

CIRCULAR

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**NSW DEPARTMENT OF HEALTH POLICY
ON EMPLOYMENT SCREENING USING CRIMINAL RECORD CHECKS****1. PURPOSE**

This policy sets out the procedures applied by the Department in relation to criminal record checks conducted in conjunction with the recruitment or secondment of staff into the Department.

2. SCOPE

This policy covers employment or secondment into permanent or temporary positions within the NSW Health Department.

3. SOURCES OF AUTHORITY

- Criminal Records Act 1991
- Commission for Children & Young People Act 1998
- Child Protection (Prohibited Employment) Act 1998
- Ombudsman Amendment (Child Protection & Community Services) Act 1998
- Public Sector Management Act 1998
- Public Sector Management (General) Regulation 1996
- NSW Department of Health Circular 97/80 Procedures for Recruitment of Staff and Other Persons – Vetting and Management of Allegations and Improper Conduct
- NSW Health Department Circular 99/65 Ombudsman Amendment (Child Protection and Community Services) Act 1998
- NSW Department of Health Circular 2000/55 Policy and Procedure for Employment Screening of Staff and Other Persons in Child Related Areas
- Privacy and Personal Information Protection Act 1998

Distributed in accordance with circular list(s):

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4. DEFINITIONS

Criminal Records Check

means a search undertaken by the Criminal Records Section of the NSW Police Service authorised by the NSW Health Department to be undertaken on the recommended applicant for secondment or appointment to a permanent or temporary position within the Department.

Serious Offence

means an offence which is punishable by penal servitude of imprisonment for 12 months or more.

Spent Conviction

means those offences on a persons criminal record which, because of the passage of time, are excluded from consideration when determining their relevance for employment purposes.

5. PRINCIPLES

- 5.1 The Department is committed to safeguarding the welfare of its staff and protecting the interests of those who rely on and/or receive services provided by our staff.
- 5.2 The Department recognises its social obligations towards persons who have been convicted of criminal offences and who have completed court imposed penalties for such offences.
- 5.3 In determining the relevance and implications of criminal offences recorded against potential staff and secondees to the Department, the Department will take into account relevant considerations and apply fair procedures in determining the consequences of those convictions for employment purposes.

6. PROCEDURES

- 6.1 In conjunction with secondments and recruitment into permanent or temporary positions within the Department, criminal record checks will be undertaken on recommended candidates.
- 6.2 At interview, candidates should be asked to complete the Criminal Record Check form at Attachment 1.
- 6.3 Where the criminal record check is “clear” ie. no charges or convictions recorded, the person may be offered employment.
- 6.4 Where a Criminal Record Check reveals a pending charge or conviction against the person, the relevance of the charge or conviction for employment within the Department will be determined by the Associate Director Corporate Personnel Services in conjunction with the applicant, their prospective manager and other relevant persons. In the event that the Criminal Record Check reveals a matter of a sexual nature or one involving children, the consequences for the person’s employment will be determined under the

provisions set out in Circular 2000/55 Policy and Procedures for Employment Screening of Staff and Other Persons in Child Related Employment

- 6.5 The main factors which will be taken into account in determining individual cases are:
- The Nature of the Offence and its implications for the position concerned.
 - The Number of Offences – an accumulation of individual minor offences may be sufficient to warrant a decision not to employ the person.
 - The Severity of Punishments.
 - Age at which the offences were committed.
 - Mitigating or Extenuating Circumstances – which might include provocation, the effect of alcohol, peer pressure at the time of the offence and other circumstances in which the offence was committed.
 - The person's general character since the offence(s) – consideration would include reference to the person's employment history and reports from previous employers.
- 6.6 A final decision to reject a person for employment will not be taken until the person has been given adequate opportunity to discuss identified charges or convictions in order to verify that it relates to them; check the information for accuracy; and, provide any details of extenuating circumstances.
- 6.7 Applicants rejected for employment on the basis of criminal charges or convictions are to be informed of the reasons for the decision and advised that they have 14 days in which to seek review of the decision. The Director-General will review the decision if requested to do so by an applicant.

7. OFFER OF EMPLOYMENT PENDING CRIMINAL RECORD CHECK

As requests for criminal record checks can generally be processed promptly by the Police Department, offers of employment should not be made prior to receipt of a clearance. Where there is an urgent need to make an offer of employment however Convenors may request the Corporate Personnel Services Branch to offer the successful candidate employment pending completion of the Criminal Records Check. In such circumstances, the letter of offer will clearly state that the offer is conditional upon completion of a criminal record check which does not reveal charges or convictions which the Department might consider justifies rejection of the person's application for employment.

8. REPORT OF CHARGES AND CONVICTIONS FOR SERIOUS OFFENCES

Clause 30 of the Public Sector Management (General) Regulation 1996 requires an officer or temporary employee who is charged with or convicted of a serious criminal offence to report that fact in writing to the Department Head.

9. CONFIDENTIALITY AND DOCUMENT CONTROL

Under no circumstances will an applicant's criminal record be disclosed to any person not directly involved in determining the applicant's suitability for employment.

All records relating to a person's criminal history are maintained securely and disposed of securely 6 months after the last action has been taken on them unless the history concerns matters dealt with under Circular 2000/55 Policy and Procedure for Employment Screening of Staff and Other Persons in Child Related Areas.

This policy is maintained and updated by the Corporate Personnel Services Branch. Copies of the policy are available on HealthNet.

Michael Reid
Director-General

Criminal Record Checks

In line with its commitment to patient care and the protection of staff safety and welfare, the NSW Department of Health has initiated a policy which requires all staff seeking employment in the NSW Health System to undergo a criminal record check prior to employment.

Where a criminal record check proves positive, ie where the search of criminal records reveals a conviction, the information will be treated confidentially. A positive result from a criminal record check will not necessarily preclude a person from being employed in the health system. Each particular case will be determined on its merits and relevance to the position applied for and should any decision be contemplated that would disadvantage a person, they will have an opportunity to respond to the Department of Health before a decision is made.

The following information must be provided by applicants in order to initiate the criminal record check:

	<i>Surname</i>	<i>First Name</i>	<i>Middle Names</i>
Name:	_____	_____	_____
<i>(if applicable)</i> Former Name:	_____	_____	_____
<i>(if applicable)</i> Other Name:	_____	_____	_____
<i>(if applicable)</i> Other Name:	_____	_____	_____
<i>(if applicable)</i> Other Name:	_____	_____	_____
Gender:	<i>Male</i> or <i>Female</i> (please circle)		
Date of Birth:	_____		
Place of Birth:	_____		

Where an applicant refuses to provide sufficient detail for a criminal record check, the applicant will not be considered for employment.

I submit the above information in agreement to the undertaking of a criminal record check in relation to my proposed employment within the NSW Health System. I understand that the employer may exercise its right to reject my application for employment in the event of a positive criminal record check.

Signature

Date