



Criminal Record Check Policy

Objective

A criminal record check is a compulsory part of the initial engagement and continuation of engagement process with the Department.

Scope

An applicant should not be engaged by the Department without a completed national criminal record check conducted by the DCP Screening Unit, except in certain situations that are defined in the policy.

New departmental employees can receive a 'recommended' letter that is conditional on all the required record checks (such as criminal, WWC, etc) being completed but they cannot receive an 'offer' of employment letter until the employee's National Criminal Record Check and (if applicable) Client and Child Protection Check have been completed. Applicants who require an International Check can, however, receive an offer of employment letter at the completion of their National Criminal Record Check and (if applicable) Client and Child Protection Check with the offer being conditional on the completion of their International Check, providing the relevant Director has given approval (Please refer to International Check section below for further details).

Applicants (18 years of age and over) who will have contact with clients and/or children in the CEO's care or access to client and/or children's confidential records and who have not previously lived in Australia and/or have resided in Australia for less than 5 years are required to complete an international record check.

An applicant's criminal record will be assessed in relation to the role the person has applied for or will be engaged to perform (i.e. the inherent requirements of the job) and the relationship between these. In determining an applicant's suitability, the overriding consideration will always be given to the safety and well being of the Department's clients, employees and resources. Criminal record check information will not be used for any purpose other than to determine suitability for engagement with the Department.

Policy Statement

The policy will ensure that for people undergoing a criminal record check that:

- processes are culturally sensitive;

- each case is considered on its merits and decision making processes are fair, consistent, unbiased; transparent; neither arbitrary or capricious, and free from nepotism, patronage or personal favouritism;
- compliance with all relevant legislation and government standards occurs;
- any action taken will be documented, transparent, legally defensible, and capable of review; and
- all criminal record documentation will be kept in the strictest confidence and assessed only by authorised personnel.

In determining an applicant's suitability, the overriding consideration will always be given to the safety and well being of the Department's clients, employees and resources.

A disclosable criminal record will not necessarily preclude engagement of an applicant or result in any action being taken in relation to an employee. In making a determination, the Director General, or their nominee, will consider the offence history within an overall assessment, having regards to:

- verification that the criminal conviction relates to the applicant;
- the national or overseas record is acknowledged as accurate;
- the nature and severity of the offence[s];
- the relevance of the offence[s] to the inherent requirements of the position;
- the length of time since the offence[s] took place;
- whether there is an extended history of criminal offence[s] or accumulation of individual minor offences that indicates a persistent pattern of behaviour;
- any mitigating or extenuating circumstances that might be revealed in relation to the offence[s] committed;
- whether the offence[s] was committed as a juvenile or an adult;
- the general character displayed since the offence[s] was committed eg. the record of employment and favourable reports by past employers or the employee's manager;
- whether the offence[s] has been subsequently decriminalised or there has been a shift in community standards; and
- the penalty or sentence imposed.

Offences that may be considered unacceptable and normally disqualify an applicant:

Whilst all offence[s] will be assessed in regard to these considerations, offences, charges pending, or outstanding warrants that may be considered unacceptable and normally disqualify an applicant from engagement include:

- those that constitute an offence and/or automatic bar for child related work under the *Working With Children (Criminal Record Checking) Act 2004*;
- offences involving personal and/or financial gain committed where the person was in a position of responsibility;

- sexual offences;
- all offences where the victim was under 18 years of age;
- offences of a violent nature;
- offences involving the use of firearms or other weapons;
- serious drug offences (especially dealing/trafficking); or
- any other offence(s) that may impact on the Department's duty of care towards its clients.

An applicant assessed as having an adverse criminal record which leads to a decision not to engage them (or raises concerns about their continued employment) will:

- be fully informed of the decision;
- be given an opportunity to respond; and
- have a right to seek a formal review of the decision according to the principles of natural justice and procedural fairness.

A Working with Children Check is a mandatory requirement for some roles in the Department which involve child related work. It is essential that anyone who is required to have a Working with Children card applies for the card prior to commencing child-related work for the Department, with the exception of urgent/emergency carer placements as identified in this policy.

Specific situations/conditions regarding criminal record check:

Exemptions for Contract for Services

Where an applicant is to be engaged on a contract for service capacity, they may be exempted from a criminal record check subject to all of the following:

- the contractor not having access to client and/or case related information;
- the contractor not being engaged to work in *any* capacity which has contact with or a duty of care to children and/or clients;
- the period of engagement is for less than 8 weeks; and
- the contractor signing a statutory declaration that they do not have a criminal record, or charges pending before any court.

The delegated work unit contract manager/authorised officer must verify that all the above criteria are met and maintain documentation of this in contract files.

If at any stage of a contract, the specifications of the contract change to require the contractor to have access to client and/or case related information or work in *any* capacity which has contact with children and/or clients, a criminal record check must be instigated. A criminal record check must be completed prior to the renewal of any subsequent contract arrangements.

Where there is any other change to the original contractual arrangement, officers must use their professional judgement as to whether a criminal record check is required.

Exemptions for Contract of Service

In an unexpected situation (e.g. sickness; unplanned absence) which requires the immediate employment of an applicant, the applicant may be engaged pending the outcome of a criminal record check, with written Executive Director Approval in the below situations:

- If they are not being engaged to work in any capacity which has contact with children and/or clients or have access to client and/ or case related information;
- If the applicant is being engaged in a role that will have contact with children and/or clients that until they have satisfactory check their Director guarantees in writing to the Executive Director that they will not have unsupervised access to clients and/or children or children/clients related information.
- If the applicant is working in a country office and will have unsupervised access to children and/or clients and there are exceptional circumstances to why they should be engaged (eg may result in there being no staff working in the office)

In these situations, the applicant must be engaged following the below:

- the applicant is engaged on a fixed term period of employment for up to 8 weeks;
- signs a statutory declaration and a Record Check Consent Form (Form 395) is completed and forwarded to the Screening Unit as soon as practicable;
- employed conditionally, pending satisfactory check.

Exemptions for Public Sector Agency Secondments

An applicant may be engaged on a secondment from another Public Sector Agency with Executive Director Approval, pending the outcome of a criminal record check, subject to all of the following:

- not having access to client and/or case related information;
- is not being engaged to work in any capacity which has contact with children and/or clients;
- signs a statutory declaration and a Record Check Consent Form (Form 395) is completed and forwarded to the Screening Unit as soon as practicable;
- seconded conditionally, pending satisfactory check which should be obtained within 8 weeks from the secondment commencement date.

Exemptions for Fee for Services

An organisation engaged by the Department where its staff will have unsupervised access to the clients/children does not need to complete the criminal record check process (eg, organised camps, baby sitting organisation, medical specialists) as long as the organisation has:

- their own structured recruitment process
- a criminal record check process (e.g. obtained from a WA Police Station)
- all applicable staff and volunteers have a WWC

Note: this does not include an organisation providing placement service.

Individuals who are engaged to work with clients/children but only have supervised access to children and have a WWC card are not required to have a Department criminal record check.

Staff engaging fee for service arrangements need to verify the above criteria are met and maintain documentation on their files.

Exemptions for Foster Carers

In emergency circumstances, placement of children or young people with foster carers may be required to commence immediately. The interim authority for this to occur resides with the District Director and is conditional upon:

- the Record Check Consent Form (Form 395) being signed by the applicant and forwarded to the Screening Unit within 24 hours of the placement commencing;
- the District notifying the Screening Unit that an Emergency Placement has occurred (so that checks can be prioritised and commenced immediately); and
- the carer and adult household members having completed Statutory Declarations attesting to the fact that he/she does not have a departmental or criminal record which indicates he/she is a risk to children e.g. violent or sexual offences or behaviour recorded against them.

Exceptional Circumstances (emergency/disaster situations)

In exceptional circumstances (e.g. disaster situations such as Bali bombings, Moora flooding) the Director General may approve the immediate temporary engagement (for up to 10 working days only) of an applicant pending a national criminal record check. Engagements would be conditional upon the Record Check Consent Form (Form 395) being signed by the applicant and received by the Department and the following statement included in the letter of offer "the continuation of employment is conditional upon a satisfactory national and international criminal record check confirmation being received."

The applicant is required to accept the letter of offer in writing prior to commencing duty.

Change in work position

In cases where a person is to be contracted, transferred, deployed, redeployed, promoted, relocated to or is acting/relieving in a position that has different requirements to their current or previous position (e.g. moving from a non-client contact position to a client contact position or one that has access

to confidential client records) another criminal record check may need to be conducted prior to the person taking up the position.

Criminal offences during the period of employment /engagement

A person already employed or engaged by the Department who is charged with any criminal offence and/or findings of guilt with or without conviction must notify the Director Business Support and Coordination by close of business the next working day.

Under section 28 of the Corruption and *Crime Commission Act* 2003, the Department must notify the CCC if an employee is suspected of misconduct as soon as is practicable.

Under the *Working With Children (Criminal Record Checking) Act* 2004, the Department is required to report certain charges or convictions to the Working with Children Screening Unit.

Responsibilities

Completing a National Criminal Record Check

Recommended applicants are required to sign the Record Check Consent Form (Form 395), which is to be submitted to the Screening Unit. The Director Business Support and Coordination will ensure all requests are processed with the minimum of delay and will issue an advice letter confirming the check has been completed.

Criminal Record Checks (including District Director/Executive Director Approvals) must be completed within 90 days of the Record Check Consent Form being received by the Screening Unit.

The Screening Unit will provide a monthly report to District Directors which outlines criminal record checks that have been commenced but are yet to be finalised (including reasons for any delays) to ensure that checks are given the required level of priority and completed within the 90 day timeframe.

Completing an International Check

Where an international check is required (i.e. an applicant (18 years of age and over) who will have contact with clients and/ or children in the CEO's care or access to client and/or children's confidential records and who has not previously resided in Australia and or has resided in Australia for less than 5 years), the applicant can be employed pending the outcome of their international check with the relevant District Directors approval (only applicable if the applicant is being engaged as an employee, Carers can not commence prior to International check being finalised).

The following statement must be included in the letter of offer:

“The continuation of employment is conditional upon a satisfactory international criminal record check confirmation being received.

In line with the International Criminal Record Check Condition, you are therefore lawfully directed to supply evidence of;

- *Appointment date for fingerprinting to be undertaken (where applicable); or*
- *Copy of letter/email/application form sent to applicable country; or*
- *Copy of clearance from relevant country for applicable periods(issued no longer than 6 months prior to the applicant leaving the country); or*
- *Copy of Australian permanent residency visa; or*
- *Copy of Australian Citizenship certificate;*
- *Refugee Visa*

by (6 weeks from contract date).

Further to the above requirements you are also required to provide a copy of any international police certificate/clearance provided to you, to the Screening Unit within 2 weeks of receipt by you but no later than 6 months from date of signing this contract, unless otherwise agreed with the employer.

Failure to comply with the condition(s) of your employment and or failure to comply with the above lawful direction may result in your employment being terminated”.

The applicant is required to accept the letter of offer in writing prior to commencing duty.

An advice letter will be issued by the Screening Unit following finalisation of the international check.

Obtaining the required international check information

To obtain the required international check information, the authorised officer sights the applicant's passport and then:

- If the applicant has a permanent residency visa they will have gone through a criminal record check with the Department of Immigration and Citizenship. As such, their Permanent Residency Visa will be accepted as their international clearance.
- People who enter the country on a temporary visa do not go through the same process with the Department of Immigration and Citizenship so they are required to get a criminal record check from the country they lived in (Any associated costs are to be borne by the applicant)
- In cases where the applicant **cannot** obtain a criminal record check from the country in which they resided a character reference from an employer/person of stature they knew for over 12 months in the country they lived that refers to the referees knowledge of the applicant's character and criminal history. Applicants are also asked to sign a statutory declaration that they do not have a criminal history. If a character reference is provided in place of a criminal record check,

proof must also be provided that demonstrates that attempts have been made by the applicant to obtain a criminal record check and the reasons why the attempts were not successful.

Waiver of International check – by exception, if it becomes evident that it is not possible for an international check to be obtained (employees and volunteers only), the Director Business Support and Coordination can endorse a request for a waiver from the relevant manager on the condition that:

- a Statutory Declaration stating that they do not have a criminal record or changes pending before any court is signed;
- there is sufficient evidence that the international check information cannot be obtained; and
- there is alternative supportive evidence that convictions of a serious nature have not been incurred overseas

Assessment of an adverse criminal record check

- Where the Screening Unit has been advised that a match of a name and date of birth has been made in a particular police jurisdiction, full details, including spent convictions (where they are legally accessible), will be requested. The Screening Unit will undertake an assessment of the information and inform the authorised officer of the criminal record assessment outcome.
- A final decision to reject an applicant must not be made until the applicant has been given adequate opportunity to discuss the record.
- If the decision is taken *not to engage* a recommended applicant (who did not apply to be an employee of the Department) because of their criminal record, the authorised officer will formally advise the applicant accordingly. A note of the decision and the reason(s) for it is to be placed on a confidential relevant file.
- If the decision is taken *not to employ* a recommended applicant (who applied to be an employee of the Department because of their criminal record, the authorised officer needs to formally request this from the relevant Executive Director and then verbally and formally (in writing using a standard letter) advise the applicant accordingly. The Executive Director approval of the decision and reasons and the letter to the applicant is to be placed on a confidential relevant file within the Screening Unit. Refer to Administration Manual 1.2.06 Formal Review Procedures Policy for the templates.
- If the decision is made *to recommend the engagement* of an applicant with an adverse criminal check Executive Director endorsement is required. The decision must be documented and all related criminal record check information must be forwarded to the Screening Unit for secure and confidential filing.

Refer to the Guidance Notes for more information.

Currency of checks

Criminal record checks are regarded as current for the period which the applicant is continually engaged by the Department (or Agency). If there is a break in employment/service of more than 12 months a renewal check is required before the person is re-engaged by the Department.

Applicants deemed suitable for appointment under a pool recruitment process, will undergo a criminal record check to be included in the pool. Where the applicant is not appointed to a position within 6 months, the criminal record check will be regarded as current subject to the applicant signing a Statutory Declaration that they have no criminal convictions of a serious nature, or charges' pending before any court, in the period since the check was undertaken.

Working with Children

The *Working with Children (Criminal Record Checking) Act 2004* (WWC Act) came into effect on 1 January 2006. The purpose of a Working with Children check is to determine whether someone has a criminal history that would prevent them from undertaking child related work as specified in the legislation.

The Working with Children check is separate to the Department criminal record check. It is mandatory that anyone engaged in child related work as per the WWC Act applies for the WWC card before they commence with the Department.

New employees: All new employees commencing from 1 January 2007 will be required to pay for their own WWC check, and will not be reimbursed by the Department.

Current employees: DCP will reimburse current employees obliged to obtain a WWC check.

Eligibility for reimbursement: Employees seeking reimbursement must provide proof of payment (receipt from Australia Post) and submit a claim through their relevant work unit.

WWC renewals: DCP will reimburse all employees' WWC check renewals.

DCP Business Managers/Administrative Officers - please refer to Working with Children Card for Departmental Carers and DCP persons engaged to work with children for further information regarding WWC check procedures.

Effective Date
22 February 2013