

FACTSHEET 2: BACKGROUND AND VETTING CHECKS

Background Checks

Do not rely solely on one type of check to ascertain the suitability of candidates. Check all the following areas and gain an overall picture before making a decision:

- o **Identity checks**
- o **Police Checks and Disclosures**
 - Criminal record certificates
 - Red Stamp process
 - Workers from Overseas
- **Professional body registration**
- o **Qualifications**
- o **References**

Remember: If you are using an agency to sift/recruit staff on your behalf ensure that they undertake, and record, all necessary checks-ask about their normal procedures before engaging their services.

Identity Checks

You must be satisfied that an individual is who they say they are when recruiting them to work with children. Therefore it is necessary to check official documentary evidence of a person's identity. (This is also important before seeking police criminal record checks as discussed below- in this case it is your organisation's responsibility to verify the identity of an individual before applying for a criminal record check).

As an absolute minimum you should see original copies of at least two forms of identity, one with a photograph, such as driving licence or passport. Birth or marriage certificates can also be useful forms of identification. It is also useful to see official evidence of an individual's address, for example, recent utility bills, bank statements or any official letters from government agencies. If the documents are provided in another language it is important to ensure they are accompanied by an official translation.

Police Checks and Disclosures

(Full details on police vetting checks in New Zealand can be found at:
<http://www.police.govt.nz/service/vetting>)

'Clean Slate'

The Criminal Records (Clean Slate) Act 2004 is designed to allow individuals with less serious convictions who have been conviction free for at least seven years and who meet all other relevant criteria to put their past behind them.

However, this is not the case when an individual is applying to work with children. Under the Act an individual **must** state that he or she has a criminal record when applying *'to act in a role predominantly involving the care and protection of, but not predominantly involving the delivery of education to, a child or young person (for example, a foster parent or a caregiver of children or young persons)'*.

Police Vetting Process

As an organisation you need to obtain a criminal record check, or vetting check, to ascertain if the individual has a criminal record and if there is anything in their record which may indicate a risk to children and young people.

Remember:

- only a small amount of those who abuse children actually have criminal records so a clear record does not necessarily mean the person might not present a risk- it is only part of the picture.
- any certificates or copies of criminal records are time bound and may not show recent or impending conviction and won't necessarily show warnings/reprimands or other lesser sanctions imposed by police.

As an organisation you must have authorisation to obtain vetting checks. You can apply to the Licensing & Vetting Service Centre which carries out vetting checks by searching the Police database for any information held about an individual (copies of the authorisation request form can be found on the vetting service website highlighted above). Where conviction information is recorded a printout is made of conviction history detailing the offence title, court, date of offence and sentence, and sent to the named individual at the requesting organisation.

When requesting a vetting check it is the **organisation's responsibility to verify the identity of the applicant** so you must check the documents referred to above and be entirely satisfied the individual is who they say they are before seeking a vetting check.

You must have an individual's written consent to obtain a criminal record check. (Copies of the 'Consent to Disclosure of Information' form required can be found on the vetting service website). You should also note that the 'consent to disclose information' includes **any information**. This means that any information relating to interaction the applicant has had with police in any context, including family violence, may be referred and flagged to the organisation. This may include situations where the subject has been a victim or complainant if the behaviours that person has been subject to might place children, young people or the more vulnerable members of society at risk if they were placed in the subject's care.

'Red Stamp' Process

Non-conviction information is also reviewed and in some circumstances may also be released, usually in cases of violent or sexual conduct that may not have resulted in a conviction. In cases where such information exists, further inquiry may be carried out by the Licensing & Vetting Service Centre. In such cases the vetting response may show a large red stamp.

A red stamp may also be present on a record where there are convictions but Police may consider that the conviction given may not reflect the true nature of the offence. For example, a sexual violation case where a lesser charge of assault had been laid in order to obtain a guilty plea and save a vulnerable victim, such as a child or a vulnerable adult, having to go to court.

The red stamp is a clear indication that the Police recommend that the individual **does not have unsupervised access to children, young people, or more vulnerable members of society**. If an individual wishes to know the reason for this recommendation they can receive a written response detailing the basis for the view by writing to the Manager: Licensing and Vetting Service Centre.

This should be discussed with the subject prior to any employment decision. Individual's should be given the opportunity to view any information provided by Police and, in the interest of natural justice, have the opportunity to correct this if necessary by contacting the Licensing & Vetting Service Centre.

The risk resulting in a red stamp is indicated primarily by substantiated violent or sexual behaviour, or by patterns of behaviour that may or may not have resulted in a court conviction. For example where a prosecution has not succeeded but where there is supporting evidence that the behaviours did in fact occur.

Behaviours may be 'substantiated' by stated opinion on police records by police as to the behaviours taking place or by comment by police or the Crown Solicitor as to why a prosecution failed. Behaviour can also be considered substantiated by police when very similar behaviour has occurred/been alleged in different locations at different times, especially where the behaviour is repeated over a number of years or where an individual has been warned in writing by police, and that warning accepted.

Issues to consider in the assessment of risk following on from information contained in a vetting check are discussed in *Factsheet 1: Recruitment Process*.

You should not engage a person to work unsupervised with children until the police check has been received and you are satisfied there is no risk.

Workers from Overseas

If you are seeking to employ an individual from overseas to work with children you should, wherever possible, obtain certificates of good conduct from

relevant embassies or police forces as appropriate.

The New Zealand Immigration website has detailed information and advice for overseas workers to obtain police certificates from their own country:

<http://www.immigration.govt.nz/migrant/general/formsandfees/formsandguides/policecertificate/>

Professional Body Registration

One additional helpful check is to verify an individual's registration with any appropriate professional body. Most professional bodies have high standards of membership and practise and any individual presenting any risk can be excluded from their registers, either prior to registration or if something occurs during the individual's period of registration. Disciplinary boards will usually consider the information and make a decision regarding continuing registration.

Teachers

Information on the New Zealand Teachers' Council can be found at:

<http://www.teacherscouncil.govt.nz/>

After obtaining registration details from the individual you can conduct an online check to verify their registration with the NZTC.

<http://www.teacherscouncil.govt.nz/rt/onlineregister.stm>

Police Vetting for New Zealand Teachers' Council (NZTC)

The Police provide a vetting service to the Teachers' Council under the authority of the Education Act. In addition to the red stamp process, on rare occasions police hold information about behaviours that do not meet the threshold of the red stamp process, but are of relevance to the teacher registration process. In these cases the information is made available to the Director of the Teachers' Council. Examples include: information about behaviours of a sexual or violent nature that have come to police notice, and are recorded as having been dealt with by the school; behaviours of a sexual or violent nature at the lower end of the scale that do not indicate a direct risk within the education environment.

New Zealand Teaching Council's Sanction options

Following consideration of relevant convictions or behaviour the NZTC can suspend (for a specified period of time), cancel or refuse a teacher's registration.

Employer's Requirement to refer to NZTC

Under the Education Act 1989 there are certain situations when an employer **must** inform the NZTC of concerns that they have about a teacher's conduct or competence. If a teacher is still employed at the school, the school must have attempted to address the concerns before reporting to the Council, except in cases of **alleged serious misconduct** which must be reported directly to the NZTC.

These are when:

- a teacher is dismissed for any reason
- a teacher resigns from a teaching position if, within the 12 months preceding the resignation, the employer had advised the teacher that it was dissatisfied with, or intended to investigate, any aspect of the conduct of the teacher, or the teacher's competence
- a teacher ceases to be employed by the employer, and within the following 12 months, the employer receives a complaint about the teacher's conduct or competence while he or she was an employee
- they suspect on reasonable grounds that the teacher has engaged in 'serious misconduct'. (The criterion for reporting serious misconduct is set out in the *New Zealand Teachers Council (Making Reports and Complaints) Rules 2004*:
http://www.legislation.govt.nz/regulation/public/2004/0144/latest/DLM261106.html?search=ts_regulation_teachers+council_resel&p=1&sr=1. Broadly, 'serious misconduct' refers to physical, sexual, psychological abuse; inappropriate relationships; theft and fraud; use of pornography in school. A full description of the behaviour constituting 'serious misconduct' can be found in paragraph 9 of the legislation referred to above. Paragraph 18 of the same legislation details the information that must be supplied to the NZTC when a complaint is made.
- they are satisfied that, the teacher has not reached the required level of competence

A report must also be made to NZTC within seven days, by the individual teacher themselves, when they receive a conviction punishable by imprisonment for three months or more. Failure to report this to NZTC is misconduct that may give rise to disciplinary proceedings. Although the Registrar of every court must also report to the Teachers Council when a person whom the Registrar believes to be, or to have been, a teacher is convicted of an offence punishable by imprisonment for 3 months or more.

Mandatory reports made in the above ways must be considered by the Disciplinary Tribunal of NZTC.

Social Workers

The Social Workers Registration Act 2003 establishes a **voluntary** system of registration. The legislation protects the title 'Registered Social Worker'. This means that unregistered social workers will still be able to call themselves a social worker, but will not be able to call themselves a Registered Social Worker. You can check online whether an individual is temporarily, provisionally or fully registered as a social worker at:
<http://www.swrb.govt.nz/PublicInfo.html>

To be a Registered Social Worker the Social Workers' Registration Board (<http://www.swrb.org.nz>) has to be satisfied the individual is a 'fit and proper person to practice social work'. This is particularly important given the vulnerable nature of the majority of people a social worker comes into contact with. The Act states specific factors to be taken into account when considering a person's fitness to be registered. One of which is the requirement to conduct a police vetting check. The Board can find that an applicant for registration is not a fit and proper person to practice social work, if it is satisfied that a reasonable person would conclude this. The grounds to conclude this include:

- - A conviction, in New Zealand or overseas, for an offence that is punishable by imprisonment for 3 months or more, and an offence where the nature and circumstances of the offence reflect adversely on a person's ability to practice social work;
- That a person is unable to perform adequately the functions required to practice social work satisfactorily;
- That a person is not of good character and reputation.

The Board takes into account: any professional disciplinary proceedings in New Zealand or overseas; any licensing or registration organisation investigation that may lead to the taking of disciplinary proceedings; any investigations being conducted by the Health and Disability Commissioner.

The Act also allows any person who has concerns that a Registered Social Worker may be unable to practice social work satisfactorily to advise the Registrar of the circumstances. The Board can direct the interim suspension of a social worker's registration in cases where a social worker is unable to adequately perform their functions satisfactorily, and, where there is a need to protect the health and safety of members of the public.

Remember these conditions only apply to 'registered' social workers, therefore if someone reports to be an unregistered social worker you will have to be satisfied by further checks that there is no obvious indication of risk.

Medical and other professions

There are also necessarily high professional standards for medical workers (e.g. Doctors and nurses). They have to be registered with the relevant professional body and in some cases apply annually for continuing practice. Such regular assessments of an individual's ability to perform their role without risk offer similar protections to those of registration bodies for teachers and social workers. Check and refer to the specific professional body for the individual you are seeking to employ- this is also helpful even if they are not going to work for you in that capacity but have declared their qualification/professional registration on an application form.

Qualifications

If an individual reports to have any qualifications specifically relevant to the post they are applying for you should undertake a check of the original qualification documents or properly certified copies (i.e. those that have been stamped and witnessed by a solicitor etc). Do not accept photocopies or computer print outs. If in any doubt check with the awarding body or institution directly.

References

In checking references you are seeking factual information about the individual's experience and suitability for the post. You should check directly with the referee and not accept open references ('To Whom it May Concern' references). You need to obtain objective information, not subjective opinion on the behalf of the referee.

Check:

- Referee's relationship to the individual and how well they know them and how closely they worked with the individual
- Whether the individual has the ability and is suitable to undertake the post you are recruiting for
- If the referee is totally satisfied that the individual is suitable to work with children. If they express any reservations seek to clarify the facts around those concerns fully

If an individual has displayed concerning behaviour or a risk to children in the past they may not list recent employers or even professional referees, rather seek to rely on personal character testimonials from family, friends, clergy etc. Be aware of this and speak to the candidate about the reasons. Ensure you are fully satisfied with their responses and those of any personal character referees before making any decision to engage the individual in work with children. Ensure you obtain at least two satisfactory references before appointing an individual into a post.

Record Keeping

Keep a written record of all checks you have carried out. Sign and date each

entry. The simple table below can be used/modified to meet the requirements of your organisation.

NAME	ADDRESS	DATE OF BIRTH	IDENTITY VERIFICATION (METHOD)	QUALIFICATION	POLICE CHECK	OVERSEAS CHECKS (IF REQD)	PROFESSIONAL BODY REGISTRATION	REFERENCES