

Criminal and Relevant History Screening Policy Directive

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**Government
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SA Health

Contents

| | | |
|--------|--|----|
| 1. | Policy Statement..... | 3 |
| 2. | Roles and Responsibilities | 3 |
| 2.1 | Chief Executive | 3 |
| 2.2 | Chief Executive Officers | 3 |
| 2.3 | Executives, Directors and other Line Managers | 4 |
| 2.4 | Workforce Managers or Consultants (or equivalent) | 4 |
| 2.5 | Principal Authorised Officer (not work with children / prescribed positions) | 4 |
| 2.6 | Hiring Managers / Selection Panel Chairpersons | 4 |
| 2.7 | Clinical Placement Coordinators | 4 |
| 2.8 | Volunteer Coordinators/Line Managers facilitating volunteer placements..... | 5 |
| 2.9 | Contract Managers..... | 5 |
| 3. | Policy Requirements..... | 5 |
| 3.1 | SA Health obligations regarding duty of care and compliance with legislation..... | 5 |
| 3.2 | Work with children / prescribed positions..... | 6 |
| 3.3 | Approved provider positions – Aged Care | 7 |
| 3.4 | Other positions within SA Health..... | 7 |
| 3.5 | Prospective workers from overseas | 7 |
| 3.5.1 | Prospective employees from overseas | 7 |
| 3.5.2 | Statutory declaration for positions under the <i>Aged Care Act 1997</i> (Cth) –..... | 7 |
| 3.5.3 | Statutory declaration in exceptional circumstances | 8 |
| 3.6 | Non-employee workers | 8 |
| 3.6.1 | Students on clinical placements..... | 8 |
| 3.6.2 | Staff of external service providers/agencies | 8 |
| 3.7 | Recruitment information | 9 |
| 3.8 | Timing of assessments..... | 9 |
| 3.8.1 | Work with children / prescribed positions | 9 |
| 3.8.2 | Approved provider positions – Aged Care | 9 |
| 3.8.3 | Positions not under legislation | 9 |
| 3.9 | Portability of screenings | 10 |
| 3.10 | Failure to provide a valid screening or consent to an assessment | 10 |
| 3.11 | Costs of assessments | 10 |
| 3.12 | Assessments of criminal and relevant records | 10 |
| 3.12.1 | Assessment of records and suitability for a position | 10 |
| 3.12.2 | Precluding offences..... | 11 |
| 3.12.3 | Consideration of National Police Checks..... | 11 |
| 3.12.4 | Applying procedural fairness to National Police Check assessments | 12 |
| 3.12.5 | Burden of proof relating to National Police Check assessments | 12 |
| 3.13 | Obligations to notify SA Health of any criminal charges | 12 |
| 3.14 | Confidentiality..... | 12 |
| 3.15 | Record keeping | 12 |
| 3.16 | Grievances and appeals | 13 |
| 3.16.1 | Department for Human Services work with children check appeals..... | 13 |
| 3.16.2 | Applicants from outside the public sector | 13 |
| 3.16.3 | <i>Public Sector Act 2009</i> positions..... | 13 |
| 3.16.4 | <i>Health Care Act 2008</i> positions, | 13 |
| 3.16.5 | Disputes arising from screenings of existing employees | 13 |
| 3.16.6 | Alleged discrimination based on criminal records..... | 14 |
| 3.17 | Reporting..... | 14 |
| 4. | Implementation & Monitoring..... | 14 |
| 5. | National Safety and Quality Health Service Standards..... | 14 |
| 6. | Definitions | 15 |
| 7. | Associated Policy Directives / Policy Guidelines and Resources | 17 |
| 7.1 | Legislation and related publications | 17 |
| 7.2 | Relevant SA Government or SA Health policies/publications | 17 |
| 8. | Document Ownership & History | 18 |

Criminal and Relevant History Screening Policy Directive

1. Policy Statement

The intent of this Policy Directive is to ensure that:

- SA Health complies with legislation and SA Government policy requirements for criminal and relevant history screening of persons working in or providing services to, or on behalf of SA Health.
- Appropriate criminal and relevant history screening is obtained for all employees and non-employee workers prior to commencement of their services to or on behalf of SA Health; and prior to them accessing SA Health premises or information systems for work, study or research.
- Risks to clients, patients, employees, other workers and SA Health organisations are minimised.

This Policy Directive applies to all workers of or within SA Health, including:

- All employees or prospective employees of SA Health (as defined).
- All non-employee workers (listed below) through their contractual arrangements and the conditions associated with authorising them to work in or to provide services on behalf of SA Health or accessing SA Health workplaces or information systems:
 - Agency staff, service providers, contractors and sub-contractors.
 - Students and the tertiary institutions' supervisors of these students.
 - Volunteers.
 - Persons undertaking research involving SA Health clients or patients, workplaces, services or information systems.
 - Persons hiring SA Health sites or working on such sites.
 - Members of SA Health related councils or management committees.

2. Roles and Responsibilities

The respective responsibilities are as follows:

2.1 Chief Executive

- Taking reasonably practicable steps and exercising due diligence to ensure this Policy Directive is communicated, implemented and complied with across SA Health.
- Reviewing decisions to not appoint a prospective or current employee due to an adverse National Police Certificate (NPC) assessment, where the individual seeks a review or lodges a grievance.

2.2 Chief Executive Officers

- Taking reasonably practicable steps and exercising due diligence to ensure this Policy Directive is communicated, implemented and compliance monitored within their areas of responsibility.
- Reviewing decisions to not appoint a prospective or current employee due to an adverse National Police Certificate (NPC) assessment, where the individual seeks a review or lodges a grievance.
- Reporting to the Chief Executive any adverse incident involving a worker that may have caused significant harm to SA Health as an organisation or a client, patient, employee or others in the workplace which is related to non-compliance with this Policy Directive.

2.3 Executives, Directors and other Line Managers

- Taking reasonably practicable steps and exercising due diligence to ensure this Policy Directive is implemented and compliance monitored within their areas of responsibility.
- Identifying positions requiring screenings consistent with the *Aged Care Act 1997* (Cth) (AC Act), or *Child Safety (Prohibited Persons) Act 2016* [CS (PP) Act] and the *Child Safety (Prohibited Persons) Regulations 2019*; and ensuring that the requirement for the relevant screening is included in the Role Description.
- Ensuring that the required screening (assessment) is completed prior to appointment.
- Ensuring that relevant screenings are renewed before their expiry.
- Liaising with the Director of Workforce (or equivalent) where an adverse screening indicates unsuitability for employment or for continued employment of a current employee.
- Liaising with the relevant contract manager, volunteer coordinator and clinical placement coordinator where circumstances indicate unsuitability of a non-employee worker's engagement in SA Health; or their unsuitability to access SA Health workplaces or information systems.

2.4 Workforce Managers and Consultants (or equivalent)

- Taking reasonably practicable steps and exercising due diligence to ensure this Policy Directive is communicated, implemented and compliance monitored within their areas of responsibility.
- Implementing and maintaining operational procedures that support this Policy Directive.
- Ensuring that the requirement for a relevant history screening is articulated in vacancy advertisements.
- Assisting with identifying positions requiring screenings consistent with the *Aged Care Act 1997* (Cth) (AC Act), or *Child Safety (Prohibited Persons) Act 2016* [CS (PP) Act]; and with ensuring that the requirement for the relevant screening is included in the Role Description.
- Ensuring that the required screening (assessment) is completed prior to appointment.
- Ensuring that relevant screenings are renewed before their expiry.
- Assisting Executives, Directors and other Line Managers with advice where an adverse screening indicates unsuitability for employment or for continued employment of a current employee.

2.5 Principal Authorised Officer (not work with children / prescribed positions)

- Assessing suitability for employment where an adverse record is found within a NPC.
- Considering the nature of the duties of the position and the extent to which the report findings may be relevant to the position.
- Considering a non-employee worker's suitability to work within / access SA Health workplaces and information systems when consulted on an adverse record for the non-employee worker.

2.6 Hiring Managers / Selection Panel Chairpersons

- Ensuring that the requirement for the relevant history screening is clearly articulated in Role Descriptions and communicated to applicants during the recruitment process.
- Ensuring that the prospective employee has fully completed the pre-employment screening questions on eRecruitment and the responses have been assessed as indicating no discernible risk to the organisation.
- Ensuring that all prospective employees who are shortlisted are aware they must provide as appropriate:
 - a NPC, and/or,
 - a current DHS Working with Children Check (WWCC) for *work with children / prescribed positions* as required by the CS (PP) Act and Regulations..
- For WWCC prescribed positions register an interest in the prospective employee/student/non-employee workers with Central Assessment Unit (CAU) of the Department of Human Services (DHS).

2.7 Clinical Placement Coordinators

- Liaising with education providers regarding compliance with the requirements of the SA Health *Criminal and Relevant History Screening Policy Directive*. (Education providers are responsible to ensure relevant history screenings are obtained for students 18 years and above before clinical placement in SA Health).
- Ensuring that authorisation for clinical placement in SA Health includes the provisions outlined in section 3.6.2 below.
- Taking reasonable steps to monitor that SA Health screening requirements are complied with (through regular audits of NPCs or DHS WWCC checks).
- Ensuring that screenings of students are current and appropriate to their roles.
- Ensuring that any breaches of the screening obligations are appropriately acted on.

2.8 Volunteer Coordinators/Line Managers facilitating volunteer placements

- Taking reasonable steps to monitor that SA Health screening requirements are complied with.
- Ensuring that authorisation for volunteers to work in SA Health includes the provisions outlined in section 3.6.2 below.
- Taking reasonable steps to monitor that SA Health screening requirements are complied with (through regular audits of NPCs or DHS WWCC checks).
- Ensuring that screenings of volunteers are current and appropriate to their roles.
- Ensuring that any breaches of the screening obligations are appropriately acted on.

2.9 Contract Managers

- Ensuring that contracts to work, provide services or access SA Health workplaces or information systems include provisions outlined in section 3.6.2 below.
- Taking reasonable steps to monitor that SA Health screening requirements are complied with.
- Ensuring that screenings of non-employee workers are current and appropriate to their role (through regular audits of NPCs or DHS WWCC checks).
- Ensuring that, when requested, evidence is provided to SA Health of relevant NPC or WWCC of contractors, agency staff, and other service providers working in or for SA Health, or having access to SA Health workplaces or information systems.
- Ensuring that any breaches of the screening obligations are appropriately acted on.

3. Policy Requirements

3.1 SA Health obligations regarding duty of care and compliance with legislation

SA Health has a duty of care to ensure that risk of harm to clients, patients, employees, other workers and the organisation is minimised through, amongst other things, sound practices for the engagement of persons working in or providing services to, or on behalf of SA Health, or accessing SA Health workplaces and information systems for work, study or research.

SA Health must comply with legislation regarding screening of workers for their suitability to work within SA Health. Legislation requires that all persons who seek to work, or are working, in

- Work with children / prescribed positions (WWCC position) - under the *Child Safety (Prohibited Persons) Act 2016* and *Child Safety (Prohibited Persons) Regulations 2018* - provide a current Department for Human Services (DHS) working with children check (WWCC) before employment and every five years after the date of issue.
- Approved provider positions under the *Aged Care Act 1997 (Cth)* (AC Act), provide a NPC before employment and every three years thereafter.

(For brevity the NPC or WWCC are hereafter referred to as *screening*.)

Apart from checks relating to time spent overseas (see section 3.5) and working with children checks (however so describes) of the Commonwealth, or another State or Territory, declared by the regulations to be a working with children check for the purpose of this Act, only DHS WWCC are accepted by SA Health for a WWCC prescribed position under s6 of the CS (PP) Act.

All SA Health positions not covered by the CS (PP) Act, require a satisfactory NPC from SAPOL or from an accredited Crimtrac Provider, which is appropriate to the work / placement / activities undertaken, e.g. a NPC for Aged / Vulnerable or General Probity purposes.

More than one type of screening may be required for a role, depending on factors such as the nature of duties performed; types of clients/patients; and the ability to access certain work locations.

3.2 Work with children / prescribed positions

From 1 July 2019 screening requirements for working with children checks are provided for by:

- [The Child Safety \(Prohibited Persons\) Act 2016](#)
- [The Child Safety \(Prohibited Persons\) Regulations 2019](#)
- [The Children's Protection Law Reform \(Transitional Arrangements and Related Amendments\) Act 2017](#)

From 1 July 2019, the following apply within SA Health regarding positions under the CS (PP) Act:

- A current DHS WWCC¹ is required for all SA Health employees and non-employee workers prior to their commencement or engagement in a *work with children / prescribed position* [as defined by the CS (PP) Act]; and renewed every five years after the date of issue. The term *work with children* includes positions in health services where the person:
 - provides a service or undertakes an activity that is child-related work as defined in Section 6(1) in the course of their employment; or
 - carries on a business in the course of which an employee works with children (whether or not the individuals themselves works with children); or
 - provides any other service or undertakes any other activity declared by the Regulations to be included in the ambit of this subsection.

For more information on positions requiring a WWCC, refer to the CS (PP) Act and Regulations and the [DHS WWCC webpage](#).

- Child-related DHS (previously the Department for Communities and Social Inclusion/DCSI) screenings issued prior to 1 July 2019 remain valid until the date of expiry.
- An application for a WWCC may be made by individuals themselves or by SA Health (or other relevant registered organisation) on behalf of its workers.
- WWCCs remain valid for five years and are portable between roles and positions across South Australia.
- Where a DHS WWCC is current at the time of appointment (i.e. issued less than five years before and no prohibiting notice has been posted since the WWCC has been issued); the WWCC must be accepted unless there is clear justification why the WWCC should be renewed. (Refer also to Section 3.9 Portability)
- The WWCC status of individuals can be ascertained online by the individual and SA Health (where registered as a relevant employer) with reference to an “unique identifier”.
- Before requesting renewal of a DHS WWCC, hiring managers must:
 - Consider whether the specific role is indeed a WWCC position as defined by the CS (PP) Act;
 - Establish whether the individual has a current DHS WWCC issued less than five years before and a prohibiting notice has not been posted since the WWCC has been issued.
- WWCC must not be requested for positions that are not *work with children / prescribed positions* under the CS (PP) Act.
- It is an offence to employ a person or volunteer for a *work with children / prescribed position* who doesn't have a valid WWCC, or is prohibited from working with children. The offence carries a fine of up to \$120,000 It is an offence to employ a person or volunteer for a *work with children / prescribed position* who doesn't have a valid WWCC, or is prohibited from working with children. The offence carries a fine of up to \$120,000 for a body corporate...

¹ A working with children check assesses whether a potential employee or volunteer could pose a risk to the safety of children, based on criminal history and child protection information.

3.3 Approved provider positions – Aged Care

The AC Act requires that Commonwealth funded aged care providers obtain criminal history screenings for individuals who are reasonably likely to have access to care recipients, whether supervised or unsupervised. Key personnel as defined under Division 8-3A of AC Act must not be a disqualified individual as defined in Division 10A of that Act.

The provisions regarding AC Act positions also apply to non-employee workers providing services to, within or on behalf of SA Health with access to aged care recipients.

All prospective employees and non-employee workers for aged care related work must present a satisfactory NPC from SAPOL or from an accredited CrimTrac Provider for Aged Care Related Work.

A satisfactory screening assessment is further required for all current employees and non-employee workers engaged in aged care related work every three years after receipt of the initial assessment.

Application for a NPC can be made to South Australia Police through SAPOL www.police.sa.gov.au, or through an accredited CrimTrac Provider as listed in the [National Police Checking Service \(NPCS\)](#). (Refer to 3.11 regarding costs of screenings.)

3.4 Other positions within SA Health

The provisions below also apply to non-employee workers providing services to, within or on behalf of SA Health.

All prospective workers considered for positions not covered by the CS (PP) Act are required to provide a satisfactory NPC from SAPOL or through an accredited Crimtrac Provider for the category of the role prior to their commencement within SA Health.

Similarly, all current SA Health employees, who are the preferred applicants for another role not under the CP Act, must present a satisfactory NPC prior to their appointment.

All current employees working with vulnerable adults may be requested to undergo a screening assessment of their criminal records. Employee agreement to this assessment is required.

There is no legislative requirement to renew the criminal history assessments of incumbents of positions not under the CS (PP) Act or AC Act.

3.5 Prospective workers from overseas

The following provisions apply to employees and non-employee workers providing services within or on behalf of SA Health.

3.5.1 Prospective employees from overseas

A DHS WWCC or a NPC may not be applicable to prospective workers who have not resided in Australia. Therefore, prior to employment for any SA Health position candidates from overseas must provide a satisfactory criminal history record from each of the overseas countries in which they have resided for more than one year within the last 10 years since their 18th birthday.

Overseas criminal history checks conducted by external provider 'Fit2Work' on behalf of AHPRA are accepted by SA Health for overseas applicants. Where only these checks are available, employment must be with the understanding that a satisfactory DHS WWCC or NPC will be provided to SA Health within a reasonable period of no more 12 months of residence in Australia. These checks must comply with this Policy Directive.

A prospective employee or an employee returning to SA Health who has worked or resided overseas for more than one year is required to provide a satisfactory criminal history check from each of the overseas country/countries where they have worked/resided in within the last 10 years prior to their employment or returning to duties in SA Health.

3.5.2 Statutory declaration for positions under the Aged Care Act 1997 (Cth) – regarding convictions overseas

The *Accountability Principles 2014* made under subsection 96-1 (1) of the AC Act outlines additional conditions for persons who, at any time after turning 16 years of age, were a citizen or permanent resident of a country other than Australia. As required by Part 4, subsection 1.20 of the *Accountability Principles 2014*, a person to whom this section applies must not be employed unless SA Health is satisfied that the person has made a statutory declaration stating

that the person has never been convicted of murder or sexual assault or convicted of, and sentenced to imprisonment for any other form of assault.

3.5.3 Statutory declaration in exceptional circumstances

In exceptional cases, [regarding positions not covered by CS (PP) Act] applicants from overseas may commence employment with a statutory declaration confirming they have no relevant criminal record (refer also to 3.5.2). In such an instance, their employment will be with the understanding that a satisfactory criminal history record must be provided to SA Health within a reasonable period after their starting date. No-one may commence working in a *work with children / prescribed position* under the CS (PP) Act before international criminal record results have been received by SA Health.

3.6 Non-employee workers

3.6.1 Students on clinical placements

Students who are on clinical placements across more than one LHN will require (prior to commencement of their placements within SA Health):

- A current DHS WWCC, if required by the CS(PP) Act; and
- Other screening assessments relevant to the activities undertaken - such as a NPC through SAPOL or through an accredited CrimTrac Provider.

3.6.2 Staff of external service providers/agencies

The screening requirements of this Policy Directive must be made applicable to non-employee workers through their contractual arrangements and the conditions associated with authorising them to work in or to provide services on behalf of SA Health or accessing SA Health workplaces or information systems.

External providers/agencies are required to ensure screenings relevant to the activities undertaken are completed for all non-employee workers prior to them commencing services and/or obtaining access to SA Health workplaces and information systems. These may be a DHS WWCC and/or a NPC from SAPOL, or from an accredited CrimTrac Provider as required by this Policy Directive.

The terms and conditions of contractual arrangements or agreements authorising working in, renting, or accessing SA Health workplaces or information systems must include the provisions below (as appropriate to the type of agreement). These provisions should be included in contracts, licencing arrangements or agreements authorising working in or accessing SA Health workplaces or information systems.

- Contracted or authorised parties must comply with all criminal and relevant screening and assessment requirements of legislation and SA Health policies ensuring that appropriate screening assessments has been undertaken for all individuals engaged to provide services to, or on behalf of SA Health, and/or accessing SA Health workplaces or information systems for work, study or research purposes.
- Contracted or authorised parties must meet all costs associated with complying with legislative, contractual and SA Health screening and security policy requirements.
- Screenings must be undertaken prior to individuals accessing SA Health workplaces or information systems, or prior to non-employee workers providing services to or within SA Health. Students and staff of education providing organisations who are nominated by the organisation to attend a SA Health facility to undertake a clinical placement must complete and sign a *Clinical Placement Deed Poll* prior to attending a placement. When requested, a copy of the signed Deed Poll must be provided to SA Health. The Deed Poll is in addition to screening requirements of legislation.
- NPCs and DHS WWCC must remain current while non-employee workers are engaged to provide services for or on behalf of SA Health, and while having access to SA Health workplaces and information systems.
- Where an adverse NPS record has been found for a non-employee worker, or if a non-employee worker has been charged with a criminal offence during their placement/engagement within SA Health, the contracted or authorising parties (Clinical Placement Coordinators or Volunteer Coordinators) must:
 - For a *work with children / prescribed position* under the CS (PP) Act - ensure that the worker's DHS WWCC is still valid (i.e. check status online with *Unique Identifier*). If the

non-employee worker is identified as a Prohibited Person under the CS (PP) Act, the worker must not commence work; or must immediately cease working in the *work with children / prescribed position*.

- For roles not a *work with children / prescribed position* under the CS (PP) Act - consult with the relevant Principal Authorising Officer.
- Provisions that will enable SA Health access to evidence of compliance to screening requirements of contracted or authorised parties providing services to SA Health; including a requirement to provide the WWCC Unique Identifier, declarations or other evidence to SA Health regarding criminal and relevant history status and suitability of individuals to the relevant SA Health representative before and after them commencing services or accessing SA Health workplaces or information systems.
- Provisions that will facilitate effective remedial action by SA Health (including termination of the contract or licensing/authorising agreement) where:
 - there is doubt about the suitability of a person providing services in SA Health or accessing SA Health workplaces or information systems;
 - there has been an adverse incident involving the non-employee worker; or
 - it is considered there has been a breach of a requirement of the contract or agreement; or of legislation and relevant SA Health policy.
- Provisions that will enable SA Health in the above circumstances to take reasonable action to prevent harm to or protect clients, patients, staff and SA Health interests, (without incurring liability), e.g.
 - require that the contracted, licensed or authorised person exits SA Health workplaces; loses access to SA Health Workplaces and information systems; and remains absent until cleared to resume duties; and
 - obtain all information from the contracted or authorised parties which is required to determine appropriate further action.

3.7 Recruitment information

All SA Health recruitment advertisements and Role Descriptions must clearly articulate the screening assessment requirements for the role.

Prospective employees/non-employee workers must apply for a DHS WWCC through the DHS online system if they do not have a valid WWCC for a *work with children / prescribed position*.

Hiring managers must advise (prospective) employees and volunteers when to apply for a WWCC or NPC where this is required. This will generally be at shortlisting/interview stage, but could be earlier.

3.8 Timing of assessments

The provisions below apply to both employee and non-employee workers providing services within or on behalf of SA Health.

3.8.1 Work with children / prescribed positions

A valid DHS WWCCs must be obtained for all *work with children / prescribed positions*:

- *Before* an employee/non-employee worker or a prospective employee/non-employee worker is appointed/engaged in a *work with children / prescribed position* under the CS (PP) Act.
- *At maximum intervals of five years* from the date each WWCC has been issued for the duration of the period a person works within a role.

3.8.2 Approved provider positions –Aged Care

A NPC must be obtained for *approved provider* positions under the AC Act:

- *Before* an employee or prospective employee/non-employee worker, including key personnel, is appointed/engaged in positions covered by the AC Act.
- *At maximum intervals of three years* during the period an individual works within an *approved provider* position.

3.8.3 Positions not under legislation

A NPC appropriate to the category of the relevant position or role must be provided and assessed as satisfactory before the commencement of any new employee/non-employee worker in SA Health.

3.9 Portability of screenings

A DHS WWCC is valid for five years and is transferable / portable between different WWCC *prescribed position* during this period. The validity of a WWCC can be verified online.

A current DCSI/DHS child-related-screening obtained before 1 July 2019 and applicable to the type of role remains valid until its expiry date.

A NPC that has been issued within the previous three years; (and is applicable to the type of role) must be accepted.

3.10 Failure to provide a valid screening or consent to an assessment

(Prospective) employees/non-employee workers not willing to obtain a WWCC or NPC as required for the role they have applied for will be precluded from appointment/engagement; or, where they are already employed or engaged in the role requiring the WWCC or NPC, will not be allowed to continue working within this role.

3.11 Costs of assessments

All prospective employees who are not current employees of SA Health must meet the cost of the necessary NPC or DHS WWCC. Prospective employees who are not employees of SA Health, who refuse to meet the cost of the NPC or DHS WWCC, will be precluded from appointment.

Current employees of SA Health without a valid WWCC or applicable NPC who apply for another position in SA Health requiring a DHS WWCC or NPC, must meet the cost of the necessary check.

Notwithstanding the above, SA Health may meet the cost of obtaining a screening if this is deemed necessary to attract staff.

Where a current employee is to be placed/allocated to another position in SA Health as a result of a direction by a SA Health delegate; or because of an organisational restructure; or on account of becoming redeployed, SA Health will pay for any screening assessment necessary for appointment in the other position.

SA Health will meet the on-going costs of any mandatory three yearly NPCs or five yearly renewal of DHS WWCC for current employees.

SA Health will also meet the cost of required NPCs of volunteers. WWCCs for volunteers are free of charge.

Non-employee workers, (e.g. contractors, agency staff, students, etc.) and organisations sponsoring or applying for the provision of services by the non-employee workers within SA Health are responsible for the initial and ongoing cost of maintaining appropriate screenings.

3.12 Assessments of criminal and relevant records

3.12.1 Assessment of records and suitability for a position

WWCCs: Decisions of the DHS Screening Unit regarding a WWCC are binding. SA Health and other employers do not have opportunity to assess any relevant history that has been revealed during the WWCC process of the Screening Unit.

WWCCs only determine that a person's prior conduct does not indicate that they pose a risk to children. Therefore, a current WWCC must not be viewed as a *clearance* that the person is not a risk to children or others in the workplace or to SA Health.

NPCs: The Principal Authorised Officer is the delegate to determine an individual's suitability to work within SA Health based on an adverse record in their NPC. The Principal Officer must consider this consistent with section 3.12.

For non-employee workers (including volunteers) the contractor/agency may consider it necessary to liaise with the relevant Principal Authorised Officer to assist with the determination of an individual's suitability to work, study or research within SA Health.

For students on clinical placement students, the education provider may consider it necessary (in exceptional circumstances) to liaise with the relevant Clinical Placement Coordinator to assist with the determination of an individual's suitability to be placed within SA Health.

3.12.2 Precluding offences

The CS (PP) Act prohibits a person convicted of a “*Prescribed Offence*” from working in a *work with children / prescribed position*. It is an offence to employ or engage a *Prohibited Person* for a work in a *work with children / prescribed position*. By using a person’s *Unique Identifier* hiring managers and Line Managers can establish online whether a person has a current WWCC or is a Prohibited Person.

The Accountability Principles 2014 issued under the AC Act exclude individuals from working in *approved provider* positions who have been convicted of murder or sexual assault; or convicted of, and sentenced to, imprisonment for any other form of assault (whether wholly or partially suspended). Any person with a conviction for a precluding offence must not be employed, contracted, hired, retained, or accepted to work or continued to work in *approved provider* aged care positions.

In circumstances where a person working in a WWCC position become a prohibited person, the WWCC cannot be renewed; or the assessment of their renewed NPC is not satisfactory; advice should be sought from the local Human Resource work unit regarding termination of employment, engagement or other actions relevant to the worker.

3.12.3 Consideration of National Police Checks

For a criminal record revealed by a NPC or for another record to be relevant to an employment decision, it must relate to, or has a logical link to the inherent requirements of the particular position.

The record must also be significant enough to lead to a reasonable assumption of potential risk of harm to clients, patients (inclusive of *vulnerable adults*), employees, other workers and the organisation if the person would be engaged or appointed within a particular role.

Where a NPC or other information reveals a relevant offence, and the offence is not a precluding offence, it may still be acceptable for a person to work in a role depending on the circumstances of the offence and the relative risk associated with the role.

The specific contextual factors surrounding the conviction and situational factors relating to the role must be considered on a case by case basis to determine the likely risk of harm to clients, patients (inclusive of *vulnerable adults*), employees, other workers and the SA Health organisation. The decision must be defensible and evidence based.

Factors that must be considered include:

- the seriousness and context of the offence;
- the relevance of the offence to the inherent requirements of the position (i.e. the essential duties, circumstances and requirements of the role);
- the possible impact of the risk on the clients, patients (inclusive of vulnerable adults), employees, other workers and the organisation;
- the possible consequences of a similar incident; and
- the availability of preventative strategies that could limit risks.

Convictions that indicate a risk that will most likely lead to a refusal to employ (or continue to employ) an individual in SA Health are:

- Convictions for crimes of a violent or sexual nature.
- Any other offences against a child (including drug offences).
- Convictions for dealing or trafficking in illegal drugs.
- Convictions for crimes of dishonesty.
- Offences relating to cruelty to animals.
- Convictions that resulted in a 12 month or longer prison sentence (whether wholly or partially suspended).

3.12.4 Applying procedural fairness to National Police Checks assessments

Principal Authorised Officers must ensure that the principles of procedural fairness are adhered to throughout the assessment and decision-making process concerning the relevance and significance of a criminal or other relevant record within a NPC. This requires that:

- The rationale for any decision to appoint or not appoint a person with recorded convictions or an adverse relevant history must be defensible and evidence-based.
- The decision-making process must be transparent, fair and equitable.
- Individuals must be given the opportunity to confirm their identity, and confirm the accuracy of any associated criminal and relevant history screening; or dispute its contents.
- Individuals must be invited to provide contextual and/or other information, (such as references or details of the conviction or offence and the circumstances surrounding any offence) before a decision on the criminal and relevant history information is made.

3.12.5 Burden of proof relating to National Police Checks assessments

Where a person's relevant criminal and/or other history suggests a *prima facie* risk of harm to clients, patients (inclusive of *vulnerable adults*), employees, other workers or the SA Health organisation, the individual being assessed bears the onus of proving they do not pose such a risk.

However, where the criminal and relevant history of an individual does not indicate a *prima facie* risk, but there are other strong indicators of risk that cause sufficient concern, the Principal Authorised Officer should be able to demonstrate on the balance of probabilities that the individual poses a considerable and unacceptable risk of harm to clients, patients (inclusive of *vulnerable adults*), employees, other workers or the organisation is more probable. The decision must be defensible and evidence based.

3.13 Obligations to notify SA Health of any criminal charges

Under the *Code of Ethics for the South Australian Public Sector*, SA public sector employees must, at the earliest possible opportunity, advise their manager if they are charged with a criminal offence. Non-compliance with the Code of Ethics may lead to disciplinary action, including termination of employment. Refer also to the [SA Health Policy Directive: Employees Charged with Criminal Offences](#) available on the SA Health intranet policies pages.

A Line Manager of a worker who have been charged with a criminal offence and is working in *work with children / prescribed positions*, must use the person's unique identifier to establish online whether their WWCC remains valid. If the employee works in a position not under the CS (PP) Act, the processes in 3.12 must be followed to assess the relevance and risk of the change.

Contracted parties or others authorised to provide non-employee workers to work or access SA Health workplaces or information systems must consult immediately with the relevant Principal Authorised Officer when notified that the WWCC of a non-employee worker is no longer valid or the non-employee worker has been charged with a criminal offence. For students on clinical placements, the education provider must consult with the relevant Clinical Placement Coordinator.

3.14 Confidentiality

Regardless of the outcome of a WWCC application or NPC assessment, all related information must be treated in a confidential manner and may not be used for any purpose other than to determine suitability for employment/engagement. [Refer to Information Privacy Principles (IPP) and *Privacy Act 1998* (Cth)]

Approved providers must comply with the *Privacy Act 1998* (Cth) and the related *Records Principles 2014* describing the types of records that need to be kept by *approved providers* to meet the legislative requirements, and the duty to keep records in accordance with the *Privacy Act 1998*.

3.15 Record keeping

Nominated Liaison Officers must maintain records of screenings in the Complete Human Resource Information System (CHRIS). These records must include the employee name, the type of screening assessment undertaken and the date of assessment.

This screening information must also be included in the Credentialing and Scope of Clinical Practice System (CoSP).

Following receipt of a NPC and related material; or a confidential assessment briefing on an adverse record, the Principal Authorised Officer must document the determination on the individual's suitability to work within SA Health. This document must be retained on a confidential and secure file and must include:

- the date the decision was made
- the reasons for the decision, and
- the people involved/consulted in the decision-making process.

Records must be maintained and disposed of consistent with the [General Disposal Schedule No 30](#) (GDS 30) of the *State Records Act 1997* (SA). The GDS 30 includes provisions for the disposal of records that may have relevance to the conduct of personal checks on and screening of employees. Criminal history check information must be maintained separately from the person's personal file (which is retained until the person is 100 years of age). Personal files *may*, however, include a summary of actions and outcomes following a criminal history check, medical history check, alcohol or drug use tests, or other employment screening.

3.16 Grievances and appeals

Where the reason for a decision not to appoint a prospective employee is based on an adverse NPC assessment; and the prospective employee seeks a review or lodges a grievance, an appointment to the position may not be made until the review/grievance has been addressed.

3.16.1 Department for Human Services Work with children check appeals

A person may appeal a WWCC decision of the DHS Screening Unit. This review must be requested through DHS. (Refer to the [DHS WWCC webpage](#).)

3.16.2 Applicants from outside the public sector

Where a non-public sector applicant has not been appointed due to an assessment of a NPC, they may lodge a request for the decision to be reviewed with the relevant SA Health delegate within seven days of being notified of the decision. The basis for the request for review of the decision must be stated with sufficient detail to be considered appropriately. The relevant facts pertaining to the decision must be reviewed by the Chief Executive (for positions of the Department for Health and Wellbeing) or by the Chief Executive Officer (for positions in a LHN or SA Ambulance Service), and the aggrieved party must be advised of the outcome.

3.16.3 Public Sector Act 2009 positions

Employees or preferred applicants for positions under Part 7 of the PS Act, who are directly affected by a management decision based on their NPC, may apply for a review of the decision in accordance with the *Public Sector Act 2009*, sections 59 to 63 and the *Public Sector Regulations 2010*, Regulations 26 to 28. This provision also applies to *Health Care Act 2008* (HC Act) employees whose employment is covered by Part 7 of the *Public Sector Act 2009* and/or the *SA Modern Public Sector Enterprise Agreement: Salaried 2017* (or later Enterprise Agreement).

3.16.4 Health Care Act 2008 positions,

Current employees under the HC Act, or preferred SA Health internal applicants for HC Act positions, who are aggrieved by a decision not to appoint them based on their NPC assessment, may write to the relevant Chief Executive Officer or delegate within seven days of being notified of the decision to request a review of this decision. If the matter is not resolved at the local level, HC Act employees may lodge an application to have their grievance reviewed by a Grievance Appeal Panel within DHW. (Refer to Part 3 Grievances and Disputes in the *SA Health (Health Care Act) Human Resources Manual*.)

3.16.5 Disputes arising from screenings of existing employees

Where an employee disputes an adverse finding based on a NPC or DHS WWCC and provides reasonable evidence to support their assertions, consideration must be given to appropriate interim arrangements to enable the employee to maintain their employment while the matter is being reviewed (e.g. provision of alternative paid employment; access to paid leave, special leave with/without pay or, if deemed appropriate, continue in their substantive role under supervision).

3.16.6 Alleged discrimination based on criminal records

If a person considers they have been discriminated against based on their criminal record regarding any employment decision, they may make a complaint to the Australian Human Rights Commission. Under the *Australian Human Rights Commission Act 1986*, the Australian Human Rights Commission has the authority to inquire into discrimination in employment based on a criminal record. Further information is available at: Australian Human Rights Commission <http://www.humanrights.gov.au/publications/human-rights-record>

3.17 Reporting

Line Managers must report to Chief Executive Officers

- any adverse incident involving an employee or non-employee worker that may significantly impact SA Health’s interests or may have caused harm to the organisation, client, patient, employee or others in the workplace; or
- if termination of a significant contractual arrangement is contemplated due to non-compliance with the provisions of the contractual arrangements relating to this Policy Directive.

Chief Executive Officers must report to the Chief Executive any adverse incident involving an employee or non-employee worker that may have caused significant harm to SA Health, a client, patient, employee or others in the workplace due to non-compliance with this Policy Directive.

4. Implementation & Monitoring









Compliance with this Policy Directive must be monitored and ensured by:

- Executives and Line Managers - regarding all employee and non-employee workers within their area of responsibility.
- The relevant Clinical Placement Coordinator– regarding all clinical placements.
- Volunteer Coordinators / Line Managers facilitating volunteer placements - regarding all volunteers.
- Contract Managers - regarding compliance of contractual parties (e.g. agencies providing agency staff services) to SA Health’s requirements for screening of agency staff.

Evaluation of compliance to this Policy Directive will include consideration of whether:

- All persons working in roles under the CS (PP) Act have at all times a current DHS WWCC.
- All workers in roles under the AC Act have a current and satisfactory NPC as required.
- There is due consideration of the duties and circumstances of a role before a WWCC is required or applied for to determine whether it is in fact a *work with children / prescribed position* under the CS (PP) Act.
- Sufficient enquiry is being made to determine whether a worker has a current DHS WWCC before application is made for a DHS WWCC for a *work with children / prescribed position*.

5. National Safety and Quality Health Service Standards

| | | | | | | | |
|---|---|---|---|---|--|---|--|
|  |  |  |  |  |  |  |  |
| National Standard 1 Clinical Governance | National Standard 2 Partnering with Consumers | National Standard 3 Preventing & Controlling Healthcare-Associated Infection | National Standard 4 Medication Safety | National Standard 5 Comprehensive Care | National Standard 6 Communicating for Safety | National Standard 7 Blood Management | National Standard 8 Recognising & Responding to Acute Deterioration |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

6. Definitions

In the context of this document:

approved provider means Commonwealth funded aged care services.

approved provider positions (under the *Aged Care Act 1997*):

Key personnel are defined in *Aged Care Act 1997* as follows:

- (a) a member of the group of persons who is responsible for the executive decisions of the entity at that time
- (b) any other person who has authority or responsibility for (or significant influence over) planning, directing or controlling the activities of the entity at that time
- (c) if, at that time, the entity conducts an *aged care service:
 - any person who is responsible for the nursing services provided by the service;
 - any person who is responsible for the day-to-day operations of the service; whether or not the person is employed by the entity;
- (d) if, at that time, the entity proposes to conduct an aged care service:
 - any person who is likely to be responsible for the nursing services to be provided by the service
 - any person who is likely to be responsible for the day-to-day operations of the service; whether or not the person is employed by the entity.

A staff member is defined in Section 4 of the *Accountability Principles 2014* as a person who:

- has turned 16; and is employed, hired, retained or contracted by the approved provider (whether directly or through an employment or recruitment agency) to provide care or other services under the control of the approved provider; and
- has, or is reasonably likely to have, access to care recipients.

Examples of staff members include:

- key personnel of the approved provider;
- employees and contractors of the approved provider who provide care to recipients;
- allied health professionals contracted by the approved provider to provide care to recipients;
- kitchen, cleaning, laundry, garden and office personnel employed by the approved provider; and
- consultants, trainers and advisors for accreditation support or systems improvement who are under the control of the approved provider.

Examples of persons who are NOT considered staff members include:

- visiting medical practitioners, pharmacists and other allied health professionals who have been requested by, or on behalf of, a care recipient but are not contracted by the approved provider; and
- trades people who perform work otherwise than under the control of the approved provider (that is, as independent contractors).

conviction means the complete orders made by a court after finding an accused person guilty of an offence, including both the finding of guilt and the sentence passed as a consequence.

CrimTrac Accredited Provider is an organisation accredited with the Australian Criminal Intelligence Commission (ACIC) to provide a National Police Check to an individual.

assessment -screening or NPC means an assessment of a (prospective) employee's NPC with consideration of the provisions of the AC Act (if it is an approved provider position) and/or of the duties and circumstances of the relevant role, to identify any potential risk of harm the (prospective) employee might pose if employed or remain employed in their current position.

disqualified individual (under section 10A-1 of the AC Act) means an individual that:

- has been convicted of an indictable offence; or
- is an insolvent under administration; or
- is of unsound mind.

For the purposes of this Policy Directive, an indictable offence is an offence against a law of the Commonwealth or of a State or Territory; or an offence that:

- is an offence against a law of a foreign country or a part of a foreign country; and

- when committed, corresponds to an indictable offence against a law of the Commonwealth or of a State or Territory.

For the purposes of this Policy Directive, an individual who is one of the key personnel of an applicant (under section 8-2 of the AC Act) is taken to be of unsound mind if, and only if, a registered medical practitioner has certified that he or she is mentally incapable of performing his or her duties as one of those key personnel.

Employee means a person who is employed in SA Health to perform functions in connection with the operation or activities of an incorporated hospital or the South Australian Ambulance Service, as defined in the *Health Care Act 2008*, or in DHW.

A prospective employee is a person who is a (preferred) applicant to be an employee of SA Health, including a current employee of SA Health who has applied for a position in another incorporated hospital or another unit in the same incorporated hospital, or the South Australian Ambulance Service, or in DHW.

Line Manager means the person who is responsible for overseeing a worker's day-to-day activities, performance and conduct in a SA Health workplace. This also includes managers of labour hire agency staff and co-ordinators of volunteers or students on clinical placements in SA Health.

National Police Certificate - (NPC) means a national summary of a person's criminal conviction history - often referred to as a 'police check'. It does not assess the relevance or significance of these records in relation to the duties and circumstances of a position that the person may have applied for or is engaged in.

non-employee worker means any person through their contractual or licencing arrangements providing services within or on behalf of SA Health to SA Health clients or patients; or accessing SA Health workplaces or information systems for work, study, research or other authorised purposes; but is not a SA Health employee.

prescribed position means a position requiring a WWCC under s17 of the CS (PP) Act.

principal authorised officers – SA Health means an employee of SA Health who is the key contact for all confidential concerns regarding screening of applicants or current employees. The *Principal Authorised Officers* in SA Health are the Directors of Workforce (or equivalent) of LHNs or DHW; and the Chief Operating Officer of the South Australian Ambulance Service.

principal authorised officer – external provider means the Principal Authorised Officer of a service provider to SA Health that has the responsibility to assess screening assessments, e.g. education providers for student placements.

prohibited person means a person to whom a prohibition notice has been issued and who is under a law of the Commonwealth or of another State or Territory prohibited from working with children.

relevant history – DHS means a person's relevant history based on information considered by DHS in addition to criminal records.

satisfactory assessment or screening means an assessment by the DHS Screening Unit, the Principal Authorising Officer of DHW, LHN or SA Ambulance Service or a service provider concluding that the criminal and relevant records of an individual does not contain any records that are relevant or significant enough to indicate a risk to the organisation, patients, clients or others in SA Health workplaces.

volunteer means a person who:

- is not an SA Health paid employee; and
- offers his or her services to SA Health; or
- provides care or other services as authorised by SA Health; and
- has turned 16 or, if the person is a full-time student, has turned 18.

vulnerable adult means an adult client or patient who is:

- An adult with serious physical illness; or with a physical disability / mental disability which includes intellectual disability, mental impairment, or mental illness.
- An adult who suffers social or financial hardship and may be vulnerable to exploitation as a result of this hardship. (Social hardship includes a wide range of situations and experiences

such as a history of homelessness; domestic or family violence; bullying; sexual abuse; racial abuse; problem gambling; drug and alcohol abuse; torture or other trauma.

- An adult who cannot communicate, or who has difficulty communicating in English.

work with children position - refer to section 6 of the CS (PP) Act.

worker means all persons working under SA Health supervision, e.g. all employees and non-employee workers (such as volunteers, students/clinical placements and labour hire agency staff).

workplace means the work environment where SA Health workers perform their duties; whether on SA Health premises or elsewhere in the community.

7. Associated Policy Directives / Policy Guidelines and Resources

This Policy Directive should be read in conjunction with:

7.1 Legislation and related publications

- [Aged Care Act 1997 \(Cth\)](#); [Accountability Principles 2014](#) and [Record Principles 2014](#) issued pursuant to the [Aged Care Act 1997 \(Cth\)](#)
- [Australian Human Rights Commission Act 1986 \(Cth\)](#)
- [Child Safety \(Prohibited Persons\) Act 2016 \(SA\)](#)
- [Child Safety \(Prohibited Persons\) Regulations 2018 \(SA\)](#)
- [DHS WWCC webpage](#)
- [Fair Work Act 1994 \(SA\)](#)
- [Health Care Act 2008 \(SA\)](#)
- [Privacy Act 1988 \(Cth\)](#)
- [Public Sector Act 2009 \(SA\)](#)
- [State Records Act 1997 \(SA\)](#) and [General Disposal Schedule No. 30, V1.1](#)

7.2 Relevant SA Government or SA Health policies/publications

- [Code of Ethics for the South Australian Public Sector](#)
- [SA Health Employees Charged with Criminal Offences Policy Directive](#)
- [SA Health \(Health Care Act\) Human Resources Manual](#)

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