

Working with Vulnerable People (Background Checking) Amendment Regulation 2021 (No 1)

Subordinate Law SL 2021- 22

made under the

Working with Vulnerable People (Background Checking) Act 2011, s 12(2)(o) (When is a person not required to be registered to engage in a regulated activity)

EXPLANATORY STATEMENT

On 16 March 2020, the Minister for Health made an emergency declaration due to the public health risk posed by coronavirus disease 2019 (COVID-19), caused by the novel coronavirus SARS-CoV-2. On 16 August 2021, Public Health (Emergency) Declaration Further Extension 2021 (No 3) was made.

The Working with Vulnerable People (Background Checking) Amendment Regulation 2020 (No 1) was prescribed in May 2020 and provided exemptions for Australian Defence Force (ADF) personnel, and public employees of Commonwealth, state or territory entities, from registration under the Working with Vulnerable People (WWVP) scheme, while engaged in ‘regulated activities’ on behalf of the Territory for the purposes of supporting the COVID-19 emergency. The exemption from registration expired in May 2021 (12 months from commencement). This regulation will expire when the *COVID-19 Emergency Response Act 2020* expires, which is at the end of a 12-month period during which no COVID-19 declaration has been in force.

The Working with Vulnerable People (Background Checking) Amendment Regulation 2021 (No 1) (Regulation) seeks to provide for further exemptions from WWVP registrations for Australian Defence Force (ADF) personnel, and public employees of Commonwealth, state or territory entities to support the ACT in the ongoing response to the COVID-19 emergency.

ADF personnel and public employees are not ordinarily exempt from registration under the WWVP scheme. However, during the COVID-19 emergency, the ACT Government may request support be provided to the Territory. This means ADF personnel and other public employees may be required to directly interact with children and other

vulnerable people in the ACT. An exemption from WWVP registration is required to assist their ability to engage in regulated activities in the ACT.

The Regulation must be notified on the Legislation Register and presented to the Legislative Assembly within six (6) sitting days under the *Legislation Act 2001*.

Human rights implications

During the development of this Instrument, due regard was given to its effect in relation to the compatibility with human rights as set out in the *Human Rights Act 2004* (HRA).

The Regulation engages the right to liberty and security of person (section 18 of the HRA) in relation to vulnerable people accessing regulated activities regarding their vulnerability.

The Regulation engages this right because the Commissioner for Fair Trading (the Commissioner) will engage in a higher level of risk by exempting ADF personnel and public employees to provide the workforce capacity required to deliver an effective and urgent response to the public health emergency.

The Regulation does not limit this right because ADF personnel and public employees are subject to other regulatory obligations, including police checks and security clearances. Exempt individuals are also limited to engaging in regulated activities for the purposes of supporting the ACT Government's response to the COVID-19 public health emergency. In addition, these individuals are subject to all other reporting obligations.

The Commissioner maintains the power to revoke the exemption in relation to any person during the period of a public health emergency, where the individual is subsequently assessed as an unacceptable risk of harm to children and vulnerable people. This reduces the risk of potential harm to children and vulnerable people and protects the rights and dignity of vulnerable people by limiting their exposure to people who pose a risk to their safety, welfare and wellbeing.

The new amendment will expire after the cessation of the public health emergency and by notification of the responsible Minister.

Clause Notes

Clause 1 — Name of Regulation

This clause provides that the name of the regulation is the Working with Vulnerable People (Background Checking) Amendment Regulation 2021 (No 1).

Clause 2 — Commencement

This clause provides that the Regulation commences the day after its notification day.

Clause 3 — Legislation amended

This clause provides that the Regulation amends the Working with Vulnerable People (Background Checking) Regulation 2012.

Clause 4 — New Section 4A

This clause inserts a new section 4A that exempts ADF personnel and Commonwealth, state and territory public employees from registration where they are engaging in regulated activities on behalf of the Territory and for a purpose related to the COVID-19 public health emergency.