



Australian Government
Department of Foreign Affairs and Trade



DFAT CHILD PROTECTION GUIDANCE NOTE

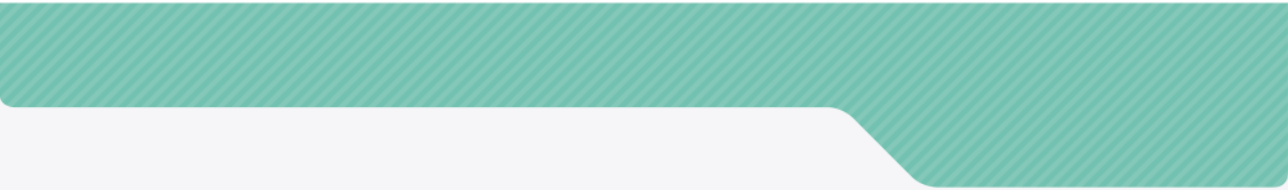
CRIMINAL RECORD CHECKS

January 2017

The DFAT Child Protection Policy and other relevant contracts and agreements are the authoritative documents and nothing in these guidance notes overrides these policies. For advice on any conflicts, contact childprotection@dfat.gov.au

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DFAT CHILD PROTECTION GUIDANCE NOTE

CRIMINAL RECORD CHECKS

1. WHO HAS TO OBTAIN A CRIMINAL RECORD CHECK?

Criminal record checks are required for every individual who will be in a position that involves contact with children, either under the position description or due to the nature of the work environment.

Contact with children is inherent to the nature of DFAT funded activities. This means that DFAT partners need to take into account the risk of abuse and/or exploitation of children when implementing an activity or working in-country.

We know that child sex offenders may seek employment in children's organisations or may volunteer to work in remote or vulnerable communities. Therefore, while an activity may not involve working with children, it may involve introducing a new person into a community or in to contact with children, which is an increased risk to children. In the end, it comes down to partners needing to make their own determination by undertaking a risk assessment and adherence to an organisation's child protection policy.

2. WHY DO WE NEED A CRIMINAL RECORD CHECK?

A criminal record check forms one part of an organisation's broader child-safe recruitment and screening process. It covers all personnel (including volunteers and contractors) who will be in contact with children. Child-safe recruitment includes (but is not limited to):

- criminal record checks prior to engagement
- regular review of criminal record checks as an ongoing condition of employment to re-validate suitability
- verbal referee checks
- interview plans incorporating behavioural-based interview questions, for use when candidates are applying for specific *working with children positions*.¹

Activities that may require personnel to have contact with children include (but not limited to):

- activities working with homeless children, sex workers or in women's refuges
- disaster responses (natural and conflict related)
- education activities with children, including in preschools, primary and secondary schools
- recreational activities including in children's clubs, youth groups, or the organisation of sports for children
- health activities, particularly those that focus on mothers' or children's health
- research activities involving direct contact with children (e.g. interviews)
- activities that require the applicant to live in a small and/or remote community.

¹ Working with children means being engaged in an activity with a child where the contact would reasonably be expected as a normal part of the activity and the contact is not incidental to the activity. Working includes volunteering or other unpaid work.

3. CAN I HIRE SOMEONE AND THEN GET THE CRIMINAL RECORD CHECK COMPLETED? WHAT IF IT'S AN EMERGENCY SITUATION?

While organisations should aim to ensure all new staff members, volunteers and contractors have completed a criminal record check (and subsequent police certificate) before they start work, there are exceptional circumstances where new staff, volunteers and contractors are required to commence work before you receive a police certificate, such as when rapid recruitment and deployment is required during times of emergency.

A person can start work before obtaining a police certificate if:

- the service to be provided by the person is essential; and
- an application for a criminal record check has been made before the date on which the person first becomes a staff member, volunteer or contractor; and
- until the criminal record check is completed, the person will be subject to appropriate supervision during periods when the person interacts with children; and
- the person makes a statutory declaration² stating either that they have never, in Australia or another country, been convicted of an offence or, if they have been convicted of an offence, setting out the details of that offence.³

In such cases, the organisation must have policies and procedures in place to demonstrate:

- that an application for a criminal record check has been made;
- that the service to be provided is essential;
- the way in which the person would be appropriately accompanied; and
- how a person will be appropriately accompanied in a range of working conditions, e.g. during holiday periods when staff numbers may be limited, whether or not the person will be living in a small and/or remote community.

4. WHAT TYPE OF CRIMINAL RECORD CHECK(S) DOES DFAT REQUIRE?

DFAT requires criminal record checks for all countries in which the individual has lived for 12 months or longer over the past five years *and* for all countries of citizenship.

For Australian residents, people who work in Australia or people who have worked in Australia in the past five years, DFAT requires a *National Police Check* from the Australian Federal Police (AFP).

² An in-country equivalent can be used where available but must be a legally binding document. Australian citizens are to use statutory declarations as the default position.

³ The assessment of statutory declaration information should follow the same principles for assessing a criminal record check.

Foreign National Police Checks must also be obtained for each country in which the applicant has lived for 12 months or longer over the past five years *and* for all countries of citizenship.

DFAT recommends using the AFP instead of state-based police services as these checks are available for overseas employment. Agencies that wish to use state-based 'working with children/vulnerable people' checks will need to determine the best interests of their agency within the boundaries of the DFAT Child Protection Policy and related guidance notes. There may be legal implications to using a state-based 'working with children/vulnerable people' checks as opposed to an AFP criminal record check. DFAT cannot advise on such implications. Each state has its own legislation on 'working with children/vulnerable people' checks and how state-based spent convictions legislation will be applied, as well as details on when checks can be legitimately supplied to employers.

Many Australian states and territories provide 'Working with Children Checks' or 'Working with Vulnerable People Checks' for people working with varying vulnerable groups. These checks are currently designed for use within the state where they were granted, and are not considered to be transferrable across states and territories or internationally, and are not available for all categories of work.

An organisation must be satisfied that a police certificate is genuine. This is best achieved through the sighting/acceptance of original police certificates or a certified copy, rather than accepting uncertified photocopies as the default. Where originals or certified copies are unavailable, such as when electronic clearances are received, organisations must make efforts to satisfy themselves of the authenticity of the police certificate.

5. HOW DO I APPLY FOR AN AFP NATIONAL POLICE CHECK?

You can apply for an AFP National Police Check by visiting the [Australian Federal Police - National Police Checks](http://www.afp.gov.au/what-we-do/police-checks/national-police-checks.aspx)⁴ website. Ensure that you include your organisation's details and note that the check is for **Overseas Employment (Code 35)** on the application form, unless your role/job description or your agency has deemed a **Code 37** is the requirement for your position. A Code 37 is designed for anyone who will have **Care, instruction or supervision of children/Care of intellectually disabled persons/Aged care staff/Volunteers**.

6. HOW DO I APPLY FOR A FOREIGN NATIONAL POLICE CHECK?

For details of how to apply for criminal record checks in specific overseas countries, please refer to Department of Immigration & Border Protection's [Character and Police Clearance Requirements](http://www.border.gov.au/Trav/Visa/Char).⁵ If in doubt, contact the nearest embassy or consulate for the country.

⁴ <http://www.afp.gov.au/what-we-do/police-checks/national-police-checks.aspx>

⁵ <http://www.border.gov.au/Trav/Visa/Char>

7. HOW LONG DOES IT TAKE TO PROCESS AN APPLICATION?

The current processing time for a routine national police check through the Australian Federal Police is approximately 15 working days from the date received by Criminal Records. Please note that processing times may vary.

Foreign national police checks can take up to 4–6 months to be provided. If necessary, statutory declarations can be accepted as an interim measure while foreign national police checks are being processed.

8. WHAT HAPPENS IF IT IS NOT POSSIBLE TO OBTAIN A FOREIGN NATIONAL POLICE CHECK IN ONE OR MORE OF THE COUNTRIES THAT THE INDIVIDUAL HAS RESIDED IN OR IS A CITIZEN OF?

Provision may be made for cases where foreign national criminal record checks have not been completed in time or where a country does not provide criminal record checks of adequate reliability. In these cases, a statutory declaration (in Australia) or equivalent can be used instead of a criminal record check. You can obtain an Australian Statutory Declaration form at <https://www.ag.gov.au/publications/pages/statutorydeclarations.aspx>.

Please see Attachment A for an example of an Australian Statutory Declaration.

The statutory declaration would need to be made for all countries that the individual had lived in for 12 months or longer over the past five years and for the individual's country of citizenship, where it has not been possible to obtain a criminal record check.

Statutory declarations are not to be used as the default position. Where statutory declarations or equivalents are used by an organisation, it is essential that the organisation can demonstrate that they made every reasonable effort to source a criminal record check from the countries required.

Agencies must consider any risks associated with using statutory declarations. It only requires one person to submit a fraudulent statutory declaration, but the purchase of a 'clean' police check requires at least two. In countries where there is a known risk of purchasing 'clean' records, strengthening other elements of the child-safe recruitment strategy (such as referee checking processes) is strongly advised.

9. HOW MUCH DOES A NATIONAL POLICE CHECK COST?

As of December 2016, a National Police Check from the AFP costs A\$42.00.

Costs for foreign national police checks vary widely. Please refer to the Department of Immigration & Border Protection's [Character and Police Clearance Requirements](#)⁶ for general information on fees and how to obtain checks.

⁶ <http://www.border.gov.au/Trav/Visa/Char>

10. DO I HAVE TO PROVIDE A NEW NATIONAL POLICE CHECK FOR EVERY NEW TENDER OR CONTRACT WITH DFAT OR WHEN TAKING UP A ROLE IN A NEW ORGANISATION?

A National Police Check is valid only on the day it is issued. Organisations should consider this when utilising criminal record checks as part of their child-safe recruitment and screening strategies.

DFAT will accept an individual's national police check(s), as part of a tender process or engagement of individual contractors, for a period of 12 months from the date of issue of each national police check required. After this period new national police checks will have to be obtained.

11. WILL THE NATIONAL POLICE CHECK INCLUDE SPENT CONVICTIONS?

AFP National Police Checks for overseas employment (**Code 35**) will not include spent convictions.

AFP National Police Checks for roles/jobs involving *care, instruction or supervision of children/care of intellectually disabled persons/aged-care staff/volunteers* (**Code 37**) will include:

unspent offences,

offences against the person, and

- (i) a sexual offence
- (ii) any other offence against the person if the victim of the offence was under 18 at the time the offence was committed.

Foreign national police checks may or may not include spent convictions.

Under the 1990 Spent Convictions Scheme (Australia), prospective employers are prohibited from taking into account or disclosing any prior convictions for an offence (Australian or foreign) that is covered under the spent conviction scheme, without the consent of the individual. This means that even when the person concerned inadvertently discloses information about a protected old conviction, it cannot be taken into account.

Under this scheme, organisations are required to disregard any convictions where:

- it has been 10 years from the date of the conviction (or 5 years for juvenile offenders)
- the individual was not sentenced to imprisonment for more than 30 months
- the individual has not re-offended during the 10 year (5 years for juvenile offenders) waiting period
- a statutory or regulatory exclusion does not apply.

The scheme also covers convictions that have been set aside or pardoned under Part VIIC of the *Crimes Act 1914 (Australia)*. An individual whose conviction is protected does not have to disclose the conviction to any person, including a Commonwealth authority.

However, the right of non-disclosure is a limited right and there are also some exclusions. For roles/jobs involving *care, instruction or supervision of children/care of intellectually disabled persons/aged-care staff/volunteers*, organisations are not required to disregard the following spent convictions:

offences against the person, and

- (i) a sexual offence
- (ii) any other offence against the person if the victim of the offence was under 18 at the time the offence was committed.

Please refer to information about exclusions to the Spent Convictions Scheme at <https://www.oaic.gov.au/resources/individuals/privacy-fact-sheets/general/privacy-fact-sheet-41-commonwealth-spent-convictions-scheme.pdf>. Organisations are encouraged to seek separate legal advice should they find themselves in this or a similar situation.

12. WHAT IF I HAVE A CONVICTION, BUT IT'S NOT RELEVANT TO THE JOB I AM APPLYING FOR?

DFAT reserves the right not to engage any individual in an activity whom the agency believes to pose an unacceptable risk to children's safety or wellbeing.

If a police certificate shows prior conviction(s) relating to child abuse/exploitation, the Child Protection Compliance Section is to be consulted, and an assessment will be made as to whether the conviction is relevant to the job and does not pose an unacceptable risk to children's safety and wellbeing.

Other convictions (such as physical assault against an adult) and their relevance will need to be determined by the employing agency.

13. HOW DO I ASSESS A POLICE CERTIFICATE?

Where national police checks show a criminal offence, organisations will need to assess the person's suitability for the role. Organisations, in consultation with the Child Protection Compliance Section, will use a risk assessment approach when assessing a person's criminal history to determine whether recorded offences are relevant to the job. The principle that organisations should apply is to determine the risk of harm to children.

Organisations should ensure they have policies and procedures in place to assess national police checks in line with the organisation's risk management processes. An organisation's decision to employ or retain the services of a person with any relevant recorded convictions will need to be rigorous, defensible, and transparent, and clearly demonstrate that consultation processes have been held with the Child Protection Compliance Section.

A risk assessment approach:

These considerations are intended as a guide to help organisations assess a person's police certificate against their suitability for employment as a staff member, volunteer or contractor:

Access: the degree of access to children and their personal information. Considerations include whether the individual will work alone or as part of a team; the level and quality of direct supervision; the location of the work, i.e. community, residential care settings.

Age: the ages of the person and any victim at the time the person committed the offence. The organisation may place less weight on offences committed when the person is younger, particularly less than 18 years of age. The organisation may place more weight on offences against vulnerable persons.

Consequences: the impact of a prospective incident if the person continues, or commences, particular duties.

Country-specific offences: whether or not the conduct that constituted the offence or to which the charge relates, is a crime under Australian Law (State/Territory or Federal).

Decriminalised offence: whether or not the conduct that constituted the offence or to which the charge relates has been decriminalised since the person committed the offence.

Employment history: whether an individual has been employed since the conviction, and the outcome of verbal referee checks with any previous employers.

Individual's information: the findings of any assessment reports following attendance at treatment or intervention programs, or other references; and the individual's attitude to the offending behaviour.

Likelihood: the probability of an incident occurring if the person continues with, or is employed for, particular duties.

Pattern: whether the conviction represents an isolated incident or a pattern of criminality.

Proportionality: whether excluding a person from employment is proportional to the type of conviction.

Relevance: the type of conviction and sentence imposed for the offence in relation to the duties a person is, or may be undertaking. An organisation should only have regard to any criminal record information indicating that the person is unable to perform the inherent requirements of the particular job.

Risk treatment strategies: procedures that will assist in reducing the likelihood of an incident occurring including, for example, modification of duties.

Timing: when the conviction occurred.

14. WHEN DO I HAVE TO PROVIDE NATIONAL POLICE CHECKS?

National Police Checks (from AFP and relevant Foreign NPCs) assessment will be required:

- a) prior to engagement;
- b) once engaged, every 5 years; or
- c) when there is a significant change in an individual's circumstances.⁷

⁷ personnel should report the following changes in circumstances to management:

- involvement in criminal activity; and
- disciplinary procedures and/or criminal or civil court proceedings relating to child exploitation and abuse

15. HOW WILL DFAT MONITOR CONTRACTOR AND NGO COMPLIANCE FOR CRIMINAL RECORD CHECK REQUIREMENTS?

DFAT monitors compliance through contractor performance assessments and review, the NGO accreditation process, and a program of audits and spot checks. DFAT reserves the right to conduct random audits of contractors' and NGOs' compliance with the standards, including requesting documentary evidence.

Contractors and NGOs must hold evidence of criminal record checks on file (example at Attachment B) and must inform DFAT in writing of any changes in the circumstances of any person under contract that may affect the assessment of that person. This includes becoming the subject of allegations, being charged with, or arrested for, or convicted of, criminal offences relating to child exploitation and abuse.

16. ARE THERE PRIVACY ISSUES THAT THE ORGANISATION SHOULD BE CONCERNED WITH?

DFAT will monitor compliance with the child protection standards through the NGO accreditation process and a program of audits and spot-checks of contractors and NGOs working with DFAT. Where national police checks are required under the child protection compliance standards, individuals must provide their consent to a criminal record check and must be informed of the purposes for which the resulting police certificate will be used, including being sighted by DFAT.

All information relating to criminal record checks must be managed by an organisation in accordance with the *Privacy Act 1988* (Australia) and any state-based or other country legislation, relevant to the agency's location.

It may be advisable for organisations to sight criminal record checks, note the outcomes on a register (example at Attachment B) and hand the checks back to the individual, rather than holding on to a copy of the checks. The correct management and storage of criminal record checks can be onerous and the resources required not balanced with the need for retention.

Organisations should confirm the correctness of a criminal record check with the applicant, particularly with foreign national police checks, in case they have been the unwitting victim of identity fraud. Organisations are encouraged to request written confirmation from applicants.

17. WHERE DO I GET FURTHER ADVICE ON DFAT'S CHILD PROTECTION POLICY?

All questions concerning the DFAT Child Protection Policy should be directed to DFAT's Child Protection Compliance Section at childprotection@dfat.gov.au.

Attachment A

STATUTORY DECLARATION

This declaration must be made before an authorised person. Only certain people may witness a Commonwealth statutory declaration. A list of people who can be witnesses is set out in Schedule 2 to the *Statutory Declaration Regulations 1993*. The Regulations and a separate 'list of signatories' can be accessed via a link at www.ag.gov.au/statdec.

WARNING: When you make a statutory declaration, you are declaring that the statements in it are true. If you intentionally make a false statement in a statutory declaration, you could be charged with an offence and, if convicted, you could be fined or jailed, or both.

The provision of false or misleading information in this declaration is subject to penalties under the *Statutory Declarations Act 1959*. The *Statutory Declarations Act* provides for penalties of up to 4 years imprisonment.

For more information see: <http://www.ag.gov.au/Publications/Pages/Statutorydeclarations.aspx>

Commonwealth of Australia
STATUTORY DECLARATION

Statutory Declarations Act 1959

I, *(name)*.....of *(address)*.....

do solemnly and sincerely declare that:

1. I resided in *(country)*from *(date)*.....to *(date)*.....
during which period I was employed by *(organisation)*.....
in the role/position of
2. At no time during my stay in *(country)*was I involved in or convicted of any
criminal offence, including an offence of or relating to child abuse, exploitation or child pornography,
in *(country)*.....
3. I have not been charged with any offence that is incomplete or awaiting legal action, nor am I aware of
any investigation into my affairs that has the potential to lead to such charges of or relating to child
abuse, exploitation or child pornography.

I fully understand the above, or the above has been fully explained to me by another person or interpreter
who fully understands the above, such that I fully understand the above.

I understand that a person who intentionally makes a false statement in a statutory declaration is
guilty of an offence under section 11 of the Statutory Declarations Act 1959, and I believe that the
statements in this declaration are true in every particular.

Signature of person making the declaration

Declared at *(place)*

thisday of*(month)**(year)*.

Before me, *(Signature and title of person before whom the declaration is made)*

.....

A statutory declaration under the *Statutory Declarations Act 1959* may be made before:

1. a person who is currently licensed or registered under a law to practise in one of the following occupations:

Chiropractor	Dentist	Legal practitioner
Medical practitioner	Nurse	Optometrist
Patent attorney	Pharmacist	Physiotherapist
Psychologist	Trade marks attorney	Veterinary surgeon

2. a person who is enrolled on the roll of the Supreme Court of a State or Territory, or the High Court of Australia, as a legal practitioner (however described); or
3. a person who is in the following list:

Agent of the Australian Postal Corporation who is in charge of an office supplying postal services to the public

Australian Consular Officer or Australian Diplomatic Officer (within the meaning of the *Consular Fees Act 1955*)

Bailiff

Bank officer with 5 or more continuous years of service

Building society officer with 5 or more years of continuous service

Chief executive officer of a Commonwealth court

Clerk of a court

Commissioner for Affidavits

Commissioner for Declarations

Credit union officer with 5 or more years of continuous service

Employee of the Australian Trade Commission who is:

- a. in a country or place outside Australia; and
- b. authorised under paragraph 3 (d) of the *Consular Fees Act 1955*; and
- c. exercising his or her function in that place

Employee of the Commonwealth who is:

- a. in a country or place outside Australia; and
- b. authorised under paragraph 3 (c) of the *Consular Fees Act 1955*; and
- c. exercising his or her function in that place

Fellow of the National Tax Accountants' Association

Finance company officer with 5 or more years of continuous service

Holder of a statutory office not specified in another item in this list

Judge of a court

Justice of the Peace

Magistrate

Marriage celebrant registered under Subdivision C of Division 1 of Part IV of the *Marriage Act 1961*

Master of a court

Member of Chartered Secretaries Australia

Member of Engineers Australia, other than at the grade of student

Member of the Association of Taxation and Management Accountants

Member of the Australasian Institute of Mining and Metallurgy

Member of the Australian Defence Force who is:

- a. an officer; or
- b. a non-commissioned officer within the meaning of the Defence Force Discipline Act 1982 with 5 or more years of continuous service; or
- c. a warrant officer within the meaning of that Act

Member of the Institute of Chartered Accountants in Australia, the Australian Society of Certified Practising Accountants or the National Institute of Accountants

Member of:

- a. the Parliament of the Commonwealth; or
- b. the Parliament of a State; or
- c. a Territory legislature; or
- d. a local government authority of a State or Territory

Minister of religion registered under Subdivision A of Division 1 of Part IV of the *Marriage Act 1961*

Notary public

Permanent employee of the Australian Postal Corporation with 5 or more years of continuous service who is employed in an office supplying postal services to the public

Permanent employee of:

- a. the Commonwealth or a Commonwealth authority; or
- b. a State or Territory or a State or Territory authority; or
- c. a local government authority

with 5 or more years of continuous service who is not specified in another item in this list

Person before whom a statutory declaration may be made under the law of the State or Territory in which the declaration is made

Police officer

Registrar, or Deputy Registrar, of a court

Senior Executive Service employee of:

- a. the Commonwealth or a Commonwealth authority; or
- b. a State or Territory or a State or Territory authority

Sheriff

Sheriff's officer

Teacher employed on a full-time basis at a school or tertiary education institution

Attachment B

INDIVIDUAL ASSESSMENT FORM TEMPLATE SUGGESTION

Name of Person	
Description of the position the person occupies or will occupy	
The person provided an original or certified copy of all relevant National Police Checks	
Outcome of NPC/Stat Dec checks	

National Police Checks Required:

Name of Country	Date NPC Received	NPC authenticity checked (Y/N)	NPC disclosed no convictions (Y/N)	NPC disclosed a conviction requiring further assessment. Refer to Attachment XX	Did disclosed conviction preclude individual from employment? (Y/N)

Name of Country	Date Stat Dec/equivalent was signed	Applicant disclosed no convictions (Y/N)	Applicant disclosed a conviction requiring further assessment. Refer to Attachment XX	Did disclosed conviction preclude individual from employment? (Y/N)

Attachment XX

NPC disclosed a conviction requiring further assessment.

Name of Person:

Details of assessment: