

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
FAMILY COURT OF AUSTRALIA

Question No. 127

Senator Ludwig asked the following question at the hearing on 24 May 2007:

Employment of persons with criminal records/histories.

- a) Are you able to indicate what criminal record or history checks are undertaken for members of staff who are applying
 - i) Does this cover all staff – permanent and temporary?
- b) Are you able to indicate – during 2006-07 – whether or not any staff have been dismissed as a result of a discovery of a criminal record or history.
 - ii) If so:
 - 1. How was this discovered?
 - 2. Without identifying the person, give details as to the history?

The answer to the honourable senator's question is as follows:

a) The Court's practice is to undertake AFP criminal record checks for new staff of the Court. It is a condition of their engagement that the check is undertaken and the outcome is satisfactory.

Child care workers are also subject to additional checks having regard to the work they undertake.

- i) Yes – this practice covers all staff both permanent and temporary.

b) During 2006-07 one employee of the Family Court of Australia was dismissed, by termination of probationary appointment, following discovery that they were involved in criminal proceedings. However, the decision to end the employment, and subsequently to confirm that decision, was a direct consequence of the person's own conduct and not of the circumstance that the person was involved in criminal proceedings which at that point remained unresolved.

The employee's engagement was subject to probation for three months from commencement. A condition was that the person must be assessed as meeting the Court's performance and conduct requirements. The employee was informed that failure to meet those requirements could lead to termination of employment.

The person had to undergo a criminal history check conducted by the Australian Federal Police. In this regard, the person indicated no pending proceedings. However, the police check showed that there were pending proceedings for unlawfully dealing with found property.

The key issue for the Court, was not the fact that the person had pending criminal proceedings, it was that the Court had to be able to rely on the person's trustworthiness. The person had not dealt with the Court frankly and truthfully.

Having regard to this and other matters it had raised with the person, and taking into account the person's own responses, the Court concluded that the person's behaviour had not met the standard it required. It considered representations made by the person and reviewed and upheld the decision taken.

The person made a complaint to the Human Rights and Equal Opportunity Commission about discrimination on the basis of a criminal record. The Court understands that the Commission considered both the complaint and the Court's submissions. Having done so, the Commission declined to investigate the matter further.