

Criminal History Check Guideline and Procedure

Framework

This document is part of a framework, which includes:

- *Public Sector Act 2009 (SA)*
- AGD Criminal History Check Policy
- Commissioner for Public Sector Employment Guideline: Extent of Obligation on Employees to Report They Have Been Charged with a Criminal Offence
- *State Records Act 1997 (SA)*
- *Disability Services Act 1993*
- *Disability Services (Assessment of Relevant History) Regulations 2014*
- *Children's Protection Act 1993 (SA)*
- *Children's Protection Regulations 2010 (SA)*
- *Australian Human Rights Commission Act 1986 (Cth)*
- *Spent Convictions Act 2009 (SA)*

Who needs to comply with this Procedure

All employees in the Attorney-General's Department (AGD) are required to comply with this guideline and procedure.

What is covered by this Guideline and Procedure

AGD ensures that appropriate screening processes are adopted in the recruitment, selection, employment and promotion of staff. This enables the Department to fulfil its duty of care to protect and minimise risk to staff, clients and others who are recipients of a service provided by the Department.

Purpose of the Guideline and Procedure

The Department aims to:

- maintain public and client confidence in the integrity of the Department and its employees;
- safeguard applicants from unlawful discrimination on the basis of a criminal history that is not relevant to the role for which they have applied;
- minimise the risk of inappropriate appointments to Departmental roles of unsuitable candidates;
- ensure that delegates are fully informed of the history of individuals when considering appointments to Departmental roles to reduce the risk of inappropriate appointments and compliance with Public Sector values;
- establish adequate protection of information, assets and people from potential risk of appointment of unsuitable candidates to key roles; and
- undertake all reasonable precautions to provide a child safe environment.



Definitions

'Criminal History' is a list of offences recorded for which an individual has been found guilty by a court including offences for which a "without conviction" was recorded as a sentencing outcome, as recorded and reported by SAPOL or an interstate counterpart in a National Police History Clearance.

'Offence' means an offence and includes pending charges or proceedings.

'Director' is a person occupying a position at or above Director level under the authorised AGD Human Resources Delegations.

Criminal History Checks

All candidates must undergo a criminal history check prior to being recommended for an offer of employment within the Department.

At the time of applying for employment, or at the time of applying for a new role within the Department, applicants must complete a National Police Check (NPC) Application Form. This is regardless of whether they are existing public sector employees or not. This form is then submitted to SAPOL, who provide the Department with a National Police Certificate. National Police Certificates provided in relation to applicants for employment will be accessed only by Human Resources and Business Unit Heads.

Pursuant to the *Determination and Guideline of the Commissioner for Public Sector Employment: Employment Declaration*, together with the *Australian Human Rights Commission Act 1986* and *Spent Convictions Act 2009*, information disclosed in respect of criminal offences or current criminal charges should only be taken into account where the offences committed or alleged to have been committed by the application are relevant to the inherent requirements of the role. Offences that have no bearing on the suitability of the applicant having regard to the functions of the role should be disregarded.

Employees working with children, vulnerable people or people with a disability

Employees, volunteers, contractors or applicants for employment working with children, vulnerable people or people with a disability will be required by Business Units Heads to undergo additional background screening or checks upon applying for employment or engagement and every three years thereafter, including but not limited to:

- Child related employment screening
- Disability Services employment screening
- Vulnerable person related screening
- Aged care sector employment screening
- General employment probity screening

Business Unit Heads should seek advice from Human Resources if unsure about which employees are required to undertake such additional screening. The cost of additional screening will be met by the Business Unit. Managers are responsible for ensuring that the required checks are contained within the relevant Job and Person Specifications for the relevant roles.

Extended Police Checks

In some circumstances, certain candidates will be required by Business Unit Heads to undergo extended police checks. Business Unit Heads may also determine certain workgroups or groups of employees, due to the nature of their work, are required to have further screenings and/or periodic checks.

Periodic Checks

Further, in some circumstances and at the discretion of the Business Unit Head, certain employees will be required to undergo a National Police Clearance every three years. The cost of the three yearly screening will be met by the Business Unit. Business Unit's are to record any subsequent checks on the Chris21 payroll system for reviewing purposes.

Disclosure of Criminal Offence during Employment

Where employees are charged with a criminal offence during their employment, (irrespective of whether the alleged offence occurred during the period of their employment or not) this may result in them potentially breaching the *Public Sector Act 2009*. A proven breach of the *Public Sector Act 2009* constitutes misconduct and renders an employee liable to disciplinary action/sanction. Where management becomes aware that an employee has been charged with a criminal offence(s), consideration is to be given to whether it is appropriate to suspend the employee from duty; or to assign or transfer them temporarily to alternative duties; or allow them to continue performing their substantive duties, but subject to restrictions.

In all circumstances where suspension of an employee from duty is contemplated, advice must be sought from Human Resources. Depending on the nature of the allegations and whether information is made available by South Australia Police (SAPOL) it may be appropriate for management to conduct an investigation. Such an investigation may be necessary to discern if there is evidence available that gives rise to allegations of misconduct in relation to the employee's employment and hence the need of a disciplinary process independent of any criminal proceedings in place. Investigation is also necessary in order to inform an assessment of any real or potential past or future risk of harm to any client/s, including children and vulnerable people, or other employee/s.

All employees must comply with their obligation under the Code of Ethics to advise their manager at the earliest possible opportunity if they are charged with a criminal offence. Employees are to refer to the Commissioner for Public Sector Employment Guideline: Extent of Obligation on Employees to Report They Have Been Charged with a Criminal Offence, for guidance.

Record keeping

Employment Declarations and associated documents should be classified 'Sensitive : Personal' according to the agency information security classification scheme and only be made available to staff on a need-to-know basis. Physical and electronic copies should be secured from unauthorised access according to the requirements of Premier and Cabinet Circular 30 "Protective Security Policy Framework" for example in a locked filing cabinet.

All staff responsible for handling Employment Declarations are obliged to securely handle official information described in the Code of Ethics for the Public Sector as well as the specific requirements of the Privacy Principles and "Protective Security Policy Framework".

Copies of identification documents provided with an application for a National Police Check will be destroyed if an applicant for employment is unsuccessful.

Where do I get further information?

The AGD Criminal History Check Policy can be found on the intranet on the [policies and procedures page](#). The Commissioner for Public Sector Employment Guideline: Extent of Obligation on Employees to Report They Have Been Charged with a Criminal Offence can be found on the [Office for the Public Sector website](#).

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