

Background checks on staff teaching adult students

Background

Government agencies and tertiary education organisations (TEOs) have a responsibility to promote the safety of all students, international or domestic, regardless of age and should implement practices that are appropriate to the individual context of that organisation. TEOs also have a responsibility to check if their governing members (as defined in section 232 of the Education Act 1989) meet the fit and proper person requirements outlined in section 233A of the Education Act 1989, which includes criminal offences.

The New Zealand Qualifications Authority (NZQA) became the Administrator for the *Code of Practice for the Pastoral Care of International Students* (The Code) in August 2013. The Code is designed to ensure that international students are well informed, safe and properly cared for. The Code sets out the minimum standards of advice and care required by signatories.

In consultation with the tertiary education sector, NZQA has developed this document to highlight good practice with TEOs on policies they have, or could implement, to maximise the safety of students and other staff. The guide document focuses only on criminal background checks rather than other methods to ensure student safety. The guide provides information on effective background check practice, but it is not intended as a check-list.

Criminal background check policies

This guide contains examples of good practice for conducting criminal background checks on staff. The information was collated from examples provided to NZQA by a range of TEOs, including private training establishments (PTEs), universities, wānanga, institutes of technology and polytechnics (ITPs) and government training establishments (GTEs). TEOs are obliged to do criminal background checks on staff who have financial responsibilities and those who are working with vulnerable people (such as young persons, children, elderly, disabled)¹. TEOs are generally performing these roles well. NZQA is interested in the use of criminal background checks for roles that are not in either of these two obligatory categories.

The TEOs referred to in this document have practices for criminal background checks and in general TEOs use discretion to make decisions about employees.

¹ In addition to these current requirements; from 2016 under the Vulnerable Children Act 2014 new workers working with anyone under 18 are required to be vetted, and from 2018 current workers working with anyone under 18 are required to be vetted. For more detail refer to: <http://childrensactionplan.govt.nz/legislation-/faqs/>

New Zealand Police Vetting Service and Ministry of Justice criminal conviction history

There are two ways criminal background checks are conducted: through the New Zealand Police Vetting Service and Ministry of Justice criminal conviction history.

The New Zealand Police Vetting Service suits TEOs that regularly have to do criminal background checks. Organisations have to become approved to use police vetting. Only approved organisations, not individuals, can use the New Zealand Police Vetting Service. To become approved, organisations must show that their staff care for children, older people, people with special needs or other vulnerable members of society. Further information on police vetting can be found here: <http://www.police.govt.nz/advice/businesses-and-organisations/police-vetting/ask-police-vetting>

If an organisation requires only occasional criminal background checks, it can use the Ministry of Justice criminal conviction history. An organisation needs a person's authorisation to view their criminal record. Further information on Ministry of Justice criminal conviction history can be found here: <http://www.justice.govt.nz/services/criminal-records/how-to-get-a-copy-of-someone-elses-criminal-conviction-history>

Examples of criminal background check policies TEOs put into practice

This guide provides information on policies TEOs have, or could implement to ensure the safety of students and other staff. The following are examples of TEOs that have well-developed criminal background check policies or procedures.

CTC Aviation (a PTE) has a policy requiring criminal background checks for all flight instructors and senior roles. CTC Aviation uses both New Zealand Police Vetting and Ministry of Justice criminal conviction history. If a contractor is a pilot, the Civil Aviation Authority (CAA) has already done background checks. Non-flying contractors are not subject to background checks but are supervised on site at all times in line with health and safety regulations. A person with a criminal history will not be issued a license by the CAA and will not be employed by CTC Aviation.

Te Wānanga o Aotearoa (TWOA) uses New Zealand Police Vetting to assist it to evaluate any likely risk before making an employment decision. New Zealand Police Vetting is used to protect society's most vulnerable members including older people and people with special needs. It also safeguards the business functions of TWOA.

All managerial roles, and roles with responsibility for human resources, finance, risk, taura pastoral care and facilities are subject to New Zealand Police Vetting. Certain tutorial and academic staff will also be subject to New Zealand Police Vetting. TWOA reserves the right to request any employee or prospective employee undertake New Zealand Police Vetting.

Massey University uses the Ministry of Justice Criminal and Traffic Convictions (Security) checks for all positions that have a high level of accounting and financial responsibility and any role that has financial delegated authority to approve expenditure. In addition, any position that has a moral or ethical responsibility and/or element of pastoral care in roles that deal with vulnerable individuals, shall require a completion of this check prior to commencing work at the University. If the Ministry of Justice Criminal and Traffic Convictions (Security) check provides evidence of the applicant having a previous criminal or significant traffic history, then the applicant may only be appointed with the approval of the relevant Senior Leadership Team member (in consultation with the Employment Relations Manager).

Southern Institute of Technology (an ITP) has New Zealand Police Vetting as part of the application criteria for some programmes, in particular programmes with a 'people' focus such as the Bachelor of Nursing and the National Certificate in Social Services. This means that prospective applicants, prior to acceptance, are notified that New Zealand Police Vetting is a requirement and will be taken into consideration for the selection and acceptance process.

Contractors and visitors

Mahitahi Trust has a criminal background check policy for contractors and visitors.

Mahitahi Trust (a PTE) has a policy requiring criminal background checks for all staff, students on placements and volunteers. All contractors, sub-contractors, service repair and maintenance contractors provide evidence that they comply with Health and Safety regulations. This PTE uses both New Zealand Police Vetting and Ministry of Justice criminal conviction history. The PTE uses the information gained from the criminal background checks to make decisions about staff, students on placements and volunteers. They may choose either to not employ the person or implement safety monitoring measures.

Exercising discretion

TEOs exercise discretion over whether they would hire a person with a criminal conviction. TEO final decisions for hiring would depend on the nature and frequency of the conviction, when the conviction occurred, and the role in question. The following are examples of TEOs exercising discretion in their criminal background check policies.

Quality Education Services Trust Ltd (QESTL) (a PTE) requires all staff that have contact with students, contracted drivers and volunteer classroom support persons to undergo a criminal background check. QESTL uses New Zealand Police Vetting. People with convictions for violence, substance abuse or theft would generally be excluded from employment at QESTL. Other convictions, including driving under the influence of alcohol, would be considered on a case-by-case basis.

Christchurch Polytechnic Institute of Technology (CPIT) (an ITP) uses New Zealand Police Vetting. CPIT uses the information obtained from criminal background checks to confirm or question the appointment of a staff member. CPIT also uses this information to confirm induction and training plans, and to put in place interventions to ensure a safe work environment for the person and for the team/organisation.

Business College NZ Ltd (a PTE) does criminal background checks on all contracted teaching staff. Business College NZ Ltd uses New Zealand Police Vetting. Contracted teaching staff are employed for a three month probationary period. The college considers the three main risks to be sexual crimes, drug crimes and violent crimes. The college would not employ anyone with a history of sexual crimes. Business College NZ would exercise discretion in considering the seriousness and length of time since an offence occurred for drug crimes or violent crimes.

University of Canterbury uses a third party to conduct background checks. The third party has advised the University of Canterbury on the appropriate checks for a role and arranges for the checks to be conducted, including Ministry of Justice criminal conviction history and New Zealand Police Vetting.

An offer of employment will be subject to the candidate receiving suitable clearance in respect of any check that has been undertaken. The University will, however, make the final decision as to whether the appropriate standard has been met.

Making decisions based on background checks

The following examples illustrate the kind of decision-making TEOs do based on the information they gain from a criminal background check. Decisions include seeking further information on the conviction to determine an appropriate response, adjusting the position to minimise risk by reducing or restricting unsupervised access to children, or changing the job description.

Responsive Trade Education Ltd (a PTE) has a policy requiring background checks for Governance, management, all staff and contracted staff within the organisation. The PTE uses New Zealand Police Vetting. While no conviction is preferred, management makes the decision to employ staff depending on the type of conviction and length of time since the offence occurred.

Central Otago Rural Education Activities Programme (Central Otago REAP) (a PTE) has a policy requiring background checks of all staff, trustees and volunteers. Central Otago REAP use New Zealand Police Vetting. The PTE chooses not to employ people with certain convictions.

University of Auckland uses a third party to conduct criminal background checks. New Zealand Police Vetting is conducted on prospective campus security staff, residential assistants, counsellors and halls of residence managers. Ministry of Justice criminal conviction history is used for senior roles with management reporting. The information gained from criminal background checks is used to make hiring decisions.

Overall, TEOs recognise that they have responsibilities to ensure students of all ages, both domestic and international, have a safe and secure learning environment. One element of this is the organisation's policies and practice that minimise risk around staff who may have criminal histories.

NZQA thanks those that have contributed to this document. We trust that sharing these examples will enhance the safety of students and other staff.