

# DISALLOWED PERSONS

This fact sheet is to help training providers understand and comply with the Disallowed Person requirements in the VET Funding Contract (the Contract)<sup>1</sup>.

## BACKGROUND

The Contract includes a defined category of people or organisations who you can't engage, employ, contract or otherwise deal with. 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 training if it is high quality and meets ethical standards.

## Who can be a 'Disallowed Person'?

A Disallowed Person can be an 'organisation' (including a body corporate, partnership, association, governmental or local governmental authority or agency) or 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 actions described in the definition of Disallowed Person. 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 actions described in the definition of Disallowed Person.

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.<sup>2</sup>

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

## What actions 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 any of the following actions for 'performance reasons':

- 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)
- registration cancellation, revocation or suspension (whether by the VRQA or ASQA)
- restrictions imposed on registration (whether by the VRQA or ASQA).

## What are 'performance reasons'?

Performance reasons means where a termination or regulatory action taken indicates that the Department wouldn't be able to rely on the RTO or Relevant Person to provide training services to the standards expected under the Contract.

The definition is not intended to unfairly exclude anyone from the government-subsidised training market. If an action is taken that is not related to the RTO's performance.

For example, if a contract or RTO registration ends voluntarily, or an action is applied to a group of RTOs for a government policy reason, this does not lead to them being a Disallowed Person.

<sup>1</sup> 2018-19 VET Funding Contract (extended to 31 December 2020)

<sup>2</sup> 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.

### The Department considers Disallowed Persons in certain decisions

The Department may enquire whether a training provider employs or engages any Disallowed Persons in making certain decisions, including whether to:

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

For example, training providers had to declare to the Department that they did not employ or deal with Disallowed Persons as part of the application process for a 2018-19 VET Funding Contract.

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

### 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 regulatory actions and 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 or regulatory action for performance reasons.

## FREQUENTLY ASKED QUESTIONS

### Does the Department maintain a list of Disallowed Persons?

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

### If the Department doesn't maintain a list of Disallowed Persons, how can I do due diligence?

There is a range of publically available information that can be useful, for example:

- The Australian Skills and Quality Authority (ASQA) publishes regulatory decisions (registration cancellations, suspensions and conditions) on its website.

#### [ASQA decisions](#)

- The Department publishes a list of training providers that have had a VET Funding Contract terminated since mid-2015 for serious non-compliance associated with the delivery of Training Services.

#### [Department enforcement decisions](#)

- The Victorian Registration and Qualifications Authority (VRQA) publishes a list of RTO cancellations and suspensions.

#### [VRQA cancellations and suspensions](#)

*\*Note: this list includes organisations that have had their registration cancelled for reasons other than performance, including voluntary cancellations.*

- The Commonwealth Department of Employment, Skills, Small and Family Business publishes a list of training providers no longer approved to offer VET Student Loans.

#### [VET Student Loans approvals](#)

*\*Note: This may include training providers that have ceased to deliver approved courses.*

You may also find the websites of government departments or agencies that fund VET in other jurisdictions useful.

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 any termination or regulatory action
- the identities of all Relevant Persons of a training provider that has been the subject of a termination or regulatory action).

Given the broad range of termination and regulatory actions relevant to who may be a Disallowed Person, it is necessary to not only refer to available sources of information, but also to 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 its registration cancelled. Are they a Disallowed Person?**

You will need to gather information on two points to answer this question. Firstly, was the organisation's registration cancelled 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).

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## FOR FURTHER INFORMATION

Submit an enquiry via SVTS