



## Australian Education Union – ACT Branch

### Responses to Questions in the Working With Vulnerable People Checks Discussion Paper:

#### 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?**

The proposed definition is appropriate - *“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.*

#### 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?**

Not aware of School Crossing Services provided in ACT eg. lollipop ladies. May be some schools that provide a voluntary service or a staff member undertakes this responsibility.

The inclusion of Overnight Camps as a regulated activity has implications for school/sporting groups visiting the ACT from interstate, meaning all teachers, support staff, coaches, managers and volunteers would be required to have an ACT check carried out prior to visiting the ACT. This will probably result in schools deciding not to visit the ACT. It is preferable to allow such employees and volunteers to visit if they show evidence of a meeting their checking requirements in their home state.

**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?**

May be necessary to define ‘special needs’ where it is mentioned in Annex B.

**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?**

Contact with vulnerable people that is ‘regular and systematic’ is an appropriate way to limit those who are checked.

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

Agree that checks should extend to all those in contact with vulnerable people, regardless of whether they are supervised, not supervised or are the supervisor.

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

Volunteers under the age of 18 should be checked.

**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?**

Yes.

**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?**

It is preferable, for consistency, that all those persons engaged in a regulated activity be checked, regardless of whether they are closely related to one or all of the vulnerable persons they have contact with. This is because there have been numerous cases of abuse and neglect within families.

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

It is recognised that extending the checks to employers who employ those under the age of 18 would expand the scope of the checking system considerably. Excluding checks on employers may be acceptable as long as young workers are adequately informed of their employment rights on commencement of their employment. Employers must also be given information about where to seek advice and support (such as the relevant union).

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?**

Currently, the Department of Education does not make an offer of casual, contract or permanent employment to applicants until a satisfactory police check has been carried out. At times, this process has been reported to take up to 6 weeks. This is particularly an issue for casual relief teachers since the delay in commencing employment is a concern for the individual teacher and for schools who report a shortage of casual relief teachers. Under this proposal, the DET is unlikely to engage any person working in schools prior to the WWVP check being finalised, for good reason. This should be the case for all non-government

**schools in the ACT as well. The AEU supports a more efficient, timely checking process to enable suitable applicants to commence work as soon as possible.**

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

**There may be advantages in the employer having access to information revealed by the checking process so that they may ‘exercise reasonable judgement in assessing the connection between the criminal record and the inherent requirements of the job’. (Human Rights Commission, as quoted on p. 42 of the proposal). This may prevent potential discrimination by ensuring a suitable applicant has a chance of employment, despite a conviction that may be many years old and/or irrelevant to the job.**

## **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?**

**The AEU does not believe that spent convictions? AVOs, PPOs, CPOs, Mandatory Reports or charges should be included in the checking process (see also response to Q20). These are allegations rather than proven evidence of a person’s behaviour and could be vexatious complaints.**

**The AEU strongly supports the introduction of a national checking system to enable mutual recognition across the various jurisdictions of Australia. This is particularly relevant for teachers who move from one state to another for work. Currently, each state requires a new check to be carried out which is costly, time consuming and inconvenient.**

**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?**

**Agreed that a statutory declaration would be appropriate, as is self-disclosure.**

## **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?**

**High tech crimes – internet misuse, child pornography.**

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

**The AEU supports the concept that assessments consider the level of risk presented and that a thorough analysis of background information is undertaken. Natural justice and procedural fairness must be at the centre 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?**

As discussed at the ACTCOSS forum (23 September), it is recognised that there are rare cases of individuals having multiple charges against them but no conviction being recorded of alleged crimes which may impact upon vulnerable persons. However, there are concerns about the appropriateness of systematic checking of charges and other non-conviction information.

### **13.0 ASSESSMENT OUTCOMES**

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

Periodic renewal of registration every 5 years is appropriate and is an improvement on employees being checked once on commencement with an employer. Given the proposal to legislate for self-disclosure, 5 years is a practical timeframe for rechecking where employees have not self-disclosed.

**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?**

Yes.

**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?**

Yes.

### **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?**

Confidentiality/privacy of applicant (and possibly others) during internal and external reviews needs to be considered.

### **16.0 PENALTIES**

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

No mention in the discussion paper of the possible penalties that may be imposed for various 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?**

**The process of educating employers and employees about the changes to the checking system, their rights and entitlements etc needs to be considered as part of the overall funding allocation for implementation of a new WWVP checking system.**

**The ACTCOSS seminar held on 23 September raised the issue that government funding for implementation will be finite. Implications of this are unclear. Does this mean that organisations may eventually have to cover the cost of checking once again?**

## **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?