Victorian Public Sector Commission

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Independent Broad-based
Anti-corruption 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 VIC 3000

Dear Honourable Justice Redlich

Update on progress on Recommendation 5 – Operation Lansdowne

I am writing to update on you on the Victorian Public Sector Commission's progress on strengthening probity in public sector recruitment. As I noted in my letter of 6 June 2018, the Commission considers this a high priority area of work and remains committed to delivering robust and effective measures to respond to this complex issue.

Since writing to you, I have issued Commission Circular 2018-05 (**Attachment A**) detailing a mandatory pre-employment screening requirement for all new Victorian Public Service (VPS) executive roles. Applicable from 30 October 2018, the implementation of the new policy and process has been mandated by the Victorian Secretaries Board.

The pre-employment screening policy (**Attachment B**) sets a minimum standard of pre-employment screening for VPS executives. It requires all preferred candidates for VPS executive positions to complete a statutory declaration and consent form (**Attachment C**) declaring relevant instances of misconduct and allowing the recruiting entity to validate the declaration with previous employers.

Candidates with a history of misconduct are not necessarily precluded from employment. Employers are required to assess the nature of the misconduct and make a risk-based assessment about whether it would affect the candidate's ability to carry out the inherent requirements of the role. The principles of natural justice apply, requiring candidates to be advised of any adverse findings, and be provided with an opportunity to respond before a final decision is made.

The Commission has produced *A guide to implementing the VPS executive pre-employment screening policy* (**Attachment D**) to provide best practice guidance to VPS employers in implementing the policy. The Commission is now considering how best to work with departments and other public sector agencies to monitor the effectiveness of the policy and process.

The Commission is also actively engaging with departments, agencies and public sector unions, with a view towards developing pre-employment frameworks that could be applied more broadly to roles in the VPS and the public sector generally. We envisage that

approaches to be adopted will draw heavily on the framework that has been mandated for VPS executives, and experience with its implementation. The implementation of formal and consistent pre-employment screening arrangements across the Victorian public sector is a high priority objective for the Commission in 2019.

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

Yours sincerely

[redacted]

Paul Grimes
Commissioner

31 / 1 /2019

Attachments:

A – Commission Circular 2018-05

B – Pre-employment screening policy for VPS Executives

C – Statutory declaration and consent form

D – *A guide to implementing the VPS executive pre-employment screening policy*

CIRCULAR 2018-05 | VPS EXECUTIVE PRE-EMPLOYMENT SCREENING POLICY

Circular Number	2018-05
Issue date:	30 October 2018
Application:	All Victorian public service bodies for executive officer recruitment.
Resources:	VPS executive pre-employment screening http://vpsc.vic.gov.au/resources/vps-executive-pre-employment-screening/
Enquiries:	Integrity and Advisory Victorian Public Sector Commission (03) 9651 1321 info@vpsc.vic.gov.au

Key Points

- VPSC, with the agreement of the Victorian Secretaries Board, issues the VPS Executive Pre-employment Screening Policy (the Policy) and associated guidance material.
- This Policy addresses integrity risks associated with inadequate pre-employment screening of people seeking executive employment in the Victorian Public Service, and sets a minimum standard of pre-employment screening for VPS executives.
- It requires that a Statutory Declaration and Consent Form (the Form) be completed by candidates prior to a formal offer of employment being finalised for all VPS executive positions in public service bodies.
- Candidates with a misconduct history are not necessarily precluded from employment. However, the Policy ensures that employers can access the information required in order for them to determine a preferred candidate's suitability for a position based on a further understanding of their past employment history.

Updates

This is the first version of the VPS Executive Employment Pre-employment Screening Policy and applies to all executive level recruitment by public service bodies.

The Policy and associated guidance material are now available on the VPSC website at http://vpsc.vic.gov.au/resources/vps-executive-pre-employment-screening/

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 addresses integrity vulnerabilities identified in recruitment processes and sets a minimum standard of pre-employment screening for VPS executives. The Policy seeks to prevent employees moving between employers without previous misconduct being known or appropriately assessed in the context of relevance to the inherent requirements of a position.

The Policy requires completion of the Form prior to any formal offer of employment to an executive role in the VPS. The purpose of the Form is to allow conduct history to be known and assessed prior to formalising an offer of employment. Preferred candidates make a declaration about their conduct history and provide consent for information to be provided by previous employers to verify this history.

In most cases the Form should be completed once a preferred candidate has been identified. However, declarations made at earlier stages in the recruitment process may be appropriate for some roles.

Background

The Independent Broad-based Anti-corruption Commission (IBAC) released the report Corruption and misconduct risks associated with employment practices in the Victorian public sector on Tuesday 14 August 2018. Inadequate pre-employment screening and the recycling of employees with problematic histories are key findings.

The report draws on case studies from past investigations and echoes key findings of previous reports identifying integrity vulnerabilities in Victorian public sector recruitment processes, particularly in pre-employment screening.

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

contravention of a provision of this Act, the regulations or a binding code of conduct;

improper conduct in an official capacity;

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 under Part 3 (public service employment) or Part 7A (emergency situations);

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 of the public sector.

Scope

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

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.

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

Date of Application

The policy came into effect 30 October 2018.

VPS EXECUTIVE PRE-EMPLOYMENT SCREENING POLICY

1. Purpose

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

Misconduct[1] puts the safety of employees and the community at risk and erodes public trust.

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

The VPS Executive Pre-employment Screening Policy (this Policy) sets out the responsibilities and obligations for all VPS employers and candidates for employment in executive level roles in public service bodies.

This Policy requires that the Statutory Declaration and Consent Form (the Form) provided at Attachment A be completed by candidates prior to a formal offer of employment being finalised for all VPS executive positions advertised in public service bodies.

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.

2. Principles

Public sector values

The Victorian Public Sector Commission (the VPSC) issues the binding Code of Conduct for Victorian Public Sector Employees based on the public sector values. The values and this Code strive to meet the high standards the community rightly expects of the public service and provides the foundation of the integrity and accountability framework for all public service employees. The Code of Conduct is binding on employees and a contravention of it constitutes misconduct.

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.

Employment principles and standards

Section 8 of the PAA outlines the public sector employment principles. Section 62 of the PAA requires the VPSC to issue binding standards concerning application of the public sector 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.

Natural justice

The principles of natural justice 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.

3. Mandatory Requirements

Employers

Employers must ensure that all candidates for VPS executive roles complete the Form prior to a formal offer of employment being finalised.

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

In most cases the Form should be completed once a preferred candidate has been identified. However, declarations made at earlier stages in the recruitment process may be appropriate for some roles.

The Form also provides the required consent to enable employers to verify the accuracy of declarations made with previous and/or current employers. A Guide to Implementing the VPS Executive Pre-employment Screening Policy sets out a risk based approach to validating information provided by candidates in application for employment.

Candidates

Candidates who have progressed through the recruitment process to the stage of preferred candidate, must complete the Form prior to accepting a formal offer of employment.

An offer of employment cannot be finalised until the Form is complete.

Making a false declaration is an offence and may result in a charge of perjury.

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

contravention of a provision of this Act, the regulations or a binding code of conduct;

improper conduct in an official capacity;

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 under Part 3 (public service employment) or Part 7A (emergency situations);

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 of the public sector.

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 executive roles are subject to appropriate integrity checks.

This Statutory Declaration and Consent Form (this Form) must be completed prior to any offer of VPS executive level employment being finalised. If you do not complete this Form, your application for employment may not proceed.

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

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 executives can be found at https://vpsc.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 nominated references to obtain referee statement

State of Victoria

Statutory Declaration

I,_____

[full name]

of _____

[address]

_____, do solemnly and sincerely declare that:

[occupation]

		Correct/ True	Incorrect/ False	Do not know
1.	I have **not** had my employment terminated by any previous employer due to misconduct in employment.	☐	☐	☐
2.	In the past 10 years, I have **not** been found to have engaged in misconduct in employment.	☐	☐	☐
3.	I am **not** the subject of any open investigation into misconduct in employment.	☐	☐	☐
4.	I have **not** ceased employment while being the subject of a misconduct investigation.	☐	☐	☐
5.	All information I have provided in and with my present application for employment is complete, true and correct.	☐	☐	☐

I acknowledge that, to the best of my knowledge, this declaration is true and correct, and I make it with the understanding that it is being relied on for the purposes of my present application for employment and any employment that arises from my application. It is my understanding and belief that a person who makes a false declaration is liable to the penalties of perjury.

Declared at _____

(Location e.g. Melbourne)

This _____ day of_____20____

.....

Signature of person making this declaration

[to be signed in front of an authorised witness]

Before me,

.....

Signature of Authorised Witness

.....

Address of Authorised Witness

The authorised witness must print or stamp his or her name, address and title under section 107A of the *Evidence (Miscellaneous Provisions) Act 1958* (as of 1 January 2010), (previously *Evidence Act 1958*), (eg. Justice of the Peace, Pharmacist, Police Officer, Court Registrar, Bank Manager, Medical Practitioner, Dentist)

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: __ / __ / __

A GUIDE TO IMPLEMENTING THE VPS EXECUTIVE PRE-EMPLOYMENT SCREENING POLICY

VPSC
Victorian Public Sector Commission

VICTORIA
State Government

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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. 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.

Misconduct puts the safety of employees and the community at risk and erodes public trust. The VPS Executive Pre-employment Screening Policy (the Policy) addresses integrity vulnerabilities identified in Victorian Public Service (VPS) executive recruitment and sets a minimum standard of pre-employment screening. The Policy seeks to prevent employees moving between employers without previous misconduct being known or appropriately assessed in the context of relevance to the inherent requirements of a position.

The Policy requires that the Statutory Declaration and Consent Form (the Form) be completed by candidates prior to a formal offer of employment being finalised for all VPS executive positions advertised in public service bodies.

PURPOSE AND POLICY OVERVIEW

The purpose of this document is to provide best practice guidance to assist VPS employers on implementation of the Policy.

The Policy requires completion of the Pre-employment Statutory Declaration and Consent Form prior to any formal offer of employment in a VPS executive role in a public service body. The purpose of the Form is to allow conduct history to be known and assessed prior to formalising an offer of employment. Preferred candidates make a declaration about their conduct history and provide consent for information to be shared between employers to verify this conduct history.

The form includes the following statements:

> I have **not** had my employment terminated by any previous employer due to misconduct in employment
>
> In the past 10 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.

In most cases the Form should be completed once a preferred candidate has been identified. However, declarations made at earlier stages in the recruitment process may be appropriate for some roles.

Candidates with misconduct history are not necessarily precluded from employment, rather employers can access the information required in order for them to determine a preferred candidate's suitability for a position.

The Policy also 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 former and/or current employers to provide the preferred candidate's conduct history to a prospective employer. The process of validating declarations made on the Form is at the discretion of each individual employer according to need. This document provides advice about when and how these checks and other pre-employment screening checks may be undertaken.

DEFINITIONS

Misconduct

The *Public Administration Act 2004* defines misconduct as:

contravention of a provision of this Act, the regulations or a binding code of conduct;

improper conduct in an official capacity;

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 under Part 3 (public service employment) or Part 7A (emergency situations);

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 of the public sector.

Statutory declaration

A statutory declaration is a written statement 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. A false declaration may be liable to the charge of perjury.

Consent

The *Privacy and Data Protection Act 2014* (PDPA) defines consent as "express consent or implied consent". Consent, or permission, may be a requirement under Information Privacy Principle (IPP) 2 – Use and Disclosure, 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.

In the context of pre-employment screening, a candidate must 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.

Where the former/current and prospective employers are both public service employers, they may be considered different employers as set out in the PAA. As such, information can only be shared between different Victorian public service employers if express consent has been given by the candidate.

Public service body

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.

Privacy principles

Information privacy protections are embodied in ten Information Privacy Principles (IPPs) set out in Schedule 1 of the *Privacy and Data Protection Act 2014* (PDPA).

The IPPs govern the collection, use and handling of personal information by Victorian public service organisations. The objects of the PDPA with respect to information privacy are to:

- 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.

More information about the PDPA and the IPPs can be found at the Office of the Victorian Information Commissioner (OVIC) website https://ovic.vic.gov.au

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 as defined by the *Equal Opportunity Act 2010* (EOA) does not occur.

PRINCIPLES

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.
- Human Rights – respect and promote the human rights set out in the *Charter of Human Rights and Responsibilities 2006.*

Public interest

Victorian public service executives 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.

Employment principles and standards

Section 8 of the PAA outlines the public sector Employment Principles. Section 62 of the PAA requires the VPSC to issue binding Employment Standards concerning application of the public sector 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.

Natural justice

The principles of natural justice 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.

IMPLEMENTING THE PRE-EMPLOYMENT SCREENING POLICY

Guidance is provided for each part of the recruitment and selection process. The Best Practice Recruitment and Selection Toolkit is currently on the VPSC website and provides helpful information to assist organisations in implementing best practice recruitment and selection.

Planning

The planning phase of recruitment considers the inherent requirements of the position; the requirements that are essential or fundamental and not peripheral. Inherent requirements may include the skills, accountabilities, capabilities, knowledge, qualifications, accreditation and personal characteristics required to fulfil the position.

Risks intrinsic to the duties of the specific position must be considered and Victorian public service employers must be aware that applying blanket standards to all jobs may be discriminatory.

Questions employers may consider include:

- Does the position require any mandatory qualifications, licenses or registrations to operate?
- Is there a legal requirement for a National Police Check or Working with Children Check?
- Does the position provide services to vulnerable clients, manage significant financial resources or have access to confidential information?
- Would a candidate's secondary employment in a related industry present a potential conflict of interest?
- Could personal associations compromise a candidate's ability to perform their role?

Identifying these inherent requirements assists in identifying the focus of pre-employment screening, as outlined in the table below.

Position requirements	Focus of pre-employment screening
the need for strict privacy and confidentiality access to weapons unsupervised, direct contact with vulnerable people	identity conduct behaviour towards people
direct oversight of significant organisational assets or resources (i.e. financial delegations or access to public sector intelligence)	history of dishonest behaviour fraud other financial offences
operation of a vehicle	traffic or vehicle offences

In addition to considering the inherent requirements of the position, the planning phase should also consider the risk of the position. Executive positions within the Victorian public service have inherent risks dependant on factors such as oversight of public assets, financial delegations, or responsibility for vulnerable members of the Victorian community.

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

Attraction

To ensure fair and reasonable treatment, advertisements must be inclusive and based on the inherent requirements of the position.

The requirement to complete the Form should be made clear in the position advertisement.

The requirement to complete the Form prior to a formal employment offer should be consistently communicated throughout the recruitment process to ensure that candidates are well informed of the pre-employment requirements.

Non-advertised positions

Victorian public service policies may provide employers with the opportunity to fill or re-organise positions without advertisement.

Where this occurs, employers should continue to implement 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. Informal movement between positions with different inherent risks should be subject to the appropriate level of pre-employment screening.

Employers should consider the use of the Form along with recommended pre-employment screening for preferred candidates of non-advertised positions.

Selection

Once a suitable, preferred candidate has been established, the employer must provide the preferred candidate with the Form to be completed.

The Policy requires that the Form is completed correctly by the preferred candidate prior to any formal offer of employment being made.

Once the preferred candidate completes the Form, pre-employment screening should occur to validate application information and declarations. The level of validation should be dependent on the risks of the position; the model on the following page provides a guide.

PRE-EMPLOYMENT SCREENING MODEL - GUIDANCE

The model on this page provides guidance about the types of checks that may be undertaken, including the validation of candidate declarations made using the Form.

Check*	Mechanism
Identity and right to work: evidence of name/change of name, DOB, address, citizenship or visa	birth certificate, marriage certificate, passport, change of name document, drivers licence, VEVO (Visa Entitlement Verification Online) check
Previous employment history	contact nominated references
National Police History Check, and International Police Check if lived outside of Australia for more than 12 months in past last 10 years	Undertaken directly via Victoria Police, or via an outsourced provider (e.g. Fit2Work)
Termination due to misconduct**	signed Statutory Declaration, contact HR of previous employers
Open misconduct investigation or ceased employment during an investigation**	signed Statutory Declaration, contact HR of previous employers
Substantiated findings of misconduct**	signed Statutory Declaration, contact HR of previous employers in past 10 years
Previous employment history – dates, position	contact HR of any previous employer to confirm dates and position of employment
Previous formal investigation of misconduct	additional declarations and consent required, contact HR of previous employers in past 10 years
Previous allegation of misconduct	additional declarations and consent required, contact HR of previous employers in past 10 years

* role specific checks (such as qualifications, Working With Children, etc.) should be undertaken in addition to the listed pre-employment screening

** indicates information provided in the Form that may be validated by pre-employment screening

Multiple appointments

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 the Form and **all** preferred candidates are subject to appropriate pre-

employment screening.

Identity and right to work

Victorian public service employers have an obligation to ensure that a candidate's identity is verified prior to employment.

Considerable risk to an organisation can occur where an individual is hired without satisfactory evidence of:

- commencement of identity to confirm birth in Australia or arrival in Australia (i.e. Passport, birth certificate, citizenship or visa etc.)
- primary documents to show the use of an candidate's identity in the community (i.e. driver's license)
- secondary documents to show the use of a candidate's identity in the community (i.e. Medicare card, electoral enrolment, credit card).

At a minimum the preferred candidate's identity documents must indicate full name, date of birth and photographic identification. Expired identity documents should not be accepted.

For candidates who are not Australian citizens, a current visa that entitles the preferred candidate to work in Australia is required. Victorian public service employers must consider any restrictions to the preferred candidate's right to work in the context of the position.

Visas, including associated work rights, conditions and/or restrictions can be checked using the Department of Home Affairs' free online Visa Entitlement Verification Online (VEVO) service.

Previous employment history

Victorian public service employers routinely assess previous employment history by obtaining statements from referees nominated by the candidate. Further information and a Reference Check Template can be found on the VPSC website at https://vpsc.vic.gov.au/html-resources/integrity-in-recruitment-guidance-note/

National Police History Check

Employers should identify the inherent requirements of specific jobs before deciding whether a police check is required. Positions likely to require a police check include those involving direct access to vulnerable people, sensitive or highly confidential information, financial delegations or resources or other items of significant value; or the authority to issue licenses or handle firearms.

Police checks may be legally required for licensing, registration or employment in some occupations. Victorian examples include teachers, lawyers, building practitioners, police, bail justices, correctional staff, gaming and liquor inspectors, health practitioners and aged-care workers.

Many Victorian public service employers undertake police checks for all preferred candidates. In addition, an International Police Check may be undertaken if a preferred candidate has lived outside of Australia for more than 12 months in past last 10 years.

A criminal record will not necessarily prevent employment in the Victorian public service. A criminal record can only prevent employment if the offence is of specific relevance to the inherent requirements of the position. The Australian Human Rights Commission or Victorian Equal Opportunity and Human Rights Community can conciliate complaints and make recommendations where a candidate believes they have been discriminated against because of an irrelevant criminal record. Discrimination does not include cases where the criminal record would prevent a person from performing the inherent requirements of a particular job.

Further information regarding assessing the relevance of a criminal record can be found in the section of this document titled Managing adverse conduct history arising from pre-employment screening.

Verification of misconduct declarations

The Form contains declarations regarding previous termination on the basis of misconduct; substantiated findings of misconduct; and open investigation or ceased employment during misconduct investigation; as well as the consent required to verify preferred candidate declarations with current/former employers.

For some roles, employers may wish to seek further misconduct information, for example, information about previous formal investigations and allegations of misconduct. In such cases, additional declarations and consents will be required.

Where the employer considers it is required, verification of declarations should occur in written format by way of the requesting employer submitting a standardised form to the current or previous employer. A Misconduct Declaration Validation Template document is provided in the resources.

Candidates are entitled to access any information obtained about themselves, including information provided by nominated referees and current and/or 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 personal characteristics (e.g. age, gender, sexual orientation etc.).

Role specific pre-employment screening

In addition to the checks for all positions outlined in the table on the previous page, the following position specific checks may need be undertaken, if they form part of the inherent requirements of the position:

- qualifications
- professional registration or licence
- working with children check
- child safe standards
- declarable associations to individuals known or suspected to be involved in unlawful activity
- declarable private interests that may represent a conflict of interest, including external employment, investments, etc.
- bankruptcy checks via the Australian Securities and Investment Commission
- psychometric testing.

Qualifications

For positions that require a specific qualification, the preferred candidate's qualifications should be verified by obtaining a certified copy of an academic transcript. Qualifications can only usefully be verified once evidence of identity has been established.

Professional registration or licence

If a professional registration or licence is a requirement of the position, evidence should be obtained from the appropriate body or licencing agency that the preferred candidate holds such a registration or licence.

While professional registrations may already include an assessment of a mandatory qualification, it is best practice to independently verify a preferred candidate's qualifications prior to an offer of employment. Similarly, professional registrations may also include a National Police History Check, however this may not consider some offences which may be relevant to the position.

Working with Children Check and Child Safe Standards

Legislative obligations pursuant to the *Working with Children Act 2005* require that people who work with, or care for children are subject to a screening process to assist in protecting children from sexual or physical harm. Further information may be sought from the Department of Justice and Regulation. Similarly, where services are provided to children, reasonable efforts must be made to contact current or immediate past employers with respect to ensuring children are protected, in line with Child Safe Standards.

Further information may be sought from the Commission for Children and Young People.

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.

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.

Fraudulent statutory declarations

If, through the validation process, a previous employer provides information that is contrary to the declaration of the preferred candidate, this may suggest a false declaration has been made. However, there may be many other explanations for this. In this case, the candidate should be provided with the opportunity to respond to the information the previous or current employer has provided, before an assessment is made weighing all information available.

A false declaration may be liable to the charge of perjury and can lead to termination of employment.

Deed of release

A separation agreement, commonly known as a Deed of Release (Deed), entered into at the conclusion of prior employment is likely to have confidentiality provisions that are legally binding to all parties. Candidates who have previously entered into a Deed that prevents or limits disclosure must ensure they do not violate the terms of the Deed when completing the Form. Legal advice may be sought by the candidate and/or the former employer in relation to the specific terms of the Deed.

Employers seeking to enter into such an agreement should pay particular attention to the integrity risks this may present to future employers.

External recruitment agencies

Employees appointed through an external recruitment processes, or contracted to a public service employer, should be subject to the same standards of pre-employment screening, including completion of the Form, as employees appointed through direct recruitment.

Executive search firms retained to provide recruitment services for executive roles should meet the standards of pre-employment screening and rigorous checking.

Employment offer

Following successful completion of pre-employment screening, a preferred candidate may be made a formal offer of employment. 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.

Record management

Victorian public service employers should ensure robust and clear retention of recruitment and appointment document processes.

Agencies across the Victorian public service must restrict access to candidates' pre-employment screening information, including any misconduct or criminal findings, to those involved in assessing suitability for employment within the respective Victorian public service employer.

The Public Records Office Victoria (PROV) provides standards for the retention and disposal for records of common administrative functions. This standard recommends the following minimum time periods for records relating to misconduct.

- Records documenting investigations by either the agency of an external body where misconduct by an agency representative is proven and which results in dismissal must be retained for at least 15 years.
- Records documenting investigations by either the agency or an external body where minor misconduct by an agency representative is proven and which may result in a reduction in salary or job classification or suspension of employment must be retained for at least 7 years.

Records documenting allegations of misconduct where no misconduct is proven (e.g. where allegations are proved to be frivolous or vexatious) must be retained for a minimum of 2 years.

MANAGING ADVERSE CONDUCT HISTORY ARISING FROM PRE-EMPLOYMENT SCREENING

If pre-employment screening identifies a previous history of misconduct, current or open investigation of misconduct, or criminal record; it is the responsibility of the recruitment panel to consider this information carefully in relation to the inherent requirements of the position.

Following the principles of natural justice and procedural fairness, it is important that candidates are provided opportunity to discuss the conduct with the panel, including opportunity to respond to any information presented by a current or former employer.

A candidate with an adverse conduct history will not necessarily be precluded from employment within the Victorian public service. Employers must give due and fair consideration of evidence of behaviour change rehabilitation.

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 should always be assessed on a case-by-case basis to minimise the risk of discrimination. Employers must consider that it is unlawful to discriminate and must ensure that any assessments are aligned with the *Charter of Human Rights and Responsibilities 2006* and the *Equal Opportunity Act 2010*.

Determining the relevance of previous conduct to the position applied for, should take the following into account:

- the age of the candidate 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 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.

Review of adverse decisions

The candidate should have the opportunity to apply for a review of the decision using the review processes of the employer. Victorian Public Service 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/

GUIDANCE FOR EMPLOYERS VALIDATING DECLARATIONS

Who do employers contact to validate declarations?

Information concerning an individual's adverse conduct should be restricted to those involved in assessing suitability for employment within the respective Victorian public service employer. In many agencies this is likely to be a Human Resources/People and Culture contact(s). In some cases, the relevant person to contact may work within an employee conduct unit, or equivalent.

Victorian public service employers should ensure the correct contact information is easily accessible to other agencies, to mitigate a resource burden of incorrect contacts.

Does the request have to be in the format of the Misconduct Declaration Validation Template?

No. This document 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 and of the candidate. The preferred candidate's Statutory Declaration and Consent Form should 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 it?

Employers should consider that when completing checks of information such as previous employment history, there may be limitations to the quality of record keeping or the processes previously applied. Employers should consider how they will retain and manage this sensitive data to ensure compliance with this policy.

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 employer should 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 Statutory Declaration and Consent Form should be provided along with a request to validate declarations. The Form clearly outlines the information that the preferred candidate has consented to being shared.

You should also consider if there is a Deed in place which may restrict the information that you can share. Further guidance may be sought from your Corporate or Legal area.

The principles of natural justice should 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. The candidate will have access to this information and given opportunity to respond.

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.

Records documenting misconduct investigations where misconduct is proven and results in dismissal must be retained for a minimum of 15 years.

Records documenting misconduct investigations where misconduct is proven but does not result in termination must be retained for a minimum of 7 years.

Records documenting allegations of misconduct where no misconduct is proven must be retained for a minimum of 2 years.

Some enterprise agreements may include provisions that alter the timeframes listed above. This will be relevant where employees may have moved from a non-executive to an executive level role. You should be aware of agreements that apply to your employees and former employees.

RELEVANT LEGISLATION AND 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

Fair Work Regulations 2009

Public Administration Act 2004

Privacy and Data Protection Act 2014

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