



Comments on the draft supporting documentation regarding the Working with Vulnerable People Checking System

Thank you for the opportunity to comment on the draft Working with Vulnerable People Checking System (WWVPCS) documents, including:

- Guide for Employers on Creating Safe Environments for Vulnerable People;
- Background Checking Decision Making Guide (the Decision Making Checklist);
- Risk Assessment and Decision Making Guide (the Risk Assessment Guide);
- Background Checking Application Form.

We welcome the work that has been done by the Community Services Directorate (CSD) and the Office of Regulatory Services (ORS) to develop the WWVPCS and to support the decision-making that is the basis of the system.

However, the Mental Health Community Coalition ACT (MHCC ACT) and the Alcohol Tobacco and Other Drug Association ACT (ATODA) are concerned that many of the assurances given by the ACT Government to date that our sectors will not be unintentionally disadvantaged by the system are not reflected in these key documents. Our concerns about the broader system have been well documented in previous correspondence. In this submission we will set out a few concerns regarding the draft documents listed above.

1. Eligibility for registration

The Background Checking Application Form requires that applicants provide evidence proving residency in the ACT. Given the numbers of people who live in areas outside the ACT (including Queanbeyan) and work in the ACT we can only assume the requirement to live in the ACT is an error.

The Background Checking Application Form also requires evidence of residency older than 3 months. It is extremely unfair to require people to live in the ACT 3 months without being eligible for registration and therefore ineligible to begin work in the community sector.

The Alcohol Tobacco and Other Drug Association ACT (ATODA) is the peak body for the alcohol, tobacco and other drug (ATOD) sector, and the Mental Health Community Coalition of the ACT (MHCC) is the peak body for the community mental health sector.

2. Appropriateness of certain assessments

The purpose of the system is to protect vulnerable people from harm through providing a safe environment. This involves preventing people who may be a risk to vulnerable people from coming into contact with them. Therefore the system aims to prevent registration of people who are an unacceptable risk.

It is not, and should not be, designed to supersede the recruitment systems of organisations. Just because someone does not present an unacceptable level of risk to vulnerable people, does not necessarily mean they are appropriate to work in a particular organisation or sector. It is not the role of the WWVPCS to make this judgement.

By making assessments including 'the applicant's demonstrated understanding of the emotional or physical wellbeing of vulnerable people' and 'the applicant's demonstrated capacity to manage a vulnerable person's behavioural problems' (question 4 Decision Making Checklist) we are moving beyond assessing the threshold issue of risk, into issues of whether the person has the appropriate experience and skills to work in a particular area. This is not the purpose of the scheme and risks causing confusion to both the decision maker and the applicant.

We feel assessments such as these should be left to employer's recruitment, supervision and probationary policies and are beyond what it is appropriate and reasonable for the ORS to consider.

3. Decision Making Process

We are unclear on the process that will be used to make decisions. We assume that the Decision Making Checklist will be used where an applicant does not automatically receive a general registration, because they have some criminal history or other relevant information returned through the initial police check. Many of the questions contained in the checklist, however, would not be easily answerable simply from the information suggested on page 13 of the Risk Assessment Guide including enhanced criminal history check employment related information and apprehended violence orders (AVO). Questions such as 'currently abusing alcohol?' or 'has supportive intimate relationships' can really only be answered by asking the applicant themselves. We assume this will take place through an interview between the applicant and an ORS delegate.

We are concerned about the potential impacts on an applicant of being required to answer many difficult questions about private aspects of their life, particularly as there is a risk applicants may have suffered significant trauma and difficult experiences and being asked to tell these stories, possibly more than once, without appropriate support could be damaging to them.

A possible suggestion is having social workers or other peer support positions employed within the ORS who support people through the extensive process, discussing their options, providing guidance on information that will need to be given and possibly offering debriefing after the interview.

The Decision Making Checklist asks a long list of detailed questions, but provides little guidance about what to do with the answers. In order to ensure consistency and equity in decision making, we strongly recommend that certain questions are triggers for:

- a) Encouraging the person to seek independent clinical assessment; and/or
- b) Referral to the multi-disciplinary panel.

For example, questions such as ‘the applicant has demonstrated an identifiable change in maturity (insight)’ or ‘the applicant is managing the underlying causes that lead to the behaviour’ are not ones that could easily be assessed by an interviewer. If issues of underlying mental health or alcohol or drugs issues, previous trauma or appropriateness and effectiveness of treatment arise, there should be an automatic trigger point for referral to clinical assessment. A clinical expert has the skills and expertise to safely discuss these issues with the applicant, and, through years of training and education, is likely to be in a better position to make an informed decision about questions like ‘the underlying causes of behaviour.’

4. Privacy and Human Rights Issues

The list of information and assessments in the Decision Making Checklist is extensive. There are many questions an organisation would not be allowed and would not consider asking an applicant in a recruitment situation. These include information about types and success of treatment or counselling, nature of private relationships, including intimate relationships, and details of any mental health diagnosis.

Under current community sector employment standards, a person is under no obligation to disclose a mental illness or other health issue, except in so far as it could impact on their employment. The risk assessment guide and decision making checklist places significant pressure on the applicant to disclose extremely personal details of their home life and health and wellbeing.

We are not convinced this information is relevant or necessary to make a decision about whether a person is a risk to vulnerable adults and therefore inappropriate to work in our sectors. There are also concerns in the sector about who might have access to this information.

In addition we are concerned some of the information required to be considered by the risk assessment guide could infringe on the human rights of the applicant. An example of this is the discussion on page 16 of a need to consider how comprehensive or strong the evidence presented in court that led to a judge or jury’s decision to acquit. In our opinion this is both beyond the capacity of the decision maker to assess, and is potentially in breach of the key human right of ‘innocent until proven guilty’ or in this case innocent after proven not guilty.

Having a support person or social worker involved is potentially one option for ensuring the person is informed about their rights and what information they are required to provide.

5. Role of Organisations

The ACT Government has assured MHCC ACT and ATODA as well as individual organisations in our sectors that where an organisation supports the role based registration of an applicant this will be given weight in the decision making. We were disappointed therefore to see the Decision Making Checklist and Risk Assessment Guide make almost no reference to the role of the organisation in supporting an application.

Page 22 of the Risk Assessment Guide refers to considering whether or not employer based measures can mitigate risks identified. However there is no further

explanation of what these employer based measures could be. There is also no space in the Decision Making Checklist for consideration of employer based measures.

As we have explained in previous correspondence, it is likely a large proportion of the community mental health and ATOD workforce may need to seek role-based registration. Therefore it is essential the role of the organisation is contained in the documentation.

The Background Checking Application Form contains a list of information and documents an employer may need to provide to the ORS to support an applicant's role based registration. It does not appear our sectors have been consulted in the development of the list as it does not reflect standard good practice across the community sector for policies and risk management frameworks. While many organisations may not have most of the documents listed, they are likely to have other equally relevant documents including supervision and debriefing policies, risk management registers and values statements.

We strongly suggest the ACT Government consult further with the sector about good practice in risk management practices.

In addition, we were under the impression the ACT Government would align this system with other developing systems, including the pre-qualification framework currently under development through DCS. If an organisation has satisfied the pre-qualification assessment surely they would already have been required to provide evidence of relevant risk management strategies and procedures. Rather than create increased workload for both the organisation and the ACT Government, there should be the option of recognising the accreditation/pre-qualification of the organisation.

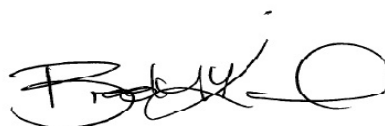
We look forward to continuing to work with you to ensure the system is an effective and appropriate means of protecting vulnerable people in our community as well as ensuring the ongoing sustainability and diversity of our sectors.

Please do not hesitate to contact us to discuss anything raised above.

Sincerely,



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