



# Employment Suitability Clearance Assessment Criteria

## Supporting Material

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# 1. Introduction

The Australian Government's *Protective Security Policy Framework* (PSPF) contains the controls used by the Australian Government to protect its people, information and assets. Pursuant to the PSPF, all Australian Government agencies are required to undertake employment screening for all new personnel (and other individuals who are provided access to the agency's assets), as well as having policies and procedures in place to monitor the ongoing suitability of personnel, including (for example) periodic employment re-screening.

To implement the Department's obligations under the PSPF, the Secretary of the Department has determined that:

- in the case of Immigration and Border Protection workers – an Employment Suitability Clearance (ESC) and a minimum Baseline security clearance are 'essential qualifications' and thus:
  - a condition of engagement for the purposes of paragraphs 22(6)(c) and 22(6)(d) of the *Public Service Act 1999*
  - subject to the arrangements for the graduated implementation of employment suitability screening, a condition of ongoing employment
- in the case of all other individuals who require non-public access to Departmental assets, subject to the arrangements for the graduated implementation of employment suitability screening, an ESC and a minimum Baseline security clearance are a mandatory precondition of being provided such access.

The purpose of this document is to outline the specific risk factors that are assessed during the Department's employment suitability screening process, and the grounds upon which an individual may be not granted an ESC.

## 1.1. Definitions

In this document, the following terms have a special meaning:

**Drug use** includes use of the following substances:

- marijuana (including herbal, oil or resin / hashish)
- cocaine
- heroin
- LSD
- 'magic' mushrooms
- ecstasy (MDMA)
- ketamine
- GHB e.g. fantasy as well as GBL and 1,4-BD
- amphetamine or methamphetamine (e.g. speed, ice, base, pills)
- inhalants (e.g. glue, petrol, 'poppers')
- steroids or other performance/image enhancing drugs (if consumed for a non-prescribed or non-medical purpose)
- pharmaceutical products/prescription medications (if consumed for a non-prescribed or non-medical purpose)
- anti-anxiety, sedatives, sleeping pills or ADHD medication (if consumed for a non-prescribed or non-medical purpose)
- painkillers (if consumed for a non-medical or non-prescribed purpose)

- drug analogues and other new psychoactive substances (e.g. mephedrone, 'spice' or other synthetic marijuana products)
- legal highs (substances marketed as 'natural' or 'herbal' alternatives to illicit drugs and/or intended to mimic the effect of illicit drugs – regardless of whether they are legal or not)
- any other prescription drug or substance taken for any non-medical reason (specify substance(s) below)
- other drugs or substances taken to produce a 'high' or other psychoactive effect (specify substance(s) below).

**Immediate family** means

- a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of an individual
- a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of an individual
- any other individual or family member (such as a cousin, aunt, uncle, niece or nephew) with which an individual can positively demonstrate they have a close familial relationship that has the same characteristics as a relationship outlined above.

## 2. Risk factors

### 2.1. Risk factor 1 – associations and conflicts of interest

**Why are associations and conflicts of interest being examined?**

The Department's work and the information it holds are valuable to organised crime syndicates, who actively try to circumvent border controls, reduce border integrity and threaten national security. Visa and citizenship decision making and the Department's border management activities are a significant target for criminal groups who have strong financial and other motives to infiltrate border protection agencies across the globe.

Within this context, it is not appropriate for individuals to be employed by the Department or otherwise provided with non-public access to Departmental assets if they have high risk associations or conflicts of interest that may cast doubt on their ability to resolve integrity issues in favour of the Department.

It is therefore necessary for the Department to examine any high risk associations or conflicts of interest as part of the employment suitability screening process. This is particularly important in cases where an individual has not previously been employed or contracted by the Department, as the employment suitability screening process will be the Department's first opportunity to examine these relationships and issues.

**How will an individual's associations and conflicts of interest be assessed?**

During the employment suitability screening process, an individual will be provided with an opportunity to declare:

- any associations with people or groups that are, or they believe or suspect to be, involved in activities that conflict with the Department's role and mission
- any other actual, potential or perceived conflicts of interest that may relate to the individual or their circumstances

The Department will also undertake a number of checks and inquiries during the employment suitability screening process to identify any high risk associations or conflicts of interest that may have an impact on the integrity or security of the Department.

Not all high risk relationships (family, personal, business, financial or otherwise) may create an intolerable risk to the Department. However, in some cases it may be necessary to work with the individual to develop a specific Aftercare Arrangement to manage or mitigate the risks created by the association or conflict of interest.

The decision maker may decide to not grant an individual an ESC based on their associations and / or conflicts of interest. Such a decision may be made if the decision maker determines that:

- the risks to the individual or the Department created by the association or conflict of interest could potentially be adequately managed or mitigated, however the individual is unwilling or unable to agree an appropriate Aftercare Arrangement
- the individual actively and deliberately associates with individuals or groups who engage in activities that are inconsistent with the Department's role and mission (including illicit drug consumption), however the individual is unwilling to cease those associations
- if the individual is an existing employee of the Department and the association is a member of the employee's immediate family, the member of the individual's immediate family presents an extreme or intolerable risk to the employee or the Department that cannot be otherwise mitigated or managed
- the costs to the Department in establishing, managing or maintaining an Aftercare Arrangement to manage the specific risk created by the association or conflict of interest are too significant or onerous
- on the balance of probabilities (due to the nature of the association or conflict of interest), the individual will not be able to resolve integrity issues in favour of the Department
- on the balance of probabilities (due to the nature of the association or conflict of interest), there is a significant risk that, should the association or conflict of interest become publicly known, it would significantly undermine the confidence the community places in the Department to maintain the integrity and security of Australia's borders.

## **2.2. Risk factor 2 – criminal history or involvement in criminal or illegal activities**

### **Why are criminal histories or involvement / association with criminal or illegal activity examined?**

Employees of the Department exercise considerable, often coercive, powers, with very wide discretion and often under limited supervision. The community trusts and expects the Department's employees to exercise these powers responsibly, lawfully, impartially and professionally. The Department is also responsible for enforcing the law and working with its partner agencies to combat serious and organised crime. As such, the community has a legitimate and reasonable expectation that individuals who are responsible for exercising such powers and functions (either directly or indirectly by virtue of their broader employment by or association with the Department), do not themselves engage in criminal or illegal activities.

Consequently, an individual's criminal history or involvement in or association with criminal or illegal activities, are relevant considerations when determining whether an individual is suitable to be employed by the Department or be provided with non-public access to Departmental assets.

### **How will an individual's criminal history or involvement / association with criminal or illegal activity be assessed?**

The Department will undertake a range of checks during the employment suitability screening process, including a national police history check (via ACIC) and criminal intelligence checks. Police history information may include outstanding charges and criminal convictions / findings of guilt recorded against the individual. As

the work of the Department includes law enforcement responsibilities, information on spent convictions may also be identified during the national police history check process.

A criminal conviction or adverse criminal intelligence record does not automatically prevent an individual from being employed by the Department or otherwise provided with non-public access to Departmental assets – particularly if there are significant mitigating factors or the conviction relates to a minor matter or occurred a long time ago.

The decision maker may decide to not grant an individual an ESC based on their criminal history or involvement/association with criminal or illegal activities. Such a decision may be made if the individual:

- is currently the subject of a current court order, an outstanding warrant or court order, or is under investigation or awaiting proceedings in relation to a criminal matter
- is currently on parole or probation
- has previously violated parole or probation, or has failed to complete a court-mandated rehabilitation program
- has been convicted of any criminal offence, or multiple lesser offences, in any Australian or foreign court, including a military court-martial
- has exhibited a pattern of behaviour which indicates, on the balance of probabilities, that the individual possesses an intentional, willful or reckless disregard for the law
- is the subject of a credible allegation or admission of criminal or illegal conduct, regardless of whether the person has been formally charged, prosecuted or convicted
- is the subject of adverse criminal intelligence reporting which the decision maker determines:
  - casts significant doubt on the ability of the individual to support the Department to achieve its mission
  - on the balance of probabilities (due to the nature of the intelligence reporting), should the matters contained within the reporting become publicly known, it would significantly undermine the confidence the community places in the Department.

## **2.3. Risk factor 3 – compliance with border-related laws**

### **Why is compliance with border-related laws examined?**

The mission of the Department is to protect Australia's border and manage the movement of people and goods across it. The Department contributes to national outcomes including strong national security, a strong economy and a prosperous and cohesive society. The Department's role encompasses functions such as:

- detecting and interdicting risk across the border continuum (pre-border, at the border and after people and goods reach and cross the Australian border)
- providing and enforcing the framework for the movement of people and goods in and out of Australia
- selecting and / or providing authorisation for people to come to Australia, as well as determining whether people can stay permanently in Australia and/or become Australian citizens
- working with partners both in Australia and overseas to deter, detect and disrupt serious and organised crime.

The Department is also responsible for making decisions that affect the safety, rights and freedoms of people, and Australian trade and commerce. As a border management and enforcement agency, it is not appropriate for its employees or other individuals to be provided with non-public access to Departmental assets if they have a history of non-compliance with border-related laws. In addition to this being a conflict of interest, such

a relationship between the Department and an individual may also reduce the confidence the community places in the Department to maintain the integrity and security of the Australian border.

### **How will an individual's compliance with border-related laws be assessed?**

The Department will undertake a range of checks and inquiries, such as examining its internal records relating to the inspection and seizure of goods at the Australian border, as well as its records relating to the questioning and searching of arriving and departing travellers.

A one off or a small number of minor breaches of border control laws does not automatically prevent an individual from being employed by the Department or otherwise provided with non-public access to Departmental assets – particularly if there are significant mitigating factors or the matter occurred a long time ago.

The decision maker may decide to not grant an individual an ESC based on their non-compliance with border-related laws. Such a decision may be made if:

- the individual has a history of repeated non-compliance (or a significant 'one off' circumstance of non-compliance) with any law governing the movement or management of goods, vessels, aircraft or people across the Australian (or a foreign) border, regardless of when the activity occurred, or whether the individual has been subject to a formal investigation or finding of guilt
- on the balance of probabilities (due to the nature of the non-compliance), there is a significant risk that, should the non-compliance become publicly known, it would significantly undermine the confidence the community places in the Department to maintain the integrity and security of Australia's borders.

## **2.4. Risk factor 4 – drug use**

### **Why is drug use examined?**

On 11 December 2014, the Secretary of the Department announced that from March 2015, all departmental employees would be prohibited from taking illicit drugs at any time. In addition, pursuant to the Department's Drug and Alcohol policy, the Department takes a zero tolerance approach to the possession, use and trafficking of prohibited drugs. This is because one of the Department's core functions is to detect, deter and disrupt the importation of illicit drugs into Australia, and to enforce the laws established by the Australian Government regarding the importation of these substances.

There is, therefore, an inherent conflict between individuals who consume, or associate with individuals who consume, prohibited substances that the Department is preventing from crossing the border. In addition, by its very nature, obtaining illicit drugs may require an individual to directly break the law and/or to interact with other individuals who are involved in criminal activity. The act of purchasing illicit drugs inherently conflicts with the role of the Department in disrupting serious and organised crime, because the profits from illicit drug sales are one of the primary sources of income for criminal enterprises.

### **How will an individual's drug use be assessed?**

During the employment suitability screening process, an individual will be provided with an opportunity to declare any past or current illicit drug use, as well as any associates who consume or are otherwise associated with illicit drugs.

The Department will also undertake a range of checks and inquiries to determine whether an individual may be consuming or using illicit drugs, or has previously, consumed or used illicit drugs. As a result of these inquiries, the Department may require an individual to undergo drug testing.

Past use or consumption of illicit drugs does not automatically prevent an individual from being employed by the Department or otherwise provided with non-public access to Departmental assets – particularly if there are significant mitigating factors or where the use or consumption was minor and/or occurred a long time ago.

The decision maker may decide to not grant an individual an ESC based on their past or current illicit drug use. Such a decision may be made if:

- the individual currently uses illicit drugs (regardless of whether the individual characterises their use as being minor or experimental in nature)
- the individual has otherwise previously used illicit drugs and is unwilling to provide the Department with a formal written declaration that they no longer do so (and will not use illicit drugs while associated with the Department)
- the individual knowingly and actively associates with individuals who use illicit drugs, and the individual, when directed to by the Department, is unwilling to discontinue those associations<sup>1</sup>, or comply with the conditions of an Aftercare Arrangement
- the decision maker forms the view that, on the balance of probabilities (either due to the nature of usage, frequency / extent of usage or particular substances used) there is a significant risk that, should the individual's drug usage history become publicly known (regardless of when the usage occurred or ceased), it would significantly undermine the confidence the community places in the Department. Examples of an individual's drug usage history that may undermine community confidence include, but are not limited to, individuals who have a history of:
  - significant or long-term drug abuse
  - poly-drug abuse
  - drug addiction
  - regular abuse of a drug known to be highly addictive.

## **2.5. Risk factor 5 – compliance with the APS Values, Employment Principles and Code of Conduct**

### **Why is compliance with the APS Values, Employment Principles and Code of Conduct examined?**

As an APS agency, all employees within the Department must comply with the APS Code of Conduct and behave in a way that upholds the APS Values and Employment Principles. In the case of non-Departmental employees who require non-public access to Departmental assets, the Department has a legitimate and reasonable expectation that such individuals behave in a manner consistent with APS Values and Employment Principles.

### **How will an individual's compliance with the APS Values, Employment Principles and Code of Conduct be examined?**

During the employment suitability screening process, an individual will be provided with an opportunity to declare any disciplinary action or adverse findings made against them in connection with their current or past employment.

The Department will also undertake a range of checks and inquiries to determine whether an individual may currently be, or has previously been the subject of any disciplinary action or adverse administrative finding.

<sup>1</sup> See Risk Factor 1 for provisions concerning associations with an individual's immediate family.



This may include the Department conducting referee checks and / or contacting the professional standards area associated with the individual's current or past employer(s).

A one off or small number of minor breaches of the APS Code of Conduct does not automatically prevent an individual from being employed by the Department or otherwise provided with non-public access to Departmental assets – particularly if there are significant mitigating factors or the matter occurred a long time ago. A breach of the Code of Conduct carrying a less serious sanction than termination will not, of itself, be grounds to refuse an ESC.

The decision maker may decide to not grant an individual an ESC based on the individual's non-compliance with the APS Values, Employment Principles and / or Code of Conduct. Such a decision may be made if:

- the individual has a proven history of repeated non-compliance (or a significant 'one off' circumstance of non-compliance) with the APS Values, Employment Principles or Code of Conduct
- the individual has resigned or transferred from a previous employer under adverse circumstances or to avoid facing disciplinary or administrative action
- the individual has previously had their employment terminated due to disciplinary, integrity or conduct issues
- the individual has exhibited a pattern of behaviour which indicates, on the balance of probabilities, that the individual possesses an intentional, willful or reckless disregard for the APS Values, Employment Principles, Code of Conduct or the Department's policy and procedures – particularly in relation to the Department's procedures governing personnel, physical and information security matters.

## **2.6. Risk factor 6 – dishonesty in the employment suitability screening process**

### **Why is dishonesty in the employment suitability screening process being examined?**

During the employment suitability screening process, individuals are advised that they must fully cooperate with the Department, including by disclosing all relevant and required information. As part of the employment suitability screening process, individuals are also required to sign a Statutory Declaration certifying that their application is true, accurate and complete. Individuals are also advised that in addition to being a potential breach of the APS Code of Conduct, giving false or misleading information to the Department can amount to an offence under the *Criminal Code Act 1995* which is punishable by a period of imprisonment of up to 12 months.

If, despite these warnings and caveats, an individual is willing to be intentionally dishonest in the employment suitability screening process – even in relation to matters that may seem trivial to an individual – it may significantly undermine the Department's ability to trust that individual with its assets. This is because if an individual is willing to be dishonest in an integrity and character assessment, being fully aware of the consequences for doing so, it may cast significant doubt on the individual's ability to be honest more broadly in their dealings with the Department.

### **How will an individual's dishonesty in the employment suitability screening process be examined?**

Information declared by an individual as part of the employment suitability screening process will be corroborated with a variety of sources.

It is recognised in some circumstances, even though an individual may have been completely honest during the employment suitability screening process, information identified through the secondary checks and

inquiries undertaken by the Department may directly contradict information provided directly by an individual. This may occur in cases where, for example, an individual may be genuinely unaware of criminal or other high-risk activities that their associates may be involved in.

The decision maker may decide to not grant an individual an ESC based on their dishonesty in the employment suitability screening process. Such a decision may be made if:

- it is determined that the individual has knowingly and/or deliberately provided false or misleading information to the Department (or has omitted or withheld information and by doing so, the information they have provided to the Department is misleading), and the decision maker forms a view that, on the balance of probabilities, the individual may not be honest in any subsequent dealings with the Department
- on the balance of probabilities (either due to the nature of the false or misleading information or its frequency), there is a significant risk that, should the individual's dishonesty in the employment suitability screening process become publicly known, it would significantly undermine the confidence the community places in the Department to maintain the integrity and security of Australia's borders.

## **2.7. Risk factor 7 – cumulative impact of multiple risk factors and other relevant factors**

In some cases, the employment suitability screening process may identify several risks associated with an individual. Additionally, the Department may be notified of information relating to an individual's security clearance that is relevant to employment suitability screening.

In the majority of cases, multiple minor issues viewed individually or cumulatively may not present a significant concern or meet a threshold under risk factors 1-6 for the decision maker to not grant an individual an ESC.

However, there are some cases where multiple issues may be identified during the employment suitability screening process. While not individually meeting a threshold under risk factors 1-6 for the decision maker to issue an individual with an adverse employment suitability screening assessment, when viewed cumulatively, they may raise significant doubts or concerns regarding the individual.

The decision maker may decide not to grant an individual an ESC based on the cumulative effect of multiple risk factors or issues relating to an individual's security clearance. Such a decision may be made if the decision maker forms a view that, on the balance of probabilities (due to the nature or extent of issues identified):

- there is significant doubt cast on the individual's ability to support the Department to achieve its mission, or
- there is a significant risk that, should these matters become publicly known, it would significantly undermine the confidence the community places in the Department.

## **3. Mitigating factors**

The employment suitability screening process is designed to be fair and balanced, and is not designed nor intended to punish individuals for past mistakes or indiscretions, or for issues in an individual's life that may be outside their control.

Mitigating factors may be taken into account during the employment suitability screening process. Mitigating factors that may be relevant in a particular case will depend on the nature of the particular matter that is being assessed. However, in all cases, the decision maker must resolve any doubt regarding the individual's suitability in favour of the national interest.

The following table outlines a non-exhaustive list of common mitigating factors and a description of how they may positively affect an assessment of suitability.

Mitigating Factor	An assessment may be positively influenced...
Intent	If an individual has not undertaken a deliberate, informed, wilful and/or positive action that has resulted in the matter or concern arising.
Knowledge and / or awareness	If an individual has no knowledge or awareness of a particular matter or concern.
Actions to disassociate	If, after becoming aware of a particular matter (such as a criminal association), the individual took all reasonable steps to disassociate or sever ties with the association.
Degree of separation	If there is a significant degree of separation between the individual and a particular matter such as an association or business or financial interest that has created a concern. Separation could be demonstrated, for example, by geographic separation, business or financial interests that are conducted at arm's length, or a limited amount of contact with the association.
Timing and / or frequency	Where a matter that has caused concern occurred a long time ago or was a one off event and has not been/is unlikely to be repeated, this is likely to have a positive impact on an assessment of suitability.
Seriousness	Where a matter that has caused concern could be considered less serious. The seriousness of a matter could be demonstrated, for example, by an individual receiving a penalty or punishment on the lower end of the scale of available penalties / punishments.
Rehabilitation	Where an individual has successfully been rehabilitated and thus the matter giving rise to the concern is unlikely to reoccur.
Age and maturity	Where an individual was relatively young and / or immature at the time the matter that has caused concern occurred.
Credibility of supporting information	If there is limited or uncorroborated information available to support a particular claim or concern that has been identified. Credibility of supporting information could also be called into question where the information is from a source of questionable or dubious reliability (for example, a possible malicious or vexatious complaint) or where the individual produces evidence to disprove any particular matter or concern.
Rare or unusual circumstances	If the circumstances giving rise to the matter that has caused concern are so rare, unusual, infrequent or outside of the individual's control that they are unlikely to be repeated.

Mitigating Factor	An assessment may be positively influenced...
Self-insight and awareness	If the individual recognises the particular matter or concern may have some bearing on an assessment of their suitability, and demonstrates they have proactively taken steps (or are willing and able to take steps) to address that particular matter or concern. The individual could demonstrate self-insight and awareness for example, by showing remorse or performing restitution.
Honesty and good faith	If an individual has demonstrated honesty and good faith during their dealings with the Department. The individual could demonstrate this, for example, by the individual's willingness to volunteer information, agree to specific risk mitigation requirements and their overall level of cooperation and compliance during the employment suitability screening process.
Positive behaviour and attributes	If an individual has a demonstrated history of positive behaviour and attitudes that may, on balance, appropriately counter any particular potential concern.

## 4. Related policies

- Employment Suitability Screening Procedural Instruction

## 5. Consultation

### 5.1. Internal consultation

The following internal stakeholders have been consulted in the development of this supporting material:

- Integrity, Security and Assurance Division
- Legal Division
- People Division
- all staff through Department-wide consultation.

### 5.2. External consultation

The following external stakeholders have been consulted in the development of this supporting material:

- staff representatives through the National Staff Consultative Forum
- Community and Public Sector Union.

## 6. Version Control

Version number	Date of issue	Author(s)	Brief description of change
1.0	1 July 2015	I&PS Branch	Initial document.
1.1	27 June 2019	I&PS Brand	Change of template.