

Australian National Criminal History Record Checks

At PeopleCheck, we often have clients and candidates concerned about what an Australian National Criminal History Record Check ("NCHRC") might reveal about their background. There is often a mis-understanding about what a NCHRC will show about a person, and how this information can be used in the candidate selection process.

When is a National Criminal History Record Check Relevant?

NCHRCs are relevant to almost all roles. More and more organisations are undertaking these types of checks as a basic minimum requirement on all of their staff – this is an encouraging sign. However, there is still a perception out there that a NCHRC is only useful for certain roles; usually those that involve money or finances. If you ran a customer-service based business, wouldn't you want to know that one of your key staff had multiple offences for assault, before they abused a difficult client? Or wouldn't you prefer to know that your new PA had a history of stealing before you gave her unsupervised access to the company credit card?

What is the Spent Conviction Scheme?

In order to undertake a NCHRC, candidates are required to complete a specific form which requests certain personal and sensitive information about them.

Forms can vary depending on the reason for the NCHRC. Most of our NCHRCs are undertaken for general employment purposes. For these types of checks, the Spent Conviction Scheme applies.

The aim of the Spent Conviction Scheme ("the Scheme") is to prevent discrimination on the basis of certain previous convictions. The Scheme applies to spent convictions where a waiting period has passed and the individual in question has not re-offended. The Australian Federal Police defines this as follows:

The following conditions apply to convictions for a Commonwealth, Territory, State or foreign offence:

- it has been 10 years from the date of the conviction (or 5 years for child offenders);
- the individual was not sentenced to imprisonment for more than 30 months;
- the individual has not re-offended during the 10 year (5 years for child offenders) waiting period; and
- a statutory or regulatory exclusion does not apply.

The scheme also covers convictions that have been set aside or pardoned under Part VIIC of the Crimes Act 1914. An individual whose conviction is protected by the scheme does not have to disclose that conviction to any person, including a Commonwealth authority.

Legislation does vary from state to state, but the general principles apply.

Statutory exclusions apply for certain types of roles and a "partial exclusion" from the Scheme is applied when the NCHRC for an individual in this type of role is undertaken.

The most well known is for people working with children or vulnerable persons, but exclusions also apply under other pieces of legislation, including Responsible Persons under the Superannuation Industry (Supervision) Act 1993. Practically, this means that any offence related to the exclusion will be disclosed, irrespective of whether the offence could be considered "spent". Some selective roles require a "full exclusion" check, but this is most common in high-risk governmental roles, such as the police or military.

The important point is that due to the Scheme, and depending on the types of NCHRC being undertaken, candidates and clients should both be aware that candidates do not necessarily need to declare all of the offences that may be in their background.

What will a National Criminal History Record Check Disclose?

A NCHRC will reveal disclosable court outcomes from police records in all Australian states and territories.

A common mis-conception is that traffic offences will be revealed in a NCHRC. Generally, traffic offences are not criminal offences and therefore, do not need to be declared.

Our National Criminal History Record Check Agencies

PeopleCheck is an accredited provider to obtain NCHRCs through CrimTrac and these results are available as quickly as 1-2 working days. In some cases we can process urgent requests instantaneously. CrimTrac does not provide a police certificate that may be required for NCHRCs being undertaken for compliance purposes, such as adherence to APRA or ASIC regulations. Therefore, for cases where police certificates are required, these NCHRCs are undertaken through the Australian Federal Police ("AFP").

The process involved in PeopleCheck undertaking a NCHRC through both CrimTrac and the AFP is essentially the same and is detailed below.

The National Criminal History Record Check Process

Once we receive a candidate's completed NCHRC form and copies of their ID, the required information is entered into CrimTrac or the AFP's system, where a search of the National Names Index is undertaken. This search is simply a name search that will reveal whether there is a possible match or not. We say a "possible" match, because at this point, our source will advise whether a result is "clear" (ie no match) or whether there is a name match that may relate to the applicant. Keep in mind that name matches are common for popular name combinations. If a name match is identified, this must be resolved and our provider distributes a request to the state or territory where the match has been identified. At this point, we are advised that there are "further enquiries" relating to the NCHRC.

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As background screening professionals, we get just as frustrated with "further enquiries" as our clients do. There is no guaranteed timeframe for us to receive the result, as the time required to investigate a possible name match varies depending on the state or territory undertaking the enquiries and the details of the possible match. The average timeframe for "further enquiries" is 10 - 15 working days and this often means delays for our clients waiting to employ a candidate. For this reason, many of our clients provide conditional employment offers, subject to the satisfactory outcome of the background check. This is a common policy in the current recruitment market.

Once further enquiries are completed, we are advised if the case is "clear" or whether there is a disclosable court outcome. When a match is identified, we are usually provided with details surrounding the offence, court, date and court result.

See Diagram 1 – NCHRC Process for more information →

You Have the Result – What Now?

In cases where a match is identified, this should not necessarily deem the employee ineligible to hire. There are some discrimination guidelines around dismissing, or not employing a person on the basis of their criminal record, unless the match relates specifically to the job. A common example is a drink driving offence. These types of offences are not uncommon, and the existence of this in your applicant's background is generally not an issue if the role is office based, for example. However, if the applicant no longer holds a current driver's licence as a result and is to be employed in a sales position with a company car, this could be an issue.

The Shortcomings of National Criminal History Record Checks

An important key to NCHRCs is that they will only show disclosable court outcomes. It must be noted that not all criminal offences lead to a conviction, and not all offences result in an arrest or go to court. A good example is to consider white collar offences which take place in the workplace. Many organisations are too concerned with the effect on their community and industry reputation, culture and staff morale to report criminal activity that occurred in their business, such as fraud. Instead, the employee resigns or is quietly dismissed and criminal action is never pursued.

The key is that wherever possible, a NCHRC should not be undertaken in isolation to other background checks. Comprehensive employment validation, qualification validation, bankruptcy or media searches may reveal crucial information that a NCHRC will not.

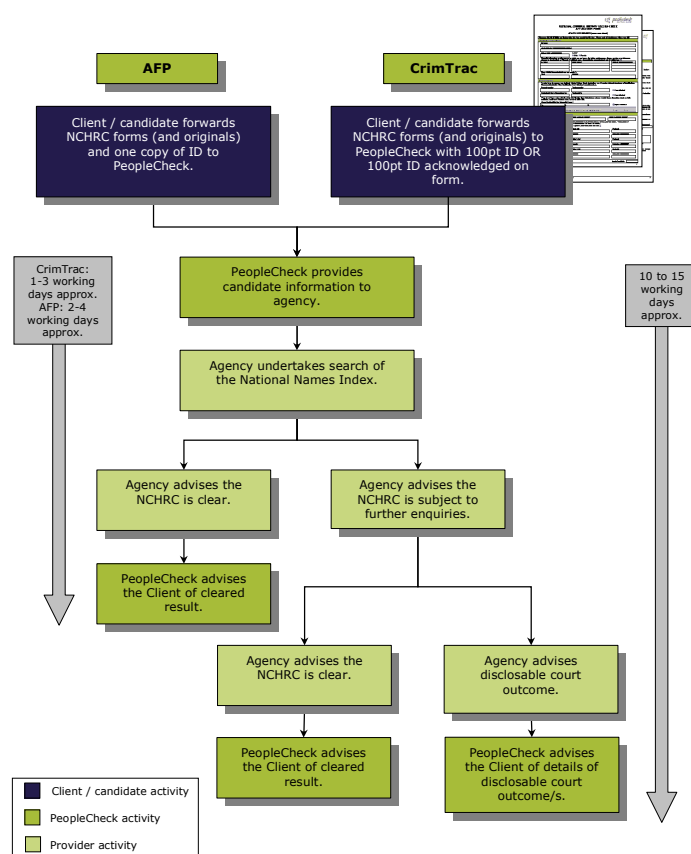
References

Australian Federal Police - www.afp.gov.au
Australian Standard 4811-2006: Employment Screening

More Information

For more information on the ways in which NCHRCs can assist in reducing the risks to your business, please contact us via telephone on +612 4023 0603 or email at validate@peoplecheck.com.au.

Diagram 1 – NCHRC Process



PeopleCheck is a background validation company specialising in local and international pre-employment checking and due diligence with a customer service focus. We work closely with our clients to establish validation solutions and packages to best suit an organisation's individual requirements, based on human resource and risk management principles. In order to meet our clients' varying needs, we have established solutions including pre-employment validations, executive team due diligence and legislative and compliance validation.