



Community and Disability Services Ministers' Conference

Creating safe environments for children - Organisations, employees and volunteers

National Framework

Schedule: An Evidence-based Guide for Risk Assessment and Decision-making when Undertaking Background Checking

Overview

Objective: to inform decision-making about acceptance or exclusion of persons in areas of child-related employment/volunteering.

Background checking and risk assessment during the recruitment of employees and volunteers is one important measure within the suite of policies and practices for developing a child-safe organisation. Community services organisations need to make recruitment decisions which take account of the possibility that children may be harmed¹ whilst in their care or involved with the services or programs they provide. The development of guidance in this area is based on the paramount consideration for the wellbeing of children and their protection from harm. Providing this protection requires informed decision-making about whether certain persons pose a risk to children.

Effective background checking and risk assessment requires evaluating information concerning potential employees and volunteers to assist in selecting appropriate persons for working in child-related areas. Natural justice and procedural fairness demand that there is a rationale for excluding persons from child-related employment/volunteering. Equally, organisations must be accountable for the decisions they make, and good governance requires that there are policies and guidelines which provide clear foundations for decision-making.

The overriding purpose of this Schedule is to offer guidance to those involved in background checking of employees and volunteers, and to contribute to the further development and refinement of relevant legislation, policy and practice across Australia. The Schedule is not intended to provide a step-by-step guide to risk assessment and decision-making or to prescribe particular assessment processes and tools. It does express national agreement about broad principles, guidelines and key elements to promote risk assessment and decision-making that is ethical, rigorous, consistent and evidence-based.

The guidelines are informed by national and international research and reports and reference to the systems for background checking and risk assessment which already exist within some jurisdictions. They are framed in response to questions which encompass central aspects of assessment when undertaking background checking.

Each State and Territory will determine its legislative or policy approach to minimising the likelihood that a person who may pose a risk of harm to children will be engaged in child-related work in an organisation. These guidelines will assist in that process and can be drawn upon in ways which complement existing legislation and policy. The responsibility for application of the guidelines at the local level resides with each of the States and Territories.

The Schedule does not assume that the range of information used for background checking and risk assessment purposes will be the same in each jurisdiction. It also acknowledges that the language of risk may not be uniformly used and some jurisdictions may refer to "assessment" or "appraisal" of a person's criminal history. Although the language may vary, assessment of the potential for harm to a child is the primary consideration.

This Schedule is the second in the series of national Schedules which express the commitments of the *Creating Safe Environments for Children* National Framework agreed upon by Community and Disability Services Ministers in July 2005. It should be read in conjunction with the first Schedule: *Guidelines for Building the Capacity of Child-Safe Organisations* to assist organisations in taking a broad multi-faceted approach to creating child-safe environments.

1. Background Checking and Risk Assessment – Meaning and Principles

1.1 What do we mean by background checking and risk assessment?

Background checking in the context of working with children involves obtaining information about potential employees and volunteers, on the basis that the information is deemed relevant to working in a child-related area. The information gathered may include details concerning previous employment and relevant experience; verification of qualifications and professional registration; criminal history information; thorough reference checks; and work history reports.

Risk assessment in this context refers to a process of evaluating the information received to reach a decision about the risk of harm a person may pose to children.

It is important to understand the distinctions and the relationship between risk assessment and suitability assessment. Suitability assessment may refer to a wide range of factors including attitude to physical discipline and acknowledgement of children's developmental status and needs. A person may be deemed 'not suitable' to work with children without automatically implying that the person poses a risk of harm to children.

Different jurisdictions adopt different systems for undertaking risk assessment when checking the background of potential employees and volunteers, and community services organisations must be aware of particular requirements within the State or Territory where they operate. A central body may undertake the risk assessment and decide whether a person is permitted to be employed/volunteer in a child-related area. Alternatively, a shared decision-making model may be adopted, where risk assessment is undertaken by a centralised agency, and the final decision as to whether or not a person should be employed or engaged as volunteer is made by each organisation. Elsewhere, individual organisations may be solely responsible for background checking, risk assessment and decision-making concerning appointment of employees/volunteers. There may be variations within each of these systems over time as part of the process of continuous improvement.

The critical issue, irrespective of the model adopted, is to ensure decision-making concerning whether or not to engage a potential employee or volunteer is rigorous, defensible and transparent. The overriding purpose of all models is to minimise the risk of harm to children in their dealings with community services organisations.

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1.2 What is the role of risk assessment in background checking?

The duty of care of an organisation includes the obligation to provide a safe environment and to protect individuals from harm which can result from the actions of employees or volunteers. Risk assessment when background checking employees and volunteers is part of fulfilling the duty of an organisation to act diligently and prudently to prevent actions and behaviour that would be harmful to children. A basic rationale for background checking and risk assessment is that previous behaviour is often an indicator of future behaviour.

Risk assessment models in general attempt to identify the likelihood of particular adverse events occurring² and provide a framework for considering information and promoting consistent decision-making.

In assessing the risk an individual may pose to children in the workplace, a structured approach is appropriate. In the human services more generally, research has suggested advantages of structured risk assessment rather than reliance upon unstructured judgement.³ These benefits include:

- decisions are able to be made in relation to standardised points of reference that minimise subjective decision-making;
- structured approaches are more reliable and valid than using professional judgement alone;
- the assumptions on which the risk assessment model are based are clearly set out, and may be tested;
- structured decision-making provides an open way of dealing with information and enables the person affected to put forward information and to correct information; and
- public awareness of the existence of structured risk assessment models both acts as a deterrent to possible offenders and reflects the values and culture of the organisation.

Although risk assessment is not a precise science, it is widely accepted that predicting child abuse through a formal risk assessment model is more accurate than leaving it to chance.⁴

1.3 What principles should guide risk assessment?

Responsible risk assessment seeks to ensure decision-making that is ethical, evidence-based and defensible. This requires following a logical and systematic process.

Principles which should govern risk assessment include:

- the paramount consideration is the wellbeing of children and their protection from harm;
- risk assessment will be conducted by persons who are appropriately trained and properly supported;
- risk assessment will be recognised as one of a range of organisational strategies to protect children;

- risk assessment will be evidence-based, where evidence exists;
- in all situations risk assessment decisions will be ethical and defensible;
- assessment and decision-making processes will be efficient and timely;
- assessment and decision-making processes will follow principles of natural justice and procedural fairness;
- the risk assessment procedure will be transparent, documented, and consistently applied;
- risk assessment processes will be accompanied by provisions for review and appeal against a decision; and
- the privacy of people will be strictly protected, and sensitive and personal information will be protected from inappropriate disclosure.

2. What is Required for Competent Risk Assessment and Decision-making?

It is generally agreed that a mix of knowledge, skills and abilities is needed in any environment where risk assessment takes place. Analytical and investigative skills, a capacity for structured questioning and decision-making, and understanding of the settings in which child-related employment/volunteering takes place, are all important. Where possible, there is merit in assessments being based upon multidisciplinary knowledge from corrective services, child protection, psychology and the law. Persons responsible for risk assessment may possess this expertise, or it may be gained through consultative arrangements.

Responsible risk assessment seeks to ensure decision-making that is ethical, evidence-based and defensible. This requires following a logical and systematic process.

Competent risk assessment and decision-making can become embedded in organisations by establishing ongoing training, development and support systems, within a team environment free from influences which are not part of the risk assessment process. It is also important that persons responsible for risk assessment are competent in the application of natural justice principles and procedures.

Depending upon the points at which risk may be assessed, a hierarchy of skills may be needed in accordance with the implications of the decision-making. Where a prohibited employment scheme exists,⁵ and there is provision for a person to seek a review of their status, a higher level of assessment expertise is necessary because the risks to children posed by prohibited persons are considered higher. A higher level of skill is also required where there are particular complexities associated with the criminal history or other background information concerning an individual.

3. Who Should Undergo a Background Check and Risk Assessment?

There are legislative and policy differences between jurisdictions in relation to who is required to undergo a background check and the circumstances in which a risk assessment is required. As mentioned above, it is important for community services organisations to be clear about the particular requirements in their State or Territory.

There is general agreement that background checking and risk assessment are appropriate where people are working with children in a direct and unsupervised capacity, in work that is considered to be child-related. Most jurisdictions specify those areas of work considered to be child-related and there is some variation. Volunteers working in a range of child-related areas are also frequently included in background checking and risk assessment. In some jurisdictions people who are employed/volunteering may need to undergo a background check and risk assessment where they have indirect contact with children; there is access to information about children; or they are members of boards or management committees.

4. What is Assessed?

Risk assessment should be based on information which has been tested, validated or assessed in some way, either through the courts, policing systems, disciplinary panels or other formal processes. Rigorous processes concerning verification of information and documentation of the verification and decision-making process, are critically important to the integrity of decision-making and ensuring there is an avenue for review and appeal. This requirement is fundamental to principles of natural justice and procedural fairness, in addition to being part of ensuring any assessment is based upon reliable information.

Organisations undertaking background checking and risk assessment need to pay due regard to State/Territory based legislation and policy, which may govern the particular criminal offences or charges which can be taken into account; require that particular factors are considered; or prevent the availability of certain information. The Human Rights and Equal Opportunity Commission (HREOC) has also produced useful practical guidance on how to prevent criminal record discrimination in the workplace.⁶

It is understood that there is no discrimination if an applicant is not successful in obtaining a job or promotion because they cannot fulfil the essential aspects (*inherent requirements*) of a particular job.⁷ In some community based organisations the precise requirements of positions are not always clearly articulated. It is therefore of particular importance for child-safe organisations to declare their commitment to maximising the safety of children, and the 'essential requirement' for employees and volunteers to share this commitment.

It is important that any approach to risk assessment is regularly reviewed and evaluated, to take account of the emerging research and professional knowledge base in the area of assessing risk posed to children in organisational environments.

4.1 Factors associated with the criminal history of an individual

A person's criminal history is deemed to provide a reasonable basis on which determinations can be made concerning possible future behaviours. Although there are variations between States and Territories with regard to background checking systems, there is some consistency in relation to the type of criminal offences which are identified as posing a potential likelihood of harm to children. Some offences may be taken into account in risk assessment, although they do not target children directly, because they indicate a pattern of behaviour that raises concern for the safety of children.

In order to inform an evidence-based assessment the kinds of questions that could be asked include:⁸

- What is the nature, gravity and circumstances (where known) of the offence or charges and how is this relevant to child-related employment/volunteering?
- How long is it since an alleged offence occurred?
- What was the age of the victim of the offending behaviour?
- What was the age difference between the person and any victim?
- How serious is the applicant's criminal history based upon all the information available (for example, whether there is a pattern of offending)?
- Have the applicant's circumstances changed since an offence was committed?
- What is the attitude of the applicant to their previous offending behaviour, and what relevant information can be provided by the applicant?
- What are the findings of any assessment reports following attendance at treatment or intervention programs?
- Has the offence been decriminalised in Australia or was it an offence overseas but not in Australia?

It is important to note that the above list does not provide a prescription for risk assessment. It is intended to draw attention to a range of considerations which should not be overlooked.

The HREOC guidelines concerning discrimination in employment on the basis of criminal record make the following point:

The more information available to the employer, the greater the likelihood that an employer can exercise reasonable judgment in assessing the connection between the criminal record and the inherent requirements of the job.⁹

It is also important to make clear that the focus of background checking is upon identifying factors which may pose a risk to children in child-related work settings. People should not be discouraged from applying for a position or volunteering their services because they believe that criminal history unrelated to any risk to children will automatically preclude them from being accepted.

4.2 Additional relevant background information

Research and experience has shown that it may be only when information from a number of sources has been put together that it becomes clear that a risk of harm exists.¹⁰ In some States and Territories background checks may include additional information beyond criminal history. This information may include employment/disciplinary proceedings; proceedings of professional bodies; child protection records; notification that the person is disqualified as an out of home/foster carer; and apprehended violence orders. Where a higher than usual duty of care exists, such as in out of home/foster care and residential settings, or where persons will be working with particularly high risk populations, it may be appropriate to include a broader scope of information in background checking.

4.3 Situational factors

Individual and situational characteristics interact to increase or minimise the risk of inappropriate behaviour, and both need to be taken into account. Organisational and situational characteristics, the vulnerability of specific population groups, and the proposed nature of contact with children may be considered in legislation and/or the development of risk assessment frameworks.

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Specific factors which may be taken into account include:

- the age of the children (chronological and developmental) with whom the person will be working/volunteering;
- whether the individual will work with children with a disability or particular vulnerability (for example, children who have been abused previously);
- whether the individual will work alone or as part of a team;
- the level and quality of direct supervision;
- the duties undertaken (for example, personal care of children);
- the location of the work (for example, a residential/home based setting); and
- whether the individual will work with children from culturally and linguistically diverse backgrounds who may have experienced different cultural contexts for certain types of behaviour.

Acknowledging that some community services may be high risk environments associated with working with vulnerable people, the overriding factor is whether or not the context in which a person may be employed/volunteer presents particular risks. Importantly, the *Guidelines for Building the Capacity of Child-Safe Organisations* emphasise the need for ongoing risk management in organisations.

5. How can Background Checking and Risk Assessment be responsive to Culture, particularly Indigenous Culture?

Additional practical challenges may occur when undertaking background checking and applying these guidelines in Indigenous communities. These challenges include: limited forms of formal identification; people who have been known by, and legitimately use, a variety of names; variations in spelling of names; and relatively high transience. Remote area organisations confront particular challenges such as scarce and sparsely dispersed populations; a comparatively higher proportion of people with criminal histories; communication limitations; and high rates of staff turnover.

Whilst acknowledging the paramount importance of the safety and wellbeing of children, engagement of local communities is essential to translate this guidance into appropriate local practices. Sensitivity is required when introducing formal structures in culturally diverse communities, in an attempt to ensure the community is provided with options for implementing the requirements. Engagement with local communities is vital to enable the adoption of practices which can make a difference at the local level.

It is particularly important in an environment where disadvantaged children may miss out on social or developmental activities because of the relatively high incidence of criminal convictions, to make it clear that the focus of background checking is upon identifying factors that may pose a risk to children. Whatever the approach to risk assessment, it is important that any restrictions upon employment opportunities are determined by what is necessary to protect children and unintended consequences are avoided.

In considering the application of background checking and risk assessment among emerging cultural and linguistically diverse communities it is also important to ensure as far as possible that the processes used acknowledge the particular challenges the communities may confront. Consultation and engagement with the communities during implementation will be a key factor in ensuring the requirements are met.

Engagement with local communities is vital to enable the adoption of practices which can make a difference at the local level.

6. Natural Justice and Procedural Fairness

In the context of employee/volunteer screening, natural justice can be understood to mean that assessment decisions are balanced, fair and just, and that persons have an opportunity to have input into the decision-making process as well as an opportunity to have the decision independently reviewed.¹¹ It also means that people have a right to know about any information that is held about them and could be used to declare them ineligible to be employed/volunteer in a child-related area.

A person may be afforded natural justice by being:

- given the opportunity to provide information regarding his or her criminal history, or other information and references, and for this information to be considered;
- informed of any proposed decision to be made about them;
- provided with the rationale for the proposed decision; and
- given the right to have a final assessment decision reviewed by an independent body.¹²

Criminal histories, outcomes of the disciplinary proceedings of professional registration bodies, and other information that may be taken into account during background checking include sensitive personal information. This information must be treated with respect for the privacy of all individuals. Accompanying any risk assessment process, appropriate safeguards must be provided concerning the collection, retention, use and disclosure of personal information.

People being assessed should be informed about what will happen to any information they provide and who will have access to the information. Each child-safe organisation must be fully aware of their privacy obligations and must take all reasonable steps to ensure they comply with the privacy regime that applies to them.

In Summary

This Schedule of guidelines for risk assessment and decision making when undertaking background checking is a central strategy within the public policy framework for creating safe environments for children in community services across Australia.

Even the most careful recruitment and selection processes do not provide a guarantee of identifying all those persons who may pose a risk to children. However, rigorous recruitment and selection practices create a high threshold for engaging in child-related work, which can deter persons who may pose a risk of harm to children. Continuous improvement directed towards providing robust risk assessment and decision-making will encourage research and ongoing evaluation of existing practices and will draw upon emerging knowledge.

Background checking and risk assessment are vital first steps in minimising the risk of harm to children in their dealings with organisations. Coupled with ongoing assessment and risk management, these measures make a significant contribution towards maintaining child-safe environments.

End Notes

- 1 In the context of the *Creating Safe Environments for Children* National Framework, harm means physical, sexual, emotional or psychological abuse, and neglect of children.
- 2 Standards Australia/ Standards New Zealand (2004) *Risk Management* (AS/NZS 4360:2004), Standards Australia International Ltd, Sydney, and Standards New Zealand, Wellington.
- 3 Camasso, M.J. and Jagannathan, R. (1995) 'Prediction accuracy of the Washington and Illinois risk assessment instruments: an application of receiver operating characteristic curve analysis', *Social Work Research*, Vol.19, No.3, 174–183; Grove, W.M., Zald, D.H., Lebow, B.S., Snitz, B.E. and Nelson, C. (2000) 'Clinical versus mechanical prediction: a meta-analysis', *Psychological Assessment*, Vol.12, No.1, 19–30.
- 4 New South Wales Commission for Children and Young People (2005) *Evaluation of the Working With Children Risk Assessment Model*, Literature Review, pp.i,16.
- 5 In most jurisdictions there is legislation that prohibits certain persons from employment/volunteering in child-related areas.
- 6 Human Rights and Equal Opportunity Commission (November 2005) *On the Record: Guidelines for the prevention of discrimination in employment on the basis of criminal record*, Commonwealth of Australia, Sydney.
- 7 *Ibid.*, p.13.
- 8 Department of Justice, Victoria (2005) *Working with Children Bill 2005*, Discussion Paper; Human Rights and Equal Opportunity Commission (November 2005) above n6.
- 9 Human Rights and Equal Opportunity Commission (November 2005) above n6, p.41.
- 10 Department of Health, Home Office, Department of Education and Employment (1999) *Working Together to Safeguard Children*, Stationery Office, London, p.80; Beyer, L., Higgins, D., and Bromfield, L. (2005) *Understanding Organisational Risk Factors for Child Maltreatment – A Review of Literature*, National Child Protection Clearinghouse, Australian Institute of Family Studies, Melbourne, p.86.
- 11 Department of Community Development, Western Australia (2006) *Working with Children Check Assessment Guidelines*, p.3.
- 12 Human Rights and Equal Opportunity Commission (November 2005) above n6, p.43; Department of Community Development, Western Australia (2006) above n11, p.3.

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