

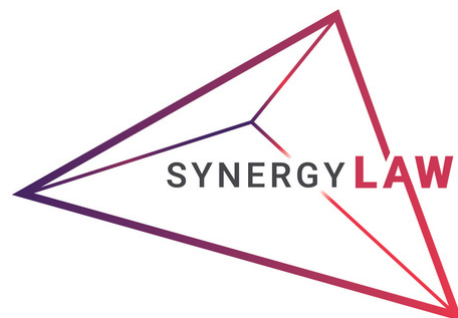


VolunteeringACT  
an inclusive Canberra



# NAVIGATING BACKGROUND CHECKS

Frequently Asked Questions  
for Organisations



The purpose of this factsheet is to assist your program or organisation in understanding what safety checks are required when involving volunteers in your operations in the Australian Capital Territory (ACT) and New South Wales (NSW). It has been designed in partnership between Synergy Law and VolunteeringACT.

Complying with local legislation and regulations is essential for your program if your volunteers engage with children and/or vulnerable people as part of their volunteer role. Knowing what checks are required for your volunteers is also important in creating comprehensive risk assessments and policies in relation to protecting children and/or vulnerable people and arranging suitable training and supervision for your volunteers.

## Common Factsheet Terms

**WWVP:** Working with Vulnerable People

**WWCC:** Working with Children Check

According to Access Canberra's definition, '**Vulnerable person**' or '**vulnerable people**': a child or an adult who is disadvantaged and is accessing a regulated activity in relation to the disadvantage.

Disadvantage in the context of vulnerable people includes:

- A physical or mental disability
- Social or financial hardship
- An inability to communicate
- Difficulty communicating in English.

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## 1. Do all volunteers need a WWVP card?

Not all volunteers are required to be registered for a WWVP card.

Unless exempt from being required to register, a volunteer is generally required to be registered (in other words, have a WWVP card) if they are:

- Engaged in a regulated activity (see Table 1, page 4); or
- One of the key personnel of a registered National Disability Insurance Scheme (NDIS) provider providing a NDIS activity.

## 2. When is a WWVP card not required?

Some volunteers will not be required to have a WWVP card due to certain exemptions (1).

Examples of exemptions include:

- If your volunteer is under 16 years old;
- If your volunteer engages in a regulated activity for less than three days in a four-week period, and seven days in a 12-month period (for example – a ‘one off activity’); or
- If your volunteer is registered under a corresponding law in another jurisdiction (for example, has a WWCC under the NSW scheme), for substantially similar activities.

Generally speaking, if your volunteer(s) have more than incidental contact with vulnerable people in regulated activities or services, they are likely to require a WWVP registration to continue these activities. An example of incidental contact is if your volunteer works in the same building as a vulnerable person, but does not have any physical or face-to-face communications with that person, as part of their role.

### Case Study

Jenny manages a volunteer program that maintains a community garden. Volunteers participate on a regular basis, once a week, to care for organic produce which is then distributed to people experiencing financial hardship in the community. Jenny is responsible for distributing the produce as well as managing the volunteers.

In this example, Jenny will be required to hold a WWVP Card, but her volunteers will not.



(1) For further information on exemptions to the WWVP registration, see Part 3, section 12 (2) of the [Working with Vulnerable People \(Background Checking\) Act 2011 \(ACT\)](#) ('WWVP Act').

### 3. What is a regulated activity (in the ACT)?


Schedule 1 of the Working with Vulnerable People (Background Checking) Act 2011 (ACT) ('WWVP Act') outlines that a regulated activity is an activity or service in the general categories listed in Table 1 below (2).

In addition, a 'regulated activity' also includes an NDIS activity (3) or activities or services prescribed by regulation, unless declared by the Minister to not be a regulated activity.

Note: Please seek further legal advice for information on whether your activity or service in question is included in the general categories.

Members of VolunteeringACT can access pro bono legal assistance using the below application form.

[Click here for VolunteeringACT's pro bono legal assistance form](#)



**Case Study**

Trent manages a volunteer program that cares for the gardens at a mental health support service. In this scenario Trent does not need to require a WWVP Card from his volunteers, because any interaction with clients would be considered 'incidental'.

(2) For further information on the listed regulated activities, see [Schedule 1 Part 1.1 – 1.3 of the WWVP Act](#).

(3) A NDIS activity means a support or a service provided to people with a disability by a registered NDIS provider under the National Disability Insurance Scheme Act 2013 (Cth).

**Table 1: Regulated Activities - general categories**

General Category	Activity or Service examples
Activities or services for children	<ul style="list-style-type: none"> <li>• Child protection services</li> <li>• Justice facilities for children</li> <li>• Childcare services</li> <li>• Child education services</li> <li>• Child accommodation services</li> <li>• Counselling and support services for children</li> <li>• Commercial services for children, including a party service or play facility</li> </ul>
Activities or services for vulnerable people	<ul style="list-style-type: none"> <li>• Activities or services supporting:               <ul style="list-style-type: none"> <li>◦ People who are mentally impaired, mentally dysfunctional or mentally ill</li> <li>◦ Migrants, refugees or asylum seekers, or people who cannot communicate or have difficulty communicating in English</li> <li>◦ People experiencing homelessness</li> <li>◦ People who have addictions to a substance or activity</li> <li>◦ People and families suffering social or financial hardship or who need support to live independantly</li> <li>◦ People with disability</li> </ul> </li> <li>• Activities or services conducted in relation to:               <ul style="list-style-type: none"> <li>◦ Reducing the likelihood of a person committing a criminal offence, including mentoring programs</li> <li>◦ Assisting or supporting victims of crime</li> <li>◦ Respite care</li> </ul> </li> <li>• Housing and accomodation services or activities for people suffering social or financial hardship</li> <li>• Justice facilities, including correctional centres or detention places</li> <li>• Activities or services conducted by an emergency service</li> </ul>
Other activities or services for vulnerable people	<ul style="list-style-type: none"> <li>• Activities or services relating to the following, if specifically for or mainly used by children or people accessing a regulated activity mentioned in this table:               <ul style="list-style-type: none"> <li>◦ Provision of public or private transport</li> <li>◦ Coaching and tuition</li> <li>◦ Vocational and educational training</li> </ul> </li> <li>• Activities or services conducted by a religious organisation, clubs associations or movements, and the activity or service is mainly for children or people accessing a regulated activity mentioned in this table.</li> </ul>

#### 4. Who conducts the WWVP check?

Access Canberra facilitates WWVP checks and registration within the ACT.

For information on similar checks in other States and Territories, please see Table 2 below:

**Table 2: Jurisdictional Background Checks**

Jurisdiction	Who Conducts the Check?
Queensland	<u>Blue Card Services</u>
NSW	<u>NSW Office of the Children’s Guardian</u>
Victoria	<u>Department of Justice and Community Safety</u>
Tasmania	<u>Consumer, Building and Occupational Services</u>
South Australia	<u>Department of Human Services (DHS) Screening Unit</u>
Northern Territory	<u>NT Police Safe NT</u>
Western Australia	<u>Department of Communities</u>

## 5. What is checked for a WWVP registration?

For a WWVP registration, the background check and risk assessment on the applicant includes the following information:

- Criminal history;
- Non-conviction information, which includes:
  - Information relating to a charge in relation to a relevant offence (for example, a sexual offence or an offence involving violence) that has lapsed, or been withdrawn, discharged or struck out; and
  - If a conviction for an alleged relevant offence has been quashed or rescinded (4).
- Whether the WWVP applicant has previously been refused a WWVP registration;
- Whether the person was previously registered under ACT legislation, or a corresponding law for another jurisdiction (including whether their registration was suspended or cancelled);
- Care and protection orders made for a child whom the individual has or had parental responsibility under regulations; and
- Professional disciplinary proceedings against the individual.

This information allows [Access Canberra](#) to establish an informed opinion on the applicant about the ways in which they may pose a risk of harm to a vulnerable person. There must be reasonable grounds to determine that a person is ineligible to hold and maintain a WWVP registration.

To aid risk assessment for a WWVP application, the Commissioner for Fair Trading may request information or advice from a WWVP applicant's employer. If an employer receives such a request, they must, as far as practicable, comply with the request (5).

(4) For further information on and examples of non-conviction information, see section 25 of the WWVP Act.

(5) It may be an offence under the WWVP Act if an employer fails to comply with a request made by the commissioner for information or advice in relation to a risk assessment. For more information, see section 33 of the WWVP Act.

## 6. If my program operates across both NSW and the ACT, do I need to require both a WWVP and WWCC of my volunteers?

If your program operates across both NSW and the ACT, it may not be necessary to require your volunteers to register for both the WWVP and WWCC.

Under relevant ACT and NSW legislation (6), there are general exemptions to registration requirements if your volunteer already holds either a WWVP or WWCC outlined further in questions 6A and 7.

**6A:** What if my volunteer already has a WWCC? Do they still need a valid WWVP in this case? Your volunteer in this case may not be required to obtain a WWVP registration if they already hold a valid WWCC. This only applies if:

The activities that the volunteer is registered to do under NSW legislation are 'substantially similar' to a regulated activity under ACT legislation; and

The volunteer is engaged in the regulated activity in the ACT for less than 28 days within a 12-month period.

### Case Study

Debbie manages a volunteer program for a retail op shop. One of Debbie's new volunteers has a disability and she's wondering whether she will now need to require a WWVP card of volunteers who are on shift with the new volunteer.

In this case, Debbie **does not** need to require a card of her volunteers. The volunteer with a disability is **not** accessing services from the op shop relating to their disability. A card is only required when somebody is accessing a regulated service relating to a disadvantage.



## 7. If my volunteer already has a WWVP card, do they still need a WWCC?

This question should be considered if your volunteer holds a WWVP card and is conducting child-related work in NSW. Such volunteers are not required to have a WWCC if:

- They already hold a valid WWVP;
- They ordinarily reside in the ACT; and
- The period of their child-related work in NSW does not exceed a total of 30 days in any calendar year.

There are other exemptions to needing a WWCC (7). For example, a WWCC is not required if your volunteer:

- Is working in and visiting NSW from outside of the state for the purposes of a one-off event such as a jamboree, sporting or religious event or tour; and
- If the event is the only child-related work carried out by the volunteer in NSW in that calendar year; and
- The period of child-related work does not exceed 30 days.

Please note that the WWVP relates to working with vulnerable people, which refers to both children and adults who are disadvantaged and who are accessing a regulated activity in relation to the disadvantage. The WWVP legislation also covers particular NDIS activities.

The WWCC relates only to child-related work. It has a narrower application than the WWVP. In relation to the NDIS activities, an additional NDIS Worker Check may be required for certain volunteers conducting relevant activity in NSW.

**8. If my volunteer is unable to get a WWVP card, will they be able to get a WWCC card? Is information shared between states and territories?**

The WWVP and WWCC schemes are administered separately by Access Canberra for the ACT and the NSW Office of the Children’s Guardian (the NSW OCG) respectively. Each organisation must administer their scheme in accordance with the relevant legislative requirements.

While assessment results will depend on the circumstances of each individual, both Access Canberra and the NSW OCG are required to screen for similar things, including:

- Criminal history;
- Non-conviction information; and
- Other relevant information (8)

Information sharing between Access Canberra and the NSW OCG is permitted if that information is relevant to Working With Children Checks.

Access Canberra and the NSW OCG can also access the National Reference System (a national database administered by the Australian Criminal Intelligence Commission) to check if an applicant has received an adverse or negative result from another issuing authority. For example, information relating to a WWCC negative notice recorded by the NSW OCG will be accessible by Access Canberra for the purposes of assessing a WWVP application.

An unsuccessful application in one jurisdiction is therefore likely to impact the success of a similar application made for another jurisdiction.

(8) For further information on the application process and eligibility assessments, see [section 13](#) and [section 14](#) of the Child Protection (Working With Children) Act 2012 (NSW), and [section 28](#) of the WWVP Act.

## 9. If my organisation is in the ACT but my volunteer lives in NSW, which card do they require?

The card your volunteer requires depends on where the volunteer is operating and what type(s) of volunteer activity they are engaging in. You must comply with the laws of the particular State or Territory in which the relevant regulated activity is being conducted.

In some situations, you may require both cards. If your program and volunteers frequently operate in both NSW and ACT, you should consider the following questions:

- Does your volunteer work with children and/or vulnerable people?
- Does your volunteer engage in a regulated activity and/or child-related work?
- Is your volunteer exempt under either NSW or ACT legislation?

If your organisation is based in the ACT, and your NSW-based volunteer wants to work with children and/or vulnerable people in a regulated activity occurring in the ACT, it is likely they will need to obtain a WWVP registration if an exemption does not apply.

Examples of applicable exemptions include:

- Being registered under a similar scheme (for example, already being registered for a WWCC) and the activity you are registered for is substantially similar to the activity in the ACT, and being engaged in the activity for not more than 28 days in any 12-month period; or
- Not being engaged in the activity for not more than 3 days in any 4-week period, and 7 days in any 12-month period.

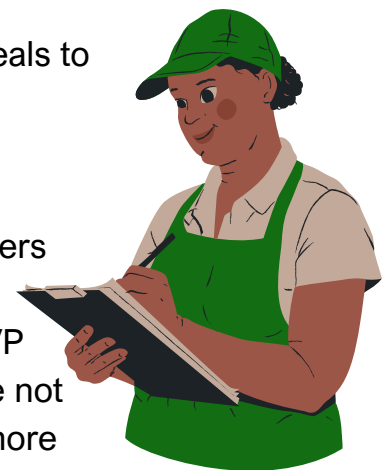
We recommend consulting ACT and NSW legislation, considering the type(s) of activity your volunteers are doing and in which State or Territory, and the number of days dedicated to that activity per year. (9).

### Case Study

Michelle manages a program in the ACT which offers hot meals to those experiencing homelessness every Tuesday night.

Her volunteers are required to have a WWVP Card.

A prospective new volunteer, Devon has expressed interest in joining the program. He has a WWCC because he volunteers in a program supporting kids with disabilities in a NSW school. In this case, Devon **would** be required to get a WWVP Card as well as his existing WWCC, as the two programs are not similar in activities and Devon would likely be volunteering more than 28 days in a 12 month period.



## 10. Is the WWVP registration transferable between organisations and roles?

Generally speaking, the WWVP registration (excepting for NDIS activities) is transferrable between organisations and roles within the ACT. This means that, unless there are any conditions imposed on a volunteer's WWVP registration, WWVPs can generally be used for all regulated activities and across all categories of vulnerable persons under the WWVP scheme.

If a volunteer has a WWVP that is subject to particular conditions, they must only work within those conditions.

These conditions can include:

- **Specific restrictions:** for example, being prohibited from supervising other registered people, or being prohibited from driving a motor vehicle if a vulnerable person is a passenger.

Registrations can also be '**role-based**', meaning registration can be conditional in relation to the following:

- Only being able to engage in particular types of regulated activities or services; and/or
- Only being able to engage in regulated activities only for a stated employer.

If a volunteer's WWVP registration is restricted by the first condition noted above, their WWVP registration is likely to be more easily transferrable compared to if the second condition is applied. For example, if a volunteer has a WWVP card to work in childcare services only for School A, that would not be transferrable to School B, without applying for a reassessment.

Your organisation should maintain appropriate mechanisms to ensure that you comply with regulations and do not engage volunteers without appropriate registration.

## 11. If I undertake a National Police Check ('NPC') for my volunteer, do I still need them to have a card?

Whether your volunteer will need a WWVP and/or WWCC in addition to an NPC depends on the main roles and duties to be performed by the volunteer, whom they interact with, and where they are conducting such duties.

If your volunteer is engaging in regulated activity in the ACT and no exemptions apply, they must register for a WWVP even if they have undertaken a recent NPC. The same applies for the NSW WWCC in relation to child-related work.

In addition, an NPC is a point-in-time check and only assesses a potential candidate's convictions or criminal history at the time of submission.

## 12. What happens if my volunteer commits a crime before their WWVP card expires? Will I be alerted to the fact that their WWVP card is no longer valid?

If a volunteer commits a crime before their WWVP card expires, it does not mean they will be excluded entirely from their current and future registration.

An additional risk assessment, undertaken by the Commissioner for Fair Trading (10), may be required if there is new relevant information related to a volunteer's potential criminal history. New relevant information can include being charged with, convicted of, or found guilty of a 'relevant offence' (11).

An additional risk assessment can be triggered in several ways, including:

- Notification from the registered person to [Access Canberra](#) in relation to a change in relevant information (Note: Under the WWVP scheme, a registered person is required to inform the Commissioner for Fair Trading and Access Canberra of any changes in relevant information to their suitability, within 10 days of this change occurring); and
- Receipt of information from other agencies (including of other States and Territories) which Access Canberra has links to. This includes policing agencies.

The relevant volunteer will be informed in writing if an additional risk assessment is conducted.

**During an additional risk assessment:** A volunteer's WWVP registration may still be valid but subject to an interim condition, or their WWVP registration may be suspended (in other words, not valid), during an additional risk assessment. The volunteer and their employer (12), if any, will be notified, in writing, if either of these occur.

If a volunteer's registration is suspended, they are not allowed to engage in a regulated activity under legislation. The volunteer must cease engaging in any regulated activities with children and/or vulnerable people. However, if the registration is not suspended, but is subject to an interim condition, any remaining activities your volunteer engages in must not contravene that condition. For example, they may not be allowed to drive a vehicle as part of their volunteering (see question 10, page 11 for more information on conditions and restrictions).

(10) For further information on additional risk assessments, [see sections 53 and 54 of the WWVP Act.](#)

(11) A 'relevant offence' does not have to be committed in the ACT and includes a sexual offence, an offence involving violence, dishonesty or fraud, amongst others. For further information on relevant offences, [please see section 11A of the WWVP Act.](#)

(12) An 'employer' includes an entity for whom a volunteer engages in a regulated activity ([see section 11 of the WWVP Act](#)), including a charitable organisation.

**Outcome of additional risk assessment:** Depending on whether the additional risk assessment finds that a volunteer poses no risk or an acceptable risk of harm to a vulnerable person, the volunteer's registration could remain unchanged, a registration condition may be added or removed, or an existing registration condition may be amended.

If the additional risk assessment finds that your volunteer poses an unacceptable risk of harm to a vulnerable person, the volunteer's WWVP registration will be cancelled.

**If there are delays in assessment:** If a registration has been suspended and 6 months has passed with no assessment outcome, your volunteer can apply to end the suspension. The Commissioner must determine whether to end the suspension.

### 13. Who can I contact for more information?

If you require additional support or guidance to understand the WWVP scheme, WWCC scheme or National Police Checks, members of VolunteeringACT can access pro bono legal advice through our legal partners. You can apply for pro bono legal assistance using the button below.

[Click here for VolunteeringACT's pro bono legal assistance form](#)

If you'd like to talk about your volunteer program, membership or any other advice and support feel free to reach out to us via [info@volunteeringact.org.au](mailto:info@volunteeringact.org.au).