

Disallowed Persons

This fact sheet provides information to assist training providers understand and comply with the Disallowed Person requirements in the 2018-19 VET Funding Contract

BACKGROUND

The 2018-19 VET Funding Contract restricts the types of person a contracted training provider can engage, employ, contract or otherwise deal with, in order to minimise risks to the integrity of the *Skills First* program and to facilitate the Victorian Government subsidising training only if it is delivered to high quality and ethical standards.

The definition of a Disallowed Person exists to make it clear when a person or entity cannot be dealt with by a contracted training provider due to another provider having a VET funding contract terminated or having a regulatory decision or other restriction placed on it for **performance reasons**.

WHAT IS MEANT BY PERFORMANCE REASONS?

The performance element of the definition of Disallowed Persons is intended to identify training providers and individuals whose past performance suggests that they may not provide Training Services to the standards expected under the VET Funding Contract. For example, they have previously had a VET Funding Contract terminated, or been subject to an Other VET Funding Arrangement Termination Event, because they failed to deliver training to the required standard or discharge their related contractual or legislative obligations.

This is intended to ensure that the requirement not to deal with Disallowed Persons addresses risks to the ethical and quality standards of training delivery. The focus on performance means that training providers that have had, for example, a contract or registration cancelled for other reasons (including voluntarily) are not unfairly excluded from the subsidised training market.

WHAT IS MEANT BY 'DISALLOWED PERSON'?

The term 'Disallowed Person' applies to both registered training organisations and Relevant Persons at registered training organisations where the registered training organisation has, since 1 January 2011, been subject to any of the following actions for performance reasons:

- A VET Funding Contract termination
- Termination of an 'Other VET Funding Arrangement'
- Registration cancellation, revocation or suspension (whether by the VRQA or ASQA)
- Restrictions imposed on registration (whether by the VRQA or ASQA)

The inclusion of the category of 'Other VET Funding Arrangement Termination Events' means that the events giving rise to disallowance extend to not only a termination of a VET Funding Contract in Victoria, but also the termination of an equivalent contract or arrangement to provide government subsidised vocational education and training in any other Australian jurisdiction, or termination of a Commonwealth approval to offer VET Student Loans (or any approval under predecessor schemes), each for performance reasons.

The earliest date of an event that can cause someone to be a Disallowed Person is **1 January 2011** because this is when the contestable training model was fully implemented.

A Disallowed Person can be an individual (natural person) or an 'entity' (including a body corporate, partnership, association, governmental or local governmental authority or agency).

For an individual to be considered a Disallowed Person, the individual must have been a **Relevant Person** at an entity that has been subject to one of the actions described in the definition of Disallowed Person.

WHAT IS MEANT BY 'RELEVANT PERSON'?

The definition of a 'Relevant Person' exists to set the parameters for who is considered to have sufficient control or influence over a training provider and, in particular, conduct of that provider that could give rise to a termination or regulatory action for performance reasons.

A Relevant Person means an individual who has been an Executive Officer or High Managerial Agent, or at a sufficiently high level within an organisation to have exercised a material degree of control or influence over the management or direction of the organisation in relation to training delivery.

These tests are consistent with tests for a person's level of control of an organisation under the *Corporations Act 2001* (Cth) and the *National Vocational Education and Training Regulator Act 2011* (Cth).

THE DEPARTMENT CONSIDERS DISALLOWED PERSONS IN CERTAIN DECISIONS

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

- award Contracts during a Provider Selection Process
- approve a notified Change in Control of a training provider
- approve a training provider's application to subcontract training and assessment

For example, the Department required training providers to declare 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 training providers' own ongoing obligation under the VET Funding Contract not to engage, employ, contract or otherwise deal with Disallowed Persons.

DUE DILIGENCE BY TRAINING PROVIDERS IS REQUIRED

Training providers are expected to make a reasonable effort to undertake their own due diligence when employing staff, or entering into contractual or other relationships with other individuals or organisations, to ensure they are meeting their obligations under the 2018-19 VET Funding Contract.

It will be necessary to access publically available information on regulatory actions and funding terminations, and to request that individuals provide details of their employment history (including positions held) with registered training organisations.

Regardless of the capacity in which a person is to be engaged, consideration must be given to what role that person may have previously held in any other registered training organisation that has been subject to a termination or regulatory action for performance reasons.

QUESTIONS AND ANSWERS

Q: Does the Department maintain a list of Disallowed Persons?

A: No, the Department does not hold a list of training providers or individuals that are Disallowed Persons. It is the responsibility of training providers to undertake due diligence prior to engaging individuals or organisations.

Q: If the Department doesn't maintain a list of Disallowed Persons, how can I conduct due diligence?

A: There is a range of publically available information that can be useful in undertaking due diligence, for example:

- The Australian Skills and Quality Authority (ASQA) publishes regulatory decisions (registration cancellations, suspensions and conditions) on its website (<https://www.asqa.gov.au/about/decisions/decisions-table>)
- The Department publishes a list of RTOs that have had a VET Funding Contract terminated since mid-2015 for serious non-compliance associated with the delivery of Training Services (<http://www.education.vic.gov.au/training/providers/rto/Pages/enforcement.aspx>)
- The Victorian Registration and Qualifications Authority (VRQA) publishes a list of RTO cancellations and suspensions (<http://www.vrqa.vic.gov.au/VET/Pages/list-of-rto-cancellations-and-suspensions.aspx>) however it is important to note that this list includes many organisations that have had their registration cancelled for reasons other than performance, including voluntary cancellations.
- The Australian Government Department of Education and Training publishes a list of training providers no longer approved to offer VET Student Loans (<https://docs.education.gov.au/node/47736>). This may include training providers that have ceased to deliver approved courses.

Other sources, such as the websites of VET funders in other relevant jurisdictions, may also be useful.

While this published information provides a useful starting point, it will not 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, and 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 considering engaging to provide pertinent details of their history with, or as, a registered training organisation.

Q: I am recruiting to a trainer position in my organisation. One of the applicants previously worked at an organisation that had its registration cancelled – is that person a Disallowed Person?

A: 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 potential recruit was a Relevant Person at that organisation. This will include asking the person to provide the necessary information about their employment history, including positions held and times at which they were held, relative to the cancellation of the organisation's registration.

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