



Family &
Community
Services

Probity in Employment Policy for FACS funded disability service providers

Summary: This policy is designed to promote a strong culture of probity in employment of persons (paid or unpaid) involved in delivering services and supports to people with disability.

This policy is also taken to be guidelines issued by the Secretary under section 41 of the *Disability Inclusion Act 2014*.



Document approval

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1. Purpose and scope of policy

1.1 Purpose

This policy promotes a strong culture of probity in the employment of persons involved in delivering services and supports to people with disability. It builds on work in NSW over previous years to improve arrangements for probity checking, and better supporting service providers to ensure the quality and safety of disability services.

There is community expectation that organisations supporting vulnerable people will have in place robust procedures to ensure that only suitable people are engaged to deliver services.

Under the *Disability Inclusion Act 2014* (NSW) (DIA), the major obligations for FACS funded disability service providers regarding probity in employment include:

- To ensure that appropriate probity checking is carried out on individuals involved in the provision of disability supports and services;
- A prohibition on the employment or engagement of individuals who have been convicted of certain offences; and
- A requirement to repeat criminal records checks every four years.

The operation of the DIA is supported by the Disability Inclusion Regulation 2014 (the Regulation), which also contains guidance relating to the probity requirements.

The requirement for effective employment practices, including probity, is included in the NSW Disability Service Standards in Standard 8 'Service Management'.

1.2 What's new?

This policy replaces the *Probity in Employment Policy for ADHC funded services* (May 2012), to reflect the commencement of the DIA, and to provide additional guidance to service providers on probity checking.

The following table sets out some of the key changes introduced in this policy.

| | Previous policy | New policy | Refer to section |
|-------------------------------|---|---|-------------------------|
| Who must be checked | All paid employees and certain members of corporate governing bodies (with tailored probity checking for some volunteers) | “Relevant workers” and “relevant board members”, including volunteers and subcontractors | 1.5 |
| What checks must include | Full national criminal record checks and effective referee checks | A national criminal record check and at least one referee check | 2.2 and 2.3 |
| How often checks must occur | Not specified | At least once every four years | 1.4 |
| Prohibited employees | Not specified | Service providers must not employ certain persons that have been convicted of a prescribed offence or refuse to undertake a criminal record check | 2.5 |
| Offences outside of Australia | Not specified | Statutory declaration required | 2.4 |
| Record keeping | Document decisions and store information | Service providers must keep records to demonstrate that checks have been completed and safely store information | 2.3.4 |

In addition, this policy provides additional guidance and information for service providers on a range of matters, including:

- how to conduct and read criminal records checks;
- how to treat non-prohibited convictions when making employment decisions;
- the development of appropriate policies and procedures;
- relationship with other probity employment regimes; and
- a range of tools and resources to support the implementation of this policy.

1.3 Scope

In this policy the terms “eligible entities” and “disability service providers” are used to describe an entity or service that has a funding agreement with FACS under the DIA, including those receiving funding through the Community Care Supports Program (CCSP).

Compliance with the probity requirements is a condition of the FACS funding agreement. This means that non-compliance with the probity requirements can constitute a breach of the funding agreement, and FACS can take management action against the entity or service, which ultimately could lead to a suspension or termination of funding.

1.4 Overview of the legislation

The DIA updates probity checking requirements and clarifies the obligations of service providers to ensure that any person working directly with people with disability is “a suitable person to be involved in the provision of supports and services to persons in the target group.”¹

“Persons in the target group” are people with disability who are eligible to receive disability support services or funding from FACS.²

The DIA specifies that service providers are required to undertake certain checks when employing or appointing a relevant worker or a relevant board member to work with people with disability. These include:

- At least one referee check of the person prior to engaging the person;³ and
- A criminal record check prior to engagement;⁴ and
- Subsequent criminal record checks at least once every four years.⁵

Disability service providers are required to conduct these checks for all relevant workers who work directly with people with disability in a way that involves face to face or physical contact. A full definition of “relevant worker” is provided at Section 1.5 of this policy.

Disability service providers must not engage, or continue to engage, a person as a relevant worker or relevant board member who has been convicted of certain “prescribed” criminal offences as set out in Schedule 2 of the DIA. These offences include murder, a range of sexual assaults, and some serious physical assaults resulting in imprisonment for more than two years.

The DIA does provide some discretion in certain circumstances with regard to the engagement of persons convicted of a prescribed offence. These circumstances are explained in Section 2.5 of this policy.

Where a person is required to obtain a criminal record check and refuses to do so, a service provider must not engage or continue to engage that person as a relevant worker/board member.⁶

1.5 Definition of “relevant worker” and “relevant Board member”

The term “relevant worker” means a person who is engaged to provide disability supports and services directly to people with disability, in a way that involves face to face or physical contact with those persons, and covers:

¹ Section 32(2) of the DIA.

² Section 24 of the DIA.

³ Section 32(3)(b) of the DIA.

⁴ Section 32(3)(a) of the DIA.

⁵ Section 32(4) of the DIA.

⁶ Section 32(6)(b) of the DIA.

- Employees (whether casual, temporary, or permanent);
- Volunteers;
- Self-employed people, contractors, subcontractors or consultants; and
- Students undertaking training as part of an educational or vocational course or program (other than school students on work experience).⁷

This policy uses the term “relevant worker” to refer to all the above categories of persons involved in the direct provision of supports and services to people with disability.

The term “relevant board member” refers to members of the governing body of the organisation, whatever that governing body is called (e.g. board or management committee), who works, or is likely to work, directly with persons in the target group in a way that involves face to face or physical contact with those persons.

1.6 When does the DIA apply?

Disability service providers are required to be compliant with the new probity requirements in the DIA, the Regulation, and this policy as follows:

- In relation to the engagement of new relevant workers and new board members – from **3 December 2014 onwards**;⁸ and
- In relation to existing relevant workers/board members (those who were engaged prior to 3 December 2014) – compliance must be achieved by **1 December 2015**.⁹

2. Performance Requirements

2.1 Suitability

Disability service providers can only engage a person as a relevant worker or relevant board member if they are satisfied that the person is suitable to provide disability supports and services to people with disability.¹⁰

This means that a provider needs to have in place recruitment and employment practices that ensure they are selecting people with the appropriate qualifications and/or experience to do direct disability work. Some suggestions for policies and procedures are set out in Section 2.10 of this policy.

⁷ Section 32(11) of the DIA, and (in relation to consultants) clause 11 of the *Disability Inclusion Regulation 2014*.

⁸ Regulation 15(1) of the Regulation.

⁹ Regulation 16(1) of the Regulation.

¹⁰ Section 32(2) of the DIA.

2.2 Referee checks

Disability service providers must obtain a reference for the relevant worker/board member from at least one referee nominated by the person.¹¹ Some further suggestions for disability service providers seeking references are set out in Section 2.10 of this policy.

2.3 Criminal Record Checks

2.3.1 What the Act requires

The DIA says that a funded disability service provider must ensure that “a criminal record check (CRC) is conducted or obtained” in relation to a relevant worker/board member.

The Regulation explains that a CRC is “an Australia-wide assessment of the person’s criminal history.”¹²

This is often called a National Police Check or a National Criminal Record History Check. Technically, the police certificate is a report of a person's criminal history, and is an outcome of a CRC. However, the terms “criminal record check”, “National Police Certificate” and “National Police Check” are often used interchangeably.

2.3.2 How a CRC can be done

There are two different ways a disability service provider can comply with the obligation to undertake a CRC¹³. A disability service provider can either:

- Conduct a CRC in relation to a particular person (which requires the person to give written consent for this purpose); or
- Request the person to provide a copy of the CRC (e.g. the National Police Certificate) to the provider.

It is a matter for each organisation to determine who pays for the CRCs for its existing and future relevant workers and board members.

CrimTrac is the Commonwealth agency with responsibility for operating the National Police Checking Service. It undertakes CRCs on behalf of the Australian Federal Police and other Australian police services, including the NSW Police. CrimTrac has also accredited many government agencies, private brokerage agencies and some large non government organisations, to undertake CRCs.

The number and range of organisations providing CRC services – including NSW Police – mean that disability service providers have a degree of choice

¹¹ Section 32(3)(a) of the DIA.

¹² Regulation 10(2) of the Regulation

¹³ Regulation 10(1) of the Regulation.

in procuring CRC services. It also provides some price competition in the fees charged for CRCs. At the time of publication of this policy, charges for a single CRC ranged from \$42 to \$82, with the lower prices usually offered for bulk orders. Reduced charges are available for volunteers.

More information about CrimTrac and its accredited agencies is available at <http://www.crimtrac.gov.au/>. Many private CRC brokers have a simple online process and can be found by searching for “National Police Check” through an internet search engine.

Individuals can apply for their own National Police Certificate through NSW Police, see http://www.police.nsw.gov.au/about_us/structure/specialist_operations/forensic_services/criminal_records_section.

2.3.3 Reading a National Police Certificate

Police certificates may have different formats, including printed certificates or electronic reports. Every police certificate or report must record:

- The person’s full name and date of birth;
- The date of issue; and
- A reference number or similar.

A police certificate discloses whether a person:

- Has been convicted of an offence;
- Has been charged with and found guilty of an offence but discharged without conviction; or
- Is the subject of any criminal charge still pending before a court.

The above information is referred to as “disclosable court outcomes”.

The information on the certificate is drawn from all Australian jurisdictions and is subject to the NSW, and other relevant state and territory, spent conviction schemes. Convictions that are considered “spent” will not be disclosed on a police certificate unless the purpose for the application (e.g. Working with Children Check) is exempt from the relevant spent conviction scheme.

In NSW, some convictions may be spent where a bond was given or a sentence of less than six months was imposed. It does not apply to serious offences or anyone who has been sentenced to imprisonment for more than 6 months. For a conviction to be spent, a person usually must be crime free and not in prison for 10 years as an adult or 3 years as a child.

Note that all prescribed offences listed in Schedule 2 of the DIA are serious or result in an imprisonment of more than 6 months, and will therefore be disclosed on the police certificate.

A service provider must be satisfied that a certificate is genuine and has been prepared by an Australian Police Service or a CrimTrac accredited agency. FACS does not provide advice on whether a police certificate meets the requirements under the DIA. It is up to the service provider to be satisfied that a certificate meets the requirements, and enables them to assess a person's criminal history. Any police certificate decision should be documented by the service provider.

A National Criminal History Record Check undertaken for another purpose (e.g. Aged Care legislation) may satisfy the requirements of the DIA. Further details are provided at Section 3 of this policy.

2.3.4 Record Keeping

Disability service providers must keep records that can demonstrate that:

- A criminal record check, which is not more than four years old, has been done for each relevant worker; and
- A statutory declaration has been provided by any relevant worker who was a citizen or permanent resident of a country other than Australia.

How a service provider demonstrates their compliance with record keeping requirements is a decision for each organisation.

The collection, use, storage and disclosure of personal information about relevant workers/board members must be in accordance with the *Privacy Act 1988* (Commonwealth) where relevant.

In practice, this means that sensitive information obtained through a CRC must be stored in a safe and secure location that is only accessible to specified management and HR staff. This applies to police certificates detailing convictions and other disclosable court outcomes, and any associated documents that contain sensitive details (e.g. assessments on whether employment should be terminated).

Police certificates and associated documents should be destroyed as soon as they are no longer required (e.g. when new CRCs are obtained after four years or once the relevant workers or Board members that are the subject of the CRC have left the organisation).

FACS recommends that disability service providers keep a register of their relevant workers and board members CRC information, including police certificate reference numbers and expiry dates, in a safe and secure place. An Individual Assessment Form is provided at Appendix 1 and a Police Certificate Register template is provided at Appendix 2.

2.3.5 CRCs for new workers/board members

The Regulation requires all new relevant workers or board members engaged on or after 3 December 2014 to have a CRC undertaken before they are considered suitable for a relevant position.

Under the Regulation, the CRC must be no older than 6 months.¹⁴

2.3.6 CRCs for existing relevant workers/board members

Disability service providers must ensure that relevant workers (volunteers/contractors etc.) and board members who are employed or engaged as at 3 December 2014 have their CRCs conducted by 1 December 2015.

A provider can use an existing CRC on file so long as it is no more than four years old. However, this requires the provider to either have copies of the actual National Police Certificate on file, or to have retained other records of the CRC which list any disclosable court outcomes.

2.3.7 CRCs undertaken for Aged Care checks

Disability service providers that are also “approved providers” under the *Aged Care Act 2001* (Commonwealth) may be able to use CRCs that were undertaken for the purposes of the *Aged Care Act 2001*. Further information about the difference between an Aged Care CRC and a DIA CRC is set out in section 3 of this policy.

The CRC undertaken for Aged Care checks would only be of assistance if sufficient information was kept on file for that person, for example a copy of the actual National Police Certificate, or evidence that the relevant person had no disclosable court outcomes at all. A note on a person’s file that someone has passed the CRC as per the *Aged Care Act 2001* is not of itself sufficient.

2.4 Offences outside of Australia

It can be difficult for many people to obtain copies of their criminal records from other countries in which they have lived and worked.

The Regulation therefore allows disability service providers to require relevant workers/board members to provide a statutory declaration in relation to their criminal record outside of Australia. Providers should identify all staff that have worked or lived outside of Australia since the age of 16, and request these staff members to return a statutory declaration which verifies that they have not been convicted of any offences that would be a prohibited offence under the DIA if they had been committed in NSW. The statutory declaration should also detail any other offences committed overseas and providers

¹⁴ Regulation 10(3) of the Regulation.

should assess this information to determine whether a person is suitable for employment as a relevant worker or appointed as a relevant board member. A statutory declaration is not a substitute for an Australian CRC, unless a person has not resided in Australia before. A relevant worker from overseas who has resided in Australia for more than six months must also undergo a CRC.¹⁵ Therefore, it is envisaged that for the majority of cases where a statutory declaration is required, it would be an accompaniment to an Australian CRC.

Statutory declarations relating to the DIA requirements must be made on the form prescribed under the *Oaths Act 1900* (NSW). A statutory declaration template is provided at Appendix 3. Also included at Appendix 4 is detail about the prohibited offences under the DIA. Where a relevant worker/board member has declared on the statutory declaration that they have been convicted of certain offences, the disability service provider can use Appendix 4 to determine whether any of the offences would have been a prohibited offence had they been committed in NSW.

More information about statutory declarations is available through Law Access at www.lawaccess.nsw.gov.au.

2.5 Prescribed Offences

The DIA prohibits the engagement of certain persons as relevant workers/board members.

Where a person is required to obtain a criminal record check and refuses to do so, a disability service provider must not engage, or continue to engage, that person.

Disability service providers also must not engage, or continue to engage, a person who has been convicted of a criminal offence listed in Schedule 2 of the DIA. These offences (set out in full detail in Appendix 4 of this policy) are:

- Murder;
- A prescribed sexual offence as defined under the *Criminal Procedure Act 1986* (NSW) (or equivalent law in other states or territories);
- An offence under Part 3 of the *Crimes Act 1900* (NSW) (or equivalent law in other states or territories) such as assault or related violent offences for which the person was sentenced to two or more years imprisonment;
- An offence under section 98 of the *Crimes Act 1900* (NSW) (or equivalent law in other jurisdictions) such as armed robbery or robbery with violence;
- An offence under section 13 or 14 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) – stalking and intimidation and

¹⁵ This is not a statutory requirement but a policy requirement. If a person has lived in Australia for less than six months, any offences are unlikely to show up on their criminal record.

breaches of apprehended violence orders – for which the person has been sentenced to 2 or more years imprisonment.

2.5.1 Discretion in the engagement of relevant workers

The DIA provides some discretion in certain circumstances. Where a person has been convicted of one of the prohibited offences, so long as it is not one of the sexual offences, if their criminal record shows no further convictions in the ten year period following the date of the person's release from imprisonment, then a disability service provider has the discretion to consider engaging or continuing to engage the person as a relevant worker/ board member.

2.6 Non-prohibited convictions

Organisations should ensure they have policies and procedures in place regarding their assessment of police certificates that record non-prohibited convictions. In employing staff or engaging board members, an organisation must consider any risks to clients, other staff, or the organisation that are inherent in the work that the person is required to undertake. For example, if a person's criminal record shows fraud or deception offences, and the person's role is to assist people with disability in managing their finances, the provider should consider whether the person really is suitable to work in that position.

An organisation's decision regarding the recruitment or the continued engagement of a person with any recorded convictions should be rigorous, defensible and transparent.

Appendix 5 provides guidance in assessing the suitability of a person who has been convicted of a non-prohibited offence to be engaged, or continue to be engaged. Appendix 5 would also be applicable to assessing the ongoing engagement of a relevant worker/board member who has been charged with a prohibited or other serious offence but has not yet been convicted.

Any decision taken by a disability service provider should be documented in a way that can demonstrate to an auditor the date the decision was made, the reasons for the decision, and the people involved in the decision, that is the specific service provider staff, the individual, a legal representative or board members.

2.7 Discrimination on the basis of criminal record

Any offences which appear on a person's police record should be carefully considered when a disability service provider is determining if a particular person is an appropriate person to provide supports to people with disability. However, the mere fact that a person has a criminal record should not of itself lead to a decision that a person is not appropriate to be employed to undertake the relevant work.

A person may make a complaint to the Australian Human Rights Commission if they believe they have been discriminated against purely because they have

a criminal record (rather than because their criminal record reveals certain prohibited offences or offences which could reasonably be considered to pose a risk to clients or the employer).

For further information see <https://www.humanrights.gov.au/discrimination-employment-basis-criminal-record>, and in particular Guidelines for the prevention of discrimination in employment on the basis of criminal record: https://www.humanrights.gov.au/sites/default/files/content/human_rights/criminalrecord/on_the_record/download/otr_guidelines.pdf.

2.8 Employment decisions

If a CRC conducted in relation to an existing worker reveals that they have committed one of the prohibited offences, the disability service provider will be in breach of its funding agreement with FACS if it continues to engage that person as a relevant worker.

It is also possible that the person is in breach of the service provider's Code of Conduct or employment policies, which usually require all staff to disclose any criminal convictions.

The prohibitions in the DIA apply to people who work directly with people with disability. It may be possible to engage a person who does not meet the relevant requirements of section 32 and Schedule 2 of the DIA in another capacity that does not involve working directly with people with disability.

If termination of employment is being considered, the provider should ensure that it follows the requirements of the law and the provider's own employment policies. It is recommended that the disability service provider seek legal advice before commencing any termination of employment. Advice and information is available from the Fair Work Authority www.fwa.gov.au. Non-government organisations may also access JusticeConnect's Not-for-Profit Law project www.nfplaw.org.au/employees.

2.9 Agency staff

The definition of "relevant worker" includes agency staff. The service provider therefore must ensure that where they use staff from an employment agency, that agency has conducted all relevant criminal record checks.

2.10 Development of appropriate policies and procedures

Disability service providers need to incorporate the probity in employment requirements of the DIA into their relevant employment, human resources and risk management policies and procedures. Policies and procedures should include the following features:

Recruitment policy and general probity requirements

A disability service provider needs to have in place recruitment and employment practices that ensure they are selecting people with the appropriate qualifications and/or experience to do direct disability work. Such practices would include:

- Developing accurate job specifications for all staff, volunteers, contractors and board positions – including casual positions;
- Identifying whether a position will fall within the definition of a relevant worker or relevant board member;
- Being clear in recruitment about what the position involves, what qualifications are essential or desirable, what referee and criminal record checks will be undertaken, and any other information that the employer will be using to assess applications for the position;
- Having a selection process that ensures all the necessary qualification, referee and criminal record checks are undertaken, and that the person's general suitability for the position is considered taking into account their qualifications and experience.

Reference checks

The DIA requires that disability service providers obtain at least one referee check prior to engaging a new relevant worker or board member. Many employers prefer to seek at least two or three references, and this is good practice.

Procedures should be developed to ensure that the reference check requirements are complied with. These procedures should be in place by 3 December 2014 when the probity requirements of the DIA commence with regard to new relevant workers.

Procedures should describe processes that assist relevant HR staff to undertake referee checks, including conduct and service checks.

It is good practice to recommend that a prospective worker should be asked to nominate a senior staff member from their current or most recent employer. If a person does not nominate their most recent employer, the provider may want to ask why. Although it is a person's right to nominate a referee of their choice, disability service employers should also be alert to the possibility that a person may have left a position due to misconduct or serious performance issues.

There are no specific restrictions under privacy law which would prohibit a disability service provider from contacting a previous employer and asking about a particular person's employment record – for example, why the person left the organisation, or whether there had been any substantiated misconduct

issues.¹⁶ However some employers may be reluctant to share this information.

Criminal Record Checks

Recruitment policies should include procedures for ensuring that all new relevant workers/board members undergo a compliant CRC, or provide evidence of having undergone a recent compliant CRC prior to being engaged by the organisation. The DIA probity requirements in respect to new relevant workers/board members commence from 3 December 2014.

Organisations should develop an action plan for ensuring that all existing relevant workers / board members are compliant with the CRC requirements by 1 December 2015.

Organisations are also required to develop procedures to ensure that relevant workers/board members undergo re-checks at least every 4 years. The organisation's policies and procedures should describe processes that assist relevant HR staff to undertake, assess and interpret the outcomes of CRCs.

Further details on CRCs are provided in Section 2.3 of this policy.

Statutory Declarations

An organisation's CRC policy should include procedures on when and where a statutory declaration should be used and relevant content of the statutory declaration. Further guidance on statutory declarations can be found in Section 2.4 of this policy.

Prohibition on engaging persons with criminal convictions

Procedures should be developed for managing and responding to situations where the organisation has been informed that a new or existing relevant worker/board member has been convicted of a prohibited offence. These procedures will need to comply with principles of natural justice and due process.

An organisation's code of conduct should include a requirement that all workers, volunteers and board members must inform the organisation when they are charged or convicted of a serious offence, or other matters relevant to their employment that may affect their ability to do the job.

Disability service providers should develop, or update their existing risk management procedures in relation to assessing risks associated with the engagement of a relevant worker/board member who has been charged with a prohibited offence, or who has been convicted of a serious offence that is not deemed to be a prohibited offence. Procedures should describe how relevant HR staff should document these risk assessment processes.

¹⁶ The *Privacy Act 1998* (Cth) applies to private organisations (including non-government organisations) with an annual turnover of \$3m; however, there is an exemption in the Act in relation to employment records: see www.oaic.gov.au/privacy/privacy-topics/workplace/are-employee-records-covered-by-the-privacy-act.

The prohibited convictions and discretionary circumstances are further explained in Section 2.5 of this policy.

Reporting on compliance

Funded disability service providers will be required to report on their compliance with the probity in employment requirements of the DIA as part of their 2015/16 Annual Compliance Returns.

Other Requirements

Probity in employment is not just about meeting the requirements of the DIA. Probity issues are integral to operational effectiveness, and should be considered in the context of broader strategies to support and strengthen the operational effectiveness of disability services.

Employment and HR policies and procedures should also incorporate the requirements of other statutory probity in employment regimes, for example federally funded aged care organisations, and the NSW Working with Children Checks (WWCC) regime. Further information on these statutory regimes is provided at Section 3 of this policy.

Policies and procedures relating to probity in employment should be reviewed regularly and the framework for review documented. FACS also recommends that regular audits and internal reviews of employment practices be undertaken to provide the corporate governing body and management committee with assurance these procedures and policies are being met.

Guidance on developing policies and procedures on probity and employment is also available in the *Its your business* governance resource for ADHC service providers. While some aspects of the Probity in Employment chapter have been superseded by this policy, it contains valuable tools and resources for service providers.

http://www.adhc.nsw.gov.au/sp/training_and_development/good_governance

3. Other probity in employment regimes

Other probity in employment regimes that are potentially applicable to individuals and organisations involved in the provision of supports and services to people with disability include the Aged Care check and the Working with Children Check.

3.1 Aged Care criminal record checks

Organisations that receive Commonwealth age care funding (“approved providers”) are required to ensure that all staff and volunteers have had a National Police Check on recruitment every three years.¹⁷ Approved aged care providers are prohibited from engaging staff and volunteers convicted of

¹⁷ See Part 6 of the *Accountability Principles 2014* (Cth), made under the *Aged Care Act 2001* (Cth).

certain offences – murder, sexual assault, and other assaults resulting in any term of imprisonment.

Further information on the Commonwealth Aged Care probity regime can be found at

<http://www.health.gov.au/internet/main/publishing.nsf/Content/ageing-quality-factsheet-policechecks-guidelines.htm>.

The probity regimes of the Commonwealth Aged Care legislation and of the NSW DIA are very similar. An existing CRC could be used to assess a relevant worker/board member under section 32 of the DIA. However, there are some significant differences in the list of prohibited offences. This means that compliance with the requirements of the Aged Care legislation does not necessarily equate to compliance with the requirements of the DIA, and vice-versa.

Appendix 6 provides details of the prohibited offences of both regimes and their consistencies and differences. This resource will assist service providers in assessing whether an existing police certificate is compliant with the DIA.

3.2 The Working with Children Check (WWCC)

The NSW WWCC is a central probity check for child-related positions. All people working in positions or applicants for positions that involve child-related work¹⁸ must have a WWCC clearance. Employers are required to check a person's WWCC number in relation to potential employees (and others in significant roles, including volunteers) if they are employed in certain kinds of child-related employment.

A person must apply for a WWCC clearance from the Office of Children's Guardian (the Office). The Office conducts a CRC on that person, with certain offences barring that person from working with children.¹⁹ The Office also checks whether the person has been the subject of substantiated reports to the Ombudsman in relation to harm caused to children.²⁰

The Office provides each person with a WWCC number which they can then provide to their prospective or current employer. The employer then enters this number into the Office of Children's Guardian online system and checks whether the person has a clearance or a bar to work with children. Therefore, even if a person is determined to be a suitable person to work with people with disability, if they have a bar to work with children, they can only work with adults with disability.

¹⁸ As defined in the *Child Protection (Working with Children) Act 2012* (NSW) and *Child Protection (Working with Children) Regulation 2013* (NSW).

¹⁹ See Appendix 6

²⁰ Part 3A of the *Ombudsman's Act 1974* (NSW) requires certain government and non-government agencies to make reports about any of their staff who are alleged to have been involved in sexual assault, sexual misconduct, assault, ill-treatment, neglect, or psychological harm of children.

Further information about WWCC can be obtained from <http://www.kidsguardian.nsw.gov.au/Working-with-children/working-with-children-check>

Appendix 6 provides details of the prohibited offences of the DIA, the Aged Care regime, and the WWCC, setting out their consistencies and differences.

4. Further information

4.1 Resources

The following are links to useful resources:

CrimTrac <http://www.crimtrac.gov.au/>

Applying for police records via NSW Police
http://www.police.nsw.gov.au/about_us/structure/specialist_operations/forensic_services/criminal_records_section

Information on statutory declarations www.lawaccess.nsw.gov.au

Information about privacy is available at www.privacy.gov.au

Employment advice and information is available from:

Fair Work Authority www.fwa.gov.au

JusticeConnect's Not-for-Profit Law project www.nfplaw.org.au/employees

Aged Care probity regime
<http://www.health.gov.au/internet/main/publishing.nsf/Content/ageing-quality-factsheet-policechecks-guidelines.htm>

Working with Children Check resources
<http://www.kidsguardian.nsw.gov.au/Working-with-children/working-with-children-check>

4.2 Support and advice

You can get advice and support about this policy from Community Inclusion Directorate who has carriage of this document and from FACS District Contract Managers. Queries about the requirements in this policy can be directed to probityforfundeddisabilityservices@facs.nsw.gov.au.

If you are reviewing a printed version of this document, please refer to the Intranet to confirm that you are reviewing the most recent version of the policy. Following any subsequent reviews and approval this policy will be uploaded to the internet and/or intranet and all previous versions removed.

5. Monitoring, evaluation and review

It is the responsibility of the Community Inclusion Directorate to monitor and update this policy when required. This policy will be reviewed in June 2015 or when any significant new information, legislative or organisational change warrants amendments to this document.

6. Appendices

Appendix 1: National Police Certificate Information Register

Individual Assessment Form

| | |
|---|---|
| Name of person | |
| Description of position the person occupies or will occupy | |
| Is this person a relevant worker (including volunteer), or board member under DIA? (refer to Policy) | |
| The person provided, or gave approval for employer to obtain, an original or certificate copy report of his/her police certificate | Yes. Evidence recorded. |
| | No. A person who does not provide, or give consent for an approved provider to obtain his/her police certificate, is precluded from employment. |
| Date police certificate requested | |
| Date of the NPC or date that the outcome of the CRC is received by the provider | |
| NPC reference number | |
| The police certificate disclosed no convictions | |

| | |
|---|--|
| <p>The police certificate disclosed a conviction requiring further assessment</p> | <p>Ensure there is evidence on file regarding the further assessment that was undertaken and the result of the assessment. NB if a person has a conviction or convictions for an offence(s) which does not result in a bar from employment; it is still the responsibility for the employer to consider that record to determine whether in the circumstances they are an appropriate person to employ to work directly with people with disability.</p> |
| <p>The police certificate disclosed a conviction of murder or sexual assault; or a conviction of, and sentence to 2 years imprisonment for other form of assault</p> | <p>Check offence against this Policy to determine if person is precluded from employment / engagement.</p> |
| <p>Date for next NPC check</p> | <p>(3 years if person is working on programs funded under the Aged Care Act; the DIA check can be done at the same time. If only doing disability work funded by FACS, the DIA check must be within 4 years)</p> |
| <p>NOTE THAT THIS SHEET, THE NPC AND ALL RELATED DOCUMENTATION MUST BE RETAINED IN A SECURE PLACE UNTIL NEW CHECKS ARE UNDERTAKEN, AND THEN DISPOSED OF SECURELY</p> | |

Appendix 2: Police Certificate Register

| Name | Date of birth | Position | Required to have CRC under Aged Care Act? Required to have a WWCC? (delete if not relevant) | Required to have CRC under DIA? | National Police Certificate (NPC) reference no. | Date of NPC / date CRC undertaken | Date/signature: checked for DIA requirements CLEAR or OUTCOMES | Date due for rechecking (within 3 years for Aged Care – DIA can be done at same time, or no later than 4 years from date of NPC) |
|------|---------------|----------|--|---------------------------------|---|-----------------------------------|--|--|
| | | | | | | | | |
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| | | | | | | | | |

In the presence of an authorised witness, who states:

I,, a,
[Name of authorised witness] *[Qualification of authorised witness]*

Certify the following matters concerning the making of this statutory declaration by the person who made it: *[* please cross out any text that does not apply]*

1. *I saw the face of the person OR *I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering, and
2. *I have known the person for at least 12 months OR *I have not known the person for at least 12 months, but I have confirmed the person's identity using an identification document and the document I relied on was:

.....
[Describe document relied on]

.....
[Signature of authorised witness]

.....
[Date]

Notes for filling out this statutory declaration

Authorised witnesses in New South Wales are:

- Justice of the Peace (JP)
- Notary public
- Commissioner of the court for taking affidavits
- Solicitor (with a current practising certificate issued under Part 2.4 Division 3 of the Legal Profession Act 2004)
- Other person by law authorised to administer an oath.

Where the person making the statutory declaration has vision impairment or does not read English, Section 24A of the *Oaths Act 1900* states that if it appears to the authorised person that the person making the declaration is blind, illiterate or otherwise unable to read written English, the authorised person must certify, in or below the statutory declaration:

- a) That the declaration was read to the person making the declaration in the presence of the authorised person, and
- b) That it appeared to the authorised person that the person making the declaration understood the declaration, and
- c) That the person making the declaration signed the declaration (by signature or mark) in the presence of the authorised person.

For further legal information about statutory declarations contact Law Access on 1300 888 529 or visit www.lawaccess.nsw.gov.au.

Appendix 4: Prohibited offences

Extract from the *Disability Inclusion Act 2014* (NSW):

Schedule 2 Prescribed criminal offences

- 1) For the purposes of paragraph (a) of the definition of prescribed criminal offence in section 32 (11) of this Act, the following offences are prescribed criminal offences:
 - a) murder,
 - b) a prescribed sexual offence as defined in the *Criminal Procedure Act 1986*,
 - c) an offence under any of the following provisions of Part 3 of the *Crimes Act 1900* for which the offender has been sentenced to 2 or more years imprisonment:
 - i. sections 26–30,
 - ii. section 33,
 - iii. sections 35 and 35A,
 - iv. sections 37 and 38,
 - v. section 39,
 - vi. section 44,
 - vii. sections 56–59A,
 - viii. section 61,
 - d) an offence under section 98 of the *Crimes Act 1900* for which the offender has been sentenced to 2 or more years imprisonment,
 - e) an offence under section 13 or 14 of the *Crimes (Domestic and Personal Violence) Act 2007* for which the offender has been sentenced to 2 or more years imprisonment.
- 2) A prescribed criminal offence includes an offence committed outside of the State that, if it had been committed in the State, would have constituted an offence of a kind referred to in subclause (1).

Further details about the prescribed offences

Murder

Any offence of murder – note this does not include manslaughter.

Sexual Offences under (1)(b):

An offence as defined in s3 of the *Criminal Procedure Act 1986* (NSW) means an offence under the following sections of the *Crimes Act 1900* (NSW), or an offence committed outside of NSW if it had been committed in NSW would have constituted an offence of this kind:

- 61I. Sexual assault
- 61J. Aggravated sexual assault
- 61JA. Aggravated sexual assault in company
- 61K. Assault with intent to have sexual intercourse
- 61L. Indecent assault
- 61M. Aggravated indecent assault

- 61N. Act of indecency
- 61O. Aggravated act of indecency
- 66A. Sexual intercourse-child under 10
- 66B. Attempting, or assaulting with intent, to have sexual intercourse with child under 10
- 66C. Sexual intercourse - child between 10 and 16
- 66D. Attempting, or assaulting with intent, to have sexual intercourse with child between 10 and 16
- 66EA. Persistent sexual abuse of a child
- 66EB. Procuring or grooming child under 16 for unlawful sexual activity
- 66F. Sexual offences - cognitive impairment
- 78A. Incest
- 78B. Incest attempts
- 79. Bestiality
- 80. Attempt to commit bestiality
- 80A. Sexual assault by forced self-manipulation
- 80D. Causing sexual servitude
- 80E. Conduct of business involving sexual servitude
- 86. Kidnapping
- 87. Child abduction
- 91A. Procuring etc
- 91B. Procuring person by drugs etc
- 91D. Promoting or engaging in acts of child prostitution
- 91E. Obtaining benefit from child prostitution
- 91F. Premises not to be used for child prostitution
- 91G. Children not to be used for production of child abuse material.

Other violent offences under (1) (c):

An offence under the following sections of Part 3 of the *Crimes Act 1900* (NSW) – or an offence committed outside of NSW, which if committed in NSW would have constituted an offence of this kind – for which the offender has been sentenced to 2 or more years imprisonment:

- 26. Conspiring to commit murder
- 27. Acts done to the person with intent to murder
- 28. Acts done to property with intent to murder
- 29. Certain other attempts to murder
- 30. Attempts to murder by other means
- 33. Wounding or grievous bodily harm with intent
- 35. Reckless grievous bodily harm or wounding
- 35A. Causing dog to inflict grievous bodily harm or actual bodily harm
- 37. Choking, suffocation and strangulation
- 38. Using intoxicating substance to commit an indictable offence
- 39. Using poison etc. to endanger life or inflict grievous bodily harm
- 44. Failure of persons to provide necessities of life

- 56. Obstructing member of the clergy in discharge of his or her duties
- 57. Assault on persons preserving wreck
- 58. Assault with intent to commit a serious indictable offence on certain officers
- 59. Assault occasioning actual bodily harm
- 59A. Assault during public disorder
- 61. Common assault prosecuted by indictment.

Offence referred to in (1)(d):

An offence under section 98 of the *Crimes Act 1900* (NSW) - Robbery with arms etc and wounding –or an offence committed outside of NSW, which if committed in NSW would have constituted an offence of this kind – for which the offender has been sentenced to 2 or more years imprisonment.

Offence referred to (1)(e):

An offence under the following sections of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) –or an offence committed outside of NSW, which if committed in NSW would have constituted an offence of this kind – for which the offender has been sentenced to 2 or more years imprisonment:

- 13 Stalking or intimidation with intent to cause fear of physical or mental harm
- 14 Offence of contravening apprehended violence order

Appendix 5: Engagement of relevant workers convicted of a non-prohibited offence

The following considerations are intended as a guide only to assist funded disability service providers in assessing the suitability of a person who has been convicted of a non-prohibited offence to be engaged, or continue to be engaged, by the organisation:

- Access – the degree of access to clients, their belongings and their information, whether the individual will work alone or as part of a team, the level and quality of direct supervision and the location of the work (residential, community or home based settings).
- Relevance – the type of conviction in relation to the duties a person is, or may be undertaking and a service provider should only have regard to any criminal record information indicating that the person is unable to perform the inherent requirements of the particular job.
- Proportionality – excluding a person from employment is proportional to the type of conviction.
- Timing – when the conviction occurred.
- Employment history – whether an individual has been employed since the conviction and the outcome of referee checks with any such employers.
- Individual's information – the findings of any assessment reports following attendance at treatment or intervention programs, or other references and the individual's attitude to the offending behavior.
- Pattern – whether the conviction represents an isolated incident or a pattern of criminality.
- Likelihood – the probability of an incident occurring if the person continues with, or is engaged for, particular duties.
- Consequences – the impact of a prospective incident if the person continues, or commences, particular duties.
- Treatment strategies – the procedures that will assist in reducing the likelihood of an incident occurring including, for example, modification of duties.

The above considerations would also be applicable to assessing the ongoing engagement of a relevant worker who has been charged with a prohibited or other serious offence but has not yet been convicted.

Appendix 6: Matrix of Prohibited Offences

The matrix of prohibited offences under the probity-in-employment schemes is set out in the *Disability Inclusion Act 2014 (NSW)*, the *Aged Care Act 2001 (Commonwealth)* and the NSW Working with Children Check scheme.

Information about this table:

- The DIA probity scheme only applies to disability service providers that receive funding from FACS under the DIA – it is the responsibility of employers to ensure they have a person’s criminal record check. See these Guidelines for more information.
- The Aged Care scheme is only relevant to approved providers under the Commonwealth Aged Care Act. See <http://www.health.gov.au/internet/main/publishing.nsf/Content/ageing-quality-factsheet-policechecks-guidelines.htm>
- The Working with Children Check is administered by the Office of Children’s Guardian and applies to all workers in child-related work. It is the responsibility of a “child-related employer” to ask a relevant employee for their WWCC number, and then verify that number. See <http://www.kidsguardian.nsw.gov.au/Working-with-children/Working-With-Children-Check/Child-related-employers>. There is no need for employers to check a person’s CRC to see if the WWCC offences are listed as this has already been done by the Office of Children’s Guardian – the information is just included here so that employers are aware of the significant overlap in the different offences.

| | | | |
|--|--|---|---|
| <p>Relevant sections of the <i>Crimes Act 1900</i> (NSW)</p> <p>Note that all schemes allow the recognition of equivalent offences under other legislation in NSW or overseas</p> <p>Other relevant legislation is also listed in this column.</p> | <p><i>Disability Inclusion Act 2014</i> (NSW) –Schedule 2 Prescribed offences</p> | <p><i>Aged Care Act 2001</i>(Cth) - <i>Accountability Principles 2014</i> (Cth) – Part 6</p> | <p><i>Child protection (Working with Children) Act 2012</i> (NSW) – Schedule 2 Disqualifying offences.</p> <p>(Note: employers do not need to check a person’s CRC for these offences as the Office of Children’s Guardian does this.)</p> |
| <p>A. MURDER</p> | | | |
| <p>Murder is defined in section 18.</p> | <p>Yes.</p> | <p>Murder is not defined any further – would cover all murders as defined in the place it occurred.</p> | <p>Murder of a child.</p> <p>Also includes:</p> <ul style="list-style-type: none"> • intention to murder • attempting to murder, or • conspiring to murder a child. <p>(Murder of an adult is not prohibited, but is likely to be taken into account during risk assessment)</p> |
| <p>Manslaughter</p> | <p>No.</p> | <p>No.</p> | <p>Manslaughter of a child, other than as a result of a motor vehicle accident.</p> |
| <p>B. SEXUAL ASSAULT</p> | | | |
| <p>*Note sections marked with a star were repealed as at November 2014, however these are prescribed sexual offences if they</p> | <p>A prescribed offence as defined in s 3 of the <i>Criminal Procedure Act 1986</i> (NSW).</p> | <p>No further definition of sexual assault in the legislation.</p> <p>Likely to cover any assault which has</p> | <p>Legislation says that prohibited offences are common law offences of rape or attempted rape, as well as the following list of <i>Crimes Act 1900</i></p> |

| were in force at the time of the offence. | S 3 sets out sections of the Crimes Act as follows. | a sexual element, including most those listed as for the DIA, however legal advice would be required to check if a particular offence is categorised as a sexual assault. | offences (including an intention to commit, attempting, or conspiring to do the offence): |
|---|---|---|---|
| *61B [REPEALED] | Yes | Likely | Yes |
| *61C [REPEALED] | Yes | Likely | Yes |
| *61D [REPEALED] | Yes | Likely | Yes |
| *61E [REPEALED] | Yes | Likely | Yes |
| 61I. Sexual assault | Yes | Likely | Yes |
| 61J. Aggravated sexual assault | Yes | Likely | Yes |
| 61JA. Aggravated sexual assault in company | Yes | Likely | Yes |
| 61K. Assault with intent to have sexual intercourse | Yes | Likely | Yes |
| 61L. Indecent assault | Yes | Likely | Yes |
| 61M. Aggravated indecent assault | Yes | Likely | Yes |
| 61N. Act of indecency | Yes | Likely | Yes |
| 61O. Aggravated act of indecency | Yes | Likely | Yes |
| | Yes | Likely | Yes |
| *63 [REPEALED] | Yes | Likely | Yes |
| *65 [REPEALED] | Yes | Likely | Yes |
| *65A [REPEALED] | Yes | Likely | Yes |
| *66 [REPEALED] | Yes | Likely | Yes |
| 66A Sexual intercourse-child under 10 | Yes | Likely | Yes |
| 66B. Attempting, or assaulting with intent, to | Yes | Likely | Yes |

| | | | |
|---|-----|--------|-----|
| have sexual intercourse with child under 10 | | | |
| 66C. Sexual intercourse - child between 10 and 16 | Yes | Likely | Yes |
| 66D. Attempting, or assaulting with intent, to have sexual intercourse with child between 10 and 16 | Yes | Likely | Yes |
| 66EA. Persistent sexual abuse of a child | Yes | Likely | Yes |
| 66EB. Procuring or grooming child under 16 for unlawful sexual activity | Yes | Likely | Yes |
| 66F. Sexual offences-cognitive impairment | Yes | Likely | Yes |
| *67 [REPEALED] | Yes | Likely | Yes |
| *68 [REPEALED] | Yes | Likely | Yes |
| *71 [REPEALED] | Yes | Likely | Yes |
| *72 [REPEALED] | Yes | Likely | Yes |
| *72A [REPEALED] | Yes | Likely | Yes |
| *73 [REPEALED] | Yes | Likely | Yes |
| *74 [REPEALED] | Yes | Likely | Yes |
| *76 [REPEALED] | Yes | Likely | Yes |
| *76A [REPEALED] | Yes | Likely | Yes |
| 78A. Incest | Yes | Likely | Yes |
| 78B. Incest attempts | Yes | Likely | Yes |
| *78H [REPEALED] | Yes | Likely | Yes |
| *78I [REPEALED] | Yes | Likely | Yes |
| *78K [REPEALED] | Yes | Likely | Yes |
| *78L [REPEALED] | Yes | Likely | Yes |

| | | | |
|---|-----|-------------------|--|
| *78M [REPEALED] | Yes | Likely | Yes |
| *78N [REPEALED] | Yes | Likely | Yes |
| *78O [REPEALED] | Yes | Likely | Yes |
| *78Q [REPEALED] | Yes | Likely | Yes |
| 79. Bestiality | Yes | Likely | (Not prescribed but could be considered during risk assessment) |
| 80. Attempt to commit bestiality | Yes | Likely | (Not prescribed but could be considered during risk assessment) |
| 80A. Sexual assault by forced self-manipulation | Yes | Likely | Yes |
| 80D. Causing sexual servitude | Yes | Likely | Yes |
| 80E. Conduct of business involving sexual servitude | Yes | Likely | Yes |
| *81 [REPEALED] | Yes | Likely | Yes |
| *81A [REPEALED] | Yes | Likely | (Not prescribed but could be considered during risk assessment) |
| *81B [REPEALED] | Yes | Likely | (Not prescribed but could be considered during risk assessment) |
| 86. Kidnapping | Yes | Seek legal advice | Yes, where the person against whom the offence is committed is a child, except where the person found guilty of the offence was, when the offence was committed or at some earlier time, a parent or carer of the child. |
| 87. Child abduction | Yes | Seek legal advice | (Not prescribed but could be considered during risk assessment) |
| *89 [REPEALED] | Yes | Seek legal advice | (Not prescribed but could be considered during risk assessment) |

| | | | |
|--|-----|-------------------|---|
| *90 [REPEALED] | Yes | Seek legal advice | (Not prescribed but could be considered during risk assessment) |
| *90A [REPEALED] | Yes | Seek legal advice | (Not prescribed but could be considered during risk assessment) |
| *91 [REPEALED] | Yes | Seek legal advice | (Not prescribed but could be considered during risk assessment) |
| 91A. Procuring etc. | Yes | Seek legal advice | (Not prescribed but could be considered during risk assessment) |
| 91B. Procuring person by drugs etc. | Yes | Seek legal advice | (Not prescribed but could be considered during risk assessment) |
| 91D. Promoting or engaging in acts of child prostitution | Yes | Likely | Yes |
| 91E. Obtaining benefit from child prostitution | Yes | Likely | Yes |
| 91F. Premises not to be used for child prostitution | Yes | Likely | Yes |
| 91G. Children not to be used for production of child abuse material | Yes | Likely | Yes |
| 91H Production, dissemination or possession of child abuse material | No | Seek legal advice | Yes |
| 91J Voyeurism | No | Seek legal advice | Yes |
| 91K Filming a person engaged in a private act | No | Seek legal advice | Yes |
| 91L Filming a person's private parts | No | Seek legal advice | Yes |
| 91M Installing a device to facilitate observations or filming - where the person intended to be observed or filmed was a child | No | Seek legal advice | Yes |
| 578B and 578C – publishing indecent | No | Seek legal advice | Yes |

| | | | |
|---|---|--|--|
| articles | | | |
| Customs Act 1901 (Cth) 233BAB – involving items of child pornography or of child abuse material | No | Seek legal advice | Yes |
| Criminal Code Act 1995 (Cth) - 471.24, 471.25, and 471.26 - Using a postal or similar service to procure, groom or send indecent material to persons under 16 | No | Seek legal advice | Yes |
| C. OTHER ASSAULTS | | | |
| (Note: If a particular type of assault does not appear in the following list, then it not a prohibited offence under the NSW DIA or the WWCC. However, if a term of imprisonment was imposed, then it will be a prohibited offence for the <i>Aged Care Act</i> , unless it is a spent conviction.) | | | |
| 26. Conspiring to commit murder | Yes – where sentenced to 2 or more years imprisonment | Yes, if person is sentenced to any term of imprisonment- however spent convictions are not included. | Yes, where victim is a child |
| 27 Acts done to the person with intent to murder | As above | As above | Yes, where victim is a child |
| 28. Acts done to property with intent to murder | As above | As above | Yes, where victim is a child |
| 29. Certain other attempts to murder | As above | As above | Yes, where victim is a child |
| 30. Attempts to murder by other means | As above | As above | Yes, where victim is a child |
| 33. Wounding or grievous bodily harm with intent | As above | As above | Not explicitly prescribed but could be considered during risk assessment |
| 35. Reckless grievous bodily harm or wounding | As above | As above | As above |

| | | | |
|---|---|----------|----------|
| 35A. Causing dog to inflict grievous bodily harm or actual bodily harm | As above | As above | As above |
| 37. Choking, suffocation and strangulation | As above | As above | As above |
| 38. Using intoxicating substance to commit an indictable offence - | As above | As above | As above |
| 39. Using poison etc to endanger life or inflict grievous bodily harm - | As above | As above | As above |
| 42 Injuries to child at time of birth | No | As above | As above |
| 43 Abandoning or exposing a child under 7 years | No | As above | As above |
| 44. Failure of persons to provide necessities of life | Yes – where sentenced to 2 or more years imprisonment | As above | As above |
| 56. Obstructing member of the clergy in discharge of his or her duties | As above | As above | As above |
| 57. Assault on persons preserving wreck | As above | As above | As above |
| 58. Assault with intent to commit a serious indictable offence on certain officers | As above | As above | As above |
| 59. Assault occasioning actual bodily harm | As above | As above | As above |
| 59A. Assault during public disorder | As above | As above | As above |
| 61. Common assault prosecuted by indictment | As above | As above | As above |
| 98 - Robbery with arms etc and wounding | As above | As above | As above |
| D. SERIOUS DOMESTIC VIOLENCE | | | |
| An offence under the following sections of the <i>Crimes (Domestic and Personal Violence) Act 2007 (NSW)</i> (and equivalent | | | |

| | | | |
|--|--|---|--|
| offences outside of NSW): | | | |
| 13 Stalking or intimidation with intent to cause fear of physical or mental harm | Yes, where sentenced to 2 or more years imprisonment | If defined as a <ul style="list-style-type: none"> • sexual assault, or • physical assault resulting in a term of imprisonment. | Not explicitly prescribed but could be taken into account during risk assessment |
| 14 Offence of contravening apprehended violence order | As above | <ul style="list-style-type: none"> • As above | As above |

Note: If a particular offence is on a person's criminal record but it does not appear to be covered by those offences described in the above table, and it is not murder, sexual assault or another form of assault, then it is not a prohibited offence under any of the three probity schemes.