



**Australian Government**



# **Criminal Records Checks Guidelines**

## **V 1.0**

### **Disclaimer**

This document is not a stand-alone document and does not contain the entirety of Disability Employment Services Providers' obligations. It should be read in conjunction with the Disability Employment Services Grant Agreement and any relevant guidelines or reference material issued by the Department of Social Services under or in connection with the Disability Employment Services Grant Agreement.

# Table of Contents

<b>Criminal Records Checks Guidelines</b>	<b>1</b>
<i>Table of Contents</i>	2
Document Change History	3
Background	3
Disability Employment Services Grant Agreement Clauses:	3
Reference documents relevant to this guideline	3
Explanatory Note	3
Criminal Records Checks Guidelines - What a DES Provider must do to comply	4
Sourcing Criminal Records Checks	8

## Criminal Record Checks Guidelines

### Document Change History

Version	Effective Date	End Date	Change & Location
1.0	1 July 2018		Original version of document

### Background

This Guideline outlines the responsibilities of DES Providers in relation to criminal records checks, including processes for obtaining criminal record checks in each State and Territory.

For the purposes of this document, a 'criminal record check' may refer to both a criminal records check and a Working with Children check.

**Note: This should not be read as a stand-alone document, please refer to the Disability Employment Services Grant Agreement.**

### Disability Employment Services Grant Agreement Clauses:

The relevant clauses in the Disability Employment Services Grant Agreement are:

Clause 16 – Criminal records checks and other measures

Clause 44 - Records the Provider must keep

Clause 45 - Access by Participants and Employers to Records held by the Provider

Clause 98 – National Work Experience Programme Placements

Section 3C– Control of Information

Annexure A – Definitions

### Reference documents relevant to this guideline

National Work Experience Programme for Disability Employment Services Guidelines

### Explanatory Note

All capitalised terms have the same meaning as in Disability Employment Services Grant Agreement. In this document, "must" means that compliance is mandatory and "should," means that compliance represents best practice.

## Criminal Records Checks Guidelines - What a DES Provider must do to comply

Criminal records checks must be carried out where legislation requires it; **or** where an activity is subject to industry accreditation requirements/standards; **or** where the Department specifies a records check is needed. A criminal records check must be completed for all activities where the Participant will have regular or unsupervised contact with Children, the elderly, or other vulnerable people.

Who is Responsible:	What is Required:
<p><b>1. The DES Provider</b></p> <p><b>Identify if a criminal records check needs to be undertaken for an activity and obtain the check</b></p> <p><i>Disability Employment Services Grant Agreement Clauses</i> <i>References:</i></p> <ul style="list-style-type: none"> <li>• Clause 16</li> <li>• Clause 98</li> <li>• Annexure A - Definitions: Child/Children</li> <li>• Relevant state and territory legislation</li> </ul>	<p>A criminal records check is needed where:</p> <ul style="list-style-type: none"> <li>• legislation requires criminal records checks to be conducted;</li> <li>• the activity is subject to industry accreditation requirements, industry standards, or a legal requirement that the activity can only be carried out by people who have not been convicted of particular crimes;</li> <li>• the activity is specified by the Department as requiring criminal records check; or</li> <li>• it is otherwise an activity in which the Participant and/or their supervisor will have regular or unsupervised contact with children, the elderly, or other classes of vulnerable people, and for which it would be considered prudent for a reasonable person that a criminal records check be conducted.</li> </ul> <p>The DES Provider must, prior to commencing a Participant or engaging a supervisor on an activity, establish whether the nature of the activity requires a criminal records check. The DES Provider is not required to arrange for a criminal records check to be conducted for a Participant/supervisor starting in employment, unless there is a statutory requirement for the DES Provider to do so. Where a criminal records check is required, the DES Provider must arrange for the check to be completed before allowing the Participant and/or supervisor to participate or be associated with the activity.</p> <p>The DES Provider must obtain the Participant’s or supervisor’s written permission before undertaking a criminal records check or a Working with Children check using the ‘Consent to Obtain Personal Information’ form or the relevant form required by the organisation the DES Provider has chosen to conduct the check.</p> <p>Criminal records checks enable the DES Provider to ensure that a Participant or supervisor does not have:</p> <ul style="list-style-type: none"> <li>• a conviction for crime(s) that would suggest people will be placed at undue risk of injury or mistreatment;</li> <li>• a conviction for crime(s) against children where there may be direct or indirect contact with children; and</li> <li>• a conviction for murder, sexual assault or any other form of assault that resulted in a prison sentence (which is relevant to where a Participant and/or supervisor may have direct or indirect contact with vulnerable people). In the case of less serious assault convictions, consideration must be given to the extent of the contact that a Participant and/or supervisor should have and the level of supervision that is required.</li> </ul> <p>When determining if a criminal records check is required, the DES Provider may take into account whether other people working or volunteering in the activity have had a criminal record check.</p> <p>It is up to the DES Provider to choose an organisation for processing criminal records checks. The DES Provider must meet the expenses for the cost of all criminal records checks and/or Working with Children checks conducted for their Participants/supervisors.</p> <p>Legislative requirements, the type of criminal records check issued, requirements for</p>

Who is Responsible:	What is Required:
	<p>undertaking the processing of criminal records checks and application fees vary considerably between different Australian jurisdictions and government bodies.</p> <p>The Working with Children check is different to the criminal records check and Participants and supervisors may be required to get both. This is because the Working with Children check is only concerned with offences that could indicate a child may be harmed. For example, where an Activity involves working with vulnerable people, a conviction for theft (that would not be picked up on a Working with Children Check) may be of relevance to the DES Provider.</p> <p>The DES Provider must remain aware of current legislative requirements in their respective state or territory to ensure that Participants and supervisors have the appropriate criminal records check and/or Working with Children check in place prior to commencement on an activity that requires a check/s.</p> <p>The Participant has the right to refuse consent, as does the supervisor (subject to any contractual relations between the DES Provider and the supervisor that is depending on the terms of the employment contract).</p> <p>If a criminal records check or a Working with Children check is refused by the Participant or supervisor, they should be referred to an activity where a criminal records check is not required.</p> <p>If children or vulnerable people will be participating in an activity alongside adult Participants, then the DES Provider will need to use their discretion to decide on how to best manage the activity so the safety of the children/vulnerable people is assured. In particular, the DES Provider must ensure that the activity has a greater level of supervision and may, for instance, require that the supervisor and/or Participants have had a criminal records check and/or a Working with Children check completed.</p> <p><b>Note:</b> In addition to obtaining criminal records checks and Working with Children checks, an appropriate person employed by the organisation running the activity (who may be the supervisor) also needs to be at the location at all times where Participants will have direct contact with children or other vulnerable groups.</p>
<p><b>2. The DES Provider</b></p> <p><b>Send the application for the criminal records check to the organisation processing the check</b></p>	<p>Depending on the protocols of the organisation conducting the check, the check forms will be returned to either the DES Provider or direct to the applicant Participant/supervisor. In the latter case, the DES Provider must ensure that the Participant/supervisor provides a copy of the application and the results to them before they can commence on the nominated activity.</p> <p>Some organisations that conduct criminal records checks will return interim reports indicating a potential match exists. This does not necessarily indicate that the applicant has a criminal conviction, which would preclude him or her from undertaking an activity.</p> <p>For instance, organisations such as the Australian Federal Police (AFP), CrimTrac and state and territory police will often need to exchange information in order to determine if a relevant criminal conviction exists. In some cases, the organisation that is conducting the check will send a report to the applicant or designated third party advising them that further investigation is being undertaken. If the DES Provider receives preliminary advice of this nature, then the DES Provider should not use this information to cancel the criminal records check and/or automatically look for an activity that does not require a criminal records check.</p> <p>If criminal history exists, the organisation conducting the criminal records check and/or Working with Children check will provide written reports that contain information about criminal convictions, findings of guilt and/or charges yet to be</p>

Who is Responsible:	What is Required:
	<p>heard when the check is processed.</p> <p>After checking police records, if a potential match is not confirmed; either the DES Provider or the applicant will be advised that there is no match against the applicant's name. Where the information is precluded from release under specific legislation or policy, the DES Provider or the applicant is advised that there is no match.</p>
<p><b>3. The DES Provider</b></p> <p><b>Identify an activity for the Participant/supervisor to participate in while waiting for the check/s to be processed</b></p>	<p>Criminal records checks and/or the Working with Children check may be completed in a few days but in some cases may take up to six months to complete. The DES Provider will need to consider interim or alternative activities/interventions for the Participant/supervisor to participate in while results are pending.</p> <p>In some instances, before results of criminal records checks are received, the DES Provider and the Participant may decide that the interim activity is preferred to the proposed activity, which originally required the criminal records check. If this is the case, the Participant may remain on the interim activity.</p>
<p><b>4. The DES Provider</b></p> <p><b>Manage the results of the criminal records check</b></p> <p><i>Disability Employment Services Grant Agreement Clauses References:</i></p> <ul style="list-style-type: none"> <li>• Clause 16</li> <li>• Clause 98</li> </ul>	<p>If the criminal records check uncovers a relevant criminal conviction, the applicant may dispute the conviction and request another criminal records check to be completed. If the applicant does dispute the conviction/s, the DES Provider will need to contact the organisation that conducted the original check to ensure it is correct.</p> <p>If the DES Provider becomes aware, or has received notice from the AFP or CrimTrac, or relevant state or territory police or other body (as applicable), that there have been changes to the information provided in relation to a criminal records check, the DES Provider should immediately decide, using the information available, whether it is appropriate to:</p> <ul style="list-style-type: none"> <li>• leave the Participant/supervisor on the activity</li> <li>• move the Participant/supervisor to an activity which is not an activity which specifically requires a criminal records check, and/or</li> <li>• repeat the criminal records check process.</li> </ul> <p>Where the criminal records check has uncovered a criminal conviction that precludes the Participant/supervisor from participating on an activity, the DES Provider will need to refer the Participant/supervisor to an alternate activity that does not require a criminal records check.</p> <p><b>Participant</b></p> <p>If the criminal records check uncovers an issue that might reasonably impact on Participant's suitability for an activity, the DES Provider may need to undertake a risk assessment to ascertain whether they should refer them to the activity.</p> <p>For example, it may be the case that a DES Provider in Western Australia identifies an activity for a Participant where one of the tasks is working at a local canteen that routinely serves children. The DES Provider then applies for a criminal records check and a Working with Children check. The Working with Children check does not uncover any relevant conviction or criminal history however; the criminal records check uncovers a criminal conviction for stealing. The Participant has no history of assault, or aggressive behaviour, however they have advised the DES Provider that they have a history of gambling.</p> <p>While it might be regarded as an acceptable risk for the Participant to be working with children, the DES Provider may decide that it is not appropriate for the Participant to be handling money. The DES Provider might decide, however, that they can mitigate the potential risk of money being stolen by arranging for appropriate</p>

Who is Responsible:	What is Required:
	<p>supervision. The course of action the DES Provider eventually takes, after looking at all the available options, is at their discretion.</p> <p><b>Supervisor</b></p> <p>If the DES Provider chooses to use the services of the supervisor on other activities, they must use their discretion and they must not arrange for the supervisor to be deployed to other activities, if the DES Provider thinks that there is a reasonably foreseeable risk that the supervisor will cause loss or harm to others on the activity.</p>
<p><b>5. The DES Provider</b></p> <p><b>Undertake appropriate records management processes</b></p> <p><i>Disability Employment Services Grant Agreement Clauses</i></p> <p><i>References:</i></p> <ul style="list-style-type: none"> <li>• Section 3C</li> <li>• Clause 44</li> <li>• Clause 45</li> </ul>	<p>The results of criminal records checks are personal and confidential. The DES Provider must not disclose the information to other parties unless permission is obtained from the Participant/supervisor.</p> <p>Anyone who is required to sight criminal records checks or Working with Children checks should be reminded that the information needs to be treated sensitively at all times.</p> <p>Criminal records checks, Working with Children checks and any associated material must be securely stored at all times to ensure confidentiality.</p> <p>If documents are faxed to speed up the criminal records check process, additional caution is required in order to ensure that confidentiality is maintained. The DES Provider needs to implement steps to ensure confidentiality, including:</p> <ul style="list-style-type: none"> <li>• confidential material is only to be sent via the specific means that the AFP, CrimTrac, or relevant state or territory police force (as applicable) have identified for this purpose;</li> <li>• where fax machines are used in the criminal records check process: <ul style="list-style-type: none"> <li>○ the fax machines are to be regularly monitored by appropriately trained staff</li> <li>○ confidential material is not to be left on fax machines</li> <li>○ changes to fax numbers or faults with fax machines are to be advised immediately to the organisation that is conducting the check</li> <li>○ confidential faxes are not to be sent outside normal business hours, and</li> <li>○ all faxes, including confidential material, must carry a confidentiality statement in case the fax is misdirected.</li> </ul> </li> </ul> <p>Criminal records checks are only valid at the time of issue. The AFP, CrimTrac, and state and territory police will not guarantee the results of a criminal records check for an extended period of time, and will not automatically issue the DES Provider with an update if a Participant/supervisor is convicted of an offence after the criminal records check is completed.</p> <p>It is the Department's policy that the DES Provider can retain and undertake risk assessments based on the results of a Participant's and/or supervisor's criminal records check for up to 12 months from the date the check is issued. The DES Provider should shred criminal records checks after this time.</p> <p>If the DES Provider has reason to be concerned with the validity of a criminal records check within the 12 month period, for example if a Participant/supervisor advises the DES Provider that they have been charged with assault, then a further criminal records check should be obtained. If necessary, following a DES Provider's risk assessment, the DES Provider should place the Participant/supervisor on another activity, which does not require a criminal records check.</p> <p>In some instances, a supervisor may also be a Participant on that or another activity. In that situation, the DES Provider may have carried out a criminal records check on</p>

Who is Responsible:	What is Required:
	<p>the person and therefore another criminal records check may not be required.</p> <p>The Department's IT Systems have a specific field for entering information about criminal records checks in relation to activities. The DES Provider needs to record whether criminal records checks are required for the activity in the Department's IT Systems at the time the activity record is created.</p> <p>If the Participant/supervisor requests a copy of the results of their criminal records check, the DES Provider needs to ensure that the Participant/supervisor provides proof of identity before they are provided with a copy.</p>

### Sourcing Criminal Records Checks

There is no single national framework setting out the requirements for obtaining criminal records checks or Working with Children checks. Each state and territory differs in its legal obligations and processes. For a general overview on the requirements for each state/territory for the Working with Children check, please visit the [Australian Institute of Family Studies website](http://www.aifs.gov.au/nch/pubs/sheets/rs13/rs13.html) (<http://www.aifs.gov.au/nch/pubs/sheets/rs13/rs13.html>)

It is the DES Provider's responsibility to ensure that it keeps abreast of, and complies with, legislative requirements and processes for obtaining criminal records checks. It is recommended that DES Providers periodically check their state or territories legislative requirements.

The information contained in the following table was correct at the time of publication. In addition to the government bodies mentioned below, there are also a number of private companies that undertake criminal records checks. The decision as to which organisation to use is at the DES Providers' discretion and the Department will not be held liable for, or be bound by the terms of, any contract that the DES Provider enters into with a private company.

Jurisdiction	Body
National	<p><a href="http://www.crimtrac.gov.au/">CrimTrac</a> (<a href="http://www.crimtrac.gov.au/">http://www.crimtrac.gov.au/</a>)</p> <p>DES Providers requiring more than 500 criminal records checks per-year can choose to use CrimTrac to obtain criminal records checks, regardless of the state/territory in which the DES Provider operates. Further information is available on the CrimTrac website.</p>
Australian Capital Territory	<p><a href="http://www.afp.gov.au/">Australian Federal Policy (AFP)</a> (<a href="http://www.afp.gov.au/">http://www.afp.gov.au/</a>)</p> <p>DES Providers may apply to the AFP to obtain criminal records for residents of the ACT, as well as Jervis Bay Territory and other external territories. DES Providers may also apply for people seeking employment with the Australian Government or people requiring a check under Australian Government legislation. Application forms and further information is available on the AFP website.</p> <p><a href="http://www.ors.act.gov.au/">Office of Regulatory Services</a> (<a href="http://www.ors.act.gov.au/">http://www.ors.act.gov.au/</a>)</p> <p>A Working with Vulnerable People check is required for anyone working or volunteering with vulnerable people in the ACT, including children. Applications forms and further information is</p>

Jurisdiction	Body
	available on the Office of Regulatory Services website.
Western Australia	<p><b>Western Australian Police</b> (<a href="http://www.police.wa.gov.au/">http://www.police.wa.gov.au/</a>)</p> <p>Applications for National Police Certificates and Working with Children checks need to be made in person at Australia Post outlets. Application forms can be downloaded from the police website. There are certain requirements related to these applications and DES Providers should check the WA police and Australia Post websites for further information.</p>
New South Wales	<p><b><u><a href="http://www.kidsguardian.nsw.gov.au/">Office of the Children’s Guardian</a></u></b> (<a href="http://www.kidsguardian.nsw.gov.au/">http://www.kidsguardian.nsw.gov.au/</a>)</p> <p>The Office of the Children’s Guardian administers the NSW Working with Children Check. Further information and application forms are available online at the Office’s website.</p> <p><b><u><a href="http://www.police.nsw.gov.au/">New South Wales Police</a></u></b> (<a href="http://www.police.nsw.gov.au/">http://www.police.nsw.gov.au/</a>)</p> <p>In NSW, a criminal records check can be applied for through the NSW Police. Further information and application forms are available on the NSW Police website.</p>
Queensland	<p><b><u><a href="http://www.bluecard.qld.gov.au/">Public Safety Business Agency</a></u></b> (<a href="http://www.bluecard.qld.gov.au/">http://www.bluecard.qld.gov.au/</a>)</p> <p>In Queensland, the Public Safety Business Agency is responsible for the Blue Card (criminal records checks) for those intending on working with children. This also covers the criminal records check. Applications may be made online at the Bluecard website.</p>
Victoria	<p><b><u><a href="http://www.workingwithchildren.vic.gov.au/">Victorian Department of Justice</a></u></b> (<a href="http://www.workingwithchildren.vic.gov.au/">http://www.workingwithchildren.vic.gov.au/</a>)</p> <p>In Victoria, Working with Children Checks are conducted by the Victorian Department of Justice. Applications forms are available online through the Working with Children website and must be lodged with a participating Australia Post outlet.</p> <p><b><u><a href="http://www.police.vic.gov.au/">Victoria Police</a></u></b> (<a href="http://www.police.vic.gov.au/">http://www.police.vic.gov.au/</a>)</p> <p>In Victoria, a criminal records check can be applied for through the Victorian Police. Application forms are available online at the Victoria Police website.</p>
Tasmania	<p><b><u><a href="http://www.justice.tas.gov.au/">Tasmanian Department of Justice</a></u></b> (<a href="http://www.justice.tas.gov.au/">http://www.justice.tas.gov.au/</a>)</p> <p>In Tasmania, people wanting to work or volunteer with children must apply to the Working with Children Register. An online application, as well as further details about the process, are</p>

Jurisdiction	Body
	<p>located on the Department of Justice website.</p> <p><a href="http://www.police.tas.gov.au/">Tasmania Police</a> (http://www.police.tas.gov.au/)</p> <p>In Tasmania, a criminal records check can be applied for through the Tasmanian Police. Details of the application process are available on the police website.</p>
South Australia	<p><a href="http://www.police.sa.gov.au/">South Australia Police</a> (http://www.police.sa.gov.au/)</p> <p>In South Australia, a criminal records check can be applied for through the South Australian Police. Application forms and details about the application process are available on the police website</p> <p><a href="http://www.dcsi.sa.gov.au/">Department of Communities and Social Inclusion (DCSI)</a> (http://www.dcsi.sa.gov.au/)</p> <p>Organisations requiring child-related employment screening may apply to have the screening conducted by the DCSI or another authorised screening unit. Information about child-related employment screening, disability services employment screening, vulnerable person-related employment screening, aged care sector employment screening, and employment probity screening is available on the DCSI website.</p>
Northern Territory	<p><a href="http://www.pfes.nt.gov.au/">Northern Territory Police</a> (http://www.pfes.nt.gov.au/)</p> <p>The Northern Territory Police conduct criminal records checks and Working with Children’s checks. Online application forms, as well as details about the application process, are available on the Northern Territory Police website.</p>