

Building Practitioners Board

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Mr Brendan Watkins
CEO,
SPASA Victoria Limited
Building 10
270 Ferntree Gully Road
Notting Hill VIC 3168

Goods Shed North
733 Bourke Street, Docklands
Victoria, Australia 3008

PO Box 536, Melbourne
Victoria, Australia 3001

Telephone 1300 815 127
Facsimile 03 9618 9046
Email bpb@vba.vic.gov.au

DX 210 299 Melbourne
www.vba.vic.gov.au

Dear Mr Watkins,

Police Checks on all new Applications for Registration as a Building Practitioner in Victoria

As you will be aware, following amendments made in 2013, section 169(2)(cb) of the Building Act 1993 (Vic) requires that all new applications for registration as a building practitioner in Victoria be accompanied by an authorisation signed by the applicant for the conduct of a police check on the applicant. Section 169A of the Building Act 1993 permits the Building Practitioners Board (the BPB) to arrange for a police record check on the applicant.

I am writing to you to advise you and through you your members that the BPB will shortly commence to conduct a police record check on all new applications for registration. This will be a staged process commencing with all applications for registration as a Domestic Builder – Unlimited, Building Surveyor, Demolisher, or Erector of Temporary Structures. It will be extended soon after to all applications. Any one of your members making application for registration in Victoria from now on should proceed on the assumption that their application will be subject to a police check.

This new requirement is in addition to the long standing requirement under section 169(2)(ca) that an application for registration be accompanied by the prescribed information relating to the character of the applicant. That information is set out in Regulation 1509 of the Building Regulations 2006. That regulation requires an applicant to disclose to the BPB whether he or she has within the last 10 years as an adult, or the last 5 years as a child, been convicted or found guilty of an indictable offence or an offence that, if committed in Victoria, will be an indictable offence involving fraud, dishonesty, drug trafficking or violence.

The BPB will not confine its assessment of the results of Police Record Checks to only Regulation 1509 matters. However, the BPB will regard it as a very serious matter if an applicant fails to disclose the information required by Regulation 1509 and it comes to the BPB's attention as the result of a Police Record Check.

Attached to this letter is a copy of the guidance adopted by the BPB for the assessment of the results of Police Record Checks. As the guidance states, the BPB will not be concerned with minor offending that has no relevance to the responsibilities of a registered building practitioner. The BPB will be concerned where a Police Record Check discloses serious offending, particularly involving violence or dishonesty that raises questions for the BPB as to whether the applicant has the good character required to fulfil the obligations and responsibilities of a registered building practitioner.

As outlined in the attached document, the BPB will adopt a risk based approach to the consideration of each Police Record Check result when determining the extent to which an applicant's criminal history will affect the application for registration. A risk based approach will ensure that all

applicants are treated equally and fairly, that assessments are based on objective criteria and that the administrative law principles of lawfulness, fairness and rationality are observed in the exercise of the discretion vested in the BPB.

One of the primary responsibilities of the BPB is to ensure that the public is protected against registration of a building practitioner who is reasonably likely to cause injury, damage or loss to either consumers or to the industry. Each Police Record Check that discloses serious offending will be considered in terms of the relevance of that offending to the activities undertaken by a building practitioner in the category or class of registration sought by the applicant. This will cover the full scope of work covered by the category or class applied for, not merely by the work the applicant may be currently doing or intend to do.

Past offending that has a direct relationship with the performance of building work such as offending committed performing building-related activities or within a building-related environment such as an assault by a building worker on a building owner; or the falsification or building contracts or permits will be of greatest concern to the BPB. The BPB will also be very concerned about offending that involves conduct that, if transferred to a building-related activity or building related environment, would pose a risk to the industry. This would be offending such as an assault carried out over a financial debt; or the falsification of documents such as a tax return.

Where the offending disclosed on a Police Record Check raises concerns for the BPB, the applicant will be invited to provide more information and may be required to attend a Character Interview. In seeking more information and interviewing the applicant, the BPB will be seeking evidence from the applicant that he or she has taken steps to address the behaviour that gave rise to the offending. The BPB will require information to allow it to make an assessment as to whether the applicant poses a risk to consumers and other members of the building industry. The type of information the BPB will be looking for is evidence that the applicant has taken positive steps to address past behaviours such as participating in educational and vocational training; having a record of steady employment; participation in alcohol or drug treatment programs or anger management programs as appropriate. Applicants will be afforded an opportunity to provide information regarding his or her Police Record Check results or other information and references, and for this information to be considered.

The handling of all Police Record Checks will be strictly confidential and revealed only to those required to have access in order to assess the applicant's eligibility for registration. Any breach of confidentiality will be considered serious and appropriate disciplinary action will be taken. The BPB will maintain and retain only appropriate records relating to the Police Record Checks as is permitted by privacy legislation. Information gathered will not be used for any purpose other than as part of registration assessment process. No information will be disclosed to any other person, agency or organisation without the permission of the applicant or relevant authority. Police Record Check results will be held securely in restricted access electronic form. Hard copies will only ever be made for reference in a Character Interview with an applicant. No hard copies will be retained and any made will be shredded and disposed of securely.

The BPB understands that some applicants may be concerned about the new processes. The BPB welcomes any comments on the attached guidance and will keep your organisation informed of any refinements to the document that take place as its full implementation proceeds. The guidance will be reviewed and kept up to date at all times.

Sincerely,

A handwritten signature in black ink, appearing to read 'F Hanlon', with a stylized flourish at the end.

Dr Fiona Hanlon
Chair, Building Practitioners Board

BUILDING PRACTITIONERS BOARD

GUIDANCE ON THE ASSESSMENT OF POLICE RECORD CHECK RESULTS

1. INTRODUCTION

The Building Practitioners Board (BPB) is established by section 183 of the *Building Act 1993* (the Act) which provides that amongst other things its function is to:

“(a) to administer a registration system for building practitioners”.

Part 11 of the Act deals with registration of building practitioners.¹ Section 170 of the Act provides that the BPB must register any applicant who:

- has complied with the application requirements (section 170(1)(a));
- either holds the prescribed qualification in the class of practitioner for which they are applying to be registered or otherwise holds a qualification that the Board considers is equivalent to the prescribed qualification (section 170(1)(b));
- **is of good character (section 170(1)(c));** and
- has complied with any other condition prescribed for registration in that category or class (section 170(1)(d)).

The purpose of this document is to give guidance to applicants as to the types of matters the BPB will take into account in assessing whether an individual applicant is of ‘good character’ where the applicant has a history of prior criminal conduct as disclosed by a Police Record Check.

2. REQUIREMENT FOR AN APPLICANT TO DISCLOSE PRIOR CRIMINAL CONDUCT AND CONSENT TO A POLICE RECORD CHECK

Regulation 1509 of the *Building Regulations 2006* requires an applicant for registration as a building practitioner to disclose in their application information as to whether he or she has within the last 10 years as an adult, or the last 5 years as a child, been convicted or found guilty of an indictable offence or an offence that, if committed in Victoria, will be an indictable offence involving fraud, dishonesty, drug trafficking or violence.

In addition, section 169(cb) of the Act requires that every application for registration as a building practitioner be accompanied by an authorisation signed by the applicant for the conduct of a Police Record Check.

¹ The BPB is responsible for the registration of the following categories and classes of building practitioners - Building Surveyor (Unlimited); Building Surveyor (Limited); Building Inspector (Unlimited); Building Inspector (Limited); Quantity Surveyor; Civil Engineer; Mechanical Engineer; Electrical Engineer; Fire Safety Engineer; Draftsperson Building Design (Architectural); Draftsperson Building Design (Interior); Draftsperson Building Design (Services); Commercial Builder (Unlimited); Commercial Builder (Limited); Domestic Builder (Unlimited); Domestic Builder (Limited); Domestic Builder (Manager); Demolisher (Low Rise Buildings); Demolisher (Medium Rise Buildings); Demolisher (Unlimited); Erector or Supervisor (Temporary Structures), Class 1; Erector or Supervisor (Temporary Structures), Class 2

The BPB will seek a Police Record Check in relation to every new application for registration as a building practitioner.

3. ASSESSING THE RESULTS OF A POLICE RECORD CHECK

Where an applicant discloses to the BPB an offence specified in Regulation 1509, or the results of the Police Record Check discloses prior criminal conduct on the part of the applicant, the BPB will make an assessment of the relevance of that information to the 'good character' of the applicant for the purposes of section 170(1)(c).

In relating the particular conduct to the category of registration sought by the applicant, the BPB will be guided by the objectives of the Act and its statutory responsibilities as the registering authority.

By section 4 of the Act, the BPB is required to have regard to, amongst other things, the following relevant objectives of the Act:

- “(a) to protect the safety and health of people who use buildings and places of public entertainment;*
- (d) to facilitate the adoption and efficient application of— (i) national building standards;*
- (e) to facilitate the cost effective construction and maintenance of buildings and plumbing systems;*
- (g) to aid the achievement of an efficient and competitive building and plumbing industry.*

Taking these objectives into account, the BPB takes the view that Parliament designed the practitioner registration system to ensure that only persons of good character and holding appropriate qualifications and experience in their practitioner categories are to be registered as building practitioners so as to ensure health and safety, high building standard and consumer protection.

Registered building practitioners have a wide range of responsibilities and obligations. They must observe the requirements of a wide range of legislation including:

- *Building Act 1993*
- *Building Regulations 2006*
- *Domestic Building Contracts Act 1995*
- *Occupational Health and Safety Act 2004*
- *Building and Construction Industry Security of Payments Act 2002.*

Building practitioners must also comply with the requirements of the Australian Standards, Building Code of Australia, local governments and the Victorian Building Authority's Standards and Tolerances. Honesty and integrity are important. Building practitioners must ensure that all their legislative and contractual responsibilities and obligations are met.

Where the results of the Police Record Check indicates the applicant does not have a clear record the BPB will consider and assess an individual's Police Record Check results on a case-by-case basis. The conduct disclosed in the Police Record Check will be considered in context, based on relevance and the potential risk of harm to consumers and other users of building practitioner services, the health and safety of employees and work colleagues of the applicant, the ability of the applicant to meet the standards of quality, and of complying with all relevant legislation, regulations and standards.

Certain conduct disclosed by a Police Record Check will give rise to concern as to whether the applicant has the good character required to maintain building quality standards, reduce the incidence of poor quality work, increase standards of work safety and amenity, avoid misleading conduct and protect consumers of services provided by registered building practitioners.

Criminal assessment history information will be considered objectively and any decision based on the outcomes of a Police Record Check, either in whole or part, will be undertaken fairly and equitably and without discrimination.

In considering the results of a Police Record Check in an individual case the BPB will adopt a risk based assessment approach to ensure that all applicants are treated equally and fairly, that assessments are based on objective criteria and that the administrative law principles of lawfulness, fairness and rationality are observed in the exercise of the discretion vested in the BPB.

This approach is designed to ensure that the BPB takes into account a range of relevant considerations when exercising its discretion. In all cases the paramount consideration for the BPB will be to make a fair, balanced and objective assessment of the relationship between an individual applicant's criminal behaviour and the risk posed to the building industry and consumers.

4. PROCESS FOLLOWING RECEIPT OF POLICE RECORD CHECK RESULT

4.1 APPLICANT HAS CLEAR RECORD

Where the results of the Police Record Check discloses no past criminal activity or pending criminal prosecution, the applicant may be recommended for registration in the category sought if they in all other respects meets the requirements for registration and there are no other matters relevant to the assessment of the applicant as being of good character (e.g. a history of insolvency or disciplinary action)

4.2 APPLICANT DOES NOT HAVE CLEAR RECORD

If a Police Record Check reveals that an applicant has a criminal history, it will not automatically prevent the Board from finding that the applicant is of "good character" and refusing the applicant's registration. A criminal history is one of a number of factors relevant to "good character".

The BPB will consider how the results of the Police Record Check relate to the obligations and responsibilities of the category and class of registration sought by the applicant. This consideration will be made on the circumstances of the particular application.

4.3 POLICE RECORD CHECK INDICATES MINOR OFFENDING

Where the Police Record Check results disclose some history of past offending but that offending:

- took place when the applicant was young, particularly under 18 years of age;
- involved only a single minor (non-indictable) offence where the penalty was non-custodial and has been fully discharged and the offending is not recent;
- relates to an offence that has since been decriminalised in Australia or was an offence overseas but not in Australia at the time of offending; or
- is not offending of the type that outlined in section 4.4 of this document.

the applicant may be recommended for registration in the category sought if they in all other respects meet the requirements for registration and there are no other matters relevant to the assessment of the applicant as being of good character (e.g. a history of insolvency or disciplinary action).

Where the Police Record Check discloses that the applicant has a history of illegal possession of drugs the BPB may ask the applicant for evidence that he or she has taken action to overcome their drug habit such as evidence of successful completion of a drug treatment program.

4.4 POLICE RECORD CHECK INDICATES MATTERS OF CONCERN ABOUT THE CHARACTER OF THE APPLICANT

In some cases the conduct disclosed in a Police Record Check will be serious and will raise concerns for the BPB as to whether the applicant has the good character required to fulfil the obligations and responsibilities of a registered building practitioner.

A record of criminal conduct involving dishonesty, deceit or exploitation of other people will give the BPB cause for concern that the applicant may not regard the proper observance of his or her responsibilities with sufficient gravity. This could result in non-compliant and unsafe building sites and building work or abuse of contractual obligations to clients and other building practitioners. A past history of offences involving fraud, deception or theft will raise particular concerns given the large sums of money involved in many building projects and the ready access building practitioners have to clients' premises.

A Police Record Check that discloses a history of criminal behaviour involving violence will give the BPB cause for concern that the applicant may not respect the personal safety and bodily integrity of clients and may pose a threat to the health and safety of others. It will also give rise to concern that the applicant will not observe restraint and proper process when dealing with disputes with clients, other building practitioners, staff, or with persons on properties adjoining a building site.

4.5 RELEVANCE OF CATEGORY OF REGISTRATION SOUGHT

In assessing the relevance of the results of an applicant's Police Record Check the BPB will take into account the category of registration sought by the applicant. Where the applicant seeks registration in a category where they will have direct access to consumers the BPB will place greater relevance on a history of violence than for an applicant seeking registration in a technical category where they will be less likely to work one to one with consumers or where their work will be supervised.

The BPB will consider seriously a history of dishonesty on the part of an applicant seeking registration in a category such as Domestic Builder – Unlimited where, if registered, the applicant will have responsibility for all components of building work and for engaging other building practitioners, staff, apprentices and contractors. A history of dishonesty will give rise to the concern that the applicant may not have the good character necessary to carry on business diligently, and to secure the honesty of his or her staff and respect their contractual obligations to consumers.

Similarly, much responsibility is placed on those registered in the category of Building Surveyor. A history of dishonesty on the part of an applicant for registration in this category will raise concerns for the BPB as to whether the applicant has the good character necessary to establish and maintain a proper compliance culture, which demonstrates proper respect for legal, regulatory and professional obligations and exercises candour and good faith in dealings with regulators.

In all cases, the BPB will regard it as a very serious matter if the Police Record Check results indicate that the applicant has a history of criminal conduct of the type set out in Regulation 1509 and the applicant has not disclosed that conduct in his or her application. If an applicant has not disclosed his or her criminal history and such criminal history is significant, such non-disclosure may trigger an automatic rejection of the application.

5. CHARACTER INTERVIEWS OF APPLICANTS OF CONCERN

The BPB may, pursuant to section 169(3) of the Act, request more information from the applicant regarding the matters shown on the Police Record Check, in order to make an assessment of his or her good character. Objective evidence of character will be sought through its demonstration in recorded documented evidence of behaviour. The type of information sought may include personal, business, and financial references, or evidence of a stable pattern of employment history, including verification of dates of employment. The latter will be requested by the BPB where the Police Record Check discloses offences involving dishonesty or obtaining income by illegal means, including drug trafficking. Where the Police Record Check discloses offences involving violence, the BPB may seek evidence from the applicant that he or she has taken steps to address their conduct such as evidence of attendance at an anger management program. The BPB may also seek out additional information in consultation with the applicant.

The BPB will advise the applicant of the information sought in each case and a copy of this document will be forwarded when writing to the applicant. It is also likely that the applicant will be required to attend for a Character Interview in accordance with the principles of natural justice and fairness outlined below.

Where the applicant has engaged in conduct in the past that reflects adversely on his or her good character the BPB will be looking for objective evidence from the applicant that his or her past conduct is not reflective of current character or an indication of how the applicant will conduct his or herself in the future. The Board will be seeking evidence from the applicant that he or she can demonstrate that their present conduct is an improvement from their past conduct. The more serious the applicant's past offending, the greater the evidence of demonstrated change the Board will be seeking.

The applicant should be able to demonstrate to the BPB that they appreciate the significance of their past offending and has rehabilitated his or herself such that he or she will not repeat the offending or further depart from the standards required of them in the future if registered as a building practitioner.

In order to inform an evidence-based assessment the kinds of questions that could be asked of an applicant include:

- What were the circumstances surrounding the offending?
- Have those circumstances changed since the offending and, if so, how?
- What steps did the applicant taken to affect their rehabilitation following the offending?
- What documentary evidence of rehabilitation, such as reports or certificates, can they provide?
- What has been the applicant's behaviour and general character since he or she committed the offence(s)?

6. PRINCIPLES OF NATURAL JUSTICE AND FAIRNESS

In the context of considering the Police Record Check results of an applicant for registration, natural justice can be understood to mean that assessment decisions are balanced, fair and just, and that persons have an opportunity to have input into the decision making process, giving them the opportunity to provide information regarding his or her Police Record, or other information and references, and for this information to be considered. It also means that people have a right to know about any information that is held about them and could be used to declare them ineligible for registration as a building practitioner.

Where the results of a Police Records Check cause the applicant to be an Applicant of Concern the applicant will be afforded an opportunity to provide information regarding his or her Police Record Check results or other information and references, and for this information to be considered. Documented evidence of the assessment and decision will be maintained.

The Police Record Check will only be used for evaluating the applicant for registration as a building practitioner. It will not be used to discriminate on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

7. PRIVACY AND STORAGE OF POLICE RECORD CHECK INFORMATION

The handling of all Police Record Checks will be strictly confidential and revealed only to those required to have access in order to assess the applicant's eligibility for registration. Any breach of confidentiality will be considered serious and appropriate disciplinary action will be taken. The BPB will maintain only appropriate records relating to the Police Record Checks as is permitted by legislation. Information gathered will not be used for any purpose other than as part of registration assessment process. No information will be disclosed to any other person, agency or organisation without the permission of the applicant or relevant authority.

8. APPEAL PROCESS:

Where a person has been refused registration on the basis of character, the results of their police check will be made available to them for a period appropriate to retention periods outlined in relevant privacy legislation. The reasons for their refusal will be outlined and included in the official communication of the BPB's decision. A person to whom a decision of the BPB applies may apply for a review of the decision to the Victorian Civil and Administrative Tribunal (VCAT). The prescribed period in which to lodge an appeal is 60 days which commences from the date of the decision.