the student (child) are likely to be accessing the services provided by the chemist shop.</p> <p>2/Is the activity or service being provided for vulnerable people a regulated activity: No, the chemist shop is not a regulated service.</p> <p>3/Is the Chemist engaged in a regulated activity or service: No, a chemist shop is not a regulated activity or service, therefore, the Chemist is not engaging in a regulated activity or service.</p> <p>4/Is the Chemist's engagement in a regulated activity or service subject to exemptions: This question is not applicable. The previous questions determined that the Chemist is not working in a regulated activity even though the Chemist is supporting a vulnerable person's work placement.</p>

Attachment 1

Working with Vulnerable People (Background Checking) Bill 2010

Schedule 1 Regulated activities

Part 1.1 Activities or services for children

1.1 Child protection services

- (1) An activity or service is a regulated activity if the activity is conducted, or the service is provided, under the *Children and Young People Act 2008* for a child or young person.
- (2) Without limiting subsection (1), a regulated activity includes an activity conducted or a service provided under the *Children and Young People Act 2008*—
 - (a) by—
 - (i) a member of the Children and Youth Services Council; or
 - (ii) a family group conference facilitator; or
 - (iii) a kinship carer; or
 - (iv) a foster carer; or
 - (v) a residential care service; or
 - (vi) a researcher for a research project; or
 - (vii) an authorised assessor; or
 - (viii) another person administering, or exercising a function under, the Act; or
 - (b) under a therapeutic protection order.

Note See the *Children and Young People Act 2008*, particularly:

- pt 2.2 (Children and Youth Services Council);
- pt 3.2 (Family group conferences—facilitators);
- s 438 (Care and protection assessment—authorisation of assessors);
- s 509 (Who is a *kinship carer*?);
- s 510 (Who is a *foster carer*?);
- s 511 (What is a *residential care service*?);
- pt 16.2 (Therapeutic protection orders);
- ch 22 (Research involving children and young people).

1.2 Childcare service

- (1) An activity or service is a regulated activity if the activity is conducted, or the service is provided, by—
- (a) a childcare service; or
 - (b) another commercial service that provides child care.

Examples—par (b)

- 1 babysitting service
- 2 nanny service
- 3 a service conducted by a hotel or resort to provide childcare to children who are short term guests

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) In this section:

childcare service—see the *Children and Young People Act 2008*, section 732.

Note **Childcare service** means—

- (a) a childcare centre; or
- (b) a family day care scheme.

1.3 Child education services

- (1) An activity or service is a regulated activity if the activity is conducted, or the service is provided, as part of a child education service.

- (2) In this section:

child education service—

- (a) means a service for which the main purpose is to provide education and care for children; and
- (b) includes—
 - (i) a school or other educational institution, whether or not operated by or on behalf of the Territory; and
 - (ii) a school-crossing service.

school means a preschool, primary school, high school or secondary college.

1.4 Child accommodation services

- (1) An activity or service is a regulated activity if the activity is conducted, or the service is provided, as part of a child accommodation service.
- (2) In this section:

child accommodation service—

- (a) means a service for which the main purpose is to provide residential accommodation for children; and
- (b) includes an overnight camp for children, irrespective of the kind of accommodation or of how many children are involved.

Examples—child accommodation service

- 1 school group accommodation
- 2 a home stay, including as part of a student exchange
- 3 a school boarding facility

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

1.5 Counselling and support services for children

An activity or service is a regulated activity if the activity is conducted, or the service is provided, as part of—

- (a) a counselling service for children; or
- (b) a support service for children.

1.6 Commercial services for children

An activity or service is a regulated activity if—

- (a) the activity is conducted, or the service is provided specifically for children by a commercial entity; and
- (b) the activity or service is one of the following:
 - (i) an entertainment or party service;
 - (ii) a gym or play facility;
 - (iii) a photography service;
 - (iv) a talent or beauty competition.

Part 1.2 Activities or services for vulnerable people

1.7 Mental health

An activity or service is a regulated activity if any of the usual functions of the activity or service include providing treatment, care, rehabilitation or protection to people who are mentally impaired, mentally dysfunctional or mentally ill.

Examples

- 1 an activity or service that provides personal care, assessment or referral of support needs, education, training and skill development, information services, recreation, counselling, community access, accommodation support, rehabilitation, or employment services, specifically for people who are mentally impaired, mentally dysfunctional or mentally ill
- 2 an activity or service provided in association with the use of premises for the care, treatment or accommodation of people who are mentally impaired, mentally dysfunctional or mentally ill

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

1.8 Migrants, refugees and asylum seekers

An activity or service is a regulated activity if the activity is conducted, or the service is provided, to support—

- (a) migrants, or
- (b) refugees or asylum seekers; or
- (c) people who cannot communicate, or who have difficulty communicating, in English.

Examples

an activity or service that provides assistance settling in the ACT, including mentoring, employment services, transport or accommodation support, specifically for migrants, refugees, asylum seekers or people from non-English speaking backgrounds

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

1.9 Homeless people

An activity or service is a regulated activity if the activity is conducted, or the service is provided, to support people who are homeless.

Examples

- 1 an activity or service that provides food, transport, coordination or referral of support needs for people who are homeless
- 2 a drop in centre
- 3 a soup kitchen

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

1.10 Housing and accommodation

A service or activity is a regulated activity if any of the usual functions of the service or activity include providing public or community housing or accommodation to people suffering social or financial hardship.

Examples

- 1 public housing
- 2 social housing
- 3 community housing
- 4 housing assistance
- 5 social housing
- 6 crisis accommodation
- 7 refuges

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

1.11 Justice facilities

- (1) An activity or service is a regulated activity if—
 - (a) any of the usual functions of the activity or service are carried out at a justice facility; or
 - (b) the activity is conducted, or the service is provided, because of a sentence, detention, probation, parole or other order, that could be made or imposed by the court.

- (2) In this section:

justice facility means—

- (a) a correctional centre; or
- (b) a remand centre; or
- (c) a detention place; or
- (d) a place outside a detention place if a detainee is, or has been, directed to work or take part in an activity at the place; or
- (e) any other place a person may be held in custody.

1.12 Prevention of crime

An activity or service is a regulated activity if the activity is conducted, or the service is provided, in relation to a person to reduce the likelihood of the person committing a criminal offence.

Examples

- 1 a program to keep police informed of the whereabouts and other personal details about a person who has committed a crime to reduce the likelihood that the person will reoffend
- 2 a mentoring program

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

1.13 Victims of crime

An activity or service is a regulated activity if the activity is conducted, or the service is provided, to assist or support victims of crime.

Example

an activity or service that provides counselling and support, therapeutic intervention, financial assistance, information or advice for victims of crime

Note 1 Victims of crime are eligible for assistance under the victims services scheme (see *Victims of Crime Act 1994*, pt 4).

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

1.14 Services for addictions

- (1) An activity or service is a regulated activity if any of the usual functions of the activity or service include providing treatment, care, rehabilitation or protection to people who are—
- (a) addicted to, or misuse, a substance (whether alcohol, a medicine, a prohibited substance or another substance); or
 - (b) addicted to an activity.

Examples—addictive activity

- 1 gambling
- 2 shopping
- 3 exercise

Examples—regulated activity

- 1 an activity or service that provides health care, counselling, accommodation or financial support for people who are addicted to a substance or an activity
- 2 a detoxification support program, such as Alcoholics Anonymous
- 3 a needle and syringe exchange program
- 4 a methadone treatment and withdrawal program
- 5 a gambling addiction telephone help-line

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) In this section:

prohibited substance—see the *Medicines, Poisons and Therapeutic Goods Act 2008*, section 13.

1.15 Community services

An activity or service is a regulated activity if the activity is conducted, or the service is provided, to—

- (a) people and families suffering social or financial hardship; or
- (b) people who need support to live independently.

Examples

- 1 an activity or service that provides crisis intervention, emergency relief, parenting support, assessment or referral of support needs, education, training and skill development, information services, counselling, community access, or employment services, for people and families suffering social or financial hardship
- 2 an activity or service that provides home help, home maintenance or modification, allied health care, personal care, food services, assessment or referral of support needs, information services, coordination, case management, recreation, counselling, community access, rehabilitation, or employment services, to people who need support to live independently
- 3 an activity or service provided in association with the use of premises for the care, treatment or accommodation of people who need support to live independently

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

1.16 Disability services

- (1) An activity or service is a regulated activity if the activity is conducted, or the service is provided, specifically for people with a disability.

Examples

- 1 an activity or service that provides home help, home maintenance or modification, personal care, food services, assessment or referral of support needs, information services, coordination, case management, recreation, counselling, community access, rehabilitation, or employment services, to people with a disability
- 2 an activity or service provided in association with the use of premises for the care, treatment or accommodation of people with a disability

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(2) In this section:

disability—see the *Human Rights Commission Act*, section 8 (2).

Note For the *Human Rights Commission Act*, s 8 (2), **disability** means a disability that—

- (a) is attributable to an intellectual, psychiatric, sensory or physical impairment, or a combination of those impairments; and
- (b) is permanent or likely to be permanent; and
- (c) results in—
 - (i) the person having a substantially reduced capacity for communication, learning or mobility; and
 - (ii) the need for continuing support services for the person; and
- (d) may, but need not, be of a chronic episodic nature.

1.17 Respite care services

An activity or service is a regulated activity if any of the usual functions of the activity or service include providing respite care.

1.18 Emergency services personnel

An activity or service is a regulated activity if the activity is conducted, or the service is provided, by—

- (a) an emergency service; or
- (b) a person acting on behalf of an emergency service.

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Part 1.3 Other activities or services for vulnerable people

1.19 Transport

An activity or service is a regulated activity if any of the usual functions of the activity or service include providing public or private transport that is—

- (a) specifically for, or mainly used by, children; or
- (b) specifically for people accessing a regulated activity mentioned in part 1.2.

Example—par (a)

a school bus service

Examples—par (b)

- 1 a minibus transporting detainees to or from a remand centre
- 2 a taxi for mobility impaired people

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) To remove any doubt, an activity or service is a regulated activity if a person must have 1 or both of the following to conduct the activity or provide the service:

- (a) a public vehicle licence;
- (b) a driving instructor certificate of accreditation.

Note 1 **Public vehicle licence**—see the *Road Transport (Driver Licensing) Act 1999*, dictionary.

Note 2 For certificates of accreditation for driving instructors, see the *Road Transport (Driver Licensing) Regulation 2000*, pt 7 (Accreditation of driving instructors).

1.20 Coaching and tuition

An activity or service is a regulated activity if—

- (a) any of the usual functions of the activity or service include coaching or tuition specifically for—
 - (i) children; or
 - (ii) people accessing a regulated activity mentioned in part 1.2; and
- (b) the coaching or tuition is provided by a commercial entity.

1.21 Vocational and educational training

An activity or service is a regulated activity if any of the usual functions of the activity or service include providing vocational education and training specifically for—

- (a) children; or
- (b) people accessing a regulated activity mentioned in part 1.2.

Examples

- 1 a pathways to employment program
- 2 an adult English language, literacy and numeracy skills program
- 3 an industry training service

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

1.22 Religious organisations

An activity or service is a regulated activity if—

- (a) the activity is conducted, or the service is provided, by—
 - (i) a religious organisation; or
 - (ii) a person acting on behalf of a religious organisation; and
- (b) the activity or service is—
 - (i) specifically for, or mainly used by children; or
 - (ii) specifically for people accessing a regulated activity mentioned in part 1.2.

Example—par (a)

Sunday school

Example—par (b)

counselling provided by a minister of religion

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

1.23 Clubs, associations and movements

An activity or service is a regulated activity if—

- (a) the activity is conducted, or the service is provided, by a club, association or movement (including of a cultural, recreational or sporting nature); and

- (b) the club association or movement has significant membership or involvement by—
 - (i) children; or
 - (ii) people accessing a regulated activity mentioned in part1.2.

Examples

- 1 a children’s football team
- 2 an art class for people who require assistance to live independently

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

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