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Probity in Employment Policy for FACS funded disability service providers

Summary: This policy is designed to promote a strong culture of probity in employment of persons (paid or unpaid) involved in delivering services and supports to people with disability.

This policy is also taken to be guidelines issued by the Secretary under section 41 of the *Disability Inclusion Act 2014*.



Document approval

The Probity in Employment Policy for FACS funded disability service providers has been endorsed and approved by:

Executive Director, NDIS Implementation

Approved: August 2016

Document version control

Distribution:	Public - website
Document name:	Probity in Employment Policy for FACS funded disability service providers
Trim Reference	AH16/131646
Version:	Version 2.1
This document replaces	Probity in Employment Policy for FACS funded disability service providers Version 2.0
Document status:	Draft
File name:	Probity in Employment Policy for FACS funded disability service providers Version 2.1
Authoring unit:	Ageing Disability and Home Care: Community and Sector Engagement
Date:	August 2016
Next Review Date:	June 2018

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1. Purpose and scope of policy

1.1 Purpose

This policy promotes a strong culture of probity in the employment of persons involved in delivering services and supports to people with disability. It builds on work in NSW over previous years to improve arrangements for probity checking, and better supporting service providers to ensure the quality and safety of disability services.

There is community expectation that organisations supporting vulnerable people will have in place robust procedures to ensure that only suitable people are engaged to deliver services.

Under the *Disability Inclusion Act 2014* (NSW) (DIA), the major obligations for FACS funded disability service providers regarding probity in employment include:

- to ensure that appropriate probity checking is carried out on individuals involved in the provision of disability supports and services;
- a prohibition on the employment or engagement of individuals who have been convicted of certain offences; and
- a requirement to repeat criminal records checks at least every four years.

The operation of the DIA is supported by the Disability Inclusion Regulation 2014 (the Regulation), which also contains guidance relating to the probity requirements.

The requirement for effective employment practices, including probity, is included in the NSW Disability Service Standards in Standard 8 'Service Management'.

1.2 What's new?

This policy replaces the *Probity in Employment Policy for FACS funded disability service providers – Version 2.0* (November 2014).

The table below sets out the key changes from the previous policy.

Table 1: The following table outlines the key changes from the previous policy.

Section	Previous policy	New policy	Refer to section
This is a Guidance Document	N/A	This is a new section	1.6
How a CRC can be done	Provided information about CrimTrac and its role in operating the National Police Checking Service	Updated this section to indicate that the Australian Criminal Intelligence Commission (ACIC) was formed following the merge of the Australian Crime Commission and CrimTrac	2.3.2
Spent Convictions	Covered under 'Reading a National Police Certificate'	New heading and information	2.3.4
Record keeping	No specific reference to legislation	Now references the Privacy Act 1988	2.3.5
Retention and destruction of CRC information	Previously covered under 'Record Keeping'	New heading and information	2.3.6
Offences outside of Australia	Additional information added	Guidance is provided on period for individuals to provide statutory declarations where a worker has lived overseas	2.4
Working with Children Check	Additional clarification provided	Provides clarification in relation to checks under both the DIA and WWCC regimes	3.2

1.3 Scope

In this policy the terms “eligible entities” and “disability service providers” are used to describe an entity or service that has a funding agreement with FACS under the DIA, including those receiving funding through the Community Care Supports Program (CCSP).

Compliance with the probity requirements is a condition of the FACS funding agreement. Non-compliance with the probity requirements may constitute a breach of the funding agreement, and FACS can take management action against the entity or service, which ultimately could lead to a suspension or termination of funding.

1.4 Overview of the legislation

The DIA outlines probity checking requirements and clarifies the obligations of disability service providers to ensure that any person working directly with

people with disability is “a suitable person to be involved in the provision of supports and services to persons in the target group.”¹

“Persons in the target group” are people with disability who are eligible to receive disability support services or funding from FACS.²

The DIA specifies that disability service providers are required to undertake certain checks when employing or appointing a relevant worker or a relevant board member to work with people with disability. These include:

- at least one referee check of the person prior to engaging the person;³
- a criminal record check prior to engagement;⁴ and
- Subsequent criminal record checks at least once every four years.⁵

Disability service providers are required to conduct these checks for all relevant workers who work directly with people with disability in a way that involves face to face or physical contact. A full definition of “relevant worker” is provided at Section 1.5 of this policy.

Disability service providers must not engage, or continue to engage, a person as a relevant worker or relevant board member who has been convicted of certain prescribed criminal offences as set out in Schedule 2 of the DIA. These offences include murder, a range of sexual offences, and some serious physical assaults resulting in imprisonment for more than two years.

An eligible entity may employ or engage a person convicted of a prescribed criminal offence in some circumstances as explained in Section 2.5 of this policy.

Where a person is required to submit to or obtain a criminal record check and refuses to do so, a disability service provider must not engage or continue to engage that person as a relevant worker/board member.⁶

1.5 Definition of “relevant worker” and “relevant board member”

The term “relevant worker” means a person who is engaged to provide disability supports and services directly to people with disability, in a way that involves face to face or physical contact with those persons, and covers:

- employees (whether casual, temporary, or permanent);
- volunteers;
- self-employed people, contractors, subcontractors or consultants; and

¹ Section 32(2) of the DIA

² Sections 24-25 of the DIA

³ Section 32(3)(b) of the DIA

⁴ Section 32(3)(a) of the DIA

⁵ Section 32(4) of the DIA

⁶ Section 32(6)(b) of the DIA

- students undertaking training as part of an educational or vocational course or program (other than school students on work experience).⁷

This policy uses the term “relevant worker” to refer to all the above categories of persons involved in the direct provision of supports and services to people with disability.

The term “relevant board member” refers to members of the governing body of the organisation, whatever that governing body is called (e.g. board or management committee), who works, or is likely to work, directly with persons in the target group in a way that involves face to face or physical contact with those persons.

1.6 This is a guidance document

This policy is intended to provide guidance to assist eligible entities to comply with their obligations under section 32 of the DIA. It does not purport to alter the law or to create legal obligations or entitlements. This policy is to be read subject to the DIA and the regulations. If there is any inconsistency, the law prevails.

2. Performance Requirements

2.1 Suitability

Disability service providers can only engage a person as a relevant worker or relevant board member if they are satisfied that the person is suitable to provide disability supports and services to people with disability.⁸

This means that a disability service provider needs to have in place recruitment and employment practices that ensure they are selecting people with the appropriate qualifications and experience to do direct disability work. Some suggestions for policies and procedures are set out in Section 2.10 of this policy.

2.2 Referee checks

Disability service providers must obtain a reference for the relevant worker or board member from at least one referee nominated by the person.⁹ Some further suggestions for disability service providers seeking references are set out in Section 2.10 of this policy.

⁷ Section 32(11) of the DIA, and (in relation to consultants) clause 11 of the Regulation

⁸ Section 32(2) of the DIA

⁹ Section 32(3)(a) of the DIA

2.3 Criminal Record Checks

2.3.1 What the Act requires

The DIA says that a disability service provider must ensure that “a criminal record check (CRC) is conducted or obtained” in relation to a relevant worker or board member.

The Regulation explains that a CRC is “an Australia-wide assessment of the person’s criminal history.”¹⁰

This is often called a National Police Check or a National Criminal Record History Check. Technically, the police certificate is a report of a person's criminal history, and is an outcome of a CRC. However, the terms “criminal record check”, “National Police Certificate” and “National Police Check” are often used interchangeably.

2.3.2 How a CRC can be done

There are two different ways a disability service provider can comply with the obligation to undertake a CRC.¹¹ A disability service provider can either:

- conduct a CRC in relation to a particular person (which requires the person to give written consent for this purpose); or
- request the person to provide a copy of the CRC (e.g. the National Police Certificate) to the provider.

It is a matter for each organisation to determine who pays for the CRCs for its existing and future relevant workers and board members.

On 1 July 2016, the Australian Criminal Intelligence Commission (ACIC) was formed following the merge of the Australian Crime Commission and CrimTrac. ACIC’s role is to facilitate and maintain the National Police Checking Service (NPCS) which undertakes CRCs on behalf of the Australian Federal Police and other Australian police services, including NSW Police. ACIC also accredits many government agencies, private brokerage agencies and some large non-government organisations, to undertake CRCs.

The number and range of organisations providing CRC services – including NSW Police – mean that disability service providers have a degree of choice in procuring CRC services. It also provides some price competition in the fees charged for CRCs. At the time of publication of this policy, charges for a single CRC ranged from \$42 with lower prices usually offered for bulk orders. Reduced charges are available for volunteers.

More information about ACIC and its accredited agencies is available at <https://www.acic.gov.au/>. Many private CRC brokers have a simple online process and can be found by searching for “National Police Check” through an internet search engine.

¹⁰ Regulation 10(2) of the Regulation

¹¹ Regulation 10(1) of the Regulation

Individuals can apply for their own National Police Certificate through NSW Police, see http://www.police.nsw.gov.au/about_us/structure/specialist_operations/forensic_services/criminal_records_section.

2.3.3 Reading a National Police Certificate

Police certificates may have different formats, including printed certificates or electronic reports. Every police certificate or report must record:

- the person's full name and date of birth;
- the date of issue; and
- a reference number or similar.

A police certificate discloses whether a person:

- has been convicted of an offence, and the penalty imposed;
- has been charged with and found guilty of an offence but discharged without conviction; or
- is the subject of any criminal charge still pending before a court.

The above information is referred to as "disclosable court outcomes".

Note that all prescribed criminal offences listed in Schedule 2 of the DIA are serious offences which may result in an imprisonment of more than 6 months, and are therefore likely to be disclosed on the police certificate.

A disability service provider must be satisfied that a police certificate is genuine and has been prepared by an Australian Police Service or an ACIC accredited agency. FACS does not provide advice on whether a police certificate meets the requirements under the DIA. It is up to the disability service provider to be satisfied that a police certificate meets the requirements, and enables them to assess a person's criminal history. Any police certificate decision should be documented by the disability service provider.

A National Criminal History Record Check undertaken for another purpose (e.g. Aged Care legislation) may satisfy the requirements of the DIA. Further details are provided at Section 3 of this policy.

2.3.4 Spent convictions

The information on the certificate is drawn from all Australian jurisdictions and is subject to NSW, and other relevant state and territory, spent conviction schemes. Convictions that are considered "spent" will not be disclosed on a police certificate unless the purpose for the application (e.g. Working with Children Check) is exempt from the relevant spent conviction scheme.

In NSW, convictions for minor offences may become spent after a certain period of time (e.g. offences where a bond was given or a sentence of less

than six months imprisonment was imposed). Convictions for serious offences or where a person has been sentenced to imprisonment for more than 6 months cannot become spent. For a conviction to become spent, a person usually must be crime-free and not in prison for 10 years as an adult or 3 years as a child.

2.3.5 Record Keeping

Disability service providers must keep records that can demonstrate that:

- a Criminal Record Check, which is not more than four years old, has been done for each relevant worker or board member; and
- a statutory declaration has been provided by any relevant worker or board member who has lived or worked in a country other than Australia.

How a disability service provider demonstrates their compliance with record keeping requirements is a decision for each organisation.

The collection, use, storage and disclosure of personal information about relevant workers or board members must be in accordance with the *Privacy Act 1988 (Cth)*¹² and with State privacy legislation.¹³

In practice, this means that sensitive information obtained through a CRC must be stored in a safe and secure location that is only accessible to specified management and HR staff. This applies to police certificates detailing convictions and other disclosable court outcomes, and any associated documents (e.g. consents to obtain a police certificate and assessments on whether employment should be terminated).

2.3.6 Retention and destruction of CRC information

The service contracts of some CRC providers require police certificates and other associated information (e.g. the person's consent form) to be destroyed after a specified period of time, unless legislation applying to the CRC provider mandates a longer retention period. The DIA requires disability service providers to keep CRC information (including any statutory declaration) in a safe and secure place for up to 4 years.

Police certificates and associated documents should be destroyed as soon as they are no longer required (e.g. when new CRCs are obtained or once the relevant worker or board member leaves the organisation).

FACS recommends that disability service providers keep a register of the CRC information for their relevant workers and board members, including police certificate reference numbers and the date the check was conducted, in a safe and secure place. An Individual Assessment Form is provided at

¹² The *Privacy Act 1988 (Cth)* applies to businesses and not-for-profit organisations with an annual turnover of more than \$3m, and also to some organisations with an annual turnover of less than \$3m

¹³ *Privacy and Personal Information Protection Act 1998 (NSW)*

Appendix 1 and a Police Certificate Register template is provided at Appendix 2.

A register of CRC information in the forms suggested at Appendices 1 and 2 will meet the DIA record keeping requirements without breaching any service contract requirements regarding the retention and destruction of police certificates.

2.3.7 CRCs for new workers/board members

The Regulation requires all new relevant workers or board members engaged on or after 3 December 2014 to have a CRC undertaken before they are considered suitable for a relevant position.

Under the Regulation, the CRC must be no older than 6 months.¹⁴

2.3.8 CRCs for existing relevant workers/board members

Disability service providers must ensure that relevant workers or board members who were employed or engaged prior to 3 December 2014 have their CRCs conducted by 1 December 2015. Disability service providers will be required to report on their compliance in this area in their 2015/16 annual compliance returns.

A disability service provider can use an existing CRC on file so long as it is no more than four years old. However, this requires the provider to either have copies of the actual National Police Certificate on file, or to have retained other records of the CRC which list any disclosable court outcomes.

2.3.9 CRCs undertaken for Aged Care checks

Disability service providers that are also “approved providers” under the *Aged Care Act 2001* (Cth) may be able to use CRCs that were undertaken for the purposes of the *Aged Care Act 2001*. Further information about the difference between an Aged Care CRC and a DIA CRC is set out in section 3 of this policy.

The CRC undertaken for Aged Care checks would only be of assistance if sufficient information was kept on file for that person, for example a copy of the actual National Police Certificate, or evidence that the relevant person had no disclosable court outcomes at all. A note on a person’s file that someone has passed the CRC as per the *Aged Care Act 2001* is not of itself sufficient.

2.4 Offences outside of Australia

It can be difficult for many people to obtain copies of their criminal records from other countries in which they have lived and worked.

The Regulation therefore allows disability service providers to require relevant workers or board members to provide a statutory declaration in relation to their criminal record outside of Australia. Disability service providers should

¹⁴ Regulation 10(3) of the Regulation

identify all staff that have worked or lived outside of Australia since the age of 16, and request these staff members to return a statutory declaration in which they declare that they have not been convicted of any offence that would be a prescribed criminal offence under the DIA if it had been committed in NSW.

The statutory declaration should also detail any other offences committed overseas and disability service providers should assess this information to determine whether a person is suitable for employment as a relevant worker or appointed as a relevant board member.

A statutory declaration is not a substitute for an Australian CRC, unless a person has not resided in Australia before. A relevant worker from overseas who has resided in Australia for more than six months must also undergo an Australian CRC.¹⁵ Therefore, it is likely that a statutory declaration would be required in addition to an Australian CRC.

The DIA and Regulation do not prescribe any minimum period of time that a person must have lived or worked overseas before they are required to make a statutory declaration. It is a matter of policy for each disability service provider to determine an appropriate minimum period. As a guide, however, it would be reasonable to require a relevant worker or board member who has worked/lived overseas for more than 12 months to complete a statutory declaration.

A statutory declaration is not necessary where a relevant worker or board member lived or worked overseas more than 15 years from:

- the day of commencement of employment/engagement; or
- 3 December 2014 in relation to existing relevant workers/board members.

Statutory declarations relating to the DIA requirements must be made on the form prescribed under the *Oaths Act 1900* (NSW). A statutory declaration template is provided at Appendix 3. Also included at Appendix 4 is detail about the prescribed criminal offences under the DIA. Where a relevant worker or board member has declared on the statutory declaration that they have been convicted of certain offences, the disability service provider can use Appendix 4 to determine whether any of the offences would have been a prescribed criminal offence had they been committed in NSW.

More information about statutory declarations is available through Law Access at www.lawaccess.nsw.gov.au.

2.5 Prescribed Criminal Offences

The DIA prohibits the engagement of certain persons as relevant workers or board members.

¹⁵ This is not a statutory requirement but a policy requirement. If a person has lived in Australia for less than six months, any offences are unlikely to show up on their criminal record.

Where a person is required to obtain or submit to a national criminal record check and refuses to do so, a disability service provider must not engage, or continue to engage, that person.

Disability service providers also must not engage, or continue to engage, a person who has been convicted of a criminal offence listed in Schedule 2 of the DIA. These offences (set out in full detail in Appendix 4 of this policy) are:

- murder;
- a sexual offence as defined under the *Criminal Procedure Act 1986* (NSW) (or equivalent law in other states or territories);
- an offence under Part 3 of the *Crimes Act 1900* (NSW) (or equivalent law in other states or territories) such as assault or related violent offences for which the person was sentenced to two or more years imprisonment;
- an offence under section 98 of the *Crimes Act 1900* (NSW) (or equivalent law in other jurisdictions) such as armed robbery or robbery with violence;
- an offence under section 13 or 14 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) – stalking and intimidation, and breaches of apprehended violence orders – for which the person has been sentenced to 2 or more year's imprisonment.

2.5.1 Discretion to engage relevant workers with criminal history

The DIA provides some discretion for disability service providers to engage, or continue to engage a person as a relevant worker or board member notwithstanding their criminal history, provided the following two conditions apply:

- the person has not been convicted of a prescribed sexual offence; and
- the person has not been convicted of any further prescribed criminal offences, or been in prison, in the ten year period immediately before the criminal record check was obtained or conducted.

2.6 Non-prescribed criminal offences

Disability service providers should ensure they have policies and procedures in place to undertake a thorough risk assessment of persons with convictions for non-prescribed criminal offences. In employing staff or engaging board members, a provider must consider any risks to clients, other staff, or the organisation that are inherent in the work that the person is required to undertake. For example, if a person's criminal record shows fraud or deception offences, and the person's role is to assist people with disability in managing their finances, the provider should consider whether the person really is suitable to work in that position.

A provider's decision regarding the recruitment or the continued engagement of a person with any criminal history should be rigorous, defensible and transparent.

Appendix 5 provides guidance in assessing the suitability of a person who has been convicted of a non-prescribed criminal offence to be engaged, or continue to be engaged, as a relevant worker or board member. Appendix 5 would also be applicable to assessing the ongoing engagement of a relevant worker or board member who has been charged with a prescribed or other serious offence but has not yet been convicted.

Any decision taken by a disability service provider should be documented in a way that can demonstrate to an auditor the date the decision was made, the reasons for the decision, and the people involved in the decision, that is the specific service provider staff, the individual, a legal representative or board members.

2.7 Discrimination on the basis of criminal record

Any offences which appear on a person's police record should be carefully considered when a disability service provider is determining if that person is an appropriate person to provide supports to people with disability. However, the mere fact that a person has a criminal record should not of itself lead to a decision that a person is not appropriate to be employed to undertake the relevant work.

A person may make a complaint to the Australian Human Rights Commission if they believe they have been discriminated against purely because they have a criminal record (rather than because their criminal record reveals certain prescribed offences or offences which could reasonably be considered to pose a risk to clients or the employer).

For further information see <https://www.humanrights.gov.au/discrimination-employment-basis-criminal-record>, and in particular Guidelines for the prevention of discrimination in employment on the basis of criminal record: https://www.humanrights.gov.au/sites/default/files/content/human_rights/criminalrecord/on_the_record/download/otr_guidelines.pdf.

2.8 Employment decisions

If a CRC of an existing worker reveals that they have been convicted of a prescribed criminal offence, the disability service provider will be in breach of its funding agreement with FACS if it continues to engage that person as a relevant worker.

It is also possible that the person is in breach of the service provider's Code of Conduct or employment policies, which usually require all staff to disclose any criminal convictions.

The prohibitions in the DIA apply to people who work directly with people with disability. It may be possible to engage a person who does not meet the relevant requirements of section 32 of the DIA in another capacity that does not involve working directly with people with disability.

If termination of employment is being considered, the disability service provider should ensure that it follows all relevant legal and procedural requirements. The disability service provider should seek legal advice before commencing any termination of employment action. Advice and information is available from the Fair Work Commission www.fwc.gov.au. Non-government organisations may also access JusticeConnect's Not-for-Profit Law project www.nfplaw.org.au/employees.

2.9 Agency staff

The definition of "relevant worker" includes agency staff. The service provider therefore must ensure that where they use staff from an employment agency, that agency has conducted all relevant criminal record checks.

2.10 Development of appropriate policies and procedures

Disability service providers need to incorporate the probity in employment requirements of the DIA into their relevant employment, human resources and risk management policies and procedures. Policies and procedures should include the following features:

2.10.1 Recruitment policy and general probity requirements

A disability service provider needs to have in place recruitment and employment practices that ensure they are selecting people with the appropriate qualifications and/or experience to do direct disability work. Such practices would include:

- developing accurate job specifications for all staff, volunteers, contractors and board positions – including casual positions;
- identifying positions that fall within the definition of a relevant worker or relevant board member;
- being clear in recruitment about what the position involves, what qualifications are essential or desirable, what referee and criminal record checks will be undertaken, and any other information that the employer will be using to assess applicants for the position; and
- having a selection process that ensures all the necessary qualification, referee and criminal record checks are undertaken, and that the person's general suitability for the position is assessed taking into account their qualifications and experience.

2.10.2 Reference checks

The DIA requires that disability service providers obtain at least one referee check prior to engaging a new relevant worker or board member. Many employers prefer to seek at least two or three references, and this is good practice.

Procedures should be developed to ensure that the reference check requirements are complied with. Procedures should describe processes that assist relevant HR staff to undertake referee checks, including conduct and service checks.

Applicants should be asked to nominate a senior staff member from their current or most recent employer as a referee. If a person does not nominate their most recent employer, the provider may want to ask why. Although a person is free to nominate a referee of their choice, disability service employers should be alert to the possibility that a person may have left a position due to misconduct or serious performance issues.

Commonwealth privacy law does not apply to the handling of employment records by private sector employers, where the records relate directly to former or current employees. This means that the law does not prevent a former employer from disclosing information about why the person left the organisation, or whether there had been any substantiated misconduct issues.¹⁶ However some employers may be reluctant to share this information.

2.10.3 Criminal Record Checks

Recruitment policies should include procedures for ensuring that all new relevant workers or board members undergo a CRC, or provide evidence of having undergone a recent CRC, prior to being engaged by the organisation. The DIA probity requirements related to new relevant workers or board members commenced on 3 December 2014.

Organisations should have ensured that all existing relevant workers or board members were compliant with the CRC requirements by 1 December 2015.

Organisations are also required to develop procedures to ensure that relevant workers or board members undergo re-checks at least every 4 years. The organisation's policies and procedures should describe processes that assist relevant HR staff to undertake, assess and interpret the outcomes of CRCs.

Further details on CRCs are provided in Section 2.3 of this policy.

2.10.4 Statutory Declarations

An organisation's CRC policy should include procedures on when a statutory declaration is required and what it should contain. Further guidance on statutory declarations can be found in Section 2.4 of this policy.

2.10.5 Prohibition on engaging persons with criminal convictions

Procedures should be developed for managing and responding to situations where the organisation has been informed that a new or existing relevant worker or board member has been convicted of a prescribed criminal offence. These procedures will need to comply with principles of natural justice and due process.

An organisation's Code of Conduct should include a requirement that all workers, volunteers and board members must inform the organisation immediately if they are charged with, or convicted of, a serious offence, or

¹⁶ See www.oaic.gov.au/privacy/privacy-topics/workplace/are-employee-records-covered-by-the-privacy-act

other matters relevant to their employment that may affect their ability to do the job.

Disability service providers should develop or update existing risk management procedures in relation to assessing risks associated with the engagement of a relevant worker or board member who has been charged with a prescribed offence, or who has been convicted of a serious offence that is not deemed to be a prescribed criminal offence. Procedures should describe how relevant HR staff should document these risk assessment processes.

Prescribed criminal offences and circumstances where some discretion may be exercised are further explained in Section 2.5.

2.10.6 Reporting on compliance

Disability service providers will be required to report on their compliance with the probity in employment requirements of the DIA as part of their 2015/16 Annual Compliance Returns. They were asked to report on their progress on compliance in their 2014/15 annual compliance returns.

2.10.7 Other Requirements

Probity in employment is not just about meeting the requirements of the DIA. Probity issues are integral to operational effectiveness, and should be considered in the context of broader strategies to support and strengthen the operational effectiveness of disability services.

Employment and HR policies and procedures should also incorporate the requirements of other statutory probity in employment regimes, for example federally funded aged care organisations, and the NSW Working with Children Checks (WWCC) regime. Further information on these statutory regimes is provided at Section 3 of this policy.

Policies and procedures relating to probity in employment should be reviewed regularly and the framework for review documented. FACS also recommends that regular audits and internal reviews of employment practices be undertaken to provide the corporate governing body and management committee with assurance these procedures and policies are being met.

Guidance on developing policies and procedures on probity and employment is also available in the *It's your business* governance resource for ADHC service providers. The Probity in Employment chapter contains valuable tools and resources for service providers.

http://www.adhc.nsw.gov.au/sp/training_and_development/good_governance

3. Other probity in employment regimes

Other probity in employment regimes that are potentially applicable to individuals and organisations involved in the provision of supports and

services to people with disability include the Aged Care check and the Working with Children Check.

3.1 Aged Care criminal record checks

Organisations that receive Commonwealth aged care funding (“approved providers”) are required to ensure that all staff and volunteers have had a National Police Check on recruitment, and at least every three years thereafter.¹⁷ Approved aged care providers are prohibited from engaging staff and volunteers convicted of certain offences – murder, sexual assault, and other assaults resulting in any term of imprisonment.

Further information on the Commonwealth Aged Care probity regime can be found at <https://www.dss.gov.au/ageing-and-aged-care/ensuring-quality/aged-care-quality-and-compliance>.

The probity regimes under Commonwealth Aged Care legislation and under the DIA are similar. An existing CRC may be used to assess a relevant worker or board member under section 32 of the DIA. However, there are some significant differences in the list of prescribed criminal offences. This means that compliance with the requirements of the Aged Care legislation does not necessarily equate to compliance with the requirements of the DIA, and vice-versa.

Appendix 6 provides details of the prescribed criminal offences of both regimes and their consistencies and differences. This resource will assist service providers in assessing whether an existing police certificate is compliant with the DIA.

3.2 Working with Children Check (WWCC)

All people working in, or applying to work in positions that involve child-related work¹⁸ must have a WWCC clearance. Employers must check a person’s WWCC number in relation to potential employees (and others in significant roles, including volunteers) if they are employed in certain kinds of child-related employment.

A person must apply for a WWCC clearance from the Office of Children’s Guardian (OCG). The OCG conducts a CRC on that person, with certain offences barring that person from working with children.¹⁹ The OCG also checks whether the person has been the subject of substantiated reports to the Ombudsman in relation to harm caused to children.²⁰

¹⁷ See Part 6 of the *Accountability Principles 2014* (Cth), made under the *Aged Care Act 2001* (Cth)

¹⁸ As defined in the *Child Protection (Working with Children) Act 2012* (NSW) and *Child Protection (Working with Children) Regulation 2013* (NSW).

¹⁹ See Appendix 6

²⁰ Part 3A of the *Ombudsman’s Act 1974* (NSW) requires certain government and non-government agencies to make reports about any of their staff who are alleged to have been

The OCG provides each person with a WWCC number which they can then provide to their prospective or current employer. The employer then enters this number into the OCG online system and checks whether the person has a clearance or a bar to work with children. Therefore, even if a person is determined to be a suitable person to work with people with disability, if they have a bar to work with children, they can only work with adults with disability.

Further information about WWCC can be obtained from

<http://www.kidsguardian.nsw.gov.au/Working-with-children/working-with-children-check>

Note: A clearance for the purposes of WWCC would not necessarily comply with the requirements of the DIA. The Probity requirements of the DIA differ from WWCC requirements, in that they have different “prescribed offences” regimes as well as other differences. Therefore if your organisation provides supports to both adults and individuals under 17 years of age, your relevant workers or board members would require checks from both regimes.

4. Further information

4.1 Resources

The following are links to useful resources:

Australian Criminal Intelligence Commission <https://www.acic.gov.au/>

Applying for police records via NSW Police

http://www.police.nsw.gov.au/about_us/structure/specialist_operations/forensic_services/criminal_records_section

Information about privacy is available at:

www.privacy.gov.au and <http://www.ipc.nsw.gov.au/>

Employment advice and information is available from the Fair Work Commission www.fwc.gov.au

JusticeConnect’s Not-for-Profit Law project www.nfplaw.org.au/employees

Aged Care probity regime

<https://www.dss.gov.au/ageing-and-aged-care/ensuring-quality/aged-care-quality-and-compliance>.

Working with Children Check resources

<http://www.kidsguardian.nsw.gov.au/Working-with-children/working-with-children-check>

involved in sexual assault, sexual misconduct, assault, ill-treatment, neglect, or psychological harm of children.

4.2 Support and advice

You can get advice and support about this policy from Community and Sector Engagement Directorate which has carriage of this document and from FACS District Contract Managers. Queries about the requirements in this policy can be directed to probityforfundeddisabilityservices@facs.nsw.gov.au.

If you are reviewing a printed version of this document, please refer to the Intranet to confirm that you are reviewing the most recent version of the policy. Following any subsequent reviews and approval this policy will be uploaded to the internet and/or intranet and all previous versions removed.

5. Monitoring, evaluation and review

It is the responsibility of the Community and Sector Engagement Directorate to monitor and update this policy when required. This policy will be reviewed in June 2018 or when any significant new information, legislative or organisational change warrants amendments to this document.

6. Appendices

Appendix 1: National Police Certificate Information Register

Individual Assessment Form

Name of person	
Description of position the person occupies or will occupy	
Is this person a relevant worker (including volunteer), or board member under DIA? (refer to Policy)	
The person provided, or gave approval for employer to obtain, an original or certificate copy report of his/her police certificate	Yes. Evidence recorded.
	No. A person who does not provide, or give consent for an approved provider to obtain his/her police certificate, is precluded from employment.
Date police certificate requested	
Date of the NPC or date that the outcome of the CRC is received by the provider	
NPC reference number	
The police certificate disclosed no convictions	

<p>The police certificate disclosed a conviction requiring further assessment</p>	<p>Ensure there is evidence on file regarding the further assessment that was undertaken and the result of the assessment. NB if a person has a conviction or convictions for an offence(s) which does not result in a bar from employment; it is still the responsibility of the employer to consider that record to determine whether in the circumstances they are a suitable person to work directly with people with disability.</p>
<p>The police certificate disclosed a conviction for murder or a sexual offence; or a conviction of, and sentence to 2 years imprisonment for other form of assault</p>	<p>Check offence against this Policy to determine if person is precluded from employment / engagement.</p>
<p>Date for next NPC check</p>	<p>(3 years if person is working on programs funded under the Aged Care Act; the DIA check can be done at the same time. If only doing disability work funded by FACS, the DIA check must be within 4 years)</p>
<p>NOTE: THIS SHEET, THE NPC AND ALL RELATED DOCUMENTATION MUST BE RETAINED IN A SECURE PLACE UNTIL NEW CHECKS ARE UNDERTAKEN, AND THEN DISPOSED OF SECURELY.</p>	

Appendix 2: Police Certificate Register

Name	Date of birth	Position	Required to have CRC under Aged Care Act? Required to have a WWCC? (delete if not relevant)	Required to have CRC under DIA?	National Police Certificate (NPC) reference no.	Date of NPC / date CRC undertaken	Date/signature: checked for DIA requirements CLEAR or OUTCOMES	Date due for rechecking (within 3 years for Aged Care – DIA can be done at same time, or no later than 4 years from date of NPC)

Appendix 3: Statutory Declaration Template

Statutory Declaration

OATHS ACT 1900 (NSW) EIGHTH SCHEDULE

I, do solemnly and sincerely declare that
[Name of declarant]

1. I have lived, worked and/or volunteered in a country or countries other than Australia.

AND

2. I declare that I have never been convicted of any offence in a country or countries other than Australia.

OR

3. *[strike out if this does not apply]* I declare that I have been convicted of one or more of the following offences in a country or countries other than Australia:
- a. Murder
 - b. Sexual assault
 - c. Other physical assault for which I was sentenced to two (2) or more years prison
 - d. Armed robbery causing harm for which I was sentenced to two (2) or more years prison
 - e. Stalking or intimidation with intent to cause physical fear or mental harm, for which I was sentenced to two (2) or more years prison
 - f. Contravening a violence or protection order for which I was sentenced to two (2) or more years prison.

Details about the offences are as follows *[provide all relevant information including country of conviction, type of offence/s, year, and the length of the prison term]:*

.....
.....

OR

4. *[Strike out if this does not apply]* I declare that I have not convicted any of the offences set out at 3 above, however I have been convicted of other offences in a country or countries other than Australia as follows *[provide all relevant information including country of conviction, type of offence/s, year, and the length of the prison term]:*

.....

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act 1900*.

Declared at: on
[Place] *[Date]*

.....
[Signature of declarant]

In the presence of an authorised witness, who states:

I,, a,
[Name of authorised witness] [Qualification of authorised witness]

Certify the following matters concerning the making of this statutory declaration by the person who made it: [* please cross out any text that does not apply]

1. *I saw the face of the person OR *I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering, and
2. *I have known the person for at least 12 months OR *I have not known the person for at least 12 months, but I have confirmed the person's identity using an identification document and the document I relied on was:

.....
[Describe document relied on]

.....
[Signature of authorised witness]

.....
[Date]

Notes for filling out this statutory declaration

Authorised witnesses in New South Wales are:

- Justice of the Peace (JP)
- Notary public
- Commissioner of the court for taking affidavits
- Solicitor (with a current practising certificate issued under Part 2.4 Division 3 of the Legal Profession Act 2004)
- Other person by law authorised to administer an oath.

Where the person making the statutory declaration has vision impairment or does not read English, Section 24A of the *Oaths Act 1900* states that if it appears to the authorised person that the person making the declaration is blind, illiterate or otherwise unable to read written English, the authorised person must certify, in or below the statutory declaration:

- a) That the declaration was read to the person making the declaration in the presence of the authorised person, and
- b) That it appeared to the authorised person that the person making the declaration understood the declaration, and
- c) That the person making the declaration signed the declaration (by signature or mark) in the presence of the authorised person.

For further legal information about statutory declarations, contact Law Access on 1300 888 529 or visit www.lawaccess.nsw.gov.au.

Appendix 4: Prescribed offences

Extract from the *Disability Inclusion Act 2014* (NSW):

Schedule 2 Prescribed criminal offences

- 1) For the purposes of paragraph (a) of the definition of prescribed criminal offence in section 32 (11) of this Act, the following offences are prescribed criminal offences:
 - a) murder,
 - b) a prescribed sexual offence as defined in the *Criminal Procedure Act 1986*,
 - c) an offence under any of the following provisions of Part 3 of the *Crimes Act 1900* for which the offender has been sentenced to 2 or more years imprisonment:
 - i. sections 26–30,
 - ii. section 33,
 - iii. sections 35 and 35A,
 - iv. sections 37 and 38,
 - v. section 39,
 - vi. section 44,
 - vii. sections 56–59A,
 - viii. section 61,
 - d) an offence under section 98 of the *Crimes Act 1900* for which the offender has been sentenced to 2 or more years imprisonment,
 - e) an offence under section 13 or 14 of the *Crimes (Domestic and Personal Violence) Act 2007* for which the offender has been sentenced to 2 or more years imprisonment.
- 2) A prescribed criminal offence includes an offence committed outside of the State that, if it had been committed in the State, would have constituted an offence of a kind referred to in subclause (1).

Further details about the prescribed offences

Murder

Any offence of murder – note this does not include manslaughter.

Sexual Offences under (1)(b):

An offence as defined in s 3 of the *Criminal Procedure Act 1986* (NSW) means an offence under the following sections of the *Crimes Act 1900* (NSW), or an equivalent offence if committed outside of NSW:

- 61B* Maliciously inflict grievous bodily harm (GBH) with intent to have sexual intercourse
- 61C* Maliciously inflict or threaten actual bodily harm (ABH) with intent to have sexual intercourse; in company maliciously inflict or threaten ABH with intent to sexual intercourse
- 61D* Sexual intercourse without consent — person under 16 yrs
- 61E* Indecent assault — person under 16 yrs

- 61I. Sexual assault
- 61J. Aggravated sexual assault
- 61JA. Aggravated sexual assault in company
- 61K. Assault with intent to have sexual intercourse
- 61L. Indecent assault
- 61M. Aggravated indecent assault
- 61N. Act of indecency
- 61O. Aggravated act of indecency
- 63* Rape
- 65* Assault with intent to rape
- 65A* Sexual intercourse procured by non-violent threats
- 66* Carnal knowledge by false pretence or representation
- 66A Sexual intercourse-child under 10
- 66B. Attempting, or assaulting with intent, to have sexual intercourse with child under 10
- 66C. Sexual intercourse - child between 10 and 16
- 66D. Attempting, or assaulting with intent, to have sexual intercourse with child between 10 and 16
- 66EA. Persistent sexual abuse of a child
- 66EB. Procuring or grooming child under 16 for unlawful sexual activity
- 66F. Sexual offences - cognitive impairment
- 67* Carnally know girl under 10 years
- 68* Attempt to carnally know girl under 10 years
- 71* Carnally know girl between 10<16 yrs
- 72* Attempt, or assault with intent to carnally know girl 10<16 yrs
- 72A* Carnal knowledge of idiot or imbecile
- 73 Sexual intercourse with child between 16 and 18 under special care
- 74* Attempt carnal knowledge by teacher, father or step-father, girl 10<16
- 76* Indecent assault — girl < 16 yrs
- 76A* Commit act of indecency — girl < 16 yrs
- 78A. Incest
- 78B. Incest attempts
- 78H* Homosexual intercourse — male < 10 yrs
- 78I* Attempt or assault with intent to have homosexual intercourse, male <10 yrs
- 78K* Homosexual intercourse — male between 10 and 18 yrs
- 78L* Attempt, or assault with intention to have homosexual intercourse
- 78M* Homosexual intercourse with idiot or imbecile
- 78N* Homosexual intercourse by a teacher, father, stepfather, with pupil, son or stepson between 10 and 18 yrs being
- 78O* Teacher, father, stepfather attempt, or assault pupil, etc, between 10 and 18 yrs with intention to have homosexual intercourse
- 78Q* Gross indecency with male under 18 yrs
- 79. Bestiality
- 80. Attempt to commit bestiality
- 80A. Sexual assault by forced self-manipulation
- 80D. Causing sexual servitude

- 80E. Conduct of business involving sexual servitude
- 81* Indecent assault upon male
- 81A* Act of indecency by male with male
- 81B* Solicit offence under ss 79, 81 or 81A
 - 86. Kidnapping
 - 87. Child abduction
- 89* Forcible abduction of woman
- 90* Abduction of girl under 16
- 90A* Kidnapping
- 91* Taking child with intent to steal
 - 91A. Procuring etc
 - 91B. Procuring person by drugs etc
 - 91D. Promoting or engaging in acts of child prostitution
 - 91E. Obtaining benefit from child prostitution
 - 91F. Premises not to be used for child prostitution
 - 91G. Children not to be used for production of child abuse material.

Other violent offences under (1) (c):

An offence under the following sections of Part 3 of the *Crimes Act 1900* (NSW) – or an offence committed outside of NSW, which if committed in NSW would have constituted an offence of this kind – for which the offender has been sentenced to 2 or more years imprisonment:

- 26. Conspiring to commit murder
- 27. Acts done to the person with intent to murder
- 28. Acts done to property with intent to murder
- 29. Certain other attempts to murder
- 30. Attempts to murder by other means
- 33. Wounding or grievous bodily harm with intent
- 35. Reckless grievous bodily harm or wounding
- 35A. Causing dog to inflict grievous bodily harm or actual bodily harm
- 37. Choking, suffocation and strangulation
- 38. Using intoxicating substance to commit an indictable offence
- 39. Using poison etc. to endanger life or inflict grievous bodily harm
- 44. Failure of persons to provide necessities of life
- 56. Obstructing member of the clergy in discharge of his or her duties
- 57. Assault on persons preserving wreck
- 58. Assault with intent to commit a serious indictable offence on certain officers
- 59. Assault occasioning actual bodily harm
- 59A. Assault during public disorder
- 61. Common assault prosecuted by indictment.

Offence referred to in (1)(d):

An offence under section 98 of the *Crimes Act 1900* (NSW) - Robbery with arms etc and wounding –or an offence committed outside of NSW, which if committed in NSW would have constituted an offence of this kind – for which the offender has been sentenced to 2 or more years imprisonment.

Offence referred to (1)(e):

An offence under the following sections of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) –or an offence committed outside of NSW, which if committed in NSW would have constituted an offence of this kind – for which the offender has been sentenced to 2 or more years imprisonment:

- 13 Stalking or intimidation with intent to cause fear of physical or mental harm
- 14 Offence of contravening apprehended violence order

Appendix 5: Engagement of relevant workers convicted of a non-prescribed offence

The following considerations are intended as a guide only to assist funded disability service providers in assessing the suitability of a person who has been convicted of a non-prescribed offence to be engaged, or continue to be engaged, by the organisation:

- Access – the degree of access to clients, their belongings and their information, whether the individual will work alone or as part of a team, the level and quality of direct supervision and the location of the work (residential, community or home based settings).
- Relevance – the type of conviction in relation to the duties a person is, or may be undertaking and a service provider should only have regard to any criminal record information indicating that the person is unable to perform the inherent requirements of the particular job.
- Proportionality – excluding a person from employment is proportional to the type of conviction.
- Timing – when the conviction occurred.
- Employment history – whether an individual has been employed since the conviction and the outcome of referee checks with any such employers.
- Individual's information – the findings of any assessment reports following attendance at treatment or intervention programs, or other references and the individual's attitude to the offending behavior.
- Pattern – whether the conviction represents an isolated incident or a pattern of criminality.
- Likelihood – the probability of an incident occurring if the person continues with, or is engaged for, particular duties.
- Consequences – the impact of a prospective incident if the person continues, or commences, particular duties.
- Treatment strategies – the procedures that will assist in reducing the likelihood of an incident occurring including, for example, modification of duties.

The above considerations could also be used to assess the ongoing engagement of a relevant worker who has been charged with a prescribed or other offence but has not yet been convicted.

Appendix 6: Matrix of Prescribed Offences

The matrix of prohibited offences under probity-in-employment schemes is set out in the *Disability Inclusion Act 2014 (NSW)* and the *Aged Care Act 2001 (Cth)*.

Information about this table:

- The DIA probity scheme only applies to disability service providers that receive funding from FACS under the DIA – it is the responsibility of employers to ensure they assess a person’s suitability to be employed or engaged, having regard to the person’s criminal record check. See these Guidelines for more information.
- The Aged Care scheme is only relevant to approved providers under the Commonwealth Aged Care Act. See <https://www.dss.gov.au/ageing-and-aged-care/ensuring-quality/aged-care-quality-and-compliance>

<p>Relevant sections of the <i>Crimes Act 1900</i> (NSW)</p> <p>Note that all schemes allow the recognition of equivalent offences under other legislation in NSW or overseas</p> <p>Other relevant legislation is also listed in this column.</p>	<p><i>Disability Inclusion Act 2014</i> (NSW) –Schedule 2 Prescribed offences</p>	<p><i>Aged Care Act 2001</i> (Cth) - <i>Accountability Principles 2014</i> (Cth) – Part 6</p>
<p>Murder is defined in section 18.</p>	<p>Yes.</p>	<p>Murder is not defined any further – would cover all murder as defined in the place it occurred.</p>
<p>Manslaughter</p>	<p>No.</p>	<p>No.</p>
<p>*Note sections marked with a star were repealed as at November 2014, however these are prescribed sexual offences if they were in force at the time of the offence.</p>	<p>A prescribed offence as defined in s 3 of the <i>Criminal Procedure Act 1986</i> (NSW).</p> <p>S 3 sets out sections of the Crimes Act as follows.</p>	<p>No further definition of sexual assault in the legislation.</p> <p>Likely to cover any assault which has a sexual element, including those listed as for the DIA, however legal advice would be required to check if a particular offence is categorised as a sexual assault.</p>
<p>*61B [REPEALED]</p>	<p>Yes</p>	<p>Likely</p>
<p>*61C [REPEALED]</p>	<p>Yes</p>	<p>Likely</p>
<p>*61D [REPEALED]</p>	<p>Yes</p>	<p>Likely</p>
<p>*61E [REPEALED]</p>	<p>Yes</p>	<p>Likely</p>
<p>61I. Sexual assault</p>	<p>Yes</p>	<p>Likely</p>
<p>61J. Aggravated sexual assault</p>	<p>Yes</p>	<p>Likely</p>
<p>61JA. Aggravated sexual assault in company</p>	<p>Yes</p>	<p>Likely</p>
<p>61K. Assault with intent to have sexual intercourse</p>	<p>Yes</p>	<p>Likely</p>

61L. Indecent assault	Yes	Likely
61M. Aggravated indecent assault	Yes	Likely
61N. Act of indecency	Yes	Likely
61O. Aggravated act of indecency	Yes	Likely
*63 [REPEALED]	Yes	Likely
*65 [REPEALED]	Yes	Likely
*65A [REPEALED]	Yes	Likely
*66 [REPEALED]	Yes	Likely
66A Sexual intercourse-child under 10	Yes	Likely
66B. Attempting, or assaulting with intent, to have sexual intercourse with child under 10	Yes	Likely
66C. Sexual intercourse - child between 10 and 16	Yes	Likely
66D. Attempting, or assaulting with intent, to have sexual intercourse with child between 10 and 16	Yes	Likely
66EA. Persistent sexual abuse of a child	Yes	Likely
66EB. Procuring or grooming child under 16 for unlawful sexual activity	Yes	Likely
66F. Sexual offences-cognitive impairment	Yes	Likely
*67 [REPEALED]	Yes	Likely
*68 [REPEALED]	Yes	Likely
*71 [REPEALED]	Yes	Likely
*72 [REPEALED]	Yes	Likely
*72A [REPEALED]	Yes	Likely
*73 [REPEALED]	Yes	Likely
*74 [REPEALED]	Yes	Likely

*76 [REPEALED]	Yes	Likely
*76A [REPEALED]	Yes	Likely
78A. Incest	Yes	Likely
78B. Incest attempts	Yes	Likely
*78H [REPEALED]	Yes	Likely
*78I [REPEALED]	Yes	Likely
*78K [REPEALED]	Yes	Likely
*78L [REPEALED]	Yes	Likely
*78M [REPEALED]	Yes	Likely
*78N [REPEALED]	Yes	Likely
*78O [REPEALED]	Yes	Likely
*78Q [REPEALED]	Yes	Likely
79. Bestiality	Yes	Likely
80. Attempt to commit bestiality	Yes	Likely
80A. Sexual assault by forced self-manipulation	Yes	Likely
80D. Causing sexual servitude	Yes	Likely
80E. Conduct of business involving sexual servitude	Yes	Likely
*81 [REPEALED]	Yes	Likely
*81A [REPEALED]	Yes	Likely
*81B [REPEALED]	Yes	Likely
86. Kidnapping	Yes	Seek legal advice
87. Child abduction	Yes	Seek legal advice
*89 [REPEALED]	Yes	Seek legal advice
*90 [REPEALED]	Yes	Seek legal advice

*90A [REPEALED]	Yes	Seek legal advice
*91 [REPEALED]	Yes	Seek legal advice
91A. Procuring etc.	Yes	Seek legal advice
91B. Procuring person by drugs etc.	Yes	Seek legal advice
91D. Promoting or engaging in acts of child prostitution	Yes	Likely
91E. Obtaining benefit from child prostitution	Yes	Likely
91F. Premises not to be used for child prostitution	Yes	Likely
91G. Children not to be used for production of child abuse material	Yes	Likely
91H Production, dissemination or possession of child abuse material	No	Seek legal advice
91J Voyeurism	No	Seek legal advice
91K Filming a person engaged in a private act	No	Seek legal advice
91L Filming a person's private parts	No	Seek legal advice
91M Installing a device to facilitate observations or filming - where the person intended to be observed or filmed was a child	No	Seek legal advice
578B and 578C – publishing indecent articles	No	Seek legal advice
Customs Act 1901 (Cth) 233BAB – involving items of child pornography or of child abuse material	No	Seek legal advice
Criminal Code Act 1995 (Cth) - 471.24, 471.25, and 471.26 - Using a postal or similar service to procure, groom or send indecent material to persons under 16	No	Seek legal advice
26. Conspiring to commit murder	Yes – where sentenced to 2 or more years imprisonment	Yes, if person is sentenced to any term of imprisonment- however spent convictions are not included.
27 Acts done to the person with intent to murder	As above	As above

28. Acts done to property with intent to murder	As above	As above
29. Certain other attempts to murder	As above	As above
30. Attempts to murder by other means	As above	As above
33. Wounding or grievous bodily harm with intent	As above	As above
35. Reckless grievous bodily harm or wounding	As above	As above
35A. Causing dog to inflict grievous bodily harm or actual bodily harm	As above	As above
37. Choking, suffocation and strangulation	As above	As above
38. Using intoxicating substance to commit an indictable offence -	As above	As above
39. Using poison etc to endanger life or inflict grievous bodily harm -	As above	As above
42 Injuries to child at time of birth	No	As above
43 Abandoning or exposing a child under 7 years	No	As above
44. Failure of persons to provide necessities of life	Yes – where sentenced to 2 or more years imprisonment	As above
56. Obstructing member of the clergy in discharge of his or her duties	As above	As above
57. Assault on persons preserving wreck	As above	As above
58. Assault with intent to commit a serious indictable offence on certain officers	As above	As above
59. Assault occasioning actual bodily harm	As above	As above
59A. Assault during public disorder	As above	As above
61. Common assault prosecuted by indictment	As above	As above
98 - Robbery with arms etc and wounding	As above	As above
An offence under the following sections of the <i>Crimes (Domestic and Personal Violence) Act</i>		

2007 (NSW) (and equivalent offences outside of NSW):		
13 Stalking or intimidation with intent to cause fear of physical or mental harm	Yes, where sentenced to 2 or more years imprisonment	If defined as a <ul style="list-style-type: none"> • sexual assault, or • physical assault resulting in a term of imprisonment.
14 Offence of contravening apprehended violence order	As above	<ul style="list-style-type: none"> • As above

Note: If a person's criminal record check reveals an offence other than one described in the above table, and it is not murder, sexual assault or another form of assault, then it is not a prohibited offence under any of the two probity schemes. However, a risk assessment is still necessary to determine whether the person is a suitable person to be engaged or employed.