

DISALLOWED PERSONS

This fact sheet is to help training providers understand and comply with the Disallowed Person requirements under the *Skills First* program.

BACKGROUND

The VET Funding Contract (the Contract) includes a defined category of people or organisations who you can't engage, employ, contract or otherwise deal with in connection with your Contract. This is called a Disallowed Person.

This is to minimise risks to the integrity of the *Skills First* program and to ensure that the Victorian Government is only subsidising high-quality training that meets ethical standards.

Who can be a 'Disallowed Person'?

A Disallowed Person can be either:

- an 'organisation' (including a body corporate, partnership, association, government or local government authority or agency)
- a 'natural person' (an individual).

Organisations

To be 'Disallowed', an organisation has to have been a registered training organisation (RTO) that was:

- subject to one of the events described in the definition of Disallowed Person; or
- responsible for them by either their acts or omissions.

This applies whether or not the RTO had a Contract with the Department of Education and Training (the Department).

Individuals

To be 'Disallowed', an individual must have been a Relevant Person at an RTO that was:

- subject to one of the events described in the definition of Disallowed Person; or
- responsible for them by either their acts or omissions).

A Relevant Person means someone at a sufficiently high level within an organisation to have exercised a material degree of control or influence over the management or direction of an organisation in relation to training delivery.¹

In particular, this means they would have a high level of control over any conduct that could give rise to a contract termination.

What events lead to becoming a Disallowed Person?

Both RTOs and Relevant Persons at RTOs can become a Disallowed Person if, since 1 January 2011, the RTO has been subject to either:

- a VET Funding Contract termination
- an 'Other VET Funding Arrangement Termination Event' (this means a termination of any equivalent funding arrangement in another state or territory, or removal of Commonwealth approval to offer VET Student Loans)

The termination must be for a performance reason under that contract or funding arrangement. For example, if a contract ends voluntarily, or a termination is applied to a group of RTOs for a government policy reason, this does not lead to them being a Disallowed Person.

¹ Relevant Person includes any Executive Officer or High Managerial Agent, consistent with how these are defined under the *Corporations Act 2001* (Cth) and the *National*

Vocational Education and Training Regulator Act 2011 (Cth) as persons with a high level of Control.

We consider Disallowed Persons when making decisions

We may enquire whether you employ or engage any Disallowed Persons in making our decisions, including whether to:

- award Contracts during a provider selection process
- not approve a Change in Control of a training provider
- approve your application to subcontract training and assessment.

These scenarios do not limit your ongoing obligation to not engage, employ, contract or otherwise deal with Disallowed Persons in connection with the Contract.

Exercise due diligence

You are expected to make a reasonable effort to do your own due diligence when employing staff and entering into contractual or other relationships with individuals or organisations. This includes making sure that anything they do on your behalf will still meet your obligations under the Contract.

To exercise due diligence about whether or not a person is Disallowed, you can access public information on funding terminations, and request that individuals provide details of their past employment history (including positions held) with RTOs.

Regardless of the capacity in which an individual is to be engaged, you must consider what role that person may have previously held at an RTO and if they were a Relevant Person, and if that RTO was subject to a contract termination for performance reasons.

FREQUENTLY ASKED QUESTIONS

Does the Department maintain a list of Disallowed Persons?

No, we do not hold a list of Disallowed Persons. It's your responsibility as a training provider to do due diligence before engaging individuals or organisations.

How do I do due diligence?

You should use all the information that is publicly available to you.

We publish a [list of training providers that have had a Contract terminated](#) since mid-2015 for serious non-compliance associated with the delivery of Training Services.

The Commonwealth Department of Education, Skills, and Employment publishes a [list of training providers no longer approved to offer VET Student Loans](#). This list may include training providers that have ceased to deliver approved courses.

You should also research the websites of government departments or agencies that fund VET in other jurisdictions.

While this published information is a useful starting point, it won't necessarily provide the full picture. Not all relevant information will be available to confirm that a person is definitely not a Disallowed Person. For example, it may be difficult to ascertain:

- funding arrangement terminations that have occurred in all jurisdictions since 1 January 2011
- the reasons for a termination
- the identities of all Relevant Persons of a training provider that has been the subject of a termination.

For this reason, you should also ask any individual or organisation you are thinking of engaging to provide pertinent details of their history with, or as, an RTO.

I'm recruiting for a trainer. One of the applicants previously worked at an organisation that had a Contract terminated. Are they a Disallowed Person?

You will need to gather information on two points to answer this question. Firstly, was the Contract terminated for reasons of performance?

If the answer is yes, the second point you need to establish is whether the applicant was a Relevant Person at that organisation. This will include asking them to provide the necessary information about their employment history, including positions held, and when they were held relative to the time the registration was cancelled.

Even though you are recruiting for a trainer, the relevant issue is what position the person previously held at the other training provider (not the role for which you are now proposing to recruit them).

FURTHER INFORMATION

Please submit an enquiry via SVTS.