

Working with Vulnerable People - Information for Volunteers and Visitors in Schools

The purpose of this guide

This guide provides information to people who provide or wish to volunteer services to schools, or who visit schools to provide educational, commercial or other services.

The rules for volunteers and visitors have been changed by the introduction in the ACT of the *Working with Vulnerable People (Background Checking) Act 2011*. This requires people to undergo a background (criminal history) check and become registered with the Office of Regulatory Services (ORS) before they are allowed to work with children unless they are able to claim an exemption from this requirement. Compliance is required by 7 November 2013.

The guide sets out a range of scenarios where volunteers and visitors are clearly required to be registered; others where their work either does not fall under the Act or the particular circumstances of their work are covered by an exemption in the Act; and there are other scenarios again where the need for registration is less clear, and the volunteer or visitor may be able to reverse this need by varying the location of their work or perhaps by scheduling their time differently, thus bringing themselves under one of the exemption provisions. These scenarios are outlined below.

What it means for school volunteers and visitors (including parents)

There will be no change for parents collecting or delivering children, or attending school events such as sports days, assemblies or concerts.

The Education and Training Directorate already has in place policies and procedures to protect children and young people. These include the need for volunteers and visitors in certain circumstances to undertake criminal history checks. The Working with Vulnerable People Act replaces current checks where contact with children is sufficiently frequent to require registration. This increases the level of protection as the Act's criminal history checks are more comprehensive than current checks. The Directorate's policies will continue to apply until 7 November 2013 after which they will be aligned with the Act.

Volunteers and visitors can continue to support schools in a number of ways without the need to be registered under the Act.

The benefits of volunteers and visitors

ACT public schools provide a framework for students to learn in a safe and positive educational environment.

The ACT Education and Training Directorate recognises the valuable contribution made by parents and members of the community, on a voluntary basis, and in a diversity of roles, in supporting students and schools. Benefits include increased understanding and communication between the school and parents and the community, and providing schools with a broader resource base from which to draw.

School visitors generally provide their services, including volunteer services, through an employer or a sponsoring body such as a community organisation, or they may be self-employed. Visitors' services or activities must have a clear educational purpose, and should add value and relevance to student learning, and complement the whole school program.

Strengthening protection for vulnerable people

The aim of the Act is to reduce the rate of harm (including sexual, physical, emotional or financial harm, or neglect) to vulnerable people and children in the ACT.

From 7 November 2013, people (both paid and unpaid) who work or have contact with children while taking part in certain 'regulated activities' or services must be registered with the Office of Regulatory Services (ORS). ORS will conduct a background check and risk assessment before considering issuing a registration card for a maximum period of three years.

The ACT is the first state or territory in Australia to legislate to protect vulnerable adults as well as children. Regulated services and activities involving contact with children must be compliant with the Act by 7 November 2013. These include child education services, childcare services, child accommodation, counselling and support services for children and commercial services for children.

People working only with vulnerable *adults* will not be required to register until after November 2013.

Further details can be found on the ORS website at www.ors.act.gov.au/community/working_with_vulnerable_people.

Key aspects of the Act

The Act now requires a person over the age of 16 years, including a volunteer or visitor, who has contact with children in certain situations to be registered with ORS unless exempted under the Act.

All Education and Training Directorate school-based staff have been identified as requiring registration. Some staff who are not school-based have also been identified for registration.

After 7 November 2013, it will become an offence for an employee, volunteer or visitor to have contact with children whilst 'engaging in a regulated activity' (explained below) without carrying a valid registration card.

Refer to www.ors.act.gov.au/resources/attachments/Compliance_Complaints_-_Fact_Sheet.pdf for further information.

PLEASE NOTE: There is no fee for volunteers to apply for registration.

What captures a volunteer or visitor under the Working with Vulnerable People Act?

The Working with Vulnerable People Act states that a person is 'engaged in a **regulated activity**' if they have **contact** with a vulnerable person and an **exemption** does not apply. These terms are explained below.

Regulated activities include:

- Child education services
- Childcare services
- Child accommodation
- Counselling and support services for children
- Commercial services for children

A volunteer or visitor working in any of the above areas is required to be registered by 7 November 2013 unless an exemption applies.

Contact is defined as:

contact that would reasonably be expected AND

is not incidental AND is either:

physical contact OR

oral communication OR

written communication OR

making a decision that affects the vulnerable person.

For further detail see references in *Key References in the Act* at the end of this guide.

Exemptions. The most relevant exemptions are as follows:

- Being under 16 years old
- Engaging in the activity for not more than 3 days in any 4-week period or 7 days in any 12-month period (the 'frequency test' or frequency exemption)

NOTES

1. this exemption does NOT extend to overnight camps for children
2. a "day" is all or part of a day

- Being engaged in the activity in the same capacity as a student.
- Where the visitor is a school student on a work experience placement or doing practical training.

Circumstances in which registration *is not* required for volunteers or visitors

No registration is required for volunteer or visitor activities in circumstances where:

- a regulated activity such as a child education service is not being provided, or
- there is no contact with children, or
- contact would not reasonably be expected and is incidental, or
- contact is limited in frequency (up to 3 days per month or 7 days per year), or
- contact is limited to
 - telephone contact, or
 - working with a record of the child

Examples

- People under 16 years of age
- People delivering and collecting children from school
- People attending (but not organising or assisting in) school sports days, carnivals, concerts, music events, assemblies etc
- Adults participating as School Board members
- The person is a close relative of a child taking part in the activity AND a close relative of each child is present or is expected to be present (example: playgroups)
- Canteen volunteers not exceeding the frequency test
- A school student on a work experience placement or doing practical training
- Students undertaking Australian School-Based Apprenticeships (ASBAs)
- School-based activities which take place at times when students (other than family or close relatives) are not expected to be present, and their presence is incidental. These might include:
 - fundraising
 - working bees
 - making library bags, typing children's stories
 - writing submissions on behalf of the school
 - providing administrative support to teachers or to the school
- Persons who visit in the capacity of police officers or lawyers, and psychologists, counsellors or nurses who are registered health professionals

Volunteers and visitors should contact principals if they need clarification about activities at a particular school

Circumstances where registration *is* required for volunteers and visitors

Activities which are expected to require a person to be registered include:

- Billeting

NOTES

Adults accepting a billeted student into their home would be expected to have contact with the child. However if the period of billeting does not exceed the frequency exemption under the Act, there is no need for registration unless the adults are engaged in other volunteer activities besides billeting. Education and Training Directorate policies on *Excursions* also apply.

- Before/after-school care
- Commercial services for children, eg school photographer
- Overnight camp for children (no exemptions)
- Overseas excursions (Education and Training Directorate policies on Overseas Excursions also apply)
- Religious education

NOTES

Religious education is a service provided specifically for, or mainly used by, children. Examples include a Sunday School or counselling provided by a minister of religion. In a school, it is considered part of a **child education service**. No exemptions are relevant for religious education, so ORS registration is mandatory by 7 November 2013 for volunteers or visitors providing a religious education service in a school.

- School Chaplain or Student Support Worker
- School Canteens where the frequency of attendance exceeds the frequency test

NOTES

Canteen workers include employees and regular volunteers (including parents). Contact with children can reasonably be expected during the normal course of a canteen worker's activities and is not incidental to those activities.

Volunteers and visitors should contact principals if they need clarification about activities at a particular school

Circumstances where registration may be required for volunteers and visitors

Activities which *may* require registration - considerations

There are some activities and services which do not readily fall into the category “Requires registration” or the category “Does not require registration”. Such activities will need to be carefully assessed.

The Education and Training Directorate appreciates the strong commitment of many volunteers and visitors over the school year and notes that contact between volunteers or visitors and students will in many instances exceed the limits prescribed by the frequency test (3 days in any 4-week period or 7 days in any 12-month period). This will often be the principal factor in determining whether registration is required. Some volunteers and visitors may wish to (and be able to) limit the number of days they work with children. Others may not.

A volunteer or visitor will need to consider whether:

- the activity takes place during school hours and/or on the school campus and/or is an education service (*e.g.* is part of an activity which falls under the school curriculum or is sponsored by, or comes under the auspices of the school); and
- the activity involves ‘contact’, *i.e.* takes place in the presence of school children (see full definition under heading *Key References in the Act*); and
- the frequency limit is exceeded (as above); and
- any exemptions apply.

Activities which *may* require registration include:

- People organising or assisting in school carnivals, concerts, music events (eisteddfods, band extravaganzas) or assemblies
- Canteen workers (see previous references to the frequency test)
- Classroom support, *e.g.* art, craft, music, maths, literacy and numeracy, reading, preparation of resources
- Computer support
- Clubs – for example: chess, science
- Dance tutors
- Excursions including transport (policies on excursions may also apply)
- Library support
- Mentoring programs (mentors)
- Music tutors
- Outdoor adventures activities (the Outdoor Adventure Activities Policy and Procedures may also apply)
- Reading tutors
- Sports coaching
- Sports events – for example: judges/officials (time keeping/recording)

Volunteers and visitors should contact principals if they need clarification about activities at a particular school

Can I register even if the Act doesn't require me to do so?

Not all volunteers and visitors who provide services to schools are engaging in regulated activities. Some of those who do engage in regulated activities may be covered by one of the exemptions outlined. People in these categories are not required to apply for registration with the Office of Regulatory Services, but may choose to do so.

Registration is free for volunteers. Registration for visitors who are engaged in the capacity of employees and who are not providing volunteer services is not free.

What if my registration card has not yet been issued?

As long as a volunteer (or visitor) has applied for a registration card with the Office of Regulatory Services including providing a named employer (this can be a school), and a decision has not yet been made about their application, the employer (i.e. the school) can allow the volunteer (or visitor) to engage with children provided they are supervised at all times by a person who is registered under the Act. This permission ceases to apply if the application is withdrawn or the person is given a negative notice.

PLEASE NOTE

The Education and Training Directorate provides the above information in order to assist volunteers and visitors who work with or in the presence of children to understand whether their activities in ACT public schools requires them to register with the Office of Regulatory Services. It is NOT intended as legal advice. Volunteers and other visitors seeking further information or clarification about the requirements and implications of the Working with Vulnerable People Act are asked to contact the Office of Regulatory Services on 6207 3000, by email ors@act.gov.au or by accessing their website: www.ors.act.gov.au/community/working_with_vulnerable_people .

Key References in the Act

'Contact'

Under section 10 of the *Working With Vulnerable People (Background Checking Act) 2011* **Contact** is defined as that which:

- (a) Would reasonably be expected as a normal part of engaging in the activity; and
- (b) Is not incidental to engaging in the activity; and
- (c) Is 1 or more of the following:
 - (i) Physical contact, including engaging in the activity at the same place as the vulnerable person;
 - (ii) Oral communication, whether face-to-face or by telephone;
 - (iii) Written communication, including –
 - (A) Electronic communication; or
 - (B) Dealing with a record relating to a vulnerable person
 - (iv) Making a decision that affects a vulnerable person.

Exemptions

Exemptions are set out under section 12 (2) and includes the following particularly relevant to schools. (The full text of section 12 can be viewed at <http://www.legislation.act.gov.au/a/2011-44/default.asp> :

When is a person required to be registered?

- (1) *A person is required to be registered to engage in a regulated activity.*
- (2) *However, a person is not required to be registered to engage in a regulated activity if the person is—*
 - (a) *under 16 years old; or*
 - (b) *engaged in the activity (other than an overnight camp for children) for not more than—*
 - (i) *3 days in any 4-week period; and*
 - (ii) *7 days in any 12-month period; or ...*
 - (d) *a close relative of each vulnerable person taking part in the activity with whom the person has contact; or*
 - (e) *engaged in the activity as a volunteer and—*
 - (i) *is a close relative of a vulnerable person taking part, or who normally takes part, in the activity; and*
 - (ii) *a close relative of each vulnerable person taking part in the activity is engaged, or expected to be engaged, in the activity; or*
 - (f) *engaged in the activity in the same capacity as a vulnerable person; or*
 - (g) *engaged in the activity as a school student on a work experience placement or doing practical training; or ...*
 - (i) *engaged in the activity as—*
 - (i) *as a police officer, including a police officer (however described) of another jurisdiction; or*
 - (ii) *an AFP appointee within the meaning of the [Australian Federal Police Act 1979](#) (Cwlth);*
or
 - (iii) *a registered health professional under the [Health Professionals Act 2004](#) or a health practitioner; or*
 - (v) *a lawyer; or ...*
 - (j) *engaged in the activity for a Commonwealth or Territory government agency and the only contact the person has with a vulnerable person is providing a service to the vulnerable person at a public counter or shopfront, or by telephone; or*

(k) engaged in the activity and the only contact the person has with a vulnerable person is providing information to, or receiving information from, the vulnerable person by telephone; or

(l) engaged in the activity and the only contact the person has with a vulnerable person is working with a record of the vulnerable person; or

(m) engaged in the activity for a declared state of emergency; or

Note A state of emergency may be declared under the [Emergencies Act 2004](#), s 156.

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day includes part of a day.

school means a high school or secondary college.

There are also a number of other exemptions which apply to people who engage with vulnerable people but are not relevant to the majority of volunteers who are involved in child education services, childcare services, child accommodation, commercial services for children and counselling and support services for children.

Transition arrangements

Section 15 of the Working with Vulnerable People Act addresses when an unregistered person may be engaged in a regulated activity:

- (1) This section applies to an unregistered person if—
 - (a) the person has applied for registration under section 17; and
 - (b) the commissioner has not—
 - (i) registered the person under section 41; or
 - (ii) given the person a negative notice under section 40; and
 - (c) the person has not withdrawn the application.
- (2) The person may engage in a regulated activity for which the person is required to be registered if—
 - (a) the person is eligible; and
 - (b) the person included a named employer for the activity on the person's application for registration; and

Note **Named employer**—see s 18 (1) (d) (i)

 - (c) the named employer has agreed to engage the person in the activity; and
 - (d) a registered person is present at all times while the unregistered person is engaged in the activity.

Note An unregistered person who is engaging in a regulated activity under this section commits an offence under s 13 if the person continues to engage in the activity after—
 - (a) the person's application for registration is withdrawn (see s 20); or
 - (b) the person is given a negative notice (see s 40).
- (3) To remove any doubt, nothing in this section prevents an employer refusing to engage an unregistered person in a regulated activity.
- (4) In this section:

eligible—a person is *eligible* if—

 - (a) the person has not previously been given a negative notice under this Act or a corresponding law; and
 - (b) the person has not had a previous registration suspended or cancelled; and
 - (c) the person's most recent registration (if any) was not conditional.

The Working with Vulnerable People (Background Checking Act) 2011 is available at www.legislation.act.gov.au/a/2011-44/default.asp.