



Victorian Public Sector Commission

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The Honourable Robert Redlich QC
Commissioner
Independent Broad-Based Anti-Corruption Commission
Level 1, North Tower, 459 Collins Street
Melbourne Victoria 3000

Dear Justice ^{Robert} Redlich,

Operation Lansdowne – Recommendation 5

I am writing to update you on the further steps the Victorian Public Sector Commission (the Commission) has taken to strengthen probity in public sector recruitment.

As outlined in my letter of 31 January, the Commission released the *Victorian Public Service Executive Pre-employment Screening Policy* in October 2018 as an initial step in the development of a whole-of-Victorian public sector pre-employment screening policy. A staged implementation approach has been followed, enabling the Commission to work through issues in applying the policy to Victorian Public Service (VPS) appointments.

Building upon the *VPS Executive Pre-employment Screening Policy*, a Commissioner's Circular 2019-12 was released on 13 September 2019, detailing a mandatory pre-employment screening requirement for all Victorian Public Service (VPS) appointments. Applicable from 1 October 2019, the *Victorian Public Service Pre-employment Screening Policy* (the Policy) has been developed in consultation with stakeholders, including VPS departments, Victoria Police and the Community and Public Sector Union (CPSU).

Copies of the Circular, the Policy, the Statutory Declaration and Consent Form and Implementation Guide are attached for your reference.

The Policy aims to address integrity vulnerabilities in VPS recruitment and sets a minimum standard of pre-employment screening, which was the basis of Recommendation 5 in the Operation Lansdowne report. It seeks to prevent employees moving into public service roles without disclosing a history of misconduct, so that it may be appropriately assessed against the inherent requirements of a position.

Under the Policy, candidates make a declaration about their conduct history and provide consent for prospective employers to validate that history with past and present employers.

The Policy is largely identical to that in place for VPS Executives, except that VPS staff are required to declare substantiated findings of misconduct (other than those resulting in termination) in the last seven years, rather than 10 years.

The Commission is monitoring the application of the policy within the Victorian Public Service as we work with departments to determine how the policy will apply in the broader public sector.

Please do not hesitate to contact either me or Ms Verity Harris, Executive Director, Integrity and Advisory, [REDACTED] if you would like any further information or advice.

Yours sincerely



Paul Grimes
Commissioner

20 / 11 / 2019

Attachments:

Attachment A – Commissioner Circular 2019-12

Attachment B – Statutory Declaration and Consent Form

Attachment C – *Victorian Public Service Pre-employment Screening Policy*

Attachment D – *A Guide to Implementing the VPS Pre-employment Screening Policy*



Circular Number	2019-12
Issue date:	13 September 2019
Application:	All Victorian Public Service staff
Resources	Pre-employment screening
Enquiries:	Integrity and Advisory Branch Victorian Public Sector Commission info@vpsc.vic.gov.au

Key points

- The Victorian Public Sector Commission (VPSC) has developed the Victorian Public Service Pre-employment Screening Policy (the Policy) and associated Guide to Implementing the Victorian Public Service Pre-employment Screening Policy (the Guide) to assist departments and agencies.
- The Policy addresses integrity risks associated with inadequate pre-employment screening of candidates seeking employment in the Victorian Public Service (VPS), and sets a minimum standard of pre-employment screening for non-executive officer positions within the VPS.
- The Policy requires candidates to complete a Declaration and Consent Form (the Form) as part of the recruitment process, covering a number of questions relating to misconduct in employment. The Guide includes a model declaration for departments that are using digital recruitment processes.
- Candidates with an adverse conduct history will not necessarily be precluded from employment within the VPS. The Policy includes specific features to support natural justice and protect candidates from unlawful discrimination. The Policy ensures that employers are better informed to determine a candidate's suitability for a position based on an understanding of their past employment conduct history.

Updates

This is the first version of the Victorian Public Service Pre-employment Screening Policy for non-executive appointments and applies to all non-executive officer recruitment by public service bodies.

[Read the full policy](#)

Requirements

- The VPSC has a legislated responsibility to maintain and advocate for public sector professionalism and integrity. The Public Administration Act 2004 (the PAA) provides a framework to ensure that employment decisions in the public sector are based on merit. Employees are required to conduct themselves in a manner that is consistent with the public sector values and employment principles set out in the PAA.
- The Policy requires completion of the required Form by candidates as part of the recruitment process either at the preferred candidate stage or at an earlier stage. Candidates must be advised of the requirement to undergo pre-employment screening at the interview stage.
- To ensure information provided by candidates is kept suitably confidential and considered impartially and with relevant expertise, completed declarations are to be reviewed by a 'Consideration Panel'; a decision-maker or group of decision-makers independent from the hiring panel. Information conveyed to the hiring panel should be confined to a decision to rule out a candidate, or to continue with the hiring process as normal.
- Employers are strongly encouraged, as part of a robust integrity approach, to validate a completed Form for all roles assessed by the organisation as having a high or medium risk rating. The Guide includes some guidance on determining the risk rating of a role.

Background

Integrity vulnerabilities in Victorian public sector recruitment processes, particularly in pre-employment screening have been highlighted by several Independent Broad-based Anti-corruption Commission (IBAC) and Victorian Ombudsman (VO) investigations, such as IBAC's August 2018 research report Corruption and misconduct risks associated with employment practices in the Victorian public sector.

Investigations dating back to 2013 have included recommendations to strengthen the use of existing processes and consider adopting the use of statutory declarations of previous misconduct.

On 30 October 2018, the VPSC issued the VPS Executive Pre-employment Screening Policy as an initial step towards the development of a whole of Victorian public sector pre-employment screening policy.

The Policy has been developed with the agreement of the Victorian Secretaries Board.

Scope

This circular applies to all public service bodies for non-executive officer recruitment.

A public service body is a Department, an Administrative Office established under section 11 of the PAA and the Victorian Public Sector Commission.

Departments are obliged to notify Administrative Offices in their portfolio that this Policy now applies.

Date of application

The Policy comes into effect on 1 October 2019.

Statutory Declaration and Consent Form

Information for Applicants

VPS employees must adhere to standards of conduct and behaviour that exemplify the Public Sector Values prescribed in the *Public Administration Act 2004*. Public servants occupy positions of trust in the community and are accountable for their actions. As such, all candidates for VPS roles are subject to appropriate integrity checks.

This Statutory Declaration and Consent Form (this Form) must be completed as part of the recruitment process.

Misconduct is defined in the *Public Administration Act 2004* as including:

- a) *contravention of a provision of this Act, the regulations or a binding code of conduct;*
- b) *improper conduct in an official capacity;*
- c) *a contravention, without reasonable excuse, of a lawful direction given to the employee as an employee by a person authorised (whether under this Act or otherwise) to give the direction;*
- d) *a refusal by an employee to perform duties assigned under Part 3 (public service employment) or Part 7A (emergency situations);*
- e) *an employee making improper use of his or her position for personal gain;*
- f) *an employee making improper use of information acquired by him or her by virtue of his or her position to gain personally or for anyone else financial or other benefits or to cause detriment to the public service of the public sector.*

The binding Code of Conduct applicable to VPS employees can be found at <https://vpssc.vic.gov.au/resources/code-of-conduct-for-employees/>

<insert employer name> will protect personal information collected in the course of undertaking employment related checks by restricting its distribution to individuals who require it to make or participate in making an employment decision, and ensuring proper record management procedures are adhered to.

<insert employer name> will comply with relevant privacy legislation requirements. You will be able to gain access to any relevant personal information that <insert employer name> collects about you throughout the recruitment process.

A preferred applicant with a conduct history (criminal or misconduct) will not necessarily be precluded from employment. The relevance of any information collected will be assessed strictly in relation to the requirements of the position applied for.

<insert employer name> will determine the relevance of any conduct to the position applied for, taking the following into account:

- the age of the applicant at the time of the conduct
- the nature and seriousness of the conduct
- the relevance of the conduct to the particular position applied for
- the risk to <insert employer name> and the Victorian community
- the period of time that has elapsed since the conduct took place
- the type and severity of any penalty imposed
- whether there is a pattern of behaviour
- any evidence of rehabilitation including subsequent work experience

- any additional information provided by the applicant, including references from persons who are aware of the conduct history.

<insert employer name> will conduct any relevant and required checks about applicants and the information you provide with your application. Such checks may include but are not limited to:

- Identity (evidence of name/change of name, DOB, address)
- National and/or international police checks (which may include fingerprinting depending on the role)
- Right to work (including visa, separation package and redeployment status)
- Declarable associations to individuals known or suspected to be involved in unlawful activity
- Disciplinary history (including misconduct, open investigations and findings)
- Working with children
- Qualifications
- Professional registration or licence
- Contacting references to obtain referee statement

Instructions (subject to modifications appropriate to a person's circumstances)

The person making the declaration and the witness must complete the document as indicated.

Both the person making the declaration and the witness must sign or initial each page of the document.

Before signing the declaration, the person making the declaration must say aloud in the presence of the witness:

"I, [full name of the person making the declaration] of [address of the person making the declaration], declare that the contents of this statutory declaration are true and correct."

Statutory Declaration

I,
[full name] [occupation]

of
[address]

make the following statutory declaration under the *Oaths and Affirmations Act 2018* (hereafter, the Act):

- | | Correct/
True | Incorrect/
False | Do not know/
cannot answer |
|---|--------------------------|--------------------------|-------------------------------|
| 1. I have not had my employment terminated by any previous employer due to misconduct in employment. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. In the past seven years, I have not been found to have engaged in misconduct in employment. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. I am not the subject of any open investigation into misconduct in employment. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. I have not ceased employment while being the subject of a misconduct investigation. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. All information I have provided in and with my present application for employment is complete, true and correct. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

I declare that the contents of this statutory declaration are true and correct and I make it knowing that making a statutory declaration that I know to be untrue is an offence.

.....
[signature of person making this declaration]

Declared at in the state of Victoria on
[city, town or suburb] [date]

I am an authorised statutory declaration witness and I sign this document in the presence of the person making the declaration:

..... On
[signature of authorised statutory declaration witness] [date]

.....
[full name of witness] [title/occupation/capacity to witness statutory declaration]

of

[address of witness, writing typing or stamp]

A person authorised under section 30(2) of the Act to witness the signing of a statutory declaration.

**This section must be completed and signed by the witness if the person making the statutory declaration is illiterate, blind or cognitively impaired and the statutory declaration is read to them.*

I certify that I read this statutory declaration to [name of the person making the statutory declaration] at the time the statutory declaration was made.

.....

[signature of authorised statutory declaration witness]

**This section must be completed and signed by the witness if reasonable modifications were used in preparing this statutory declaration and that the contents of this statutory declaration were read to the person making the statutory declaration in a way that was appropriate to the person's circumstances.*

I confirm that reasonable modifications were used in preparing this statutory declaration and that the contents of this statutory declaration were read to the person making the statutory declaration in a way that was appropriate to the person's circumstances.

.....

[signature of authorised statutory declaration witness]

**This section must be completed and signed by any person who has assisted the person making the statutory declaration, for example by translating the document or reading it aloud. If no assistance was required, this section does not need to be completed.*

I certify that I have assisted [name of the person making the statutory declaration] by [specify what assistance was provided, for example translating the document]

.....
.....
.....

..... On

[signature of person providing assistance]

[date]

.....

[name of person providing assistance]

[address of person providing assistance]

Under section 30(3) of the Act the person making the statutory declaration and the statutory declaration witness must, in the presence of each other, sign or initial any alteration to the statutory declaration (s30(3)(a)); sign or initial each page of the statutory declaration (s30(3)(b)); sign and date the statutory declaration (s30(3)(d), and legibly write, type or stamp their name and address on the statutory declaration (s30(3)(e)).

The statutory declaration witness must write or stamp under their signature required by ss30(3)(c) and (d) of the Act their qualification as a statutory declaration witness as prescribed by section 6 of the Oaths and Affirmations (Affidavits, Statutory Declarations and Certifications) Regulations 2018 (s30(5) of the Act).

If the person making the declaration has a disability or impairment that prevents them from completing any of the prescribed steps, please contact the Victorian Public Sector Commission (03 7004 7220) for further advice on completing a statutory declaration.

Consent Form

I, _____

[full name]

of _____

[address]

_____, consent to the following:

[occupation]

1. I consent to <insert employer name> gathering information and conducting relevant and required checks about me and the information I have provided in my present application for employment and throughout the recruitment process.
2. I consent to <insert employer name> contacting my current and previous employer(s) to substantiate my employment history, including regarding past conduct and performance.
3. Should I be successful in this application I consent to the information provided in my present application for employment to be used during my employment for employment related purposes.

Full name of person providing this consent: _____

Signature of person providing this consent: _____

Date on which consent is provided: __ / __ / __.



VICTORIAN PUBLIC SERVICE PRE-EMPLOYMENT SCREENING POLICY

1. Purpose

The Victorian public service (VPS) needs employees who act in accordance with the public sector values. VPS employees occupy positions of trust in the community and must be accountable for their actions.

Misconduct¹ by VPS employees can put the safety of employees and the community at risk and erode public trust.

Appropriate pre-employment screening can prevent employees from moving between employers without relevant misconduct being known.

The Victorian Public Service Pre-employment Screening Policy (this Policy) sets out the responsibilities and obligations for **all VPS employers and candidates for employment** in public service bodies².

This Policy requires that the Statutory Declaration (or an online declaration that includes the same questions and meets the same key objectives) and Consent Form (the Form) provided at Attachment A, be completed by all candidates prior to a formal offer of employment being finalised for all VPS positions advertised in public service bodies.

Where Departments have not yet moved to digital recruitment systems they must use the Statutory Declaration.

2. Principles

Public sector values

¹ Misconduct is defined in the *Public Administration Act 2004* as including:

- a) contravention of a provision of this Act, the regulations or a binding code of conduct;
- b) improper conduct in an official capacity;
- c) a contravention, without reasonable excuse, of a lawful direction given to the employee as an employee by a person authorised (whether under this Act or otherwise) to give the direction;
- d) a refusal by an employee to perform duties assigned under Part 3 (public service employment) or Part 7A (emergency situations);
- e) an employee making improper use of his or her position for personal gain;
- f) an employee making improper use of information acquired by him or her by virtue of his or her position to gain personally or for anyone else financial or other benefits or to cause detriment to the public service or the public sector.

² A public service body is a Department, an Administrative Office established under section 11 of the *Public Administration Act 2004* and the Victorian Public Sector Commission.

The Victorian Public Sector Commission (the VPSC) issues the *Code of Conduct for Victorian Public Sector Employees*, based on the Public Sector Values enshrined in the *Public Administration Act 2004* (PAA).

Under the PAA, the Code of Conduct is binding on public sector employees and any contravention of it constitutes misconduct. The Values and the Code of Conduct support the high standards the community expects of its public sector. They are the foundation of the integrity and accountability framework for all public sector employees.

Public interest

VPS employees are obliged to act in the interests of the Victorian community. They must perform their official functions and duties, and exercise any discretionary powers, in ways that promote the public interest that is applicable to their official functions.

Public Sector Employment Principles and Standards

Section 8 of the PAA outlines the Public Sector Employment Principles (the Employment Principles).

Section 62 of the PAA requires the VPSC to issue binding standards concerning application of the Employment Principles. The VPSC has issued six standards that define essential elements of the Employment Principles:

- fair and reasonable treatment
- merit in employment
- equal employment opportunity
- human rights
- reasonable avenue of redress; and
- career public service.

Equal opportunity and human rights

VPS employers must consider whether an adverse conduct record would impact on the preferred candidate's ability to fulfil the inherent requirements of the position.

Natural justice

The principles of natural justice are designed to ensure that any decisions are fair and reasonable. In the context of pre-employment screening, natural justice requires that candidates are provided opportunity to view any information obtained about them and respond to this information.

Risk-based approach

A risk-based approach to pre-employment screening ensures appropriate and proportionate screening according to the risk level of the position in question.

Consistency with other policies and processes – an efficient public sector

The Policy is to be implemented in a way that ensures consistency with other Government or VPS directives, such as the *Human Resources Systems Statement of Direction for the Victorian Public Service*, issued in 2016.

Where departments have existing screening processes that are more comprehensive than those provided in the Policy, the Policy should be incorporated into, and not replace or duplicate, those processes.

3. Mandatory requirements

Employers

Employers must ensure that all candidates complete the Form prior to a formal offer of employment being finalised. The Form should generally only be required from an applicant once they have been identified as the preferred candidate. Forms provided at earlier stages in the recruitment process may be appropriate in some circumstances, such as for high risk roles. In general, departments may find it useful to require the Form at the same stage of the recruitment process as police checks.

The Form consists of a statutory declaration (or online certified declaration that includes the same questions as the statutory declaration) and a consent form.

The Form provides information about a candidate's previous history of misconduct in employment. A declaration of previous misconduct or open investigation does not necessarily rule out the preferred candidate from employment. Employers should refer to *A Guide to Implementing Pre-employment Screening Policy* for assistance in determining the relevance of declared information to the inherent requirements of the position.

The consent form provides permission from the prospective employee to enable the employer to verify the accuracy of declarations made with current and previous employers. *A Guide to Implementing the Victorian Public Service Pre-employment Screening Policy* sets out a risk-based approach to validating information provided by candidates in their application for employment.

Candidates

Candidates must complete the Form prior to accepting a formal offer of employment. An offer of employment cannot be finalised until the Form is complete.

The *Oaths and Affirmations Act 2018* (Vic) provides that it is a criminal offence for a person to make a statutory declaration they know to be false. Under the PAA, knowingly providing false information in a declaration may be serious misconduct.





A GUIDE TO IMPLEMENTING THE VICTORIAN PUBLIC SERVICE PRE-EMPLOYMENT SCREENING POLICY

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1. Background

The Victorian Public Sector Commission (the VPSC) has a legislated responsibility to maintain and advocate for public sector professionalism and integrity. The *Public Administration Act 2004* (the PAA) provides a framework to ensure that employment decisions in the public sector are based on merit and requires employees to conduct themselves in a manner that is consistent with the Public Sector Values and Employment Principles, as set out in the PAA.

Misconduct by Victorian public service (VPS) employees can put the safety of employees and the community at risk, reduce public value and erode public trust. The Policy addresses integrity vulnerabilities identified in VPS recruitment and sets a minimum standard of pre-employment screening. The Policy seeks to prevent employees moving into public service roles without disclosing a history of misconduct so that it may be appropriately assessed against the inherent requirements of a position.

From 1 October 2019, all VPS employers **must** incorporate the use of the *Statutory Declaration* (or a certified digital declaration to the same effect) and *Consent Form* (the Form), into all recruitment processes.

2. Policy overview and purpose of the Guide

This Guide provides best practice advice to VPS employers on the implementation of the Policy.

All VPS bodies are required to implement the Policy, including the use of the 'Statutory Declaration and Consent Form' or digital certified declaration (the Form). The Form allows a preferred candidate's conduct history to be identified and assessed before an offer of employment is finalised. Preferred candidates make a declaration about their conduct history and provide consent for prospective employers to validate that history with past and present employers.

The Statutory Declaration form includes the following statements:

I have **not** had my employment terminated by any previous employer due to misconduct in employment.

In the past seven years, I have **not** been found to have engaged in misconduct in employment.

I am **not** the subject of any open investigation into misconduct in employment.

I have **not** ceased employment while being the subject of a misconduct investigation.

For employers using a digital declaration, a model declaration is provided at Appendix 1.

The Form should generally only be required from an applicant once they have been identified as the preferred candidate. Declarations made at earlier stages in the recruitment process may be appropriate in some circumstances, such as for high risk roles. In general, departments may find it useful to require the Declaration at the same stage of the recruitment process as police checks. The Policy provides employers with the flexibility to determine the preferred approach on a case-by-case basis.

Candidates with a misconduct history are not necessarily precluded from employment. Instead, employers must use the information provided to make an informed assessment of a preferred candidate's suitability for a position based on their ability to perform the inherent requirements of the role.

To ensure the information is considered impartially and with relevant expertise, completed declarations are to be reviewed by a 'Consideration Panel'; a decision-maker or group of decision-makers independent from the hiring panel. Details provided by candidates in their declarations should not be communicated to the hiring panel in any circumstances. Information conveyed to the hiring panel should be confined to a decision to rule out the candidate, or to continue with the hiring process as normal.

The Policy provides recourse for an employer if false information has been provided in an application for employment. The PAA provides for public service body heads to terminate employment if the employee has, in connection with his or her application for employment, given false or misleading information.

The Form provides permission for the prospective employer to validate the preferred candidate's conduct history with former or current employers. The process of validating declarations made on the Form is at the discretion of each individual employer according to need. This Guide provides **advice** about when and how these checks may be undertaken.

Employers should also consider how to provide information on the purpose, outcomes and appeal channels for the pre-employment misconduct screening process to all prospective applicants, noting that applicants may wish to discuss their circumstances anonymously.

3. Definitions

Code of Conduct	The Code of Conduct refers to the Code of Conduct for Victorian Public Sector Employees. The Code of Conduct describes the behaviours that exemplify the values contained in the PAA and is binding on all public sector employees.
consent	<p>The <i>Privacy and Data Protection Act 2014 (Vic)</i> (PDPA) defines consent as <i>express consent or implied consent</i>. Consent, or permission, may be a requirement under <i>Information Privacy Principle (IPP) 2 – Use and Disclosure</i>, unless other certain circumstances are met. More information about the IPPs can be found at the Office of the Victorian Information Commissioner (OVIC) website https://ovic.vic.gov.au.</p> <p>In the context of pre-employment screening, a candidate should provide consent for a previous/current employer to provide sensitive information about them to a prospective employer. This is because the purpose for which the information was collected by the former/current employer may be different to the purpose for which it will be shared with the prospective employer.</p>
discrimination	Employers are obligated to ensure that any exclusion of a candidate is based on the inherent requirements of the position, ensuring that prohibited discrimination does not occur.
Employment Principles	<p>Section 8 of the PAA outlines the Public Sector Employment Principles. The Employment Principles are:</p> <ul style="list-style-type: none"> • Employment decisions are based on merit; • Public sector employees are treated fairly and reasonably; • Equal employment opportunity is provided; • Human rights as set out in the Charter of Human Rights and Responsibilities are upheld; • Public sector employees have a reasonable avenue of redress against unfair or unreasonable treatment; and • In the case of public service bodies, the development of a career public service is fostered.
Employment Standards	<p>The VPSC is required to issue Employment Standards under Section 62 of the PAA. The six Standards are:</p> <ul style="list-style-type: none"> • fair and reasonable treatment; • merit in employment; • equal employment opportunity; • human rights; • reasonable avenue of redress; and • career public service.
inherent requirements	A position's inherent requirements are those that are essential or fundamental to the position.
intrinsic risks	Intrinsic risks are the risks associated with each position and vary based on the level and nature of the role.
misconduct	<p>The PAA defines misconduct as including:</p> <ul style="list-style-type: none"> • a contravention of a provision of this Act, the regulations or a binding code of conduct; • improper conduct in an official capacity;

	<ul style="list-style-type: none"> • a contravention, without reasonable excuse, of a lawful direction given to the employee as an employee by a person authorised (whether under this Act or otherwise) to give the direction; • a refusal by an employee to perform duties assigned to the employee under Part 3 or Part 7A; • an employee making improper use of his or her position for personal gain; • an employee making improper use of information acquired by him or her by virtue of his or her position to gain personally or for anyone else financial or other benefits or to cause detriment to the public service or the public sector;
Open investigation	An investigation that has commenced but has not concluded.
PAA	The <i>Public Administration Act 2004</i>
preferred candidate	The candidate the selection panel intends to recommend to the delegate as the best candidate to fill the vacant role.
Privacy Principles	<p>Information privacy protections are embodied in ten Information Privacy Principles (IPPs) set out in Schedule 1 of the <i>Privacy and Data Protection Act 2014</i> (PDPA).</p> <p>The objects of the PDPA with respect to information privacy are to:</p> <ul style="list-style-type: none"> • balance the public interest in the free flow of information with the public interest in protecting the privacy of personal information in the public sector; and • promote awareness of responsible personal information handling practices in the public sector; and • promote the responsible and transparent handling of personal information in the public sector. <p>The IPPs govern the collection, use and handling of personal information by Victorian public sector organisations.</p> <p>More information about the PDPA and the IPPs can be found at the Office of the Victorian Information Commissioner (OVIC) website, at https://ovic.vic.gov.au</p>
public sector values	<p>Section 7 of the PAA defines the public sector values as:</p> <ol style="list-style-type: none"> a) responsiveness b) integrity c) impartiality d) accountability e) respect f) leadership g) human rights
statutory declaration	A statutory declaration is a written statement on a form specified in the <i>Oaths and Affirmations Act 2018</i> (Vic) that a person signs and declares to be true and correct before an authorised witness. By signing it, the person agrees that the information in it is true. Knowingly making a false statutory declaration is a criminal offence.

4. Policy principles

4.1 Public sector values

The VPSC issues the Code of Conduct for Victorian Public Sector Employees (Code of Conduct) based on the public sector values. The Code of Conduct is binding for public sector employees from the commencement of their employment. A contravention of the Code of Conduct constitutes misconduct.

In the context of pre-employment screening, demonstrating the following public sector values are particularly relevant:

- Integrity – being honest, open and transparent in dealings and striving to earn and sustain public trust of a high level;
- Impartiality – making decisions and providing advice on merit and without bias, caprice, favouritism or self-interest and acting fairly by objectively considering all relevant facts and fair criteria;
- Accountability – accepting responsibility for decisions and actions and submitting oneself to appropriate scrutiny; and
- Human Rights – respect and promote the human rights set out in the Charter of Human Rights and Responsibilities 2006.

4.2 Public interest

VPS employees are obliged to act in the interests of the Victorian community. They must perform their official functions and duties, and exercise any discretionary powers, in ways that promote the public interest that is applicable to their official functions.

4.3 Public Sector Employment Principles and Standards

Section 8 of the PAA outlines the Public Sector Employment Principles (the Employment Principles).

Section 62 of the PAA requires the VPSC to issue binding standards concerning application of the Employment Principles. The VPSC has issued six standards that define essential elements of the Employment Principles:

1. fair and reasonable treatment
2. merit in employment
3. equal employment opportunity
4. human rights
5. reasonable avenue of redress; and
6. career public service.

4.4 Equal opportunity and human rights

VPS employers must consider whether an adverse conduct record would impact on the preferred candidate's ability to fulfil the inherent requirements of the position. Assessments must be aligned with the *Charter of Human Rights and Responsibilities 2006* and the *Equal Opportunity Act 2010*.

4.5 Natural justice

The principles of natural justice are designed to ensure that decisions are fair and reasonable. In the context of pre-employment screening, natural justice requires that candidates are provided opportunity to view any information obtained about them and respond to this information.

4.6 Risk-based approach

A risk-based approach to pre-employment screening ensures appropriate and proportionate screening according to the risk level of the position in question.

4.7 Consistency with other policies and processes – an efficient public sector

The Policy is to be implemented in a way that ensures consistency with other Government or VPS directives, such as the Human Resources Systems Statement of Direction for the Victorian Public Service, issued in 2016.

Departments will also have individual requirements relating to specific workforces, including those in high-risk roles such as Child Protection, Corrections Victoria, Victoria Police or Youth Justice. Where departments have existing screening processes that are more comprehensive or include additional questions to those provided in the Policy, the Policy should be incorporated into, and not replace or duplicate, those processes.

5. Implementing the pre-employment misconduct screening policy

The pre-employment misconduct screening process is designed to integrate into existing recruitment processes. It does not replace existing departmental or organisational guidance on other aspects of recruitment, although implementing the pre-employment misconduct screening policy may require some adjustments to existing processes.

The guidance below shows how pre-employment misconduct screening fits into each stage of the recruitment and selection process. Clearly and regularly communicating the use of a robust pre-employment misconduct screening process, including the completion of a declaration that carries consequences for providing false information, is designed to actively discourage potential candidates who may be seeking to exploit integrity weaknesses for their own gain. Sections 6 and 7 provide more detailed guidance on validating declarations and handling misconduct findings respectively.

Human resource practitioners and recruiting managers should refer to their local recruitment policies and guidance for general advice on planning, selection and confirmation processes.

5.1 Planning and designing a position

When planning and designing a role, the Policy requires employers to identify the inherent requirements of a role and assess the intrinsic risks in order to determine the extent and focus of pre-employment misconduct screening required.

5.1.1 Inherent requirements

A position's inherent requirements are those that are essential or fundamental to the position. Changing an inherent requirement effectively changes the nature of the role, while compromising on a candidate's ability to undertake an inherent requirement creates potentially significant levels of risk for the organisation. Inherent requirements may include any personal characteristics, skills, accountabilities, capabilities, knowledge, qualifications, and accreditation required to fulfil the position.

There are a number of existing processes that already help substantiate a person's ability to fulfil the inherent requirements of a role. These include reference and police checks, confirmation of qualifications, and declarations of conflicts of interest. Pre-employment misconduct screening helps identify potential relevant issues about past conduct that may not be identified through these processes.

Table 1 below shows examples of standard and role-specific inherent requirements and validation mechanisms, and where pre-employment misconduct screening fits into existing processes. Note that while pre-employment misconduct screening is not a substitute for a police or other formal checking process, it can help an employer form a judgement on a candidate's suitability by identifying a misconduct history that falls below the threshold of a police check or other scheme.

Table 1

Administrative requirement	Validation mechanism
Confirmation of identity	<ul style="list-style-type: none">• 100-point identity check
Confirmation of declaration of criminal history	<ul style="list-style-type: none">• National Police Check
Declaration and management of conflicts of interest ¹	<ul style="list-style-type: none">• Conflict of Interest declaration and policy

¹ A conflict of interest may be actual, potential or perceived. Further guidance on managing conflicts of interest in the Victorian public sector can be found on the VPSC website at <https://vpsc.vic.gov.au/ethics-behaviours-culture/conflict-of-interest/>

Standard inherent requirement	Validation mechanism
Confirmation of performance in prior roles	<ul style="list-style-type: none"> Reference checks Pre-employment misconduct screening
Role-dependent inherent requirement(s)	Examples of validation mechanisms
Working with vulnerable clients	<ul style="list-style-type: none"> Working with Children Check Disability Worker Exclusion Scheme Check Psychometric or aptitude testing Pre-employment misconduct screening
Access to and handling of highly sensitive and/or confidential information	<ul style="list-style-type: none"> Confidentiality agreement Security clearance Psychometric or aptitude testing Pre-employment misconduct screening
Access to and use of specialist equipment and/or weapons	<ul style="list-style-type: none"> Licensing and training check National Police Check for relevant offences Pre-employment misconduct screening
Oversight of or access to significant organisational assets or resources	<ul style="list-style-type: none"> National Police Check for relevant offences Psychometric or aptitude testing Pre-employment misconduct screening
Operation of a vehicle	<ul style="list-style-type: none"> Drivers licence check Check for traffic or vehicle offences with relevant road corporation (e.g. VicRoads) Pre-employment misconduct screening
Physical requirements	<ul style="list-style-type: none"> Medical check
Professional or other qualifications	<ul style="list-style-type: none"> Confirmation of qualification and currency with issuing entity

5.1.2 Intrinsic risks

In addition to considering the inherent requirements of the position, the planning phase should also consider the risk level of the position.

The intrinsic risks depend on the level and nature of the role. VPS employers must consider the risks intrinsic to each position and must be aware that applying blanket standards across roles may not be appropriate.

Any position within the VPS will have an intrinsic low, medium or high risk, depending on factors such as oversight of public sector assets, financial delegations, care and responsibility for vulnerable members of the Victorian community, or access to sensitive government information or data.

A risk-based approach to pre-employment misconduct screening ensures appropriate and proportionate screening according to the risk level of the position. Roles can be categorised into high, medium and low risk, with each category guiding the level of pre-employment screening appropriate.

Table 2 provides some examples of common risks and their effect on the requirement to conduct pre-employment misconduct screening. These examples are not exhaustive and are to be considered as guidelines only.

Table 2

Risk level	Risk factors	Pre-employment misconduct screening requirement
High	<ul style="list-style-type: none"> • All executive roles • Non-executive roles with key decision-making responsibilities and/or: <ul style="list-style-type: none"> ○ a high degree of responsibility over finances and public assets ○ interaction with vulnerable members of the Victorian community ○ access to sensitive information or data 	Declaration and consent form: Mandatory Validation of declaration: Strongly encouraged
Medium	Roles with: <ul style="list-style-type: none"> • access and/or oversight of finance and/or assets such as Budget Analyst, Property Officer, or • contact with community members 	Declaration and consent form: Mandatory Validation of declaration: Strongly encouraged
Low	Roles without: <ul style="list-style-type: none"> • access to confidential information and/or • decision-making responsibilities. 	Declaration and consent form: Mandatory Validation of declaration: Discretionary

It is important to note that the Policy sets the minimum expectations for pre-employment misconduct screening processes in VPS bodies. It is the responsibility of the VPS employer to consider the inherent risk of each position and adapt their pre-employment misconduct screening processes accordingly.

For some high-risk roles, employers may choose to require the disclosure and consent to validate information about additional matters not captured in the Form. In these circumstances, employers should seek legal advice on amending the Form to include the additional requirements.

5.1.3 Recording the inherent requirements and intrinsic risks

Once determined, a position’s inherent requirements and intrinsic risks should be included in the position description. The following paragraph is provided as a guide for departments.

Pre-employment misconduct screening requirements

This position has the following inherent requirements:

- [requirement 1]
- [requirement 2]

and is assessed as having a [high/medium/low] level of intrinsic risk.

Before a final offer of employment is made, preferred candidates will be required to complete a pre-employment misconduct screening declaration and consent form. Further information on pre-employment misconduct screening requirement is available at [link] or by calling [XXXX XXXX].

5.2 Attraction

In line with general good practice to ensure fair and reasonable treatment, advertisements must be based on the inherent requirements of the position. Human resource practitioners and recruiting managers should refer to their local recruitment policies and guidance for general advice on advertising roles.

All advertisements must make clear the requirement for preferred candidates to complete the Form and provide a link to further information on pre-employment misconduct screening. This may be a departmental webpage, or the VPSC website.

The need for preferred candidates to complete the pre-employment misconduct screening process should be raised in any discussion with prospective applicants or interview candidates along the requirement to undergo a police check or other validation process.

5.3 Selection

5.3.1 Interview stage

Candidates must be advised of the requirement for preferred candidates to undergo pre-employment misconduct screening at the interview stage, consistent with advice about other screening and procedural requirements. Candidates should also be advised of where they can find further information on pre-employment misconduct screening, such as a webpage or HR contact.

5.3.2 Advising preferred candidates

It is mandatory that all preferred candidates complete the Form prior to a formal offer of employment being finalised.

When notifying a preferred candidate of their selection, the employer must provide the preferred candidate with the pre-employment misconduct screening declaration and consent form and advise them that any offer of employment is conditional on the outcome of the screening process.

Once the preferred candidate has completed the form, the employer should validate the information and declarations provided in line with the position's risk level, as determined during the position design phase.

5.4 Validation

Section 6 provides detailed advice on validating and responding to requests to validate completed Forms.

Employers are **strongly encouraged**, as part of a robust integrity approach, to validate a completed Form for all roles assessed by the organisation as having a **high** or **medium risk** rating.

The decision to validate a completed Form for a **low risk** role is at the **discretion of the employer**. (Table 2 provides examples of intrinsic risks that, considered during the role planning stage, may result in a role being classified as high, medium or low risk.)

Organisations should consider developing a process to record the outcomes of validation processes and the resulting impact on decisions to formalise offers. This allows organisations to track the effectiveness and efficiency of the process and identify any emerging trends at a local level and contribute to a whole-of-sector analysis.

Organisations may also find it necessary to consider how they record the outcomes of misconduct processes in order to respond to validation requests from other public sector entities more efficiently.

Any information provided or received through this process should be treated as personal information and managed according to the Information Privacy Principles

5.4.1 Validating a form

A model validation template is provided at Appendix 2. This allows employers to record the outcome of the validation process in a standardised way.

It may not be possible to formally validate all aspects of a declaration for a range of reasons including candidates with overseas work histories, organisations unable to confirm or locate information about past employees, etc. Where a declaration cannot be validated, this should be recorded and the potential risk considered when determining whether to make a formal offer of employment.

5.4.2 Responding to a request for validation

Organisations may wish to consider how to respond effectively to validation requests, and what systems or processes, if any, may be required to enable prompt and accurate responses.

5.5 Employment offer

Section 7 provides detailed advice on responding to an adverse misconduct finding.

If the validation process does not identify any issues that impede the preferred candidate's ability to undertake the inherent requirement of the role, an offer of employment may be finalised. The contract of employment should include a clause stating the consequences of providing false or misleading information during application, as provided for in Sections 33 and 34 of the PAA.

If the validation process does identify a history of misconduct, the prospective employer must consider if this is sufficient to prevent the candidate from undertaking the inherent requirements of the role or create an unacceptable level of risk. Natural justice principles require the candidate be informed and provided with a chance to respond. The panel's final decision must be documented and referenced in the final recommendation submitted to the appropriate delegate for endorsement.

Where a preferred candidate is found to be unsuitable, the next or any other preferred candidate must also be asked to complete the Form for validation.

5.6 Other considerations

5.6.1 Non-advertised, short-term or project-based staff movements

Industrial agreements and VPS policies may provide employers with the opportunity to temporarily fill or re-organise positions without advertisement in response to sudden or urgent business needs. Examples may include temporary backfills, acting up arrangements, short term secondments within or between organisations, or taking staff 'offline' to undertake a short-term task.

Where this occurs, the Policy does not mandate the use of the Form. VPS employers should continue to use a risk-based approach to ensure employees or externally employed contractors selected to fill non-advertised vacancies do not represent an adverse risk to safety and integrity. A temporary movement from a position considered low risk to duties which pose a higher risk should be subject to the appropriate level of pre-employment misconduct screening.

Where an employee has been appointed to a short-term role or secondment without screening and the employer then wishes to offer the employee an ongoing role, use of the Form is mandatory.

5.6.2 The Jobs and Skills Exchange

Where staff have the opportunity to move on a short-term basis under the Jobs and Skills Exchange, the policy does not mandate the use of the Form. As with any short-term move, employers should give consideration to the level of risk inherent in the role to which the employee is moving and the length of time of the proposed appointment.

For moves to ongoing roles under the Jobs and Skills Exchange, use of the Form is mandatory. As with the standard policy, validation should be undertaken according to the risk level of the role.

5.6.3 Multiple appointments and bulk recruitment

In some circumstances, there may be provision to appoint more than one preferred candidate to an advertised position. Where this occurs, **each** preferred candidate for appointment must complete a Form and **all** preferred candidates are subject to appropriate pre-employment misconduct screening.

In certain cases, organisations may decide to request all candidates complete a pre-employment misconduct screening form and declaration prior to interview, and only validate the forms of those determined to be preferred candidates. In these circumstances, the organisation must not take the content of any declaration into account until it has been validated and the candidate given an opportunity to respond.

6. Validating declarations

6.1 Confidentiality and record management

6.1.1 Confidentiality

When verifying a preferred applicant's declaration, it is important to remember that:

- discussing sensitive, private information such as employment and conduct history over the phone poses a risk due to the difficulty in verifying the identity of a caller, and the possibility of the conversation being overheard by a third party. Appropriate precautions should be undertaken to minimise risks, including verifying identity and ensuring the conversation cannot be overheard. Adequate notes of the conversation should be taken, and, where appropriate, a written record signed by both parties.
- candidates are generally entitled to access any information obtained about themselves, including information provided by nominated referees and previous employers. Any comments provided by a referee or former employer should be honest and fair, and no comment should be made on the applicant's protected attributes or personal characteristics that do not pertain to their ability to fulfil the inherent requirements of the role (e.g. age, gender, sexual orientation, religious affiliation, etc.).

In order to protect confidentiality, verification of completed declarations must be undertaken by the Consideration Panel. Any information provided to the Consideration Panel by previous employers during the verification process should not be communicated to the hiring panel other than to confirm that a decision has been made that a candidate is considered suitable or unsuitable.

6.1.2 Record management

Victorian public sector employers should ensure robust and clear retention of recruitment and appointment document processes with particular regard to consideration that prior criminal or substantiated misconduct findings revealed through a recruitment screening process not be held within the individual's personnel files.

Employers must restrict access to candidates' pre-employment screening information, including any substantiated misconduct or criminal findings, to those involved in assessing suitability for employment within the organisation.

6.2 Verification of misconduct declarations

The Form contains declarations regarding:

- termination on the basis of misconduct (statement 1)
- substantiated findings of misconduct (statement 2); and
- open investigations of misconduct (statements 3 and 4).

It also provides the consent required for the prospective employer to validate the declarations with the preferred candidate's current and/or former employers.

Where a candidate declares an adverse conduct history, the HR area of the prospective employer should make enquiries with the candidate to determine the previous employer to which the declared conduct relates.

Table 3 shows the validation authority and mechanism for each statement.

Table 3

Declaration	Validation authority	Validation mechanism
Termination due to misconduct (Statement 1)	Signed statutory declaration and consent form	Contact HR of named employer(s)
Substantiated findings of misconduct (Statement 2)	Signed statutory declaration and consent form	Contact HR of previous employers in past seven years
Open misconduct investigation (Statements 3 and 4)	Signed statutory declaration and consent form	Contact HR of previous employer(s)

For high risk roles, employers may wish to seek further misconduct information. In such cases, **additional declarations and consents will be required**. HR teams should consider whether legal advice is required in relation to any proposed additional declarations.

To validate a declaration, the prospective employer may choose to contact past employers by phone first. This allows the prospective employer to explain the process and confirm their authority to conduct the validation. The past employer may request a copy of the Form be provided to them before responding to the request. Depending on how easily accessible the relevant information is, the prospective employer may choose to make a contemporaneous record of the conversation, using the *Misconduct Declaration Validation Form* template provided at Attachment A, or email the past employer the template to be completed and returned.

6.3 Declarable associations

Some positions in the Victorian public sector, most commonly in the corrections sector, require the declaration of personal associations to individuals known or suspected to be involved in unlawful activity. This declaration should form part of pre-employment screening for those roles where it is directly relevant to the inherent requirement of the position.

6.4 Declarable private interests

Actual or perceived conflicts of interest, such as a prospective employee's private interests that could improperly influence, or be seen to influence, their decisions or actions in the performance of their public duties, should be declared as part of pre-employment screening.

6.5 False declarations

If, through the validation process, a previous employer provides information that contradicts the declaration of the preferred candidate, this may indicate a false declaration has been made. It is, however, important to recognise there may be many other explanations, including the use of a separation agreement (see Section 6.6). The candidate must be provided with the opportunity to respond to the information the previous employer has provided, before an assessment is made weighing all information available.

If the prospective employer is satisfied that the discrepancy is unintentional, this should be recorded in the recruitment panel's report, along with any additional information provided.

If the prospective employer considers the declaration to be false, they should seek advice from HR or their legal team on how to proceed.

Knowingly making a false statutory declaration is a criminal offence under the *Oaths and Affirmations Act 2018* (Vic).

6.6 Separation agreements or other confidentiality obligations

Sometimes candidates or employers may not be able to disclose relevant information because of confidentiality or non-disclosure obligations.

For example, sometimes a misconduct process is resolved through the use of a separation agreement, commonly in the form of a deed of release. A separation agreement is entered into to conclude a person's employment and is likely to contain confidentiality provisions that are legally binding on all parties.

It is also possible that legislation or directions from an anti-corruption or law enforcement body may prevent a candidate from providing information about past misconduct or investigations, for example if confidentiality or non-disclosure obligations under anti-corruption legislation apply.

All parties should be mindful of these obligations.

In respect of separation agreements, all parties who have previously entered into a separation agreement that prevents or limits disclosure should ensure that they do not violate the terms of the agreement when completing the form or validating a declaration. **All** parties should also ensure compliance with any applicable industrial instruments and laws, for example enterprise agreements. This includes preferred candidates **and** previous employers.

Maintaining the confidentiality provisions of a separation agreement or ensuring compliance with some other confidentiality obligation may mean that the preferred candidate cannot accurately complete the Form or will have to answer 'do not know/cannot answer'. Obligations may also prevent previous employers from disclosing relevant information when validating a declaration.

To minimise the risk of a confidentiality breach, if a candidate responds to a question on the Form by indicating 'do not know/cannot answer', the Employer should ask the candidate the following question:

'Did you answer question [X] as 'do not know/cannot answer' because you are not permitted to answer that question because of confidentiality, non-disclosure or similar obligations?'

If the candidate answers 'yes', the employer should cease its enquiries regarding that question.

A candidate found to be subject to a confidentiality arrangement must not on that basis alone be deemed unsuitable for employment. Each case must be considered on its merits, based on the available information from other aspects of the recruitment process and the level of risk inherent in the role.

Employers seeking to enter into such a separation agreement with an employee must carefully consider the integrity risks this may present to potential future employers.

6.7 External recruitment agencies

The VPSC is working with the Department of Treasury and Finance (DTF) to apply the policy to external recruitment agencies. It is expected that employees appointed through external recruitment processes, or contracted to the VPS, should be subject to the same standards of pre-employment screening as employees appointed through direct recruitment.

7. Responding to adverse conduct history or incomplete conduct history arising from pre-employment screening

7.1 Assessing an adverse conduct history

If pre-employment screening substantiates a history of misconduct, it is the responsibility of the prospective employer to ensure appropriate processes are followed, including ensuring the hiring panel is not included in the process, as described in 7.1.1. Processes must ensure the information is considered against the candidate's ability to perform the inherent requirements of the position and the level of risk intrinsic to the role. They must ensure the candidate is afforded natural justice and protected from unlawful discrimination, and in doing so must also manage the risk to the prospective employer of a potential claim in relation to the recruitment process. Following the principles of natural justice and procedural fairness, it is important that the candidate is provided the opportunity to discuss the declared conduct with the prospective employer, and to respond to any information presented by a current or former employer.

A preferred candidate with an adverse conduct history will not necessarily be precluded from employment within the VPS.

VPS employers must consider whether an adverse conduct record would impact on the preferred candidate's ability to fulfil the inherent requirements of the position. This must always be assessed on a case-by-case basis.

In determining the relevance of previous conduct to the position applied for, the Consideration Panel of the prospective employer must consider whether any of the following provide sufficient reason to determine that the misconduct should not exclude the candidate from the current application process:

- the circumstances of the candidate at the time of the conduct
- the nature and seriousness of the conduct
- the relevance of the conduct to the position applied for
- the risk to the Victorian public sector and the Victorian community
- the period of time that has elapsed since the conduct took place
- the type and severity of any penalty imposed
- whether there is a pattern of behaviour
- any evidence of rehabilitation including subsequent work experience
- any additional information provided by the candidate, including references from persons who are aware of the conduct history.

7.1.1 Independent decision-making

To ensure confidentiality and reduce the risk of discrimination and bias, employers must ensure conduct histories are considered and verified by a decision maker (or a panel of decision makers) separate to the recruitment panel. This 'Consideration Panel' should normally be made up of a person or persons with relevant HR expertise and of appropriate seniority. Employers may wish to give consideration to including a representative from the VPSC on the panel.

The declaration form and any details of substantiated misconduct should not be shared with hiring panels. All that should be conveyed to the hiring panel is a decision to rule out the candidate, or to continue with the hiring process as normal.

7.1.2 Sufficient risk

Where the prospective employer concludes that the preferred candidate's history of misconduct poses sufficient risk to preclude them from selection, the decision and supporting evidence should be

recorded. The preferred candidate should then be advised of any review process available through the employer (see Section 7.3) and may decide whether they wish to seek a review of the decision.

Employers should ensure any internal review process has run its course before an offer is made to the second preferred candidate.

7.1.3 Insufficient risk

Where the prospective employer concludes that the preferred candidate's history of misconduct does not pose sufficient risk to preclude them from selection, this decision and the supporting evidence should be recorded by HR and the offer of employment and onboarding can proceed in the usual manner.

7.2 Incomplete conduct history

Where there is insufficient evidence for the prospective employer to make a conclusive assessment, for example where previous records are not available, the prospective employer must make a risk-based judgement. This decision and the reasoning should be recorded by HR.

7.3 Review of adverse decisions

Where a candidate is found to be unsuitable for employment following an adverse conduct history, where review processes are available, the candidate should have the opportunity to apply for a review of the decision using the review processes of the employer. VPS employees may, in some circumstances, be able to apply for a formal Review of Action. More information about Review of Actions is available on the VPSC website at <https://vpsc.vic.gov.au/resources/review-actions-resources/>

8. Guidance for employers validating declarations

Who do employers contact to validate declarations?

Information concerning an individual's adverse conduct must be restricted to those involved in assessing suitability for employment within the respective VPS employer. Generally this will be a Human Resources contact. In some cases, the relevant person to contact may work within an employee conduct unit or equivalent.

Does the request have to be in the format of the Misconduct Declaration Validation Form (Appendix 2)?

No. This form is provided as a guide to the types of information required. What is important is that you receive the request in writing and that you are confident of the identity of the individual making the request. The preferred candidate's Declaration and Consent Form must be provided along with the request for validation.

What do I do if the preferred candidate has made a declaration but I can't find a record of the misconduct?

Employers must consider that when completing checks such as previous employment history, there may be limitations to the quality of record keeping or the processes previously applied. VPS employers must consider how they will retain and manage this sensitive data to ensure compliance with this policy. In the event relevant records cannot be found, the prospective employer will need to make an assessment taking into account the level of risk associated with the role.

What if I can't confirm the identity of the preferred candidate?

When providing sensitive information, which may ultimately impact on a preferred candidate's success in an application, the validating employer must ensure mechanisms are in place to verify an individual's identity when releasing and receiving information.

For example, a key risk is that two individuals may have the same name, date of birth and current/previous occupation. Another risk could occur where an individual has changed their name.

All reasonable efforts should be made to verify an applicant's identity and previous employment history.

How do I know what information I can and cannot share?

The completed Declaration and Consent Form must be provided by the prospective employer along with a request to validate declarations. This form clearly outlines the information that the preferred candidate has consented to being shared.

There are two additional things to consider when sharing information:

- is there a separation agreement in place which may restrict what information I can share?
- are there any provisions in a relevant enterprise agreement or other industrial instrument, or in the Public Records Office guidelines, which may restrict the information that I can share, particularly regarding the age of the information?

If you are not sure about the answer to either of the above questions, seek guidance from your Corporate or Legal area.

The principles of natural justice must be applied to the scope of the information provided. Where adverse conduct is raised, formally recorded information related to the dates, nature, findings and penalty may be shared, with the preferred candidate having access to this information and given the opportunity to provide a response.

Are there any standards for the storage and destruction of public records Victorian public sector employers should be aware of?

The Public Records Office of Victoria (PROV) provides standards for the storage and destruction of public records. See <https://prov.vic.gov.au/recordkeeping-government/document-library/pros-0701-common-administrative-functions>

As at July 2019 the PROV standards were as follows – noting checks for updates should be made before relying on the information reproduced here:

- Records documenting misconduct investigations where misconduct is proven and results in dismissal must be destroyed after 15 years.
- Records documenting misconduct investigations where misconduct is proven but does not result in termination must be destroyed after 7 years.
- Records documenting allegations of misconduct where no misconduct is proven must be destroyed after 2 years.

Some enterprise agreements may include provisions that alter the timeframes provided by PROV. You should be aware of agreements that apply to your employees or former employees.

9. Relevant Legislation & Frameworks

Australian Human Rights Commission Act 1986 (Cth)

Charter of Human Rights and Responsibilities 2006

Code of Conduct for Victorian Public Sector Employees

Code of Conduct for Victorian Public Sector Employees of Special Bodies

Code of Conduct for Directors of Victorian Public Entities

Equal Opportunity Act 2010 (Vic)

Fair Work Act 2009 (Cth)

Oaths and Affirmations Act 2018 (Vic)

Public Administration Act 2004 (Vic)

Privacy and Data Protection Act 2014 (Vic)

Standards for the Application of the Public Sector Employment Principles

The State of the Public Sector in Victoria – Victorian Public Sector Commission

Working with Children Act 2005 (Vic)

Appendix 1 – Model Declaration and Consent Form

	Yes	No	Do not know/ cannot answer
1. Has your employment with any previous employer been terminated as a result of misconduct in your employment or profession?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Have you been found to have engaged in misconduct in your employment or profession with any employer in the past seven years?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Are you currently the subject of an investigation relating to your conduct in your employment or profession?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Have you ever resigned from employment while you were the subject of an investigation relating to your conduct in your employment or profession?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>You may provide any additional relevant information [BELOW/ON THE FOLLOWING PAGE/ETC]. You may also be requested to provide further information in due course.</p>			
5. I understand that my prospective employer may make various enquiries and checks about me in relation to any previous employment or offence history.	<input type="checkbox"/>	<input type="checkbox"/>	
6. I consent to the use of information gathered by my prospective employer throughout the recruitment and selection process. If successful in my application for employment I consent to this information being used during my employment for employment-related purposes.	<input type="checkbox"/>	<input type="checkbox"/>	
7. All information I have provided in and with my present application for employment is complete, true and correct.	<input type="checkbox"/>	<input type="checkbox"/>	
8. I understand that any false, misleading or incomplete information which I provide throughout the recruitment process may affect my application and/or employment with my prospective employer (including the termination of my employment).	<input type="checkbox"/>	<input type="checkbox"/>	

Appendix 2 – Misconduct Declaration Validation Form

DELETE BEFORE SENDING

Please ensure all details on form completed
 Please ensure *Declaration and Consent Form* is attached to this form
 A new form is to be sent to each employer
 Send as an editable document

Prospective employer:			
Name of Current / Past employer (circle appropriate):			
Identity of candidate			
Candidate Name		Employee ID at current/ past employer	
Previous name		Date of birth	
Current address		Previous address	
Registration number (if applicable)		Mobile phone number	
Past Employment information			
Position title:	Name of department/s or Unit/s		
	Commencement date		
	Finish date		
Position title:	Name of department/s or Unit/s		
	Commencement date		
	Finish date		
Questions			
Was the candidate terminated due to misconduct during employment? Yes / No Where the answer is yes, please provide further details and explain what the substantiated conduct was:			
Has the candidate had any substantiated findings of misconduct in the last seven years? Yes/No Where the answer is yes, please provide further details. Explain what the substantiated conduct was and what disciplinary action was undertaken:			

Is the candidate the subject of a current, open misconduct investigation? Yes / No
Did the candidate resign from their employment while the subject of a misconduct investigation?
Yes / No
Where the answer to either questions is yes, please provide further details, and explain the status of
the investigation:

Requested by
(name)

Date

Requested by
(prospective
employer)

Date

