

DEPARTMENT OF INDIGENOUS AFFAIRS

HR POLICY: STAFF CRIMINAL RECORD SCREENING

POLICY OBJECTIVES

- The Department of Indigenous Affairs conducts staff criminal record screening in order to prevent the employment of individuals with a criminal conviction that may conflict with the Department's functions.
- The basic premise of this policy is the Department's obligation to meet its duty of care to staff and clients.
- The possession of a prior criminal conviction will not automatically preclude employment and each case will be assessed on its merits.

PROCEDURES

1. Staff criminal record screening will commence at the Department's expense for staff engaged through positions advertised after 1 July 2006 (**excluding** positions of less than six months in duration).

2. A previous criminal conviction or pending charge will not necessarily preclude a person from employment within the Department or involvement in the provision of services.

3. The Human Resources Branch will ensure that job advertisements, job application packages, job application forms and the advertised vacancy file forwarded to the selection panel clearly reflects the need for the recommended applicant to consent to, and undergo, a criminal record screening process.

4. It is important that job applicants not be discouraged from applying for advertised positions. Therefore, departmental staff should not engage in discussion with job applicants regarding the types of convictions that could preclude them from appointment. Job applicants may access this policy and any advice provided to applicants should be consistent with this policy. If a recommended applicant is found to have a conviction/s, it is the role of the criminal record screening panel to consider the conviction/s and relevant factors and make a recommendation to the Director General as to the applicant's suitability for appointment. Enquiries about this policy may be directed to the Manager, Human Resources.

5. For positions advertised after 1 July 2006, job applicants must submit a valid 'Application for Advertised Vacancy' form that includes the following details:

- Full name;
- Declaration as to criminal convictions and/or pending charges; and
- Consent to undergo a criminal record screening process.

The application form will include a request for consent to undergo the Department's criminal record screening procedure.

6. Existing public sector employees who are successful in applying for a vacancy advertised after 1 July 2006 should be aware that if they have previously declared on an application form that they did not have a criminal conviction, but are subsequently found to have had a criminal conviction at the time they completed the application form will be asked to explain the apparent discrepancy. A person found to have made a deliberately false statement about their criminal record may be subject to disciplinary action including dismissal. A deliberately false statement may also constitute “misconduct” for the purposes of the *Corruption and Crime Commission Act 2003* and require the Director General of the Department of Indigenous Affairs to report the matter to the Corruption and Crime Commission.

7. When a selection recommendation is approved, the Manager, Human Resources will request the recommended applicant to submit a current [issued in the last six (6) months] “National Police Certificate” (NPC).

7.1 NPCs can be obtained on application at most local police stations at a cost of \$42.00 (as at June 2006). The NPC application form can be downloaded from the WA Police Service website at www.police.wa.gov.au, details completed and the form lodged at the local police station.

7.2 The Department will reimburse the cost of obtaining an NPC only where the NPC was issued after the date of the job advertisement. The intention of this sub clause is to prevent the unnecessary reimbursement for an NPC that an applicant had to obtain when applying for other positions outside the Department.

7.3 The appointee should mail or deliver the original NPC, with the payment receipt, to the Department, addressed in the following manner (to maintain confidentiality):

**Manager, Human Resources
Department of Indigenous Affairs
PO Box 7770 Cloisters Square
Perth WA 6850
CONFIDENTIAL – PERSONAL DATA**

7.5 If an applicant has been resident overseas prior to appointment, additional screening may be necessary (i.e. Australian Federal Police, Interpol).

7.6 When a recommended applicant is contacted and requested to supply an NPC, they should not assume that an offer of employment will be made.

8. An individual who refuses to consent to or participate in a criminal record screening process will be precluded from appointment by DIA or engagement in the relevant activity.

9. The Manager, Human Resources will undertake a check to ensure that NPCs submitted are relevant to the person being screened.

10. The Manager, Human Resources will assess each application and NPC as follows:

- If the application and NPC confirms the individual has no convictions, the Manager, Human Resources shall authorise employment on the basis that the individual has passed the criminal record screening process and arrange for the reimbursement of the cost of the National Police Certificate;
- If the application declares and/or the NPC lists any convictions, the Manager, Human Resources shall convene a criminal record screening panel, maintaining appropriate confidentiality throughout the process.

11. Criminal record screening panels will consist of:

- Chairperson, Selection Panel for the particular advertised vacancy;
- Manager, Human Resources;
- Supervisor and/or Manager; and
- Indigenous employee (in the case of an Indigenous applicant).

Criminal record screening panels may consult with the Principal Legal Officer or the authorised representative of that position during their investigations.

Criminal record screening panels should, as far as possible, complete their investigation and recommendation to the Director General within five (5) working days of being convened. The panel must provide the applicant reasonable time to present information to the panel.

12. Criminal record screening panels may take into account the following criteria when evaluating the relevance of an individual's criminal convictions (as evidenced in an NPC), and/or pending charges, to an application for employment:

- the scope of the individual's criminal history;
- the nature of the offence(s) and the relationship of the offence(s) to the particular position/activity or other decision under consideration;
- the period of time that has elapsed since the offence(s) took place;
- whether the offence(s) was/were committed as a child, juvenile or adult;
- the type of penalty(ies) imposed by the court eg. whether the court elects not to record a conviction where the person enters into and successfully completes a conditional order such as bond or probation, and whether the individual has successfully completed the order;
- the severity of any penalty(ies) imposed;
- whether the offence(s) is still an offence, eg., whether the offence(s) has been decriminalised or the provision creating the offence has been repealed;
- whether the individual is eligible to have the conviction/s spent within the meaning of the *Spent Convictions Act 1988*;
- any mitigating or extenuating circumstances; and
- general character since the offence(s), eg:

- whether the applicant has been or is employed in the public sector and if so, reports on their service and departmental recommendation;
- steady employment record/satisfactory appointment history; or
- favourable reports from past employers/institutions, interviewing officers or officers of Probation and Parole or Courts Administration departments.

13. A final decision to deny appointment/engagement will not be made unless the appointee has had the opportunity to:

- Discuss their criminal convictions with the criminal record screening panel in order to (where the discussion takes place in person, a support person is permitted):
 - verify that it relates to him/her;
 - verify its accuracy; or
 - provide details that they wish to be considered in relation to the matter.

OR

- Withdraw their application (in writing) for engagement or involvement in a given position.

14. Following a reasonable assessment of the individual's criminal conviction/s or pending charge/s, together with appropriate consultation with the appointee, the criminal record screening panel shall make a recommendation in writing as to whether or not the individual should be offered employment. The written recommendation shall be forwarded to the Director General for consideration and approval.

15. Where a decision has been made to not appoint a person because of a criminal conviction or pending charge, the individual shall be informed in writing of the decision and their right to lodge a 'breach of Standard' claim within the prescribed period of time (further information on the website of the Office of the Public Sector Standards Commissioner).

15.1 The decision may be reviewable within the meaning of the Public Sector Standard in Human Resource Management on Recruitment, Selection and Appointment.

The outcome of meeting the Standard is that the most suitable people are selected and appointed.

Bearing in mind the need for strict confidentiality, the minimum standard of merit, enquiry and probity required under the Standard is met if:

- A proper assessment matches a candidate's skills, knowledge and abilities with the work-related requirements of the job and the outcomes sought by the Department;
- The process is open, competitive and free of bias, unlawful discrimination, nepotism or patronage; and
- Decisions are transparent and capable of review.

16. The Human Resources Branch will coordinate criminal record screening in the Department and ensure confidential and appropriate record keeping including:

- Confidential storage of printed records - National Police Certificates are NOT to be placed on employee personal files; and
- Computer records – Only the date of passing the criminal record screening process will be recorded in the Human Resources Management Information System.

17. An individual's criminal conviction history is classified as "personal data". Access to criminal record screening information will be restricted to senior officers on a "needs to know" basis.

WARNING: Disciplinary action may be taken against an officer who gains or gives unauthorised access to a person's criminal history.

DELEGATIONS

The Director General has sole authority to exclude or appoint staff with a recorded conviction for all positions.

FURTHER REFERENCES

- *DOCEP Labour Relations Policy Statement 2002 on "Pre Employment Screening"* (www.docep.wa.gov.au)
- *Human Rights and Equal Opportunity Commission - Guidelines for the prevention of discrimination in employment on the basis of criminal record* (www.hreoc.gov.au)
- *State Law Publisher website* (www.slp.wa.gov.au)
- *Spent Convictions Act 1988*
- *The Equal Opportunity Act 1984 as amended*
- *The Freedom of Information Act 1992*
- *Public Sector Management Act 1994*
- *Working with Children (Criminal Record Checking) Act 2004*
- *Corruption and Crime Commission Act 2003*
- *Public Interest Disclosure Act 2003*
- *Public Sector Standards in Human Resource Management (More information: www.opssc.wa.gov.au)*

REVIEW

- January 2007 – A review will take place to ensure that the policy integrates with the 'phasing-in arrangements' of the *Working with Children (Criminal Record Screening) Act 2004*. At that time, employees working with children (as defined in the legislation) will be required to apply for a "Working with Children" check during 2007 (Further information: www.wwc.wa.gov.au).
- June 2007 – DIA will review the operation of its Staff Criminal Record Screening Policy.

EFFECTIVE DATE: 1 July 2006