

# AusAID Child Protection Policy

## Guidance Note on Criminal Record Checks

March 2012

*The AusAID Child Protection Policy and other relevant contracts and agreements are the authoritative documents and nothing in these guidance notes overrides these policies.*

### 1. Who has to obtain a criminal record check?

An organisation's child protection policy must include child-safe recruitment and screening processes, including:

- criminal record checks prior to engagement
- targeted interview questions
- verbal referee checks.

for all personnel (including volunteers) who will be *working with children*.

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

Activities that may involve personnel working with children include (but are 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).

### 2. What type of criminal record check does AusAID recommend?

AusAID recommends that for Australian residents, people who work in Australia or people who have worked in Australia in the last five years, that an organisation obtain a *National Police Check (No Exclusion)* from the Australian Federal Police (AFP).

You must use the AFP instead of state-based police services as these checks comply with the Commonwealth Spent Convictions Scheme and are available for overseas employment. It is possible to apply for AFP checks by post, while state-based checks often require forms to be presented at police stations in person.

Different states provide 'Working with Children Checks.' These checks are inconsistent across states and territories and are not available for all categories of work. AusAID *does not* recommend the use of these 'Working with Children Checks' at this stage.

### 3. How do you 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](#) website. Ensure that you include your organisation's details and note that the check is for Overseas Employment on the application form.

#### **4. 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.

#### **5. How much does an AFP National Police Check cost?**

As of March 2012, a National Police Check from the AFP costs \$45. GST is not applicable to this fee. This amount must be paid by cheque or money order when sending in the application forms.

#### **6. For how long will AusAID consider an AFP National Police Check as valid?**

An AFP 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.

AusAID will accept an individual's AFP National Police Check, as part of a tender process, for a period of 12 months from the date of issue of the AFP National Police Check. After this period a new AFP National Police Check will have to be obtained.

#### **7. Will the AFP National Police Check include spent convictions?**

No. While state-based 'Working with Children Checks' require all relevant spent convictions to be disclosed, police checks for overseas employment are not eligible for exemption under the Spent Convictions Scheme at this time.

Under the 1990 Spent Convictions Scheme, Commonwealth authorities are prohibited from taking into account or disclosing any prior convictions, without the consent of the individual. The scheme applies to spent convictions where a waiting period (10 years) has passed and the individual in question has not re-offended.

This is one reason why criminal record checks should not be viewed as a comprehensive measure, and only part of a range of measures which must be used to sufficiently reduce the risk of child abuse.

Please refer to information about exclusions to the Spent Convictions Scheme at <http://www.privacy.gov.au/publications/csce1.pdf>

#### **8. Where a Consultant or staff member has recently lived overseas, do they need a criminal record check for any other countries other than Australia?**

Where a person will be working with children, an organisation's child protection policy must require at a minimum that the person undergo criminal record checks for each country in which they have lived for 12 months or longer over the last five years *and* for their country of citizenship.

For details of how to apply for criminal record checks in specific overseas countries, please refer to Department of Immigration & Citizenship [Character Requirements Penal Clearance Certificate form](#). If in doubt, contact the nearest embassy or consulate for the country.

Please note that international criminal record checks can take up to 4-6 months to be provided.

**9. How will AusAID monitor contractor and NGO compliance for criminal record check requirements?**

AusAID monitors compliance through contractor performance assessments and review, the NGO accreditation process and a program of audits. AusAID reserves the right to conduct random audits of contractors' and NGOs' compliance with the standards, including requesting documentary evidence. Contractors and NGOs must hold criminal record checks on file and inform AusAID in writing of any changes in the circumstances of any person under contract that may affect the assessment of that person. This includes allegations of an organisation's personnel to have committed, or been arrested for, or convicted of, criminal offences relating to child abuse or child pornography.

For further guidance please see AusAID's Guidance Note on Child Protection Notifications for NGOs and Contractors.

**10. Are there privacy issues that the organisation should be concerned with?**

AusAID will monitor compliance with the child protection standards through the NGO accreditation process and a program of audits of contractors and NGOs working with AusAID. Where criminal record 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 clearance certificate will be used, including being sighted by AusAID.

All information relating to criminal record checks must be managed by an organisation in accordance with the *Privacy Act 1988*.

Organisations should confirm the correctness of a criminal record check with the applicant, particularly in regard to international criminal record checks in case they have been the unwitting victim of identity fraud.

**11. What happens if it is not possible to obtain criminal record checks 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 international 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 in lieu of a criminal record check. You can obtain an Australian Statutory Declaration form at [http://www.ag.gov.au/www/agd/agd.nsf/Page/Statutory\\_declaration](http://www.ag.gov.au/www/agd/agd.nsf/Page/Statutory_declaration). 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 last five years and for the individual's country of citizenship where it has not been possible for a criminal record check.

Where Statutory Declarations or equivalent 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 listed.

## **12. Where do I get further advice on AusAID's Child Protection Policy?**

All questions concerning the AusAID Child Protection Policy should be directed to AusAID's Child Protection Unit at [childprotection@ausaid.gov.au](mailto:childprotection@ausaid.gov.au).

## 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](http://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.

## COMMONWEALTH OF AUSTRALIA

### Statutory Declaration

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  
any criminal offence, including an offence of or relating to child abuse 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.

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 make this solemn declaration by virtue of the *Statutory Declarations Act 1959*, and subject to  
the penalties provided by that Act for the making of false statements in statutory declarations,  
conscientiously believing the statements contained in this declaration to be true in every  
particular.

### Signature of person making the declaration

.....

Declared at (place) .....

this .....day of .....(month) .....(year).

Before me,

(Signature and title of person

before whom the declaration is

made).....