

NATIONAL PROBITY & SUITABILITY BACKGROUND CHECKING PROCEDURE



Attachment 2.

Life Without Barriers is committed to the safety and protection of clients in our care. If, following the outcome suitability and probity checking further background information is required, Life Without Barriers will gather additional information in a fair and consistent manner, in accordance with this procedure.

Background

- Life Without Barriers' policy and procedure requires that all employees, contractors, volunteers, foster carers and Household members undergo a range of background and probity checking procedures relevant to each state and territory.
- If a flagged check is returned from either a Criminal Record Check or a Working With Children Check, further investigation is required to determine whether the applicant remains suitable for the position.
- An adverse finding of an applicant's criminal history record or working with children check, does not automatically exclude the individual from engagement or continued engagement with Life Without Barriers; however, additional information is required to determine if there are issues that affect the applicant's suitability. The purpose of a background check is to gather sufficient information to allow the agency to make an informed decision about the suitability of the applicant for engagement.
- In some States, legislation and licensing may preclude an individual from commencing or continued engagement with LWB if a negative notice or particular charge is received. In this case immediate termination or withdrawal from the recruitment process may be required.
- Life Without Barriers will maintain the confidentiality of any information received, including limiting access to such records to authorised personnel only.

Background Investigation Guideline

- A background investigation is required when a flag is received from a Criminal History Check or a Working with Children Check indicates an elevated risk status. An investigation is also required where LWB is notified or it comes to the attention of LWB that an individual has had a potential change to their probity status, including where a charge or conviction has occurred during their engagement with Life Without Barriers.
- The purpose of the Background Investigation is to gather, assess and report sufficient information for the Decision Maker to allow them to make an informed decision in relation to the approval/disapproval of an applicant, based on the principles of effective risk management.
- The process will involve an interview which may be over the phone with the applicant to seek information regarding the charges in question. A risk assessment will be undertaken. The relevant Manager will then consider this information and make a recommendation to the Decision Maker who will then make a decision about the applicant's application.
- An internal investigator will be appointed to undertake the background investigation. This person can be sourced from HR or Management.

1. Applicant Interview

- The investigator will interview the applicant in relation to the offences that have resulted in a flagged Criminal History check or the elevated risk in the Working with Children Check. The interview process similarly applies where LWB has become aware of a potential change in an individual's probity status, including where a charge or conviction has occurred during an individual's engagement with LWB.

- State HR or the appointed investigator will obtain consent from the applicant (if this has not previously been provided) to:
 - Make contact with the applicant; advise them that one of their checks have been flagged and that a “background investigation” needs to be conducted.
 - Collect records, conduct interviews and obtain information from agreed third parties relevant to the investigation.
- If the applicant withdraws from the process at any time a statement from the applicant should be requested. HR should notify the relevant Operations Manager. If the applicant would like to resume the recruitment at a point in the future the flagged file will be reopened.
- If the interview is conducted face-to-face, the applicant may request a support person attend as an observer.
- The investigator will:
 - Interview the applicant and seek to obtain information regarding the charges and convictions that may be obtained in the Criminal Record.
 - Seek and obtain any and all available records pertaining to the applicant’s criminal history (or to any incident or report that is associated with the adverse finding); and
 - Follow-up with identified agencies or appropriate third parties (e.g., previous employers) to obtain additional information or perspective on the applicant’s conduct and/or any particular event or incident.
- If the interview is conducted with an existing employee, the relevant Operations Manager may also participate in the interview and the same process above should be applied.
- If the applicant is deemed ‘High Risk’, the applicant will need to provide at least two written references in relation to character and also provide court documents.
- Following the interview stage the investigation will seek to confirm the information provided by the applicant with the relevant Criminal History checking agency.
- Based on this information provided an assessment of risk will be undertaken.

2. Manager Assessment and Recommendation

- Following the interview, the relevant Operations manager will consider the information provided by the applicant and will take into consideration the following:
 - The nature of the position in which the person would be engaged;
 - The type of contact that the person has with clients;
 - The level of access the person has to confidential and sensitive information;
 - The degree of supervision of the position;
 - The nature of the event from which the report arose;
 - The period of time since the relevant offences were committed; and
- Any additional information the panel considers relevant in developing its recommendation. The assessment of risk and suitability will be evidence-based, where evidence exists. In all situations risk assessment decisions will be ethical, defensible and timely. The assessment of suitability and risk will be transparent, consistent and documented. The privacy of people will be strictly protected, and sensitive information managed and held accordingly.
- The Operations Manager will compare and contrast the information provided by the applicant with the records and other information/perspectives collected to test the validity of the applicant’s recollection and the documentation offered.
- Following this, the Area Operations Manager will develop a recommendation for final signoff by the State Director. The recommendation is to include the rationale behind the recommendation in terms of perceived risk to clients, staff or the organisation in general.

3. Decision Making

- The State Director will assess the suitability of the applicant for engagement by Life Without Barriers, assessing the risk to clients and the risk to LWB.
- In making a final decision as to the suitability of an applicant for employment, the State Director will:
 - Review documents, records and other factual evidence available;
 - Consider the explanations and opinions gathered;
 - Establish the potential risks and likely degrees of risk; and
 - Undertake an ethical and (as far as possible) objective evaluation of the situation; and
- Decision making on an applicant will be done on a case-by-case approach, consideration should be given to the following issues:
 - The nature of the position and the relevance of the charges to their potential role in the organisation;
 - The type and extent of contact that the position requires with children, young people and vulnerable persons;
 - The level of access to confidential and sensitive information that the position entails;
 - The degree of supervision of the position;
 - The nature of the finding (or event) from which the investigation arose;
 - The elements of risk associated with the applicant's history;
 - The number and pattern of relevant offences, and period of time since they were committed; and
 - The likelihood and consequence of any risk occurring.
- Prior to making a final determination of suitability (or risk associated with engagement, the assessor will (in conjunction with the convenor and/or State HR Manager/Officer) consider whether a minimisation or reduction of risk level is possible by setting conditions or restrictions on the applicant's engagement. Where possible, these will be identified and documented to inform the decision about suitability.
- When a final or overall level of risk has been determined, the assessor will make a determination about the applicant's suitability, bearing in mind that:
 - Reportable offenders are prohibited by law from working with children, and Life Without Barriers extends this to exclusion from prescribed roles;
 - Those found to be in the Unacceptable Risk category will be excluded;
 - Life Without Barriers' default position in respect of an Very High level of risk is to exclude the applicant;
 - A compelling rationale, and strong risk minimisation measures must be put in place prior to the engagement of an applicant with a High or Very High level of risk.
- Following the evaluation of risk and suitability, the assessor will establish which of the following recommendations (or decisions) is most appropriate:
 - The applicant is suitable for engagement in the position, without any restriction or conditions;
 - The applicant is suitable for engagement subject to restrictions or conditions (the investigator should describe what those conditions should be);
 - The applicant is not suitable for engagement in the position, but may be suitable for an alternate position (with or without conditions, as above); or
 - The applicant is not suitable for engagement by Life Without Barriers.

4. Advice to Applicants

- State HR, in consultation with the Operations Manager will, arrange for contact to be made with to the applicant to advise:
 - That the suitability check has been undertaken and completed;
 - The outcome of the check and the grounds for the decision;
 - The implication of the decision (i.e. whether the applicant is no longer eligible or is still under consideration for engagement);
 - If applicable, that the right of appeals exists by writing to the CEO or State Director.

5. Existing Employees, Contractors, Volunteers and Carers

- In accordance with the National Policy current service participants including employees, carers, volunteers and contractors must maintain their suitability and probity clearance and in accordance with state legislation and state procedures may also have to participate in ongoing probity and suitability checks.
- Where a flag, negative result or information is received which relates to a potential change in probity status, Life Without Barriers will follow the same procedure as outlined above.
- In some states if a negative notice is received LWB is unable to continue to employ/engage an employee/contractor. Refer to individual state procedures.

6. Right of Appeal to an Adverse Decision

- An applicant has a right to appeal an adverse decision by writing to the State Director or CEO. The CEO may delegate an appropriate employee of LWB to undertake a review of the matter. The review should be conducted by a manager more senior than the original decision-maker or an equivalent level manager from a different business unit or the Director of Human Resources.
- LWB reserves the right to make a decision regarding approval based on its assessment of the potential best interests of Life Without Barriers service participants. In relation to determining the applicant's suitability, the Chief Executive Officer's decision is final, unless the applicant has rights of appeal under legislation.
- If the rejected applicant was being assessed to become an authorised foster carer, they have the right to appeal the decision to the Administrative Decisions Tribunal.
- Applicants will be advised in writing of the outcome of the appeal by the State Human Resource Manager.

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