



## NATIONAL CRIMINAL HISTORY RECORD CHECK GENERAL INFORMATION

### GENERAL INFORMATION

This Form is used by mercury Search and Selection as part of the assessment process to determine whether a person is suitable for employment or other engagement for work within Lachlan Shire Council.

Unless statutory obligations require otherwise, the information provided on this Form will not be used without your prior consent for any purpose other than in relation to the assessment of your suitability. You may be required to complete another consent form in the future in relation to employment in other positions within Lachlan Shire Council.

### CRIMINAL HISTORY RECORD CHECK

Criminal history record checks are an integral part of the assessment of your suitability.

Information extracted from the Form will be forwarded to the CrimTrac Agency, other Australian police services<sup>1</sup> for checking action. By signing the Form you are providing your consent to these agencies:

- disclosing criminal history information that pertains to you from their own records to mercury Search and Selection for onward transmission to Lachlan Shire Council; and/or
- accessing their records to obtain criminal history information that in turn will be disclosed to the mercury Search and Selection for onward transmission to Lachlan Shire Council.

Such criminal history information may include outstanding charges, and criminal convictions/findings of guilt recorded against you that may be disclosed according to the laws of the relevant jurisdiction and, in the absence of any laws governing the release of that information, according to the relevant jurisdiction's information release policy.

It is usual practice for an applicant's personal information to be disclosed to Australian police services for them to use for their respective law enforcement purposes including the investigation of any outstanding criminal offences.

### SPENT CONVICTIONS SCHEMES

Child-related employment screening is being conducted around Australia for many years in an attempt to minimise the risk of harm to children from persons responsible for their care and supervision. A key component of this is the provision of criminal history information (including "spent" convictions and findings of guilt of prescribed/specified offences) to employers and authorised screening organisations. In New South Wales, Victoria, Queensland and Western Australia child-related employment screening processes are governed by legislation.

#### Commonwealth (Crimes Act 1914 (Cth))

The Commonwealth Spent Convictions Scheme relates to the collection, use and disclosure of old conviction information. The relevant provisions are located in the Crimes Act 1914 (Part VIIC). The aim of the Scheme is to prevent discrimination on the basis of certain old convictions, once a waiting period has passed and provided the individual has not re-offended. The Scheme also covers convictions where an individual's conviction has been set aside or pardoned.

A spent conviction is a conviction of a Commonwealth, Territory, State or foreign offence which satisfies all of the following conditions:

- it is 10 years since the date of the conviction (or 5 years for juvenile offenders);
- the individual was not sentenced to imprisonment or was not sentenced to imprisonment for more than 30 months;
- the individual has not re-offended during the 10-year (5 years for juvenile offenders) waiting period; and
- a statutory or regulatory exclusion does not apply. (A full list of exclusions is available from the Privacy Commissioner).

An individual whose conviction is protected by Part VIIC does not have to disclose that conviction to any person, including a Commonwealth authority, unless an exclusion applies. The restrictions on disclosure applying to spent convictions do not apply in a number of areas including:

#### Child-related employment

- person/body who employs or otherwise engages others to provide services or undertake work associated with the care, instruction or supervision of minors;
- person/body who makes available care, supervision or services for minors;
- Defence Force where care, instruction or supervision of minors is involved.

#### Dealing with vulnerable people

- a person who, or body which, employs or otherwise engages persons to provide advocacy or care for intellectually disabled persons;
- Respite Care ACT re: suitability of having responsibility for disabled or aged people.

#### Australian Capital Territory (Spent Convictions Act 2000 (ACT))

The Spent Convictions Act 2000 (ACT) limits the use and disclosure of older, less serious convictions and findings of guilt recorded under ACT legislation.

- A spent conviction is one that satisfies all of the following conditions:

- it is more than 10 years (5 years for offences where the person was dealt with as a juvenile) since the date of the conviction or that the person has not been imprisoned or the person has not been subject to a control order and the person has not re-offended;
- the person was not sentenced to more than 6 months imprisonment;
- the offence was not a sexual offence;
- the person was not unlawfully at large in relation to an offence.

Unless an exclusion applies (e.g. where an individual wishes to undertake employment in certain occupations), once the waiting period has passed, a person does not have to disclose any conviction or finding of guilt that is protected by the provisions of the Act. Section 19(1) of the Act authorises disclosure of spent convictions in relation to applications for:

- appointment or employment as a teacher, teacher's aide, childcare provider, aged care provider or provider of care for people with a disability, or childcare worker, aged care worker or worker with people with a disability; or
- appointment, employment or other engagement (whether or not for financial reward) in any other capacity-
  - in relation to the care, instruction or supervision of children, older people or people with a disability; or
  - at a school, child-care centre, hospital, community care facility, residential care facility, or any other place where care, instruction, supervision or any other services are provided (or proposed to be provided) for children, older people or people with a disability; or
  - by any entity that provides care, instruction, supervision or any other services for children, older people or people with a disability; or
- permission to provide care, instruction, supervision or any other services for children, older people or people with a disability.

## **NATIONAL CRIMINAL HISTORY RECORD CHECK GENERAL INFORMATION**

### **South Australia (There is no Spent Conviction legislation in South Australia)**

The South Australia Police has developed a policy based on the Commonwealth Spent Convictions Scheme which provides for the release of:-

- Proven court outcomes ("active" convictions, findings of guilt), charges laid and pending matters that have not been determined by a Court;
- "Spent" or "inactive" convictions if required by an Act, Registration Board, requested for court purposes, or the individual has largely unsupervised contact with vulnerable groups. [A conviction will be regarded as being "spent" or "inactive" and will not be released if: at the time the offence was committed, the person was an adult (18 years and over) and 10 years have elapsed since the conviction of the offence, and no further convictions have been incurred; OR in the case of a person who was a child (under 18 years) at the time the offence was committed and 5 years have elapsed since the conviction of the offence, and no further convictions have been incurred; OR in the case of a conviction that has been quashed or set aside, a pardon was issued in respect to that conviction. The conviction will be disregarded from the date it is quashed, set aside or a pardon issued.]
- Relevant offences which include offences against the person (e.g. rape, gross indecency, pornography etc), public order offences (e.g. firearm/ weapon offences etc), drug offences and traffic offences. Relevant offences with an unproven result by reason of insanity or mental impairment may be considered for release in the interest of public safety.

### **Tasmania (Annulled Convictions Act 2003 (Tas))**

Under the Annulled Convictions Act 2003 (Tas) a conviction is annulled upon completion of the prescribed period of good behaviour. This period is:

- 10 years where the offender was an adult at the time of conviction; or
- 5 years where the offender was a juvenile at the time of conviction.

Only "minor" convictions can become annulled. A "minor" conviction is a conviction other than one for which a sentence of imprisonment of more than 6 months is imposed, a conviction for a sexual offence or a prescribed conviction. A "minor" conviction is also annulled if the offence ceases to be an offence.

In most instances Tasmania Police will not release details of a conviction if the person was an adult (18 years old) when they committed the offence and a 10-year period of good behaviour has elapsed, or if the person was a youth (under 18 years old) when they committed the offence and a 5-year period of good behaviour has elapsed. However, previous convictions will be released if a term of imprisonment of more than 6 months was imposed, or if the conviction was for a serious or sexual offence.

Some occupations and licences are exempt from the application of the Act, meaning that no prior convictions including those of a minor nature will be annulled from an applicant's police record. Due to the importance and responsibility in obtaining such positions or licences, legislation ensures that all prior convictions are released. Schedule 1 Part 6 of the Act identifies the educational and child-related positions exempt from the Act:

- Teacher, teacher's aide or a member of the non-teaching staff of a kindergarten, school, college or other place of primary or secondary education, whether in Tasmania or elsewhere in the Commonwealth.
- Licence or registration under the Child Care Act 2001.
- Provider, in any capacity, of child-care or child-minding facilities elsewhere in the Commonwealth.
- Adoptive or foster parent, whether in Tasmania or elsewhere in the Commonwealth.
- Member of a safety house scheme organised by the Safety House Association of Tasmania.
- School-crossing patrol officer.
- Authorised officer within the meaning of the Children, Young Persons and Their Families Act 1997.
- State Service employment in so far as the person employed performs duties relating to the administration of the Children, Young Persons and Their Families Act 1997.
- Engagement under a contract for service to perform duties relating to the administration of the Children, Young Persons and Their Families Act 1997.
- Volunteer positions with Scouts Australia which have direct contact with youth members.

### **Northern Territory (Criminal Records (Spent Convictions) Act 1992 (NT))**

Under the Criminal Records (Spent Convictions) Act 1992 (NT), a conviction becomes spent automatically (in the case of an adult or juvenile offender convicted in a Juvenile Court) and by application to the Police Commissioner (in the case of a juvenile convicted in an adult court) upon completion of the prescribed period. The prescribed period is:

- 10 years for offences committed while an adult; and
- 5 years for offences committed as a juvenile.

In most instances Northern Territory Police will not release details of a conviction if the offender was an adult (18 years old) when they committed the offence and a 10-year period of good behaviour has elapsed, or if the offender was a youth (under 18 years old) convicted in the Juvenile Court when they committed the offence and a 5-year period of good behaviour has elapsed.

Previous convictions will be released if a term of imprisonment of more than 6 months was imposed, or if the conviction was for a serious or sexual offence. Applications in relation to appointment or employment to do work principally involving the care, instruction or supervision of vulnerable persons (including children, aged persons, and persons with a physical or intellectual disability or mental illness) are exempt from the application of the Act.

### **Other Australian police services**

Where a criminal history record with another Australian police service has been obtained, any relevant legislation (and/or release policy) affecting that police service will be applied before that record is released. Under various pieces of Commonwealth, State and Territory legislation a person has the right, in particular circumstances or for a particular purpose, to not disclose certain convictions/findings of guilt over a certain age. Such convictions (widely referred to as "spent" or "rehabilitated" convictions) will not be released unless the records check is for the applicant's personal information only and provided that this is in accordance with relevant legislation (and/or release policy). Please contact individual police services directly for further information about their release policies and any legislation that affects them.

### **PROVISION OF FALSE OR MISLEADING INFORMATION**

You are asked to certify that the personal information you have provided on this form is correct. If it is subsequently discovered, for example as a result of a check of police records, that you have provided false or misleading information, you may be assessed as unsuitable.

You should note that the existence of a record does not mean that you will be assessed automatically as being unsuitable. Each case will be assessed on its merit, so it is in your interest to provide full and frank details in the form.