

## Service Check Register for NSW Health

**Summary** This Policy Directive sets out the mandatory requirements for the use of the Service Check Register for NSW Health including: access to the Service Check Register; creation, update and removal of Service Check Register records; review of Service Check Register records; and checking the Register in recruitment and misconduct processes.

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**Branch contact** (02) 9391 9373

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**Audience** Workforce Directorates;HR and Recruitment Staff;Professional Conduct or Standards Units and Internal Audit Units

## SERVICE CHECK REGISTER FOR NSW HEALTH

### POLICY STATEMENT

NSW Health Service Check Register (SCR) is a state-wide database used to support effective recruitment screening and misconduct processes across all NSW Health organisations.

This Policy Directive is to be read in conjunction with relevant processes outlined in NSW Health Policy Directives *Managing Misconduct* ([PD2018\\_031](#)), *Managing Complaints and Concerns About Clinicians* ([PD2018\\_032](#)) and *Recruitment and Selection of Staff to the NSW Health Service* ([PD2017\\_040](#)).

### SUMMARY OF POLICY REQUIREMENTS

Only staff authorised by the Chief Executive / Secretary (for Ministry staff), or delegate, may be given access to the Service Check Register.

The Chief Executive / Secretary (Ministry of Health staff) must personally approve the creation, update or removal of a Service Check Register record.

Service Check Register records must be created, and may only be created, when the Chief Executive / Secretary suspects on reasonable grounds that the staff member may have engaged in serious misconduct and specific risk management action has been taken to mitigate related risks; or when a finding of serious misconduct has been substantiated and a decision to take specific action as a response has been made. This includes where the staff member is already absent from the workplace or has resigned.

Staff members (including where they are no longer employed / engaged by NSW Health) must be advised in writing, within the timeframes outlined in the Procedure, if a Service Check Register record for them is created, updated or removed. A printed copy of the record must be provided to the staff member. They must also be informed of their rights in relation to the record, and the role of the Service Check Register in recruitment.

Any other NSW Health organisation(s) in which the staff member is employed / engaged must be provided with sufficient information about the Service Check Register record to allow them to assess whether the conduct that resulted in the record presents any risks for them.

Service Check Register records may only be removed if one of the criteria outlined in the Procedure applies.

NSW Health organisations must review individual Service Check Register records at regular intervals and upon request. The reviews need to determine whether the record was correctly created, and/or if the related risks still exist. A record holder may seek a further review from the Ministry's Workplace Relations Branch.

NSW Health organisations must monitor their Service Check Register records and authorised users to ensure that both remain up to date.

All preferred applicants for any positions (including locum and agency staff) in NSW Health organisations must be checked against the Service Check Register before they start work, apart from limited emergency circumstances outlined in the Procedure.

Applicants must be advised that they will be checked against the Service Check Register. If a Service Check record is identified during a recruitment process, a documented recruitment risk assessment must be undertaken. The applicant must be informed of the outcome.

If an existing Service Check Register record is identified when deciding what action is appropriate as a response to a current finding of misconduct, the decision-maker must assess its relevance to the current finding, and whether it shows a pattern of behaviour.

## REVISION HISTORY

Version	Approved by	Amendment notes
June-2021 (PD2021_017)	Deputy Secretary, People Culture and Governance	The revised Policy Directive outlines approval requirements for access to the SCR, and for creating / updating / removing SCR records. It sets new criteria for the creation of SCR records based on 'serious misconduct' only. It clarifies what advice is to be provided to a record holder and when; the criteria to be considered for removing SCR records; and the requirements for local monitoring of SCR records.
October 2013 (PD2013_036)	Deputy Director- General, Governance Workforce and Corporate	Updated policy – replaced PD2009_004. Changes include new criteria for records, new recruitment risk assessment process, new review process, inclusion of Ministry of Health staff and new Branch ownership.
January 2009 (PD2009_004)	Director-General	First released.

## ATTACHMENTS

1. Service Check Register for NSW Health: Procedure.

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## 1 BACKGROUND

The NSW Health Service Check Register is used during the recruitment process to alert a NSW Health organisation to any significant risks a preferred applicant may pose, as already identified in NSW Health. While the Register does flag misconduct of a level of seriousness that requires further assessment, it does not contain a comprehensive record of all misconduct issues in relation to a person. Furthermore, a Service Check Register record search and check does not replace the requirement for other mandatory recruitment and appointment checks.

For misconduct processes, the Register alerts NSW Health organisations to previous findings of serious misconduct so that they can be assessed for relevance when making decisions in response to current findings.

The Service Check Register cannot operate in isolation from the processes outlined in NSW Health Policy Directives on *Managing Misconduct* ([PD2018\\_031](#)) and *Managing Complaints and Concerns About Clinicians* ([PD2018\\_032](#)). Placing someone on the Service Check Register is an additional step to those processes for the most serious and high risk misconduct cases. Any decision to create a Service Check Register record must be based on decisions made under those Policy Directives about risk management action or action in response to findings.

### 1.1 About this document

This Policy Directive outlines the requirements for use of the Service Check Register, including:

- Getting access to the Register
- Creating, updating, reviewing, and removing records
- Checking and assessing any identified records as part of recruitment, employment or engagement processes
- Checking and assessing any identified records as part of making disciplinary decisions in managing misconduct processes.

The Procedure is supported by several templates and checklists, which are available at <http://internal.health.nsw.gov.au/jobs/scr/index-scr.html>.

User guides for the Service Check Register database are available from within the database and from HealthShare NSW.

### 1.2 Key definitions

#### Clinical privileges

The kind of clinical work (subject to any restrictions) that a NSW Health organisation determines a registered practitioner is allowed to perform at any of its hospitals or other health services.

#### NSW Health Organisation

Any public health organisation as defined under the *Health Services Act 1997* (excluding undeclared Affiliated Health Organisations), Cancer Institute (NSW), NSW Ambulance, Health Infrastructure, HealthShare NSW, NSW Health Pathology, eHealth, any other administrative unit of the Health Administration Corporation, Albury-Wodonga Health in respect of staff who are employed in the NSW Health Service, and the Ministry of Health.

### **Preferred applicant**

The recommended person for a vacant position, who has not yet been formally offered that position.

### **Registered health practitioner**

A person who is registered under the *Health Practitioner Regulation National Law (NSW)* to practise a health profession, other than as a student, or who holds non-practising registration under the *Health Practitioner Regulation National Law (NSW)* in a health profession.

### **Serious misconduct**

*This definition must be read together with the additional criteria in sections 3.1.1 and 3.1.2 for creating a Service Check Register record.*

- A serious sex or violence offence (carrying a possible penalty of 12 months or more imprisonment) by any staff member, and/or
- Reportable (ie child-related) conduct as defined under the *Children's Guardian Act 2019* (including allegations relating to conduct outside the workplace) by any staff member, and/or
- Professional misconduct, as defined in Part 8, Division 1 of the *Health Practitioner Regulation National Law (NSW)*, by a registered health practitioner, and/or
- A serious criminal offence (carrying a possible penalty of 5 years or more) by any staff member where the criminal conduct is directly relevant to and/or has an impact on their employment (such as fraud for a financial role), and/or
- Conduct by any staff member that presents a serious risk to the safety of patients, other staff or visitors.

### **Staff member**

Any person who is employed or engaged in a NSW Health organisation (including in the Ministry of Health), including temporary, casual or 'locum' staff, visiting practitioners, and contract or agency staff. This does not include students or volunteers, nor staff of undeclared Affiliated Health Organisations.

### **Visiting Practitioner**

A medical practitioner or dentist appointed to practice (otherwise than as an employee) at a NSW Health organisation under section 76 of the *Health Services Act 1997*.

## **1.3 Implementation of this Policy Directive**

The following have key responsibilities in relation to this Policy Directive:

**Chief Executives / the Secretary** must ensure that:

- The Policy Directive is communicated to all managers involved in managing misconduct matters or recruitment, including in relation to casual, locum or agency staff
- Correct delegations are in place to approve user access to the Service Check Register
- SCR records are created, updated or removed with their approval only.

**Workforce Directorates/ Human Resources Departments/ Internal Audit Units or Professional Conduct or Standards Unit** must ensure:

- Provision of instruction, information and training as necessary to support the establishment or review of local procedures to implement this Policy Directive
- Compliance with this Policy Directive.

**HealthShare NSW** must:

- Administer and maintain the Service Check Register database application and associated user manuals
- Manage Service Check Register user accounts, provide support and advice to users, and audit use as required
- Provide information, as required, on the use of the Service Check Register by account users.

## 2 ACCESSING THE SERVICE CHECK REGISTER

Records and information held in the Service Check Register must only be viewed and used for the purposes outlined in this Policy Directive, or as required by law.

Access to the Register is restricted to authorised users within NSW Health. Third parties not covered by this Policy Directive are not entitled to access Service Check Register records except where legally required to do so, for example under subpoena or court order.

Authorised users can view all records on the Register from across NSW Health, however, only those authorised users from within the NSW Health organisation that created a record may update or remove that record.

### 2.1 Requesting access to the Service Check Register

The Employment Screening and Review Unit (ESRU) at HealthShare NSW is responsible for creating user accounts and maintaining a register of all authorised users.

Staff members who need access to the Service Check Register database must complete and sign the '[User Access Request and Confidentiality form](#)' (Appendix 1). The signed form is to be forwarded to ESRU.



Staff of NSW Health organisations can request one of two types of access rights to the Service Check Register:

- ‘Read only,’ which allows the user to use the search function (staff managing recruitment checks would usually only need this level of access)
- ‘Read/write’, which allows the user to create, update or delete records (subject to approval by the Chief Executive / Secretary), and to produce reports about the organisation’s active Register records (staff managing misconduct matters are likely to need this level of access).

In addition, limited staff at the Ministry of Health’s Workplace Relations Branch and the Employment Screening and Review Unit (ESRU) of HealthShare NSW have ‘system administrator’ access to all functions of the database to facilitate system administration, monitoring and auditing.

The Chief Executive / Secretary (or their delegate who must be an appropriately senior staff member in the organisation) is to authorise each access request to ESRU.

Only holders of positions which have ongoing responsibility for recruitment checks, risk assessments or disciplinary decisions in misconduct processes are to have their request authorised. Each NSW Health organisation must keep the number of authorised users to a minimum and advise ESRU when user accounts need to be closed. Existing usernames and passwords must not be transferred to other staff.

### 2.2 Right to view own record

Any person who has a Service Check Register record has the right to get a printed copy of their information contained in the Register.

It is the responsibility of the NSW Health organisation that created the record to send the person a print-out of their information within ten business days of the record having been created or updated (eg from interim to final), as well as upon any further request by the person.

See also section 3.4 regarding advice to be provided to the staff member about their Service Check Register record.

## 3 CREATING, UPDATING AND REMOVING RECORDS

The Chief Executive, or the Secretary, must personally approve the creation, update or removal of a Service Check Register record using the [‘Approval to create / update / remove a SCR record’](#) (Appendix 2). This function cannot be delegated.

Information on the form must include a nominated contact person who can provide detailed information to other NSW Health organisations, when required, as part of recruitment or managing misconduct processes. If the nominated contact person leaves their position, or if the function of maintaining the Service Check Register database is delegated to another person, the record must be updated with details of a new nominated contact person. Chief Executive / Secretary approval is not required to update contact



person details for a record, but the new contact person's access to the database must have been appropriately authorised.

Once signed by the Chief Executive / Secretary, the completed form is to be placed on the investigation file.

### 3.1 Creating Service Check Register records

There are two types of Service Check Register records:

- Interim records are required while an investigation is ongoing (if the conditions under section 3.1.1 have been met), but must be either removed or converted into final records as soon as the relevant process to manage the allegation of serious misconduct has been completed.
- Final records are required once findings have been made and further action in response to the findings determined (if these meet the conditions under section 3.1.2).

Service Check Register records must be created, and may only be created, for alleged or substantiated serious misconduct (as defined in section 1.2) **and** when specific action (as outlined below in section 3.1.1 or section 3.1.2), has been taken to mitigate related risks.

Such action must be based on risks identified during the investigation or management of the allegation, or following a substantiated finding, in line with NSW Health Policy Directive *Managing Misconduct* ([PD2018\\_031](#)), NSW Health Policy Directive *Managing Complaints and Concerns about Clinicians* ([PD2018\\_032](#)), *Prevention and Management of Workplace Bullying in NSW Health* (PD2020\_040), or other relevant policy as applicable.

#### 3.1.1 Alleged serious misconduct (interim records) criteria

A Service Check Register record must be created when the Chief Executive, or the Secretary, suspects on reasonable grounds that the staff member may have engaged in serious misconduct as defined in Section 1.2, **and**:

- The staff member has been suspended from duty to mitigate identified risks while the allegation is being investigated / managed, or
- The staff member is a locum doctor or casual/agency staff, and a decision has been made to not use their services or renew their contract due to risks arising from the allegation, or
- The staff member's clinical privileges have been varied or suspended by the NSW Health organisation because of serious concerns about the safety of patients due to risks arising from the allegation, or
- The staff member has resigned or left their position before the investigation / management of the allegation could be finalised, but if they had not, one of the above actions would have been taken to mitigate identified risks.

### 3.1.2 Substantiated serious misconduct (final records) criteria

A Service Check Register record must be created when a finding indicates there is serious misconduct as defined in Section 1.2 against the staff member, **and**:

- The staff member's employment or engagement is terminated as a response to the finding, or
- The staff member is a locum doctor or casual/agency staff, and a decision has been made to not use their services or renew their contract due to risks arising from the finding, or
- The staff member's clinical privileges have been varied or cancelled by the NSW Health organisation because of serious concerns about the safety of patients
- The staff member has resigned or left their position, but if they had not, one of the above actions would have been taken as a response to the finding.

### 3.1.3 Creating a Service Check Register record when the staff member is absent

Even if the staff member is already absent from the workplace when the NSW Health organisation becomes aware of the allegation (for example, on annual leave), the NSW Health organisation must not delay the related risk assessment. If the criteria outlined above are met, a Service Check Register record is to be created.

While the staff member is unlikely to pose any immediate risks at their current workplace until their return, a Service Check Register record will alert other NSW Health organisations to the identified risks, should the staff member seek employment / engagement elsewhere in NSW Health during their absence.

### 3.1.4 Creating a Service Check Register record after the staff member has resigned

The resignation of the staff member, while the allegation against them is being investigated, or following a finding of serious misconduct against them, does not in itself meet the threshold for creating a Service Check Register record. One of the criteria outlined in Sections 3.1.1 or 3.1.2 must always be met.

If a Service Check Register record was created before the staff member left their position, it must be maintained until the findings have been finalised, unless new information comes to light and a risk assessment (in line with NSW Health Policy Directive *Managing Misconduct* ([PD2018\\_031](#))) indicates that the person could now return to their role if they were still employed / engaged.

If no record was created before the staff member left the position, a risk assessment or review (in line with NSW Health Policy Directive *Managing Misconduct* ([PD2018\\_031](#))) is to be completed if:

- A risk assessment has not yet been completed
- An earlier risk assessment did not identify any risks significant enough to require any of the actions outlined in Section 3.1.1, but additional information has since been received.

If the risk assessment or review finds that the risks are not significant enough to require action outlined under Section 3.1.1 (had the person still been in their role), the person's name must not go on the Service Check Register.

If the risk assessment or review finds that the risks would have required action outlined under Section 3.1.1 (had the person still been in their role), a Service Check Register record must be created.

These risk assessment decisions must be documented.

Further, NSW Health Policy Directives *Managing Misconduct* ([PD2018\\_031](#)) and *Managing Complaints and Concerns about Clinicians* ([PD2018\\_032](#)) require that even if the staff member resigns, the NSW Health organisation must complete any investigation or other misconduct management process that it had started. This includes making findings and decisions about any action that would have been taken as a response to the findings, had the person still been in their role.

If the investigation results in findings that meet the criteria in Section 3.1.2, the person's name must be entered in the Service Check Register. This will ensure an alert is triggered if the person seeks a role elsewhere in NSW Health. If it is identified that the person is already in a role in another NSW Health organisation, the other NSW Health organisation must be notified of the Service Check Register record (see section 3.5).

### 3.2 Updating Service Check Register records

NSW Health organisations must update an interim record to a final one within ten business days of the final findings of a misconduct investigation or management process.

Interim records will also need to be updated where a further risk assessment results in a different risk management action which meets the conditions under section 3.1.1 (such as a change from variation of clinical privileges to suspension from duty).

### 3.3 Removing Service Check Register records

Apart from the Ministry of Health, only the NSW Health organisation that created the record can remove it.

Service Check Register records can only be removed in line with the criteria set in this Policy Directive. The removal of a record without meeting the criteria cannot form a part of any agreements or settlements in industrial disputes or the like.

Before removing a Service Check Register record, the NSW Health organisation must place a print-out or screen shot of the record on the relevant investigation file. Once a record has been removed from the Service Check Register, no history of it will be available to Service Check Register users.

#### 3.3.1 Removing interim records

Interim Service Check Register records (identified on the database as 'pending') must be removed if one of the following applies:

- The record was incorrectly created

- The risk assessment (in line with NSW Health Policy Directive *Managing Misconduct* ([PD2018\\_031](#))) is updated and its outcomes no longer meet the criteria set out in section 3.1.1 of this Policy Directive
- The investigation / management of alleged serious misconduct is discontinued or closed without making findings
- The investigation / management process has been finalised and the allegation of serious misconduct is not substantiated
- A substantiated finding of serious misconduct has been made, but the action to be taken in response to the finding does not meet the criteria set out in section 3.1.2 of this Policy Directive.

### 3.3.2 Removing final records

Final Service Check Register records (identified on the SCR database as 'substantiated') must be removed if one of the following applies:

- The record was incorrectly created
- The NSW Health organisation has reviewed the risks posed by the serious misconduct that led to the creation of the record, and is satisfied that the risks no longer exist or have been sufficiently mitigated to warrant the removal of the record. Such reviews must be documented using the template '[Review of SCR record](#)' (Appendix 4)
- The staff member's record was created following a variation or cancellation of their clinical privileges by the NSW Health organisation, and that variation / cancellation has expired or been reversed
- The NSW Health organisation has become aware that the person with the SCR record is currently doing similar work elsewhere in NSW Health, and has confirmed with an appropriately delegated staff member of the other NSW Health organisation in writing that:
  - The staff member has been continuously employed / engaged by the other NSW Health organisation for 12 months or more after the date of the serious misconduct that led to the creation of the record, and
  - during that time, no risks relevant to the substantiated serious misconduct have been identified and required ongoing mitigation.

### 3.3.3 Removing old records that do not meet the criteria of this Policy Directive

NSW Health organisations must review their Service Check Register records against the new criteria set out in this Policy Directive, and remove any records that no longer meet the criteria. The Ministry of Health, and the Employment Screening and Review Unit of HealthShare NSW, will provide further guidance and assistance on this.

Wherever possible, NSW Health organisations must advise each of these record holders in writing that their record has now been removed from the Service Check Register, as

the criteria under which their record was originally created and maintained no longer applies as of the date of this Policy Directive.

### 3.4 Advising a staff member about their Service Check Register record

Wherever practicable, NSW Health organisations must provide prior initial advice to the staff member about the requirement to create a Service Check Register record, or update the status of an existing one, at the time of advising them about what risk management action or action in response to findings will be taken. If, for risk management reasons, a record has to be created before the staff member can be advised, the NSW Health organisation must clearly document these reasons, and detail any attempts to advise the staff member beforehand.

Once the Chief Executive / Secretary has approved the creation or update of the Service Check Register record, and the record has been created or updated in the database, this must be confirmed to the staff member in writing. A copy of their information on the Register must be attached. The staff member must also be advised:

- Of the specific mandatory criteria for the creation of their record
- That the Service Check Register database is checked as part of any NSW Health recruitment process
- Of their review rights
- How their record may be removed.

NSW Health Organisations are to include the following in their template letters:

*An allegation / finding of serious misconduct ([insert relevant point(s) from the definition at section 1.2]) has been made against you, and following a risk assessment, a decision has been made to [insert relevant point from section 3.1.1 or 3.1.2 as appropriate]. As a result of this decision, your name has been placed / will remain on the NSW Health Service Check Register (SCR), as required by the current NSW Health Policy Directive Service Check Register for NSW Health. A print-out of your information on the Service Check Register is attached for your information. [For incomplete matters, add:] Please note that even if you resign from your employment, your SCR record will not be removed unless and until it meets the set criteria for removal.*

*If you become a preferred candidate in any future NSW Health recruitment process, your name will be checked against the SCR. A SCR record does not mean that you cannot be employed or engaged in NSW Health. The employing NSW Health organisation will assess the relevance of the serious misconduct that lead to the creation of the SCR record against the position you are being considered for. If relevant, the NSW Health organisation will formally assess any risks arising from the serious misconduct for the new position. You will be given an opportunity to provide any relevant information for consideration before any final decisions about your appointment / engagement are made.*

*You may seek a review of your record if you believe your request meets one of the review criteria under the current NSW Health Policy Directive on Service Check Register for NSW Health. The Policy Directive is available on the NSW Health website at <http://www.health.nsw.gov.au/policies/pages/default.aspx>. Section 4 of the Policy Directive*



*provides information about how to request a Service Check Register review, what criteria will be considered and what supporting documentation you may need to provide.*

When a Service Check Register record is removed, the NSW Health organisation must, wherever possible, inform the person with the record of the removal in writing within ten business days of the review outcome.

### **3.5 Advising other NSW Health employers about a Service Check Register record**

If a NSW Health organisation creates a Service Check Register record for a staff member, they must identify if the staff member is employed / engaged anywhere else in NSW Health. If so, they must provide the other employing NSW Health organisations with sufficient information about the record and the alleged or substantiated serious misconduct that led to it, to allow those other organisations to assess whether it presents any risks for them, and to make any local risk management decisions. The '[SCR Summary Statement](#)' template (Appendix 3) is to be used.

Other employing NSW Health organisations must also be kept informed of any significant new information that may come to light during the investigation / management process that may affect their local risk assessment and management. They must also be informed of the outcome of the investigation / management process.

#### **3.5.1 Action the notified NSW Health organisation must take**

The NSW Health organisation receiving the notification is not required to complete its own investigation nor create a new SCR record. However, it must complete its own risk assessment (using the risk assessment tool provided under NSW Health Policy Directive *Managing Misconduct* ([PD2018\\_031](#))) based on the information provided, and make a decision about any local action. This assessment is not a review of any action being taken by the primary NSW Health organisation.

Where a staff member's appointment is terminated in one part of the NSW Health Service following a finding of misconduct, this may affect engagements they have elsewhere in the NSW Health Service. For further information, see NSW Health Policy Directive *Managing Misconduct* ([PD2018\\_031](#)).

## **4 REVIEWING RECORDS**

NSW Health organisations are responsible for those records in the register they have created, including their maintenance, review, update and removal, as appropriate.

All reviews must be documented using the template '[Review of SCR record](#)' (Appendix 4), clearly summarise any information considered, and state the reasons for the outcome.

To ensure the continued effectiveness of the Service Check Register, each record must remain on the Register unless one of the criteria for removing it (as outlined in Section 3, above) has been met.



### 4.1 Requesting a review of a Service Check Register record

A person with a Service Check Register record may seek a review of their own record by making a request to the Chief Executive of the NSW Health organisation that created the record. (Staff of the Ministry of Health will need to make their request to the Secretary.) The NSW Health organisation must complete the review of the record within 20 business days of receiving the request, and give the person an opportunity to make submissions to the review process. The person seeking the review must be advised of any delays in the review process and the reasons for such delays.

The person with the record must be advised of the outcome of the review in writing. The NSW Health organisation must also advise the person about the type of information or evidence that might be helpful for any further review.

### 4.2 Reviews of records by NSW Health organisations

The NSW Health organisation that created the Service Check Register record must review it in any of the following circumstances:

- Whenever new information is received that may mean the record needs to be updated or is no longer needed.
- The person with the record asks for a review of the continued need for it on the basis that they believe that:
  - Their record has been created or maintained incorrectly, or
  - The risks related to the substantiated serious misconduct no longer exist because of action they have since taken, or because of a significant change in their circumstances, or
  - They have worked in a similar role elsewhere in NSW Health continuously for 12 months or more since the serious misconduct that lead to the creation of the Service Check Register record, and have had no issues, or
  - A decision by the relevant registration board or professional council has relevance to the serious misconduct that lead to the creation of the record.

Review requests must be supported by relevant information and evidence (see section 4.2.1).

- A review of the investigation / management of the serious misconduct has resulted in a change to the findings or to the decision about the response to findings.
- A dismissal, termination or non-renewal of contract has been overturned or found to be unfair.
- For final records, at least every two years.
- For interim records, whenever a revised risk assessment (in line with NSW Health Policy Directive *Managing Misconduct* ([PD2018\\_031](#))) results in a change to risk management action.

### 4.2.1 Considerations in the Service Check Register record review

Depending on the reason for the review, the review will need to determine whether the record was created in accordance with this Policy Directive in the first place, and / or whether the related risks have now been sufficiently mitigated to warrant removing the record.

The NSW Health organisation must consider the following in their review:

- The responsibilities of the role the person was in at the time of the serious misconduct
- The seriousness of the misconduct (including whether there is a criminal conviction), and the identified risks that led to the creation of the record
- The length of time since the serious misconduct (in general, the longer the period of time with no further incident, the lower the risk)
- Whether the person is currently doing similar work elsewhere in NSW Health and has been employed / engaged by the other NSW Health organisation for 12 months or more after the date of the serious misconduct. If an initial StaffLink search indicates this may be the case, further information from an appropriately delegated staff member of the other NSW Health organisation must be sought and the following considered:
  - Any risk assessments relevant to the substantiated serious misconduct that resulted in the Service Check Register record, and any related risk management action taken by the other NSW Health organisation
  - The nature and responsibilities of the role the person is in
  - The length of time the person has been employed by them
  - Any other relevant information that may support the removal of the record.
- Any supporting information provided by the person with the record:
  - Any submissions about action they have taken, significant changes to their circumstances, or any other information that demonstrates that the serious misconduct is not likely to happen again
  - References on their behalf, addressing identified risks following the serious misconduct. The type of reference will depend on the nature and circumstances of the serious misconduct, but could include workplace references or information from professionals who have provided treatment, counselling or other help to the person.
  - Details and evidence of any relevant training or courses that may have addressed the original risks identified
  - Information about any decision by the relevant registration board / professional council to change or remove registration conditions, or take no further action with a complaint received. The NSW Health organisation needs to consider the reasons for the board's / council's action, and their

relevance to the ongoing need for the record. However, board / council decisions about health practitioners' registration conditions are separate from decisions made by the employer to manage workplace risk, and do not automatically lead to the removal of a record.

- Any other evidence or information that demonstrates that the risks have been addressed or are no longer relevant.

### 4.3 Reviews of records by the Ministry of Health

If a person is dissatisfied with a decision taken by the NSW Health organisation in response to a request to correct, update or remove a record, they can seek a review of that decision by the Workplace Relations Branch within the NSW Ministry of Health.

The Ministry will only review a decision about a record after the NSW Health organisation that created the record has reviewed it, or where there are compelling reasons for the Ministry to undertake the review in the first instance.

The Ministry will complete its review within 20 business days of receiving the request. If a longer period is needed, the Ministry will notify the person requesting the review and provide an indicative alternative completion date.

In its review, the Ministry will assess whether the initial decision to create the record, and the decision to maintain the record following a local review, were made in accordance with this Policy Directive.

To undertake the review, the Ministry will seek relevant records and documentation directly from the NSW Health organisation. The Ministry will advise both the person with the Service Check Register record and the relevant NSW Health organisation of the outcome in writing.

### 4.4 Monitoring and managing the Service Check Register database

NSW Health organisations must monitor their Service Check Register records and authorised users (using the Register's report function) to ensure that both remain up to date.

Local monitoring is to consider:

- The ongoing need for each authorised user within the organisation (including the total number of staff with authorised access)
- The number of interim records, how long those records have been open, and whether there is any ongoing need for them to remain so (with the view to removing or updating all interim records as soon as possible)
- The last review date for all final records.

NSW Health organisations must keep a record of such monitoring for audit purposes.

In addition, NSW Health organisations must address any issues identified by the Employment Screening and Review Unit (ESRU) as part of their quarterly review of the state-wide database.

## 5 USING THE SERVICE CHECK REGISTER IN RECRUITMENT AND MISCONDUCT PROCESSES

### 5.1 Checking the Service Check Register as part of recruitment screening

As part of any recruitment or appointment process, NSW Health organisations must check all preferred applicants, and persons who may be appointed as casual or 'locum' staff or as contracted agency staff, against the Service Check Register. This must take place before appointment (but refer to section 5.1.1 regarding urgent appointments). The check must be done even if those applicants are already employed or engaged in NSW Health.

Applicants must be advised that they will be checked against the Service Check Register if they become the preferred applicant.

The preferred applicant's name, including any aliases, must be checked against the Service Check Register database. Records of the Register status search result must be kept, including details of the name searched and the time and date of the search.

If a record is identified, its potential effect on the proposed new appointment must be assessed as outlined in section 5.4.

A Service Check Register check does not replace the need to do any other mandatory recruitment or appointment checks. Full information about mandatory pre-employment screening requirements is available in the following NSW Health Policy Directives:

- *Recruitment and Selection of Staff to the NSW Health Service* ([PD2017\\_040](#))
- *Visiting Practitioner Appointments in the NSW Public Health System* ([PD2016\\_052](#))
- *Working with Children Checks and Other Police Checks* ([PD2019\\_003](#)).

#### 5.1.1 Retrospective screening for urgent appointments of casual or 'locum' doctors and nursing and/or midwifery agency staff

In some circumstances, the appointment of staff (including through locum and nursing and midwifery agencies) needs to happen at short notice and out of office hours, and it may not always be possible to check the Service Check Register beforehand.

In such situations, the Service Check Register check will need to be done retrospectively. The staff member must be advised that their ongoing appointment / engagement is dependent on the outcome of the check. The retrospective check must be done as soon as practical.

If a Service Check Register record is identified, an immediate recruitment risk assessment must be done to determine if the appointment can continue.

#### 5.1.2 Approaches for where the screening process returns a Service Check Register record

An existing Service Check Register record does not mean the person cannot be employed or engaged.

The recruiting NSW Health organisation must complete and document a recruitment risk assessment, outlining if and how the risks are relevant to the position for which the applicant is being considered, and whether the Health organisation can adequately control those risks.

### 5.1.3 Completing a recruitment risk assessment

A recruitment risk assessment must:

- Be completed by a risk assessor, who must be senior staff with ongoing responsibilities, skills and experience in undertaking recruitment risk assessments (such as risk assessments around criminal records), and
- Follow established principles and processes for managing recruitment risk assessments (including the principles of procedural fairness)
- Consider whether some clinical input into the recruitment risk assessment is needed where the assessment involves a registered health practitioner (noting however, that only authorised Service Check Register users can have access to the Service Check Register record and related information).

The recruiting NSW Health organisation must contact the nominated contact person of the NSW Health organisation that created the Register record for additional information. This information must be provided in writing using the '[SCR Summary Statement](#)' template (Appendix 3).

If the SCR Summary Statement does not provide enough information for the recruiting NSW Health organisation to complete their risk assessment, it must seek further details from the nominated contact person before making a decision.

If an initial assessment of the information determines that there are no risks relevant to the position for which the applicant is being considered, this must be documented and the recruitment process will continue.

If an initial assessment of the information determines that there may be risks relevant to the position for which the applicant is being considered, the recruiting NSW Health organisation must contact the applicant to advise them that a SCR record has been identified and:

- Confirm the details of the record and the applicant's understanding of the reasons for the record
- Advise the applicant about how the record is relevant to the position for which they are being considered and advise the applicant about the type of information that may help the risk assessment
- Give the applicant an opportunity to provide additional information or evidence that may be relevant to the allegation or finding of serious misconduct.

Additional information may include workplace references from employment after the alleged or substantiated serious misconduct, medical or other professional references or assessments relating to treatment or counselling, courses attended, registration authorities' decisions following alleged or substantiated serious

misconduct, or evidence of a significant change in circumstances that may be relevant.

Based on the information obtained, the recruiting NSW Health organisation must determine whether any identified relevant risks affect the person's ability to undertake the full range of responsibilities and tasks of the position, and whether the organisation can manage those risks.

Where the NSW Health organisation assesses that it cannot manage identified risks, it must document sufficient detail about this assessment to allow for the rationale to be understood. The risk assessment needs to assess why the organisation is unable to put adequate risk controls in place. The final assessment and decision must be documented using the ['Recruitment Risk Assessment for SCR records'](#) template (Appendix 5).

The NSW Health organisation must advise the applicant of the outcome of the recruitment risk assessment.

The recruitment risk assessment does not consider risks to the position the person was in at the time of the alleged or substantiated serious misconduct and is not a review of whether the person's name should be removed from the Service Check Register.

### **5.2 Checking the Service Check Register when considering disciplinary action**

Where a NSW Health organisation is deciding what action is appropriate as a response to a current finding of misconduct against a staff member, they must consider, among other things, the staff member's previous work history, including any previous conduct issues and the period of time since them.

This will involve a review of the Service Check Register. If a Service Check Register record is found, the NSW Health organisation must seek further information from the relevant NSW Health organisation.

The decision-maker needs to consider whether the previous substantiated serious misconduct is similar to the current substantiated misconduct, when it happened, and whether it shows a pattern of behaviour.

The information must only be used in determining the appropriate response to the current substantiated misconduct, not to weigh the balance of probability during an investigation.

For further information on making decisions about an appropriate response to misconduct findings, refer to NSW Health Policy Directive *Managing Misconduct* ([PD2018\\_031](#)).



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## 6 APPENDIX LIST

1. Appendix 1 - User Access Request and Confidentiality form
2. Appendix 2 - Approval to Create / Update / Remove a SCR Record
3. Appendix 3 - SCR Summary Statement
4. Appendix 4 - Review of SCR Record template
5. Appendix 5 - Recruitment Risk Assessment template

The appendices can be found on the NSW Health intranet site at <http://internal.health.nsw.gov.au/jobs/scr/index-scr.html>.

For assessing and managing risks related to alleged misconduct, refer to the risk assessment tool provided under NSW Health Policy Directive *Managing Misconduct* ([PD2018\\_031](#)). The tool is available on the NSW Health intranet site at <http://internal.health.nsw.gov.au/jobs/conduct/index-conduct.html>.