



Australian Government



Criminal Records Checks Guidelines

V5.1

Disclaimer

This document is not a stand-alone document and does not contain the entirety of Job Services Australia providers' obligations. It should be read in conjunction with the Employment Services Deed 2012-2015 and any relevant guidelines or reference material issued by Department of Employment under or in connection with Employment Services Deed 2012-2015.

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Document Change History:

Version	Start Date	Effective Date	End Date	Change & Location
5.1	5 Jun 14	5 Jun 14		Formatting - Amendments to the formatting within the document.
5.0	1 Apr 14	1 Apr 14	4 Jun 14	Content of document amended to streamline information
4.0	1 Jul 13	1 Jul 13	31 Mar 14	Content of document amended to reflect requirements of the Employment Services Deed 2012-2015
3.0	29 June 12	1 July 12	30 Jun 13	Content of document amended to reflect requirements of the Employment Services Deed 2012-2015
2.0	24 Jan 11	24 Jan 11	1 July 12	Combination of previous Guidelines – ‘Criminal Records Checks for activities where they are a requirement for job seekers Guidelines V 1.0’ and ‘Criminal Records Checks for activities where they are a requirement for Supervisors Guidelines V 1.0’ Minor word changes have been made throughout the document to ensure consistency when combining the two guidelines and consistency with the Employment Services Funding Deed 2012-2015.
1.0	4 Jun 09	1 Jul 09	24 Jan 11	Original version of document

Summary

This Guideline outline the responsibilities and required actions of Job Services Australia providers (referred to as ‘JSA providers’) in relation to criminal records checks for Work for the Dole, Full-time Work for the Dole, Green Corps, Drought Force, Voluntary Work and Unpaid Work Experience Placement activities.

This Guideline details the actions which **must** be carried out for Fully Eligible Participants (referred to as ‘job seekers’) and any other person engaged by a JSA provider or Supervisors of job seekers (referred to as ‘Supervisors’).

JSA providers need to familiarise themselves with the criminal records check regime(s) applicable to the state/territory jurisdictions in which they operate and the activities they arrange.

Note: This should not be read as a stand-alone document, please refer to the Employment Services Deed 2012-2015.

Employment Services Deed 2012-2015 Clauses

[Clauses 12 - Criminal records checks and other measures](#)

[Clause 64.8-64.9 – Risk assessment](#)

[Clause 64.14 – 64.16 - Work for the Dole, Full-Time Work for the Dole, Green Corps, Drought Force, Voluntary Work and Unpaid Work Experience Placement activities](#)

[Clauses 93, 94, 96 and 97 - Control of Information](#)

[Annexure E - Definitions](#)

Reference documents relevant to these Guidelines

Setting up and Managing a Work Experience Activity Guidelines

Relevant state and territory legislation

Explanatory Note

1. The term 'Fully Eligible Participant', 'Drought Force Only Participant' and 'Participant' in the Employment Services Deed 2012-2015 ('the Deed') are collectively referred to as 'job seeker' in this document.
2. The terms Supervisor, persons other than participants and personnel are collectively referred to as 'Supervisor' in this document.
3. All capitalised terms have the same meaning as in the Employment Services Deed 2012-2015 ('the Deed').
4. The term 'Job Services Australia provider' is contracted to 'JSA provider'.
5. In this document, '**must**' means that compliance is mandatory and 'should' means that compliance represents best practice.
6. In this document 'Work Experience Activity Requirement' has the same meaning as 'Work Experience Activity Term', as defined in the Deed.
7. For the purposes of this document 'criminal record checks' refers to a criminal records check and/or Working with Children check.

What a JSA provider must do to comply:

Who is Responsible:	What is Required:
<p>1. The JSA provider</p> <p>Identify if a criminal records check needs to be undertaken for an activity and obtain the check</p> <p><i>Employment Services Deed 2012-2015 Clause References:</i></p> <ul style="list-style-type: none"> • Clause 12.1-12.7 • Clause 64.16-64.17 • Annexure E - Definitions: Children • Relevant state and territory legislation 	<p>For the purposes of this document 'criminal records checks' refers to a criminal records check and/or Working with Children check.</p> <p>The following Work Experience Activities require that a criminal records check be obtained for a job seeker and/or Supervisor where relevant: Work for the Dole, Full-Time Work for the Dole, Green Corps, Drought Force, Voluntary Work, Unpaid Work Experience Placement activities and the New Enterprise Incentive Scheme (NEIS).</p> <p>Activities that require criminal records checks include those where:</p> <ul style="list-style-type: none"> • legislation requires criminal records checks to be conducted • the activity is subject to industry accreditation requirements, industry standards, or a legal requirement that the activity can only be carried out by people who have not been convicted of particular crimes • the activity is specified by the Department of Employment ('the Department') as requiring criminal records checks, or • it is otherwise an activity in which the job seeker and/or Supervisor will have regular or unsupervised contact with children, the elderly, or other classes of vulnerable people, and for which it would be considered prudent for a reasonable person that a criminal records check and/or Working with Children check be conducted. <p>The JSA provider must, prior to commencing a job seeker or engaging a Supervisor in an activity, establish whether the nature of the activity requires a criminal records check and/or Working with Children check. Where a criminal records check and/or Working with Children check is required, the JSA provider must arrange for the check to be completed before allowing the job seeker and/or Supervisor to participate in or be associated with the activity.</p> <p>Criminal records checks will enable the JSA provider to ensure that a job seeker and/or Supervisor does not have:</p> <ul style="list-style-type: none"> • a conviction for crime(s) that would suggest people will be placed at undue risk of injury or mistreatment • a conviction for crime(s) against children where there may be direct or indirect contact with children, and • a conviction for murder, sexual assault or any other form of assault that resulted in a prison sentence (which is relevant to where a job seeker and/or Supervisor may have direct or indirect contact with vulnerable people). In the case of less serious assault convictions, consideration must be given to the extent of the contact that a job seeker and/or Supervisor should have and the level of supervision that is required. <p>In determining whether a criminal records check is required, the JSA provider can take into account whether other people working or volunteering with the Work Experience Host Organisation (outside the context of a Work Experience Activity) have had criminal records checks undertaken. The JSA provider will still have to make their own independent assessment within the context of managing risk</p>

Who is Responsible:	What is Required:
	<p>associated with the Work Experience Activity.</p> <p>It is up to the JSA provider to choose an organisation for processing criminal records checks. The type of criminal records check issued, requirements for undertaking the processing of criminal records checks and application fees vary considerably between state and territory police and organisations such as the Australian Federal Police (AFP), CrimTrac and other bodies (as applicable).</p> <p>The JSA provider must remain aware of current legislative requirements in their respective state or territory to ensure that job seekers and/or Supervisors have the appropriate criminal records checks in place prior to commencement in an activity that requires a check/s.</p> <p>The JSA provider must obtain the job seeker's and/or Supervisor's written permission before undertaking a criminal records check using the 'Consent to Obtain Personal Information' form or the relevant form required by the organisation the JSA provider has chosen to conduct the check. The job seeker has the right to refuse consent as does the Supervisor (subject to any contractual relations between the JSA provider and the Supervisor, that is, depending on the terms of the employment contract).</p> <p>If a criminal records check is refused by the job seeker and/or Supervisor, they should be referred/assigned to an activity where a criminal records check is not required.</p> <p>If children or vulnerable people will be participating in an activity alongside adult job seekers, then the JSA provider will need to use their discretion to decide on how to best manage the activity so the safety of the children/vulnerable people is assured. In particular, the JSA provider must ensure that the activity has a greater level of supervision and may require that the Supervisor and/or job seekers who are in contact with children/vulnerable people have had appropriate checks in relation to such contact.</p> <p>Reimbursement can be claimed for the job seeker's criminal records check through the Employment Pathway Fund. The JSA provider must meet the expenses for the cost of all criminal records checks conducted for their Supervisors.</p> <p>Note: In addition to obtaining criminal records checks, an employee of the Work Experience Host Organisation (who may be the Supervisor) also needs to be at the location at all times where job seekers will have direct contact with children or other vulnerable groups.</p>
<p>2. The JSA provider</p> <p>Send the application for the criminal records check to the organisation processing the check</p>	<p>JSA providers should contact the relevant organisation in their state or territory to have a criminal records check completed.</p> <p>Depending on the protocols of the organisation conducting the check, the forms will be returned to either the JSA provider or direct to the applicant (job seeker or Supervisor). In the latter case, the JSA provider must ensure that the job seeker and/or Supervisor provides a copy of the application and the results to them before the job seeker and/or Supervisor commences the nominated activity.</p>

Who is Responsible:	What is Required:
	<p>Some organisations that conduct criminal records checks will return interim reports indicating that a potential match exists. This does not necessarily indicate that the applicant has a criminal conviction which would preclude him or her from undertaking an activity.</p> <p>For instance, organisations such as the AFP, CrimTrac and state and territory police will often need to exchange information in order to determine if a relevant criminal conviction exists. In some cases the organisation that is conducting the check will send a report to the applicant or designated third party advising them that further investigation is being undertaken. If the JSA provider receives preliminary advice of this nature, then the JSA provider should not use this information to cancel the criminal records check and/or automatically look for an activity that does not require a criminal records check.</p> <p>If a criminal history exists, the organisation conducting the criminal records check will provide written reports that contain information about criminal convictions, findings of guilt and/or charges yet to be heard when the check is processed.</p> <p>After checking police records, if a potential match is not confirmed, either the JSA provider or the applicant will be advised that there is no match against the applicant's name. Where the information is precluded from release under specific legislation or policy, the JSA provider or the applicant is advised that there is no match.</p> <p>A detailed description of the AFP application process is available from: http://www.afp.gov.au/what-we-do/police-checks/national-police-checks.aspx</p> <p>Once a criminal records check has been undertaken, the AFP will delete any personal information concerning an individual, except for the Department's job seeker ID number and date of birth.</p>
<p>3. The JSA provider</p> <p>Identify an activity for the job seeker and/or Supervisor to participate in while waiting for the check/s to be processed</p> <p><i>Employment Services Deed 2012-2015</i> <i>Clause References:</i></p> <ul style="list-style-type: none"> • Clause 62.1 	<p>Criminal records checks may be completed within a few days but in some cases may take up to six months to complete, so an interim activity should be identified for the job seeker and/or Supervisor while results are pending.</p> <p>The JSA provider must commence the job seeker in the interim activity as soon as possible so that the job seeker is able to meet their attendance requirements, where relevant. Any hours completed on the interim Work Experience Activity may count towards the job seeker's hours of attendance requirements. Please refer to the <i>Work Experience Phase and Compulsory Activity Phase Guidelines</i> for information on hours of attendance.</p> <p>In some instances, before results of criminal records checks are received, the JSA provider and the job seeker may decide that the interim activity is preferred to the proposed activity which originally required the criminal records check. In this case, the job seeker may remain on the interim activity.</p>

Who is Responsible:	What is Required:
<p>4. The JSA provider</p> <p>Manage the results of the criminal records check</p> <p><i>Employment Services Deed 2012-2015</i></p> <p><i>Clause References:</i></p> <ul style="list-style-type: none"> • Clause 12.8 • Clause 12.9 • Clause 64.8-64.9 • Clause 64.14 • Clause 64.16 	<p>If the criminal records check uncovers a relevant criminal conviction, the applicant may dispute the conviction and request another criminal records check be completed. If the applicant does dispute the conviction/s, the JSA provider will need to contact the organisation that conducted the original check to ensure it is correct. If the JSA provider becomes aware, or has received notice from the AFP or CrimTrac, or relevant state or territory police or another body (as applicable), that there have been changes to the information provided in relation to a criminal records check, the JSA provider should immediately decide, using the information available, whether it is appropriate to:</p> <ul style="list-style-type: none"> • leave the job seeker and/or Supervisor on the activity • move the job seeker and/or Supervisor to an activity that does not require a criminal records check, and/or • repeat the criminal records check process. <p>Where the criminal records check has uncovered a criminal conviction that precludes the job seeker and/or Supervisor from participating in or supervising an activity, the JSA provider must move the job seeker and/or Supervisor to an alternate activity that does not require a criminal records check.</p> <p>Job seeker</p> <p>If the criminal records check uncovers an issue that might reasonably impact on the job seeker’s suitability for an activity, the JSA provider may need to undertake a risk assessment to ascertain whether or not they should refer them to the activity. For example, it may be the case that a JSA provider in Western Australia identifies an activity for a job seeker where one of the tasks is working at a local canteen that routinely serves children. The JSA provider then applies for a criminal records check and a Working with Children check. The Working with Children check does not uncover any relevant conviction or criminal history however the criminal records check uncovers a criminal conviction for stealing. The job seeker has no history of assault, or aggressive behaviour, however they have advised the JSA provider that they have a history of gambling.</p> <p>While it might be regarded as an acceptable risk for the job seeker to be working with children, the JSA provider may decide that it is not appropriate for the job seeker to be handling money. The JSA provider might decide, however, that they can mitigate the potential risk of money being stolen by arranging appropriate supervision. The course of action the JSA provider takes, after looking at all the available options, is at their discretion. Refer to the <i>Setting up and Managing a Work Experience Activity Guidelines</i> for information on risk assessments.</p> <p>Supervisor</p> <p>If the JSA provider chooses to use the services of the Supervisor on other Work Experience Activities, they must use their discretion and they must not arrange for the Supervisor to be deployed to other activities, including Work Experience Activities, if the JSA provider thinks that there is a reasonable foreseeable risk that the Supervisor</p>

Who is Responsible:	What is Required:
	will cause loss or harm to others on the activity.
<p>5. The JSA provider</p> <p>Undertake appropriate records management processes</p> <p><i>Employment Services Deed 2012-2015</i></p> <p><i>Clause References:</i></p> <ul style="list-style-type: none"> • Clause 63.14 • Clause 93 • Clause 94 • Clause 96 • Clause 97 	<p>The results of criminal records checks are personal and confidential. The JSA provider must not disclose the information to other parties unless permission is obtained from the job seeker and/or Supervisor. Anyone who is required to sight criminal records checks should be reminded that the information needs to be treated sensitively at all times.</p> <p>If the job seeker and/or Supervisor request a copy of the results of their criminal records check, the JSA provider needs to ensure that the job seeker and/or Supervisor provides proof of identity before they are provided with a copy.</p> <p>Criminal records checks and any associated material must be securely stored at all times to ensure confidentiality. If documents are faxed to speed up the criminal records check process, additional caution is required in order to ensure that confidentiality is maintained. The JSA provider should implement steps to ensure confidentiality, including:</p> <ul style="list-style-type: none"> • confidential material is only to be sent via the specific means that the AFP, CrimTrac, or relevant state or territory police (as applicable) have identified for this purpose • where fax machines are used in the criminal records check process: <ul style="list-style-type: none"> ○ the fax machines are to be regularly monitored by appropriately trained staff ○ confidential material is not to be left on fax machines ○ changes to fax numbers or faults with fax machines are to be advised immediately to the organisation that is conducting the check ○ confidential faxes are not to be sent outside normal business hours, and ○ all faxes, including confidential material, must carry a confidentiality statement in case the fax is misdirected. <p>Criminal records checks are only valid at the time of issue. The AFP, CrimTrac, and state and territory police will not guarantee the results of a criminal records check for an extended period of time, and will not automatically issue the JSA provider with an update if a job seeker and/or Supervisor is convicted of an offence after the criminal records check is completed. It is the Department's policy that the JSA provider can retain and undertake risk assessments based on the results of a job seeker's and/or Supervisor's criminal records check for up to 12 months from the date the check is issued. The JSA provider should shred criminal records checks after this time.</p> <p>If the JSA provider has reason to be concerned with the validity of a criminal records check within the 12 month period, for example if a job seeker and/or Supervisor advises the JSA provider that they have been charged with a crime, then a further criminal records check should be obtained. If necessary, following a JSA provider's risk assessment, the JSA provider should place the job seeker and/or Supervisor on another activity which does not require a criminal records check.</p>

Who is Responsible:	What is Required:
	<p>Recording in the Employment Services System</p> <p>The Employment Services System (ESS) includes a field for entering information about criminal records checks in relation to activities being created. It is the responsibility of the JSA provider to record in the ESS whether criminal records checks will be required for job seekers and/or Supervisors participating in the activity. This may be entered when the activity record is created.</p>