

Criminal history check requirements for licensed children's services

Practice Note | January 2010

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The *Children's Services Act 1996* (Act) and the *Children's Services Regulations 2009* (Regulations) include requirements for criminal history checks at differing points in the licensing and operation of a children's service.

Criminal history checks are required to check the suitability of a person before they become a licensee, an employee of a children's service or are otherwise engaged as a staff member or a volunteer.

This requirement sets in place a safeguard that ensures people working with children are suitable for the role, having regard to the security, health, safety and welfare of those children.

What criminal history checks are required?

The type of criminal history check required for persons to care for or educate children in a licensed children's service varies according to the role of the person and the type of children's service.

Types of criminal history checks

Assessment Notice (regulation 5 - definitions)

An 'assessment notice,' as defined in the Regulations, has the same meaning as in the *Working with Children Act 2006*, that is, a working with children check assessment notice issued by the Department of Justice. This is the notice provided to successful applicants for a working with children check.

A 'volunteer assessment notice' is a type of assessment notice that may be obtained by volunteers working in a children's service. A volunteer assessment notice may not be used in respect of child-related work engaged in for profit or gain.

A working with children check card is acceptable as evidence that an assessment notice has been granted. Thus, the presentation of a current working with children check card whenever an assessment notice is needed is sufficient.

Victorian Institute of Teaching

A teacher registered under the *Education and Training Reform Act 2006* (registered with Victorian Institute of

Teaching (VIT) **is not** required to have an assessment notice if the licensee (or in the case of an approved associated service, approved provider), primary nominee or nominee currently present and in charge of a children's service has checked the VIT register and has confirmed that the person is on the register. This is required by regulation 70(6).

Criminal history notification

A 'criminal history notification' is a notification of any criminal history of a person within Australia issued by or on behalf of a duly authorised officer of the police force of Victoria, the Commonwealth or of another State or Territory (regulation 5 – definitions) This is usually a National Police Certificate, often called a 'police records check'.

The results of a criminal history check obtained through CrimTrac¹ (including those obtained indirectly through an Accredited Agency of CrimTrac) are also an acceptable form of criminal history notification.

What is required when a person becomes an employee or is otherwise engaged as a staff member of a children's service?

With limited exceptions (discussed below) regulation 70 requires the licensee (or in the case of an approved associated service, approved provider), primary nominee or nominee currently present and in charge of a children's service to read the current assessment notice or volunteer assessment notice or for teachers registered with VIT check the VIT register:

- before that person becomes an employee or is otherwise engaged as a staff member
- for each visiting early childhood intervention staff member
- before that person becomes a volunteer.

¹ CrimTrac is an Australian government agency which provides national criminal history search results to law enforcement and other government agencies.

Who needs an assessment notice?

With limited exceptions (discussed below) all persons, before they are employed or engaged or appointed to work at the children's service (except for teachers registered with VIT), must have an assessment notice, including:

- all persons considered as part of the child/staff ratios
- cooks and administrative staff
- persons employed under traineeship programs who care for or educate the children
- persons appointed as inclusion support workers who care for or educate the children
- relief staff
- visiting early intervention workers
- volunteers

Limited exceptions to the requirement for an assessment notice

Employees and volunteers aged under 18 years

Under regulations 70(5) and 70A(4), an employee or volunteer is not required to have an assessment notice or volunteer assessment notice if such notices cannot be issued because of the employee's or volunteer's age and the employee or volunteer cares for or educates children at a service only under the immediate supervision of the proprietor or a qualified staff member of the service.

Other volunteers who are not required to have an assessment notice

Under regulation 70(7)(a)&(b)) A volunteer at a children's service is not required to have an assessment notice where the volunteer is not considered as part of child/staff ratios and is at all times under the immediate supervision of the proprietor or a qualified staff member of the service.

Early Intervention workers who are not required to have an assessment notice

Under regulation 70(7A) an early intervention worker is not required to have an assessment notice where the early intervention worker cares for or educates children only under the immediate supervision of the proprietor or a qualified staff member of the service.

Who needs to provide a criminal history notification to the Department?

A criminal history notification not older than six months must be provided to the Secretary as part of a fit and proper assessment for:

- a licensee (or in the case of an approved associated service, approved provider) or their representative
- a primary nominee
- an approved nominee.

Where a criminal history check obtained through CrimTrac (including those obtained indirectly through an Accredited Agency of CrimTrac) is submitted to the Department the following information must be included:

- the name of the person for whom the check has been undertaken,
- their date of birth,
- the date of issue of the criminal history notification,
- the status of the person's criminal history; and
- details of any criminal history if applicable.

How is an assessment notice checked for currency?

The currency of an assessment notice should be checked regularly and may be checked at

<https://online.justice.vic.gov.au/wwccu/checkstatus.doj>

How is the register for the Victorian Institute of Teaching checked?

The Victorian Institute of Teaching register can be checked at

<http://vitonline.vit.vic.edu.au/vitis/prod/register.nsf>

Recording requirements

The current assessment notice details of each staff member, employee, visiting early childhood intervention staff member and volunteer must be recorded in the staff record (regulation 38(3)) including:

- the date the assessment notice was read; and
- the reference number of the notice; and
- the expiry date of the notice.

Privacy of assessment notices, volunteer assessment notices and criminal history notifications

The licensee (or in the case of an approved associated service, approved provider) must ensure that any information in a person's criminal history notification, assessment notice or volunteer assessment notice is not divulged by the licensee, approved provider or the relevant nominee to any person except the licensee, approved provider, the relevant nominee, the Secretary or an authorised officer (regulations, 70(8), 70A(8)).