



# Indigenous Youth Mobility Programme Advisory Notice

Wednesday, 7 November 2007

No. 9

Working with Children Checks

## Why we are telling you this

DEST has implemented a new policy on Working with Children Requirements for Providers administering Indigenous Education Programmes (IEP), which will affect IYMP Training and Employment Service Provider staff, AHL IYMP staff and IYMP mentors.

A full copy of the new policy titled Working with Children Requirements – Provider Administered Indigenous Education Programmes can be found on the DEST website at [www.dest.gov.au/sectors/indigenous\\_education/default.htm](http://www.dest.gov.au/sectors/indigenous_education/default.htm)

## Background and what you need to know

### Overview

The Australian Government is committed to protecting children from harm, promoting their well being, and to ensuring the safety of young people participating in Indigenous Education Programme elements funded through the Indigenous Education (Targeted Assistance) Act 2000, such as the Indigenous Youth Mobility Programme.

### Responsibilities of IYMP funded organisations:

Under IYMP Guideline 4.6 all potential IYMP personnel are required to undergo an Australian Federal Police (AFP) Criminal Record check, which provides full disclosure of any charges, convictions or acquittals, prior to commencing in a role that involves delivery of IYMP services. IYMP Personnel are defined as

- 1) employees of the organisation who are engaged/or to be engaged to deliver the IYMP project;
- 2) volunteers who support the delivery of the IYMP project; and
- 3) personnel within the organisation who may come into contact with IYMP participants.

IYMP Training and Employment Service and Safe and Supported Accommodation Service Providers must comply with all relevant Commonwealth, state and territory laws, including those relating to working with children.



Funding must not be used to engage a person in IYMP services until these requirements have been satisfied in relation to that person.

While the use of these guidelines is an important tool for minimising the likelihood of abuse or ill-treatment of children by those working with them, it does not replace the need for fostering a workplace committed to child safety.

**Information about and the process for obtaining a National Police Check:**

All IYMP service providers must ensure that all persons who will come into contact with young people under 18 years old through IYMP undergo an **Australian Federal Police (AFP) National Police Check for Working with Children ('National Police Check')** that provides full disclosure of any pending charges or convictions. The National Police Check must be renewed every two (2) years from the date of the initial check and is **in addition** to any relevant working with children checks required under State-based working with children legislation.

The National Police Check application form is available from the DEST website at [www.dest.gov.au/sectors/indigenous\\_education/default.htm](http://www.dest.gov.au/sectors/indigenous_education/default.htm) or by contacting your IYMP Contract Manager in your DEST State Office on 1800 800 821.

Completed forms **must** be sent to the address outlined in the application form, not to DEST. The cost of a National Police Check for an individual is currently \$32.73 (GST exclusive). A cheque or money order made payable to the **AUSTRALIAN FEDERAL POLICE** must be included with the National Police Check application. Please contact the Australian Federal Police to confirm these details before submitting your application.

Where an organisation/person has not received formal notification of the outcome of their National Police Check(s) within 25 working days from the date of submission, they should contact the AFP to check on the progress of their application(s). Contact details for the AFP are outlined in the National Police Check application form.

Please note that the AFP check application form on the AFP website is **not** the appropriate form for this purpose, and **must not** be used.



### **Engagement Requirements:**

IYMP Providers **may** engage a person to deliver IYMP services after the person has:

- applied for a National Police Check; and
- declared that they have no convictions or pending charges relating to violence against children, sexual offences, offences involving pornography, offences involving dealing or trafficking of illegal drugs.

IYMP Providers must ensure that in those states requiring State Based working with children checks (NSW, Qld, WA and Vic) that these clearances are gained prior to commencement of working on the IYMP.

IYMP Providers must ensure that all persons have completed an ***Indigenous Education Programmes Working With Children Declaration Form*** before they commence delivering services under the IYMP. This form is available from the DEST website at [www.dest.gov.au/sectors/indigenous\\_education/default.htm](http://www.dest.gov.au/sectors/indigenous_education/default.htm) or by contacting your IYMP Contract Manager in your DEST State Office on 1800 800 821.

Before the **initial** National Police Check is undertaken a person may be engaged on this basis to deliver a service for a period of up to **three** months. After the three month period a person **must not** be permitted to deliver any further services until they have provided a completed ***National Police Check report*** indicating that they have no convictions or pending charges which, in accordance with these guidelines, would exclude them from being engaged under the IYMP.

All Working With Children Declaration Forms must be kept in a secure location for DEST monitoring purposes.

### **Provision of documentation:**

IYMP funded organisations must ensure that all persons who will come into contact with young people under 18 years of age in the delivery of the IYMP provide the organisation with an original copy of:

- a completed ***Indigenous Education Programmes Working With Children Declaration Form***;
- an **AFP National Police Check for Working with Children report** (this documentation **must** be provided to the funded organisation within three months of the start



date of the period of engagement); and

- any applicable State-based working with children check (this documentation must be submitted prior to any period of engagement).

Persons must not be engaged until all relevant documentation has been provided.

Personal information contained in the documents provided is collected for the purpose of assessing persons' eligibility for the IEP Working with Children requirements, and can be passed on to the relevant 3<sup>rd</sup> parties for this purpose.

**Processes following National Police Checks and Adverse Results:**

A person **must not** be engaged, or continue in engagement, to deliver services under IYMP if that person's National Police Check reveals any charges or convictions relating to the following:

- Any sexual offence committed against, with or in the presence of a child;
- Any offence involving sexual activity or an act of indecency that was punishable by greater than 12 months in prison;
- Any offence involving child pornography, or any offence against any law relating to the classification of publications, films or computer games, where it is an element of the offence that a person under the age of 18 years is present;
- Any offence of violence committed against, with or in the presence of a child, including murder of a child or causing grievous bodily harm to a child
- Any offence where a consequence of a conviction for that offence is that the person is placed on a reporting or registration list or that his or her behaviour is otherwise monitored;
- Any offence involving manufacturing, trafficking or otherwise dealing in narcotics or other banned or controlled substances;
- Any offence involving trafficking in children for whatever purpose;
- Any offence involving the detention or other deprivation of liberty of a child;



- Any offence where the intent to commit any of the above offences is an element of the offence.

No person who is a prohibited person under any law of a State or Territory relating to working with children may be permitted to work with children on the IYMP.

If a person has matters of this nature before a court, **these matters must be resolved** and a judgement handed down **before** the person may be considered for engagement under IYMP.

Where a person wishes to dispute the content of an adverse report from the AFP, they should contact the AFP Criminal Records Client Liaison Team on (02) 6202 3333 or [CriminalRecords-ClientServices@afp.gov.au](mailto:CriminalRecords-ClientServices@afp.gov.au)

DEST is not involved in the process of completing National Police Checks.

If any person's National Police Check reveals **any offences or pending charges** other than those identified above, the funded organisation/person **must** provide DEST with an **original copy** of the National Police Check report. Original documents will then be returned. Upon receipt of any adverse result, DEST will determine the suitability of the person for engagement, or to continue in engagement

**DEST action on receipt of a National Police Check with adverse results:**

Following receipt of an adverse National Police Check, DEST will:

- (a) contact the person to verify their identity and to confirm that the information in the National Police Check report is consistent with the person's own understanding of their history. Should the person dispute the content of a National Police Check report, they should contact the AFP, as outlined above; and
- (b) **if the adverse finding is listed above** - advise the person that they are ineligible to be engaged to deliver services to Indigenous students under any IEP element, and if the person is temporarily engaged their contract is to be terminated immediately ; or
- (c) **if the adverse finding is not listed above** - refer the person's adverse finding to DEST National Office for further consideration by a DEST Screening Committee. If the



person is temporarily engaged, *they can continue to be engaged until the DEST Screening Committee determines their suitability.*

In cases **where a person's identity and criminal history are unable to be verified**, DEST will advise the person that the matter will be referred to DEST National Office for further consideration.

**DEST Screening Committee:**

All adverse results other than those detailed above will be referred to DEST National Office for further consideration by a DEST Screening Committee. This committee will be convened by the DEST National Office Programme Manager and consist of an officer from the National Investigations Unit, an officer from the Procurement, Assurance and Legal Group, and the IYMP Project Delegate.

This committee, in consultation with the relevant DEST State Office delegate, will consider the context in which the adverse result exists and make a decision on the suitability of the person for engagement under IYMP.

If an adverse result is received in DEST the Screening Committee will determine the suitability of the applicant based on:

- The seriousness of the offences;
- The nature and seriousness of the penalties imposed;
- The period of time since those offences were committed;
- The age of the offender at the time the offences were committed and also the offender's present age;
- Where relevant, whether the person knew or could reasonably have known that the victim was a child;
- Whether the offence was an offence against the person;
- The seriousness of the person's criminal record considered in total;
- Whether the conduct has been decriminalised since the offence was committed; and
- Any other matters considered relevant by DEST, including, any order made by a court or tribunal competent under the law of a State or Territory to deal



with the matter, and any information that may have been lawfully obtained from an authority in a State or Territory, or from an overseas authority.

Where DEST determines that a person cannot be engaged in the delivery of an initiative due to an adverse result, DEST will formally document the reasons for the determination reached, and provide the person with a statement of reasons.

**Other information concerning suitability:**

Where an IYMP funded organisation at any time becomes aware of any other information relating to a person's suitability to be involved with the IYMP, the provider must immediately act on the information, taking any necessary steps to address the situation.

IYMP funded organisations must also formally notify and provide DEST with any other information relating to a person's suitability to be involved in the IYMP. (For example, a person may be charged with an offence after they have commenced delivery of services under IYMP.) The person **must not** deliver any further services under the IYMP until **DEST** makes a formal determination about their suitability to do so, on the basis set out in the DEST Screening Committee section. Where DEST determines that the person is suitable to continue, DEST will provide formal written authority for the person to do so.

**Working with children state/territory checks:**

All persons engaged under the IYMP who are working with children (under the age of 18 years) are required to satisfy the requirements of any '*Working with Children*' State-based legislation in the State in which they work, as outlined below.

Where applicants or their employees of subcontractors have not previously obtained a clearance in accordance with a State law, they will need to contact State agencies at the earliest possible opportunity to apply for a clearance. Applicants should verify with the State agency the time it will take to process new applications and make sure that their applications are lodged in sufficient time for this to occur.

**NSW Legislation:**

Before providers engage employees to deliver any part of the IEP in NSW, providers must ensure that employees have been screened in accordance with the requirements of the NSW Government's *Commission for Children and Young People Act 1998 (NSW)*. Information regarding the obligations of providers under this Act may be obtained from [www.kids.nsw.gov.au/director/check.cfm](http://www.kids.nsw.gov.au/director/check.cfm) or by phone on (02) 9286 7219.



**Queensland legislation:**

Before providers engage employees to deliver any part of the IEP in Queensland, providers must ensure that employees obtain a Suitability Card or ‘blue card’ in accordance with the requirements of the Queensland Government’s *Commission for Children and Young People and Child Guardian Act 2000* (Qld). Information regarding the obligations of providers under the Act may be obtained from [www.ccyipcq.qld.gov.au/index.html](http://www.ccyipcq.qld.gov.au/index.html) or by phone on 1800 113 611.

**Western Australia legislation:**

Before providers engage employees to deliver any part of the IEP in Western Australia, providers must ensure that employees pass a Working with Children Check in accordance with the *Working with Children (Criminal Record Checking) Act 2004* (WA). Information regarding the obligations of providers under the Act may be obtained from [www.checkwwc.wa.gov.au](http://www.checkwwc.wa.gov.au) or by phone on (08) 6217 8100 or toll free on 1800 883 979.

**Victorian legislation:**

Before providers engage employees to deliver any part of the IEP in Victoria, providers must ensure that employees pass a Working with Children Check in accordance with the *Working with Children Act 2005* (Vic). Information regarding the obligations of providers under the Act may be obtained from [www.justice.vic.gov.au/workingwithchildren](http://www.justice.vic.gov.au/workingwithchildren) or by phone on 1300 652 879.

**What you need to do**

1. In NSW, QLD, WA and Victoria before any staff member or mentor who will be working on IYMP that will have direct contact with participants begins in their role, they must obtain a State based Working with Children Check. DEST will need to sight the clearance form given. Please provide your Contract Manager with an original copy of the relevant clearance document for sighting purposes.
2. In all Host Locations prior to an employee or mentor who will be working on IYMP begins in their role, they must obtain a National Police Check. If they are required to commence working on the IYMP prior to clearance being given, they must complete and sign the Indigenous Education Programmes Working with Children Declaration Form. This will allow a grace period of three months. You will need to provide your Contract Manager with the original copy of the Declaration Form. If in the three month period the person has not received their clearance then they will not be able to continue to work with IYMP participants until the clearance is given. DEST



**MUST** sight the original clearance form. Please provide your Contract Manager with the original copy of the relevant clearance document for sighting purposes.

3. If an adverse result is found on the National Police Clearance then the Provider will need to immediately contact their Contract Manager. If the offence is one of the serious adverse offences listed above, that will prevent the person from working with children their involvement in IYMP will need to be immediately ceased. If the offence falls outside of those serious offences listed then the Contact Manager will then contact the DEST Working With Children Screening Committee who will decide if a waiver for that person to work on IYMP will be granted.

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<b>Internal Consultations</b>	Programme Development Team, IBMB
<b>External Consultations</b>	