**NAME OF DOCUMENT**
Probity screening: criminal record checks and prohibited persons declarations

**TYPE OF DOCUMENT**
Area Workforce Services Policy Directive

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**REPLACES**
Former SESAHS Probity screening: criminal record checks and prohibited persons declarations
Former IAHS Probity screening

**FORMER REFERENCE**
Former IAHS Area P-HR-05- August 2004
Former SESASH Probity screening: criminal record checks and prohibited persons declarations – Nov 2001

**FUNCTIONAL GROUP**
Corporate and Clinical Governance, Clinical Operations, Clinical Streams, Corporate Services, Population Health, Planning and Performance, Area Workforce Development, Communications, Nursing and Midwifery Services.

**SUMMARY**
This policy outlines the probity screening process, which includes criminal record checking and prohibited person declarations. In addition, the policy also details requirements in respect to management and reporting of allegations and/or convictions of child abuse.
The policy should be read in conjunction with the following SESIH Area Policy Directives:
- [PD 039 Child Protection](#)
- [PD 040 Incident management](#)
- [PD 043 Recruitment and Selection](#)

**COMPLIANCE WITH THIS AREA POLICY DIRECTIVE IS MANDATORY**
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SECTION 1 - POLICY

1. PURPOSE & SCOPE

The purpose of this policy is to minimize the risk to patients, clients and employees by conducting probity screening for all paid and unpaid employees throughout the recruitment process and prior to employment. Probity screening processes include criminal record checking and prohibited person declarations. In addition, the policy also details requirements in respect to the management and reporting of child related or criminal allegations, charges or convictions.

The requirement to conduct Probity Screening extends to the following paid and unpaid employees:

- Permanent employees
- Temporary and casual employees
- Visiting Medical Practitioners
- Students undertaking placements (excludes High School children)
- Volunteers
- Agency staff
- Persons engaged in any other capacity (e.g. Academics, board members, clergy, union officials, contractors, official visitors)
- Persons engaged in any capacity who are either unsupervised or on limited supervision (e.g. Employed through related Non-Government Organisations)

2. RESPONSIBILITIES

Chief Executive, Directors, Hospital Network General Managers, Area Workforce Services, Managers and Convenors of recruitment committees and all staff employed within SESIAHS have responsibilities.

3. REFERENCES

3.1 Legislation

- Commission for Children and Young People Act 1998
- Ombudsman Amendment (Child Protection & Community Services) Act 1998
- Health Services Act 1997

3.2 External references

- NSW Health PD2005_109 Improper Conduct - Procedures for Recruitment/ Employment of staff and other persons
3.3 Internal references

- Area Policy Directive PD 039 Child Protection Policy
- Area Policy Directive PD 040 Incident management
- Area Policy Directive PD 043 Recruitment and Selection
- Area Policy Directive PD 061 Code of Conduct
- Area Policy Directive PD 089 Fraud prevention and control
- Area Policy Directive PD 090 Protected Disclosures
- Area Policy Directive PD 091 Reporting corrupt conduct and protected disclosures—internal and external reporting channels

4. DEFINITIONS

**Child related employment:** Includes “people who are primarily engaged to work with children or who work with children as a major proportion of their duties”. For the purpose of interpretation, mandatory child-related employment screening activities will be completed for:

- Employment in wards of public and private hospitals in which children are patients
- Employment involving the direct provision of child or youth specific health services
- Employment involving the direct provision of non-child or youth specific health services in other than a hospital setting where the majority of the clients or patients are likely to be children receiving those health services in the absence of another health professional, parent, guardian or other adult responsible for the child’s care.

**Child:** A person who is under the age of 18

**Prohibited Person:** A person convicted of a serious sex offence, other than where there is an order in force declaring that the Child Protection (Prohibited Employment) Act 1998 does not apply to the person, in respect of the offence, and that person applies to work in or remain in child related employment.
**Serious offences:** offences punishable by penal servitude or imprisonment for 12 months or more in NSW or an offence committed elsewhere, that would have been punishable by penal servitude or imprisonment for 12 months if it had been committed in NSW.

5. **POLICY STATEMENT**

All persons must undergo criminal record checks when applying for work at SESIH. The scope of the screening will vary depending on whether the person will be working in “child-related” or “non-child related” employment.

Internal interview applicants will only be required to complete a Criminal Record Check if they are moving from non-child related employment to child related employment.

No offers of employment/appointment can be made until the necessary checks have been completed.

Checks have already been conducted on all current employees and may continue to be conducted on a random basis.

5.1 **OFFENCES**

Under the relevant legislation, it is an offence for:

- An employer to fail to ask whether a person is a prohibited person.
- An employer to employ a prohibited person in child-related employment.
- An employee not to disclose his or her prohibited person status.
- An employee to apply for, or remain in child-related employment if they become a prohibited person.
- A prohibited person to apply for work in child-related employment.

5.2 **PROBITY SCREENING**

All persons working within NSW Health (paid and unpaid) must undergo Criminal Record Checks. The scope of the check will vary depending on whether the person works in child-related employment or non-child related employment. The National Criminal Check applies to people who will be working in child-related employment. The interviewee must complete the Working with Children form and the Criminal Record Check form at the time of interview, prior to a Criminal Check being undertaken.

5.2.1 **National Criminal Check**

In relation to child-related employment, checks will be conducted for the following:

- Charges or convictions for sexual offences / child abuse
• Charges or convictions for serious offences involving a threat or injury to another person;
• Any relevant disciplinary proceedings against the person in the NSW Health System or similar information held by the Commission for Children and Young People and other organizations
• Relevant apprehended violence orders

There is no statute of limitations on checks covered for child-related employment, that is, all offences of the kind above, regardless of the age of the offence, are subject to this screening.

5.2.2 NSW Criminal Record Check

This check applies to all people who will be working in non-child related employment. Checks will be conducted for the following:

• Charges or convictions for other relevant serious offences (e.g. Embezzlement / larceny etc). The nature of the offence together with the type of employment will be considered.

Checks are only conducted for the previous 10 years, from the time of submitting the record check, except for significant offences.
SECTION 2 – PROCEDURES
PATHWAY – PROBITY SCREENING PROCESS

Generic Statement— all advertisements

Same Statement in Letter of Acknowledgement and Job Information Packages

Committee Selects Recommended Applicants. (Ensure CRC, PPD forms and Identification checklist completed)

Seek advice from Manager, Human Resources if voluntary disclosures made, but continue with pre-employment screening process.

Human Resources Initiates Criminal Record Check, Opens Prohibited Employment Declarations

Prohibited Declaration is Negative
Criminal Record Check is Positive

Manager, Workforce Services

Requests investigation and Risk Assessment Report. Assesses recommendation

Prohibited Declaration is Positive
Criminal Record Check is Negative

Letter of Offer issued

Prohibited Employment Declaration is Positive
Criminal Record Check is Negative

Placed in Personnel File

Prohibited Employment Declaration is Negative

Manager, Human Resources, Network Services

Review CRC

Review Prohibited Person Declaration

Notify NSW Ombudsman & DOH where child-related

Outcome

Offer of employment declined
Offer of employment confirmed with conditions
Offer of employment confirmed without conditions
5.3 RECRUITMENT PROCEDURES

5.3.1 Advertisements and Recruitment Packages

It is the responsibility of Area Workforce Services to manage the advertisements (external and internal) for all vacant positions and to ensure that all advertisements include the following statement:

“Appointments are subject to a satisfactory Criminal Record Check. Prohibited Persons as declared under the Child Protection (Prohibited Employment) Act 1998 are not eligible to apply for child related employment.”

The above statement is also required in all recruitment and job information packages.

5.3.2 Reference Checking

All applicants are required to provide at least two referees. Convenors are responsible for the collection of appropriate information on applicants from their referees for assessment purposes. The requirements of reference checking are detailed within the Area Recruitment and Selection procedure.

5.3.3 Screening Procedure for Interviewees

All interviewees are required to provide appropriate documentation to support their true identity in order to facilitate accuracy in the Criminal Record Check process.

The Identification Checklist outlines acceptable forms of identification and point scores each of them. A score of 100 points worth of identification is required. Convenors are required to inform interviewees of the level of identification required and ensure that the checklist states what forms of identification have been cited.

All registered health professionals must produce proof of current registration, including any conditions on registration. A photocopy must be taken and placed on the recruitment file, as well as the successful applicant’s personnel file.

All external interviewees must complete and sign the Approval to Conduct a Criminal Record Check form (Area Form F054) (referred hereafter as the CRC Form). Completed CRC Form for recommended applicants should be submitted to Workforce Services for processing. In addition, Health professionals give authorisation on this form for SESIH to obtain any relevant information from the Health Care Complaints Commission and/or professional registration authorities.

All external interviewees must complete a Working with Children Check Form (Area Form F062) (previously known as Prohibited Person Declaration Form). This form requires that the person nominate whether they are or are not a ‘prohibited person’. All external applicants must complete this even if they will not be working in child related employment.
All completed Working with Children Check Forms are to be sent to Workforce Services in an envelope marked “Private and Confidential”.

All internal interviewees should complete both CRC & Working with Children Check Forms. The Workforce Services Department will determine if a follow up Criminal Record Check lodgment is required.

5.3.4 Screening Of Non-Area Health Service Employees

While Area Health Service employees will be checked prior to employment/appointment, non-employees (paid and unpaid) require alternate arrangements to allow CRC and Working with Children forms to be completed. These forms should then be submitted to the Workforce Services Department.

Agency Staff, Volunteers and Contractors: Agency staff, volunteers (unpaid employment) and contractors (such as VMOs, tradespeople) need to be screened prior to starting work at SESIH. Both CRC and Working with Children forms need to be provided for these people and cleared prior to commencement of duty.

Students (non high school students): All university students who require placement will be advised by NSW Health of the screening requirements. NSW Health will co-ordinate Probity Screening in conjunction with the Universities and relevant Colleges and will advise of students who have been cleared. If a placement is refused, NSW Health will advise the University and student as appropriate.

All students who have been cleared will be provided with a clearance letter and that letter is to be provided to the hospital/facility upon placement. If a clearance letter is not produced a CRC will be undertaken by the hospital/facility. All students must complete a Working with Children Form prior to placement with SESIH.

Students (high school/work experience): High School students (18 years and under) are not required to complete CRC and Working with Children forms. TAFE / Other institution students seeking work placements (over 18 years) are required to complete CRC and Working with Children forms and gain clearance prior to placement with SESIAHS.

Non Government Organisations (NGO’s): All NGO’s that are funded by SESIH will be advised of screening requirements and SESIH will ensure that screening is conducted and compliance with such will be a condition of future funding.

In conducting the probity checks outlined above, the Workforce Services Department must always determine if the person will be primarily “engaged to work with children or will work with children as a major proportion of their duties”. This will then determine if the check will be conducted in NSW or Nationally.
5.3.5 CRC Investigation and Review Procedure

Upon receipt of a ‘positive’ criminal record or if the preferred applicant has identified that they are a prohibited person, the Area Workforce Services Department will conduct an investigation and risk assessment to determine the person’s suitability for employment, taking into account the nature of the position and the seriousness of the offence.

The contact person for the recruitment action will be notified of any delays, including the need for a risk assessment, resulting from the screening process.

A recommendation of employment or non-employment of the person will be made to the Area Manager, Workforce Services. In the case of an applicant being declined employment due to the CRC the matter will be referred to the CE, who will consult the Employment Screening and Review Unit, (ESRU) NSW Health to reach a decision.

5.3.6 Pending Charges

Where a charge is pending against a person, who if convicted would be refused employment/appointment, then a CRC Risk Assessment must be conducted in terms of relevance to the duties of the position. No offer of employment is to be made without a clearance by the Area Manager, Workforce Services.

5.3.7 Offers of Employment

Under no circumstances are offers of employment/appointment to be made until the screening process has been completed. However, notification to the successful and unsuccessful applicants is recommended as per the Area Recruitment and Selection Policy Directive. Convenors should advise the successful applicant that they are ‘the preferred applicant subject to a CRC clearance’.

In the event of a positive CRC, no offer of employment is to be made, until the Area Manager, Workforce Services has reached a determination on the matter.

5.3.8 Offers of Employment Pending Criminal Record Check

Where there is an urgent need to make an offer of employment, managers may request Workforce Services to consider whether an offer of employment can be made pending the completion of the criminal record check. Managers must make this request via their Service Director and provide a strong argument for this request to be considered. A recommendation will be made to the Area Manager, Workforce Services.

In such circumstances, the letter of offer will clearly state that the offer is conditional upon completion of a criminal record check, which does not reveal charges or convictions that the Health Service might consider justifies rejection of the person’s application for employment.
5.4 RESPONSIBILITIES

5.4.1 Convenors of interview selection committees

Convenors of Interview Selection Committees are required to:

- Identify and indicate on the Criminal Record Check if the advertised position responsibilities will be primarily engaged to work with children and/or where at least one of the essential duties of the position involves direct contact with children where that contact is not directly supervised.

- Ensure interviewees understand the probity screening process, and that an authority to undertake a Criminal Record Check and Working with Children Check (Prohibited Person Declaration) is compulsory for their application to be considered.

- Ensure the interviewee completes & signs the CRC and Working with Children forms.

- Ensure the Working with Children Form is sealed in an envelope and marked confidential.

- Complete the interview selection papers and forward these, along with the CRC and Working with Children forms and the completed recruitment file to the Workforce Services Department.

- Ensure that the recommended applicant supplies appropriate Identification to support their true identity (Identification Checklist form) and ensure copies are taken and placed on the recruitment file.

- The selection process for arriving at a Recommended Applicant remains unchanged. That is, appointment is recommended on merit.

- If an interviewee chooses to verbally disclose a prior conviction during the actual interview, the disclosure should be noted by the Convenor and be brought to the attention of the Sector Manager, Area Workforce Services.

- No advice is to be offered at the time of interview on what effect if any, a voluntary disclosure of a prior conviction may have on the interviewee’s application for the position. The Convenor should reply to such a question by stating the disclosure will be considered along with other selection criteria and factors, for the position.

- It is not the role of the Interview Selection Committee to question interviewees about prior criminal offences disclosed at interview, or Prohibited Person Status.
• A voluntary disclosure of a prior criminal conviction at interview does not obviate the requirement for Criminal Record Check for the Recommended Applicant(s).

5.4.2 Area Workforce Services Department

The role of the Area Workforce Services Department is to:

• Ensure all SESIH Advertisements include the statement regarding Pre-Employment Screening.

• Ensure Convenors receive a recruitment package outlining the Pre-employment Screening process, relevant forms, and a confidential envelope for the Working with Children form.

• Ensure Convenors are aware of their responsibilities in regard to obtaining the CRC and Working with Children forms from all interviewees.

• Ensure that Part B of the CRC form has been properly completed before determining the extent of the CRC, in terms of whether a NSW or National check is required.

• Send all requests for Criminal Records Checks for Recommended Applicants only, direct to the Department of Health via the on-line system. At this time the Area Workforce Services Department is required to determine if the Criminal Record Check is to be national or in NSW only, and this is determined by whether the convenor has indicated that the person is going to be working in “child-related” employment or not.

• Where the Criminal Record Check shows NO prior convictions, the clear result will be returned electronically to the Area Workforce Services Officer who originally submitted the check. Checks may be delayed if it is for “child related employment”, which requires a check to be conducted across all states and territories in Australia.

• Ensure all negative paperwork (i.e. a clear result) relating to pre-employment screening is kept on an employee’s personnel file.

• Ensure that under no circumstances a convenor or Manager / Clinical Stream Director can make an offer of employment until a clear Criminal Record Check is returned and Prohibited Person status is confirmed as negative.

5.4.3 Sector Managers, Area Workforce Services

The role of the Sector Managers, Area Workforce Services is to:
• Ensure that a CRC Risk Assessment is conducted where an interviewee declares a prior offence at interview OR where the result of a Criminal Record Check shows a prior offence or where an interviewee declares their Prohibited Person status as positive.

• Based on the outcome of the CRC Risk Assessment, recommend the employment or non-employment of this person to the Area Manager, Workforce Services.

• Advise the appropriate external agencies as required by the legislation via the Area Manager, Workforce Services.

• Appropriately manage allegations involving sexual activity, indecent acts, physical violence or the threat of physical violence by staff upon any person.

5.4.4 Department Managers

It is the responsibility of Departmental Managers to:

• Ensure that when there are persons other than employees (ie. agency staff) who will be engaged on site, that appropriate Probity Screening is arranged and completed prior to their commencement.

• Return any CRC and Working with Children forms to the Area Workforce Services Department in the strictest confidence.

5.4.5 Employees (Paid and Unpaid)

It is the responsibility of employees to:

• Declare whether or not they are a prohibited person.
• Cease employment in a child-related position if they are, or become, a prohibited person; and
• Where they are a prohibited person, they must NOT apply for a position that involves direct contact with children, where that contact is not directly supervised

5.5 CONFIDENTIALITY ISSUES

Area Workforce Service staff, convenors of selection committees and managers/directors must ensure the confidentiality of information offered by interviewees and the results of the Criminal Record Check.
This extends to include security control over interview selection documentation. These arrangements must include, as a minimum:

- Advice to selection committee members on respecting the confidentiality of information voluntarily disclosed at interview.

- Appropriate security controls over requests to, and responses from, the Area Manager, Workforce Services in relation to advice on voluntary verbal disclosures of past offences.

- Proper access control over completed interview selection papers during the recruitment process.

- Appropriate security controls over the transmission of data to, and the receipt of clearance information from NSW Health.

- Strictly limited access to the NSW Health database and appropriate training for all users.

- All cleared checks (negative) should remain on an employee’s confidential personnel file.

- All positive checks and related documentation are to be held in a secure location by the Workforce Services Department. Under the Commission for Children and Young People Act it is an offence to:
  - Disclose any information obtained by the person in connection with employment screening
  - Dishonestly obtain confidential information relating to employment screening
SECTION 3 – MANAGEMENT OF ALLEGATIONS, CHARGES AND CONVICTIONS AGAINST CURRENT EMPLOYEES

5.6 CHILD-RELATED

All Health Service employees are required to report to their supervisor or an appropriate senior manager any behaviour or circumstances that lead them to suspect improper child-related conduct by an employee (paid and unpaid).

Management must report any such allegations to the CE immediately and take action in accordance with Area Policy Directive PD 040 Incident management, Section 5.7 and NSW Health PD_025 “Child Related Allegations, Charges and Convictions Against Employees”.

5.7 CRIMINAL

All Health Service employees are required to report to their supervisor or an appropriate senior manager any behaviour or circumstances that lead them to suspect improper or criminal (non child-related) conduct by another employee. Such allegations or information may also be received from patients, members of the public or from the police.

Management must report any such allegations to the CE immediately and take action in accordance with Area Policy Directives PD 089 Fraud prevention and control, PD 090 Protected Disclosures and PD 091 Reporting Fraud and protected disclosures- internal and external reporting channels and NSW Health PD2006_026 “Criminal Allegations, Charges and Convictions Against Employees”.

6. DOCUMENTATION

- Approval to Conduct a Criminal Record Check, Approval to obtain relevant professional information, Identification Checklist - Area Form F054
- Working with children background check consent form – NSW Health

7. REVISION & APPROVAL HISTORY

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<th>Date</th>
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<td>January 2003</td>
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<td>IAHS Policy approved by Area Executive January 2003</td>
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