

2012

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

WORKING WITH VULNERABLE PEOPLE REGULATION 2012

SL2012-4

EXPLANATORY STATEMENT

**Circulated by authority of
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Minister for Community Services**

Working With Vulnerable People Regulation 2012

Explanatory Statement

OUTLINE

The Working with Vulnerable People (Background Checking) Bill 2010 was introduced to the Legislative Assembly on 26 August 2010 and passed on 25 October 2011.

The *Working with Vulnerable People (Background Checking) Act 2011* aims to reduce the incidence of sexual, physical, emotional or financial harm or neglect of vulnerable people in the ACT through the undertaking of a risk assessment on the backgrounds of people working and/or volunteering with vulnerable people.

The object of these regulations is to make statutory rules under the Act with respect to the obligations of employers intending to engage a person issued with conditional registration, including role-based registration, in regulated activities.

These regulations are made under the *Working with Vulnerable People (Background Checking) Act 2011*.

Conditional registration

Conditional registration allows a registered person to undertake activities, with conditions imposed, when working with vulnerable people. The purpose of conditional registration is to provide a level of flexibility while imposing the least possible level of restriction on the range of regulated activities in which a particular employee or volunteer may be engaged.

Conditional registration includes role-based registration. Conditional registration is portable and the applicant does not need to identify an employer.

Role-based registration is not portable and the applicant must identify their current or future employer. The employer must also be willing to support the application.

If an applicant has a significant criminal history which impacts on the inherent requirements of the employment or volunteer position and the commissioner is satisfied that the applicant's nominated employer has sufficient strategies in place to mitigate the risks present, the Commissioner may issue a role-based registration which imposes conditions on where the person may undertake paid or unpaid employment, for example, the person may be permitted to work in a particular regulated activity or service with a particular employer only.

The availability of role-based registrations enables the registration of a minority of applicants who would otherwise represent an unacceptable risk of harm to vulnerable people if allowed to move freely between all types of registered activities.

Impact of the Regulations

The regulations achieve the objectives of the *Working with Vulnerable People (Background Checking) Act 2011* (the Act) without imposing unnecessary regulations on people applying for registration or providers of services and activities for vulnerable people.

The regulations benefit vulnerable people, employees, volunteers and employers through ensuring that the obligations of employers, in relation to conditional and role-based registration, are clearly identified.

The impact of the regulations will depend on the presence of best practice risk management strategies, and policies and procedures for compliance with the Act, within the agencies and organisations providing regulated activities.

Where an organisation or agency has in place best practice risk management strategies, and policies and procedures for compliance with the Act, the financial and administrative impact of the regulations will be minimal.

Where an agency does not have appropriate risk management strategies, and/or policies and procedures for compliance with the Act, in place, the initial impact of establishing the required systems will create an additional burden for the agency.

Prior to operationalising the Act, the Office of Regulatory Services will work closely with agencies and organisations and, when requested, will assist to establish the necessary systems for compliance with the regulations.

Human Rights and Discrimination - Considerations

Consideration of human rights and the obligations of public authorities, as provided in Section 28, 40A, and 40B of the *Human Rights Act 2004*; were integral to the development of the consequential amendments.

The regulations are being provided as a function of a public nature (s40A (1) (c)) and do not hinder an applicant's human rights arbitrarily (s40B (1)) as the obligations prescribed by regulation rest with employers, not employees or volunteers.

The purpose of the regulations is to ensure that the Commissioner has access to a broad range of information so that the inherent requirements of the employment role; the 'risk factors' (behaviours or circumstances which indicate a risk); and the 'mitigating factors' (behaviours or circumstances which reduce the level of identified risk) are known and can be considered during a determination of an applicant's risk to vulnerable people accessing a regulated activity.

The regulations will be made publicly available on the ACT legislation register as a subordinate law to the WwVP Act.

DETAILS

Detailed explanation of each section of the Regulations follows.

REGULATIONS

Regulations 1 and 2 provide the formal name of regulation as the *Working with Vulnerable People Regulation 2011* and sets the date that the regulations come into force as the day on which the *Working with Vulnerable People (Background Checking) Act 2011* (the Act) commences, which is on a date determined by the Minister.

Regulation 3 refers to the Dictionary which forms part of the regulations and defines commonly used terms within the regulations.

Regulation 4 explains the 'notes' that appear in the regulation are explanatory and are not part of the regulation.

Regulation 5 – Conditional registration – Act, section 42 (4) and

Regulation 6 – Obligations of employers in relation to people with role based registration – Act, section 71 (2) (b)

Section 42 of the Act provides for a person's registration to include conditions. Section 64 provides the regulation making power for the Act which includes the obligations of employers in relation to people they engage in regulated activities.

Regulations 5 and 6 provide employers with the information required by the Commissioner to facilitate the issuing of a conditional or role-based registration.