

Disclosure of Offence, Charge or Conviction Policy

This policy is being updated to reflect the new Enterprise Agreement and may currently contain out of date information. If you have any questions, please lodge an Ask HR ticket.

Section 1 - Background and Purpose

(1) The University is committed to providing a healthy and safe environment for staff, students, contractors and visitors to the University.

(2) This Policy provides for the requirement to disclose Interim or Negative Assessment Notices, charges and convictions of criminal offences, and in the case of other Designated Persons, certain prescribed matters.

Section 2 - Scope

(3) This Policy applies to all:

- a. Employees (including casual employees);
- b. Applicants, including potential applicants, for employment with the University; and
- c. Directly Appointed Contractors (herein referred to as Contractors).

Section 3 - Policy Statement

(4) The University is required to make decisions about the impact that charges and convictions of criminal offences (or other offences, which may be related to a person's current employment or contractor status) may have on the University.

(5) All staff and contractors are required to notify the University in the event they have been or are:

- a. charged or convicted with an offence against the law of the Commonwealth or a State or Territory of Australia, or of another country, but excludes fines and infringements; and/or
- b. issued with an Interim or Negative Assessment Notice made pursuant to the [Worker Screening Act 2020](#) (Vic).

(6) For Designated Persons of the University, a fitness and propriety declaration will be required to be completed upon request by the University.

(7) Designated Persons must also provide notification in one or more of the following circumstances (as amended from time to time):

- a. where the individual has ever been determined not to be a fit and proper person as prescribed under any law of the Commonwealth or of a State or Territory of Australia, or of another country and if so, whether that determination remains in place; and/or

- b. where the individual has had a change in circumstances which would likely affect responses provided as part of their Fit and Proper Person Requirements Declaration, whether not or completed at the time of appointment or at such later time as directed by the University.

(8) Notifications made to the University outlined in the above circumstances must be made in accordance with the procedures outlined in this document.

(9) In accordance with the University's [Notifications of Changes to Institutional Operations, Ownership or Management Policy](#), the Executive Director, Human Resources (or their nominated delegate) will be responsible for:

- a. ensuring the necessary fitness and propriety declarations (as prescribed under the applicable governing legislation) are completed for all Designated Persons, including Associates, Executive Officer (RTO), High Managerial Agents and Key Personnel, as part of the appointment process, and on a five yearly basis thereafter; and
- b. notifying:
 - i. the Pro Vice-Chancellor (International) and the Executive Officer (RTO) as soon as reasonably practicable after becoming aware of an Associate, Executive Officer or High Managerial Agent failing to meet the fitness and propriety standards prescribed under the ESOS Act or RTO Standards; and/or
- c. any actual or prospective changes to an Associate, Executive Officer(s), High Managerial Agent of the University.
- d. the Executive Director, Planning and Governance and the Executive Director, Student Services and Administration of any adverse matters affecting the fitness and or propriety of Key Personnel.

(10) The Executive Director, Human Resources (or their nominated delegate) must provide all information and updates necessary under paragraph 9b, to comply with the University's statutory obligations and where applicable satisfy the Designated Authority as to the candidate and University's continued fitness and propriety.

(11) Some positions within the University have a legislated requirement for a national police clearance 'Police Check' and the remainder are to be determined by the University. Roles legislated for a national police clearance will be managed in accordance with the relevant requirements.

(12) International police checks will be conducted on relevant roles as determined by legislation and University requirements.

Section 4 - Procedures

(13) These Procedures:

- a. describe the process for employees/Contractors to disclose offence charges, convictions, interim or negative notices, and in the case of Designated Persons, other prescribed matters; and
- b. detail the process to follow in dealing with those disclosures.

Part A - What is Disclosed in a Police Check?

(14) A Police check may include:

- a. court appearances
- b. court convictions, including any penalty or sentence
- c. charges and findings of guilt with no conviction
- d. good behaviour bonds or other court orders

- e. matters awaiting court hearing

Part B - Charges and Convictions

(15) All employees and Contractors are required to notify their Manager together with the Executive Director, Human Resources (or their appointed delegate) if they:

- a. are charged or convicted with an offence against the law of the Commonwealth or a State or Territory of Australia, or of another country;
- b. are issued with an interim or negative assessment notice made pursuant to the [Worker Screening Act 2020](#) (Vic); or
- c. have prescribed disclosures pursuant to clause 7 above (collectively the Offence).

(16) Notification must be made to the person's Manager, within 5 business days of the person becoming aware of the Offence. Failure to do so by an employee may lead to disciplinary procedures under the [Enterprise Agreement](#) which may result in (but not limited to) termination of employment. Failure to do so by a Contractor may result in termination of the contract for services.

Part C - Manager Responsibilities

(17) Where a Manager becomes aware of an Offence, the Manager must inform the Executive Director, Human Resources (or their appointed delegate) within 3 business days of becoming aware of the Offence.

Part D - Human Resource Responsibilities - Staff

(18) After the Manager and the Executive Director, Human Resources (or their appointed delegate) are notified of an Offence, the Executive Director, Human Resources (or their appointed delegate) will make an assessment, in discussion with the employee and their Manager, as to whether the Offence impacts upon the employee's ability to undertake the inherent requirements of their role.

(19) For employees of the University who fail to obtain or maintain a valid, positive Assessment Notice, the matter will be dealt with under the University's [Working with Children Policy](#).

(20) Should the assessment result in a view that there is no impact, no action will be taken and the employee will be advised in writing of this outcome, as will the Designated Authority where prescribed by law.

(21) Where the Executive Director, Human Resources (or their appointed delegate) is of the view that the Offence may impact on employee's/Contractor's ability to undertake his/her role, the University will commence the disciplinary procedures under the [Enterprise Agreement](#).

(22) In the case of Designated Persons, the Executive Director, Human Resources (or their appointed delegate) will be responsible for notifying the Executive Officer, and the Pro Vice-Chancellor (International), as soon as reasonably practicable following:

- a. receipt of the disclosure of the Offence; and
- b. completion of the HR assessment for reporting to the Designated Authority, within the timeframes prescribed by law.

Part E - Human Resource Responsibilities - Directly Appointed

Contractors

(23) After the Manager and the Executive Director, Human Resources is notified of the matters prescribed above, the Executive Director, Human Resources (or their appointed delegate) will make an assessment as to whether the Offence impacts on the Contractor's ability to undertake the services.

(24) Should the assessment result in a view that there is no impact, no action will be taken and the Contractor will be advised in writing of this outcome.

(25) Should the assessment result in a view that there is an impact, a response from the Contractor will be sought. The Contractor must submit a response within 5 working days wherein it will be considered by the Executive Director, Human Resources (or their appointed delegate).

(26) If no response is received following the lapse of the required timeframe, the Executive Director, Human Resources (or their appointed delegate) may take any of the below actions (or combination of actions):

- a. seek further information from the Contractor (or any other relevant party);
- b. (if appropriate in the circumstances) take no further action, in which case the Contractor will be advised in writing of this outcome;
- c. suspend the Contractor (if this is allowable under the contract) for a period of time (for example, to allow the charges to be heard); or
- d. terminate the Contractor's contract.

(27) The Contractor may be suspended from attendance on University campuses during the period of assessment at the University's discretion.

Part F - Assessment Criteria

(28) Whether the Offence is relevant will depend on the nature of the offence and the nature of the employee/Contractor.

Part G - Privacy

(29) All information received in accordance with this Policy will be treated in accordance with the [Privacy Policy](#).

Section 5 - Definitions

(30) For the purpose of this Policy and Procedure:

- a. Assessment Notice: Means a Victorian Working with Children Check Assessment (or such recognised equivalent under the [Worker Screening Act 2020](#), or other relevant act and/or jurisdiction).
- b. Associate: The Principal Executive Officer. In La Trobe's context, the Vice-Chancellor is La Trobe's Principal Executive Officer. The function of Associate has been operationally delegated to the Pro Vice-Chancellor (International) for the purposes of compliance with the [ESOS Act](#).
- c. Charge: A formal allegation of criminal conduct. A person charged with an offence is served with a summons or other form of indictment.
- d. Conviction: The outcome of a criminal prosecution which concludes in a judgment that the defendant is guilty of the crime charged.
- e. Designated Authority: For the purposes of the ESOS and TEQSA Acts, this is the Tertiary Education Quality Standards Agency (TEQSA). For the purposes of the [National Vocational Education and Training Regulator Act](#)

[2011](#) this is the National VET Regulator.

- f. Designated Persons: Refers to Associates, High Managerial Agents, Executive Officer(s), Key Personnel and any other University designated position as determined from time to time.
- g. Directly Appointed Contractor (or Contractor): means an individual who operates their own business and who has an ABN and is engaged directly by the University to provide goods and or services through a contract or services agreement for a specific purpose and time period.
- h. ESOS Act: Means the [Education Services for Overseas Students Act 2000](#) (Cth).
- i. Executive Officer: For the purposes of the RTO Standards, a person, by whatever name called and whether or not a director of the organisation, who is concerned in or takes part in the management of the RTO. In La Trobe's context, the Executive Director, Student Services and Administration is the RTO's designated Executive Officer.
- j. High Managerial Agents: An employee, agent or officer of the Provider with duties of such responsibility that his or her conduct may fairly be assumed to represent the provider in relation to business of providing courses. In La Trobe's context under both the ESOS Act and the RTO Standards, High Managerial Agents include the following designated positions:
 - i. Members of the Governing Body (Council)
 - ii. Deputy Vice Chancellors
 - iii. Pro Vice-Chancellor (International)
 - iv. Director, International Recruitment
 - v. Director, International Partnerships and Services
 - vi. Provost
 - vii. Chief Operating Officer
 - viii. Chief Financial Officer
 - ix. Pro Vice-Chancellor (Regional)
 - x. Pro Vice-Chancellor (Graduate and Global Research)
 - xi. Chief Marketing Officer
 - xii. Personnel appointed to the position of Acting Chief Marketing Officer; and
 - xiii. RTO Course Coordinator(s).
- k. Interim Assessment Notice: A preliminary assessment of a person's criminal record or professional conduct determinations or findings, which indicate that a Victorian Working with Children Check Assessment, made under the [Worker Screening Act 2020](#), should not be passed.
- l. Key Personnel: For the purposes of the TEQSA Act, key personnel include persons who make or participate in making decisions that affect the whole, or a substantial part of the provider's affairs. In La Trobe's context, Key Personnel include:
 - i. Members of the Governing Body (Council); and
 - ii. Members of the Senior Executive Group.
- m. Negative Assessment Notice: Means a notice made pursuant to the [Worker Screening Act 2020](#) (Vic) that prohibits the holder from undertaking any child-related work, irrespective of whether the individual qualifies for an exemption under that Act.
- n. Offence: An offence against a law of the Commonwealth or of a State or Territory of Australia, or a law of the parliament of another country but excludes fines and infringements.
- o. RTO Standards: Means the [Standards for Registered Training Organisations \(RTOs\) 2015](#).

Status and Details

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