

HR POLICY 6 – CRIMINAL HISTORY ASSESSMENT		
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Introduction

Autism SA is committed to protecting the safety and wellbeing of all clients and will ensure that persons engaged by the organisation on a paid, unpaid or student placement basis are suitable for the positions they hold. One of the means that this suitability will be assessed is through the evidence based process of conducting criminal history assessments for potential and existing employees. This Policy outlines the requirements and process for assessing employee suitability.

Definitions

- **“The Standards”**: refers to the “Standards for dealing with information obtained about the criminal history of employees and volunteers who work with children July 2012” issued by the Chief Executive, Department of Education and Child Development.
- **“National Police Certificate”**: document provided by the South Australian Police Department (SAPOL) to an individual upon request noting any previous criminal convictions. The check undertaken extends to all States and Territories within Australia and only the individual themselves can apply to have a Police Check undertaken.
- **“National Criminal History Check”**: Certificate issued by CrimTrac
- **“Employee”**: For the purposes of this policy, “employee” refers to any person engaged by Autism SA on a paid, unpaid or student placement basis
- **“Prescribed functions”** are defined as positions involving:
 - regular contact with children or working in close proximity to children on a regular basis, unless the contact or work is directly supervised at all times
 - supervision or management of persons in positions requiring or involving regular contact with children or working in close proximity to children on a regular basis
 - access to records of a kind prescribed by regulation relating to children (i.e.: records relating to children in connection with child protection services, education or child care services, health services, disability services and court orders or proceedings).
- **“Department for Communities and Social Inclusion (DCSI) Screening Unit”** means the authorised screening unit pursuant to the Children's Protection Regulations 2010 and Assessment of Relevant History Regulations 2014 authorised to conduct child-related employment screening on behalf of organisations as provided for by Regulation 6(1)(b) or Disability Services Employment Screening for people working or volunteering in a prescribed function under the *Disability Services Act 1993*
- **“Child-related Employment Screening”**: screening by the DCSI Screening Unit in accordance with the Standards to obtain and assess information obtained about the criminal history of employees and volunteers who work with children
- **“Disability Employment Screening”**: screening by the DCSI Screening Unit in accordance with Section 5B of the Disability Services Act 1993 placing a legal obligation on service providers funded under the Act to ensure employees undergo an assessment of his or her relevant history before that person is appointed or engaged in a prescribed position.
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Policy

All appointments at Autism SA are made subject to the results of a criminal history assessment. Information obtained through the criminal history assessment process is used to assist in determining the suitability of applicants for employment (paid and unpaid) and for student placement.

No employee will commence working with clients until a criminal history assessment is completed.

As at 1st July 2014, through amendments to the Disability Services Act 1993 and corresponding (*Assessment of Relevant History*) Regulations 2014. People working or volunteering in a **prescribed function** under the Disability Services Act 1993, must undergo 'Disability Services Employment screening' by the Department for Communities and Social Inclusion (DCSI) Screening Unit.

Where the role of a person working in the disability sector **also involves working with children, only a child-related employment assessment** will be required, i.e. a disability services employment assessment will not be required.

Autism SA is required to ensure all individuals undergo a relevant history assessment before they are engaged or employed in a prescribed position and that individual must be found suitable for employment by the screening unit.

Autism SA has the expectation that all contractors, subcontractors and agents working with clients in a prescribed position (as defined) will comply with this Policy. That is, all individual contractors, subcontractors and agents must have, as a minimum a Letter of Clearance (or other written evidence) relating to that individual's suitability to work obtained from the DCSI Screening Unit. All organisations contracted to provide employees to work with clients in a prescribed position, must have a current policy regarding criminal history assessments that can be sighted and assessed by Autism SA.

Autism SA recognises that possessing a criminal record should not preclude a person from obtaining employment and will not discriminate on this basis. In considering any information provided via the criminal history assessment, including past criminal offences or current criminal charges, consideration will be given as to the nature of the offence and its relevance to the requirements of the position.

All information obtained by the organisation will be treated confidentially and managed in accordance with the guidelines contained within this policy, Autism SA's Employee Privacy Policy (AUTISM SA HR POLICY 15), the Confidentiality Guidelines for Authorised Officers as issued by the DCSI Screening Unit and Standard 7 of The Standards.

Implementation

1. Notification

- When advertising to fill vacancies, any advertisement must note the requirement for applicants to undergo a criminal history assessment to be conducted by the DCSI Screening Unit. All applicants for all positions must be prepared to undergo, or have completed, the Child Related Employment Screening .
- All Job and Person Specifications and other relevant contracts will include the requirement of a satisfactory Criminal History Assessment and Background Screening Check. A copy of this policy will be available for download in the employment section of the Autism SA website, included with the letter of offer prior to appointment, and available on the Autism SA Computer Network.
- All letters of offer will state that "a condition of employment is a satisfactory National Criminal History Assessment and Background Screening Check"

2. Prospective employees

Prospective employees short-listed for interview will be required to produce a Letter of Clearance (or other written evidence) relating to that individual's suitability to work obtained from the DCSI Screening Unit. Such evidence must have been obtained within three (3) months of the date of their application for employment.

Prospective employees short-listed for interview that produce a Letter of Clearance (or other written evidence) relating to that individual's suitability to work obtained from the DCSI Screening Unit that is older than three (3) months and less than twelve (12) months will be required to

undertake a National Criminal History Check with CrimTrac. The cost of this will be met by the individual.

Prospective employees short-listed for interview who are **not** able to produce such evidence (ie, cannot produce a Letter of Clearance or the Letter of Clearance is over 12 months old) will be required to demonstrate that they have commenced the process to undertake a Criminal History Assessment and background Screening Check in accordance with this Policy prior to, or at, interview. The cost of this will be met by the individual.

Screening Unit Clearances are valid for a maximum of 3 years and in exceptional circumstances, where a Letter of Clearance obtained from DCSI over 12 months old is produced by a prospective employee, they may, at the sole discretion of the CEO, be approved to begin employment whilst a new Criminal History Assessment and Background Screening Check form DCSI is obtained – if a National Criminal History Check with CrimTrac is first obtained. The cost of this will be met by the individual.

Prospective employees short-listed for interview who are **not** able to demonstrate that they have commenced the process to undertake a Criminal History Assessment and Background Screening Check in accordance with this Policy prior to, or at, interview may, at the Chief Executive Officer's sole discretion, be approved to continue the selection process. In such situations, the Criminal History Assessment and Background Screening Check must be completed by the applicant prior to commencing employment should they be successful. The cost of this will be met by the individual.

A person who does not provide evidence, or consent to evidence being obtained, is precluded from engagement.

3. Existing employees

- If the role involves regular contact with clients or working in close proximity to clients on a regular basis (direct support), existing employees will be required to have a criminal history assessment no older than 12 months. This will be conducted by the DCSI Screening Unit every third year and by CrimTrac in the intervening years.
- If the role involves supervision or management (non-direct support) of persons in positions requiring or involving regular contact with clients or working in close proximity to clients on a regular basis, existing employees will be required to have a criminal history assessment no older than three years. This will be conducted by the DCSI Screening Unit.
- If the role involves access to records of a kind prescribed by regulation relating to clients (i.e. records relating to child protection services, education services, health services, disability services and court orders or proceedings), existing employees will be required to have a criminal history assessment no older than three years. This will be conducted by the DCSI Screening Unit.
- If there is ambiguity regarding the role and the requirements for criminal history assessments, a determination will be made on a case-by-case basis by the Chief Executive Officer.

4. Persons Responsible for obtaining evidence of criminal history

The Manager/Supervisory Staff member of Autism SA responsible for the appointment of the employee (paid, unpaid or student) is responsible for arranging the completion of a criminal history assessment in accordance with the current procedures operated by Autism SA.

Criminal History Assessments and Screening Checks provided by DCSI Screening Unit

The DCSI Screening Unit cannot and does not make the final determination as to whether or not a person is suitable for employment or volunteer work. The DCSI Screening Unit conducts risk assessments to assist employers and volunteer organisations to make informed decisions about their workforce and risks to their clients (<http://www.dcsi.sa.gov.au/services/screening/information-for-employers>).

Autism SA is notified if the DCSI Screening Unit determines that a person poses an unacceptable level of risk and is subsequently not provided with a clearance.

In the event that some (but not an unacceptable) level risk of harm to children or vulnerable people is detected, the Manager or Principal Assessment Officer of the DCSI Screening Unit may engage the Authorising Officer (ie, the Chief Executive Officer or delegate) at Autism SA to finalise their determination. Consideration of the factors and criteria presented in section 6 (below) will be considered in such circumstances.

A determination may result in a specific clearance permitting an applicant to work in a nominated role only. This specific clearance cannot be used as a general clearance for use with other organisations or in other roles.

6. Assessing information contained in a criminal history assessment conducted by CrimTrac (undertaken by Autism SA in the intervening year between the three year DCSI Screening Unit assessment and in situations where an applicant has a Letter of Clearance between 3 and 12 months old) or by exception

Employee/Applicant has clear record

Where the recommended applicant has a clear record, the Manager/Supervisory Staff member may take the appropriate action in accordance with this policy to recommend that the appointment be confirmed by the CEO. Existing employees undergoing an assessment and disclosing a clear record have the details of the assessment outcome entered on the register and no further action is required.

Employee/Applicant does not have clear record

The Chief Executive Officer (or authorised delegate) will manage the assessment process for any criminal history assessment that indicates the applicant or existing employees does not have a clear record. Autism SA will consider and assess an individual's criminal history report on a case-by-case basis. Criminal history is considered in context, based on relevance and the potential risk of harm to children and vulnerable people.

It should be noted that an applicant is not automatically precluded from a job or placement on the basis of having a police record. However, there are certain types of convictions that indicate a prima-facie risk of harm to clients that will prevent a person from meeting the selection criteria required for employment and prevent that person from being engaged by Autism SA (Standard 5). Such convictions include:

- Murder and/or sexual assault
- Violence in relation to a child
- An offence relating to child pornography
- An offence involving child prostitution
- A child abuse offence, for example criminal neglect.

Any offender recorded on the Australian National Child Sex Offenders Register (ANCOR) is prohibited for working with children under the Child Sex Offenders Registration Act 2006 (SA) and will not be employed (Standard 5).

Some types of convictions will require substantial consideration against the criminal history assessment criteria, assessment of potential risk of harm with consideration to the client group (including children), and opportunity provided for the applicant to provide contextual information (Standards 5 and 6). The types of convictions requiring substantial consideration include:

- Sex related crimes and sexually-motivated offences
- Violence offences/assault including any form of assault which has resulted in a sentence of imprisonment
- Offences relating to cruelty to animals
- Any other offences against a child (including drug offences)

- Dishonesty offences including repeated fraud or theft, or fraud or theft from an employer or vulnerable people
- Serious drug-related matters
- Serious traffic offences
- Other offences that are relevant or relate to supporting a vulnerable client group.

Existing employees undergoing an assessment and disclosing a criminal history will be subject to the same assessment process as initial applicants.

Criminal history assessment process

The Chief Executive Officer (or authorised delegate) should assess the disclosable record of the person by having regard to the following assessment criteria:

- the relevance of the criminal offence in relation to the job or placement
- the nature of the offence and the relationship of the offence to the particular job or placement for which the applicant is being considered
- the length of time since the offence took place
- whether the person was convicted or found guilty and placed on a bond
- whether there is evidence of an extended police record
- the number of offences committed which may establish a pattern of behaviour which renders the applicant unsuitable
- whether the offence was committed as an adult or a juvenile
- the severity of punishment imposed
- whether the offence is still a crime, that is, whether the offence has now been decriminalised
- whether there are other factors that may be relevant for consideration, for example, cultural factors or mitigating or extenuating circumstances
- any evidence of the person's general character since the offence was committed.

Depending on the nature of the offence, additional information gained through the recruitment and assessment process may also be used to help establish the degree of relevance of the offence. The type of information used may include information supplied by referees, pattern of employment history and the applicant's general demeanour. Autism SA may also seek out additional information in consultation with the applicant.

7. Outcomes of the criminal history assessment conducted by CrimTrac

Criminal assessment history information will be considered objectively and any decision based on the outcomes of a criminal history assessment, either in whole or part, will be undertaken fairly and equitably and without discrimination. Any decision made must be documented (eg, minutes of assessment meetings, risk assessment procedures), transparent, meet the requirements of relevant legislation and standards (e.g. child protection legislation, industrial legislation, discrimination legislation) and be capable of review. Autism SA will ensure that written evidence is maintained that indicates consideration of individual cases rather than automated clearances or preclusions (Standard 7).

Following the assessment of the criminal history report against assessment criteria and subsequent due consideration of any additional information provided in response from the applicant/employee, a decision can be made as to the suitability of the person for the job or placement with Autism SA.

Criminal history deemed acceptable

Where the decision is favourable, and the criminal history is deemed acceptable, the Chief Executive Officer (or authorised delegate) will advise the Manager/Supervisory Staff member responsible for the appointment of the person and the Manager/Supervisory Staff member may take the appropriate action in accordance with this policy to recommend that the appointment be confirmed by the CEO or delegate.

Assessment identifies risk of harm or failure to meet criteria

Where the assessment indicates a risk of harm or unsuitability for the job or placement, the person conducting the assessment must advise the applicant/employee of the matter of concern and provide an opportunity for the person to respond and/or provide further information.

Such further information to be considered may include (but is not limited to) the opportunity to:

- dispute the accuracy of information in the criminal history report (persons disputing the accuracy of information contained in their criminal history record may apply to the South Australia Police through the Freedom of Information Act 1991 (SA) to correct their record)
- provide details of the conviction or offence, the circumstances surrounding the offence and other information that the applicant/employee considers relevant to the assessment and decision making process.

Where an applicant is not cleared for employment due to the outcome of the criminal history assessment, the following actions will be undertaken:

- the Chief Executive Officer will inform the Manager/Supervisory Staff member who requested the criminal history assessment of the outcome of the assessment and the decision
- the Manager/Supervisory member will inform the unsuccessful applicant of the decision and the rationale
- the Manager/Supervisory Staff member will inform the unsuccessful applicant that the National Criminal History Check and associated papers will be destroyed
- the Manager/Supervisory Staff member will inform the unsuccessful applicant that they have a right to dispute the decision.

For existing employees undergoing an annual assessment and disclosing a criminal history that identifies risk of harm or failure to meet criteria, the following process will apply:

- Where the relevant criminal history suggests a prima facie risk of harm to children or clients, the employee bears the onus of proving they do not pose such a risk
- Where the relevant criminal history of an employee does not indicate a prima facie risk but where there are other strong indicators of risk that cause concern, the Chief Executive Officer is required to prove on the balance of probabilities (ie, the risk is more probable than not) that the employee poses a risk of harm to children or clients
- Investigations into existing employees disclosing a criminal record will operate in accordance with the Autism SA Discipline and Termination of Employment policy (AUTISM SA HR POLICY 20)
- Autism SA is committed to ensuring that when disciplinary or termination of employment issues arise, everyone is treated fairly and equitably, in accordance with Industrial Standards of natural justice, equal opportunity and procedural fair play
- Employees have a right to dispute the decision.

Documented evidence of the assessment and decision will be maintained (Standard 7).

8. Principles of natural justice

A person may be afforded natural justice by being:

- Given an opportunity to dispute the contents of a criminal history report before any decision is made
- Given an opportunity to provide information regarding his or her criminal history or other information and references, and for this information to be considered
- Informed of any proposed decision to be made about them
- Provided with the rationale for the proposed decision
- Given the right to have a final assessment decision reviewed by an independent body.

9. Dispute resolution

A decision made following the assessment of an individual's criminal history may be disputed by the individual by contacting the Human Rights and Equal Opportunity Commission. Autism SA will cooperate with any such process as required by the Commission.

10. Privacy, record keeping and storage of criminal history information

Autism SA will maintain only appropriate records relating to the criminal history assessment as is permitted by legislation.

- All information gathered will not be used for any purpose other than as part of the recruitment and selection process
- No information will be disclosed to any other person, agency or organisation without the permission of the individual
- For Criminal History Assessments undertaken by Autism SA, once sighted and assessed, the National Criminal History Checks completed via CrimTrac will be destroyed. An individual may request in writing a copy within a three month period.
- For Criminal History Assessments undertaken by the DCSI Screening Unit, the notification received by Autism SA will be filed in the employees personnel file
- A record is made of the date of issue and certificate number or relevant reference number of the National Criminal History Check, the Criminal History Assessment Register which is stored electronically and managed in accordance with Autism SA's Employee Privacy policy (AUTISM SA HR POLICY 15)
- Matters disclosed in National Police Clearance Certificates and other information relating to specific offender history, criminal convictions, findings of guilt, outstanding charges and other matters are confidential and will not be incorporated into any manual or electronic database. Any police record data recording system used for audit and investigation purposes may contain only the individual's name, the date of the check, whether the individual was approved for employment or placement.
- Criminal history assessment information (certificates, supporting information and evidence) will be retained for no longer than three months under any circumstances at which time the information will be destroyed.
- Criminal history assessment information (assessment of applicant's suitability and subsequent decision along with any meeting minutes) will be retained in the employees personnel file located in a secure, locked storage cabinet in accordance with Autism SA's Employee Privacy policy (AUTISM SA HR POLICY 15). This information will include only information which is evidence that the assessment and decision was fair and followed due process, including that a criminal history report was obtained, how that information affected decision making processes and any statutory declarations (where applicable)
- Only the Chief Executive Officer (or authorised delegate) are authorised to access completed National Criminal History Checks and/or criminal history assessment information
- During selection, Manager/Supervisory Staff members may be consulted to facilitate the assessment of any disclosable record.

11. Employee obligations

- Employees, Volunteers or Contractors are required to notify Autism SA should:
 - There be any relevant change in their criminal record
 - They become subject to pending criminal charges or other police investigation that has relevance to their job role and responsibilities
 - They be subject to any other legal matters that may place either clients, other employees or the organisation at risk.
- All employees will require criminal history assessments that are no older than 12 months if working with clients. Employee compliance with this policy is a condition of ongoing employment.

12. Catholic police clearance

It is the policy of Catholic Education SA that "all employees, other workplace participants and volunteers" are required to undergo a police check through the Catholic Diocesan Police Check Unit. As such, any Autism SA employee that may have occasion to visit worksites of Catholic Education SA will be required to obtain a Catholic Police Clearance Letter through the Catholic Diocese Police Check Unit.

- This clearance will be obtained automatically by Autism SA on behalf of the employee on presentation or receipt of a National Police Clearance Certificate
- The Catholic Diocese Police Check Unit will forward the confidential clearance letter to the employee
- This must be sighted by Human Resources Officer and noted on the Autism SA Criminal History Assessment Register.

Related Policies & Procedures

Employee Privacy Policy (AUTISM SA HR POLICY 15)

Risk Management (AUTISM SA GOVERNANCE POLICY 4)

Supporting Industry Standard

Standard 6 National Standards for Disability Services: Service Management

Standard 1 National Standards for Disability Services: Rights

Standards for dealing with information obtained about the criminal history of employees and volunteers who work with children, July 2012 issued by the Chief Executive, Department of Education and Child Development

Relevant legislation

Disability Services Act 1993 (amended 2013) (SA)

Children's Protection Act 1993 (SA)

Children's Protection Act (Miscellaneous) Amendment Act 2005 (SA)

Equal Opportunity Act 1984 (SA)

Privacy Amendment (Enhancing Privacy Protection) Act 2012 (Cth)

Useful Resources

<http://www.dcsi.sa.gov.au/services/screening>