



**PRE-EMPLOYMENT SCREENING (CRIMINAL
HISTORY/RECORD CHECK) POLICY**

COR156

BACKGROUND

Heightened scrutiny of corporate performance has resulted in organisations adopting corporate practices and behaviours that better reflect community standards (including those legislated) and expectations. Increasing exposure to and awareness of corporate risk (including security matters) has led to recruitment/appointment practices that have included the screening of prospective employees prior to their formal engagement. Criminal history and background checking can provide information that allows for better-informed recruitment decisions/outcomes by verifying/confirming:

- Credentials and good character
- Any pre-conditions for employment have been met
- Suitability for employment
- Whether or not important relevant information has been concealed.

The Department of Treasury and Finance (DTF), as the lead agency supporting the government’s key economic and financial policy outcomes, has adopted pre-employment screening practices to ensure both potential and existing employees are fit and proper people to be providing services to the South Australian community on behalf of the Government.

The DTF Corporate Values further define DTF’s commitment to these standards, in particular alignment with:

- **Respect and Courtesy** by ensuring our conduct reflects the highest ethical standards expected of public servants by government and the community;
- **Professionalism** by maintaining the highest standards of behaviour;
- **Accountability** by taking responsibility for our actions;
- **Efficiency and Effectiveness** by making best use of resources for the benefit of the South Australian community.

OBJECTIVE

This policy is designed to ensure appropriate screening processes are adopted in the recruitment, selection and engagement of individuals, where the role requires consideration of a criminal history/record check, prior to an offer of employment being made.

This policy assists DTF to:

- Ensure potential and existing employees, are fit and proper persons who meet the standards of professional and ethical conduct in the South Australian public sector
- Provide a secure, safe and healthy workplace for employees
- Treat employees and prospective employees fairly, adhering to information privacy principles, merit and natural justice
- Establish adequate protection of information, assets and people from potential risk

- Protect the interests of those who rely on and/or receive services provided by DTF employees
- Identify prescribed roles that require the performance of functions or the undertaking of activities of a type prescribed by government policy and/or legislation
- Identify prescribed roles with direct access to high risk areas such as:
 - Security sensitive information, financial systems and business infrastructure;
 - Personal information.

SCOPE

This policy applies to individuals holding a “prescribed role”, or seeking any form of paid employment within a “prescribed role” with DTF, regardless of whether they are existing public sector employees or not.

In relation to existing DTF employees, this policy will only apply:

- When seeking a new role that is a “prescribed role” within the branch; and/or
- As part of a due diligence program to meet legislative requirements.

Contractors, consultants and temporary agency staff are unable to be covered under this policy, as they are not considered employees of DTF. Other arrangements will need to be considered, e.g. written inclusion in tendering documents and contract agreements of the requirement for contractors and their staff to comply with the DTF policy in terms of undergoing a satisfactory criminal history/record check prior to being awarded the contract.

This policy fulfills a number of legal, human resource management and service delivery obligations placed on DTF, and should be read in conjunction with (and should not provide terms and conditions of employment less favourable than those in):

- *Public Sector (PS) Act 2009*
- SA Public Sector Salaried Employees Interim Award
- *Work Health and Safety Act 2012 (SA)*
- *Equal Opportunity Act 1984*
- *Fair Work Act 1994*
- *Freedom of Information Act 1991*
- *State Records Act 1997*
- Cabinet Instruction 1/89 – the information Privacy Principles
- Determination 1: Merit, Engagement, Assignment of Duties and Transfer of Non-Executive Employees
- Commissioner for Public Sector Employment Guideline: Management of Unsatisfactory Performance (including misconduct)
- The Code of Ethics for the South Australian Public Sector
- Common law principles of confidentiality, duty of care, fidelity and negligence
- Memorandum of Administrative Agreement between the Department for Communities and Social Inclusion (DCSI) and DTF.

DEFINITIONS

Authorised Officer (s)

An Authorised Officer is the Under Treasurer or his delegate who is authorised to access information regarding the criminal history/record of current employees and potential employees (that is, preferred candidate).

Officers authorised to access criminal history/record information must maintain strict confidentiality. Criminal history information is not to be divulged to an unauthorised person and must be held in secured storage.

Authorised Officers themselves must successfully undergo a criminal history/record check in order to perform the duties and role of an Authorised Officer.

Candidate

Prospective and existing employees are responsible for complying with the requirements of this policy when seeking employment or promotion within DTF, to ensure the accurate assessment of the individual's suitability for employment in that role.

Criminal History/Record Check

A criminal history/record check is a National Criminal History Record Check (NCHRC). A NCHRC involves the following:

- A search of a national index of names of persons of interest to police for a possible match; then
- Checking any matched names by Australian police services for a criminal record of found or proven matters by a Court
- The subsequent release of the criminal history/record to either the subject individual (in the form of a National Police Certificate) or to a third party upon the consent of the subject individual or where prescribed by legislation.
- Where a criminal record check is "not clear", DCSI will undertake a risk assessment in line with the 'Matrix for Assessing Criminal History Information' (appendix b), and provide a briefing to the Authorised officer.

Criminal History/Record Checks are discussed further in this policy.

Public Sector Employee

Means a person appointed to the Public Service or employed by the Crown or a public sector agency. Where the text of this Policy refers to "employee" it will mean "public sector employee." For the purposes of this Policy, "employee" does not include contractors, consultants and Temp Agency staff engaged by DTF.

Freedom of Information (FOI) – FOI Act 1991

Pursuant to the *Freedom of Information Act*, individuals have the right to apply to access and correct records relating to their personal affairs.

“Spent” or “Rehabilitated” Conviction Scheme

Means those offences on a person’s police record, which because of the passage of time (10 years for adults and 5 years for minors), are excluded from (not released for) consideration when determining their relevance for employment purposes. The aim is to prevent discrimination on the basis of old convictions to enable a person to return to full citizenship provided they have proved they have reformed by not re-offending. If the person has re-offended within the last 10 years (or 5 years as a minor), all prior findings of guilt are released.

Records that contain convictions or a finding of guilt for major indictable offences will not fall within this category.

POLICY STATEMENT

Public trust and confidence in the public sector is essential for the proper administration of government services. That trust and confidence is maintained where public sector employees are ethical, honest and accountable for their actions.

DTF recognises its responsibility to ascertain, as far as practicable, that both potential and existing employees, are fit and proper people to be providing services to the South Australian community on behalf of the Government.

DTF acknowledges its responsibility for protecting the individual’s privacy and the confidentiality of their personal information, and to deal with this information in accordance with this policy.

RESPONSIBILITIES

Under Treasurer or delegate

The Under Treasurer or delegate shall ensure that the organisation has in place an effective process that provides for the screening of all current and potential individuals in keeping with legislation and this policy.

The Under Treasurer or delegate has the authority to approve all employment offers and can delegate this authority to the Deputy Under Treasurer and Branch Heads. However, in circumstances where a criminal history/record check is required, prior to an offer of employment being made, **only** the Under Treasurer or delegate has the authority to approve employment of individuals.

The Under Treasurer or delegate has the authority to:

- Access criminal history records on individuals to determine their suitability for employment as part of the recruitment and selection processes

- Make a decision about appointment where the individual is found to have a relevant offence, and conduct an independent review of the process and decision respectively.

The Under Treasurer or delegate are responsible for ensuring decisions embody the principles of merit, equity and natural justice.

Note: *The Under Treasurer or delegate and Authorised Officer will be used interchangeably throughout this document.*

Prospective and Existing Employees

Prospective and existing employees are responsible for complying with the requirements of this policy when seeking employment or promotion within DTF, where the role requires a criminal history/record check to be undertaken, as part of the assessment of an individual's suitability for employment in that role.

Human Resources

Human Resources is responsible for administering this policy to ensure the principles and procedures for conducting criminal history/record checks are adhered to and comply with the requirements of the Memorandum of Administrative Agreement between DTF and DCSI.

Authorised Officer

Authorised officers are responsible for requesting a criminal history/record check using the "Informed Consent General Employment Probity Check" form (available on the DTF intranet under Staff Resources / Forms).

When completing the 'Informed Consent General Employment Probity Check' form provide as much relevant detail as possible in relation to the role and prospective duties. Information such as whether the applicant has access to personal details, financial information, deals with money or monetary transactions, or has access to confidential or sensitive information will assist the DCSI Screening Unit in providing a more relevant risk assessment.

Authorised officers involved in the handling of an employees criminal history/record check must ensure that the privacy of individuals and confidentiality of the records is maintained at all times, and stored separately from normal filing systems in a secure area.

POLICY

Criminal history/record check

Criminal history/record checks are mandatory for individuals who apply for roles where the Delegate determines that the role requires consideration of a criminal history/record check before approving an appointment.

The requirement to undergo a criminal history/record check will be indicated on the Job and Person Specification for relevant roles and contain the following statement:

“An individual recommended for appointment/employment to a role in DTF will be subject to a satisfactory criminal history/record check being conducted in accordance with the DTF Pre-Employment Screening (Criminal history/record check) Policy. Disclosure of any pending charges is also mandatory. Previous criminal conviction or pending charges will not necessarily preclude employment.”

Criminal history/record checks will be initiated at the point of recruitment and forwarded to the Authorised Officer.

Only the preferred applicant will be required to fill out appropriate documentation and authorise the conduct of a criminal history/record check as part of the selection process, prior to any offer of employment being made.

The information produced as a result of the criminal history/record check will only be accessible by the authorised officers and must remain confidential.

A criminal history/record check can take on average 7-14 working days to process by DCSI. Appendix A charts the appropriate procedure for processing criminal history/record checks within DTF.

Prescribed Role

A prescribed role in DTF refers to roles where a criminal history/record check is determined as relevant to the inherent requirements of the job, and requires or involves:

- Access to and/or storage of secure or sensitive information systems, personal information about clients, financial and taxation information concerning members of the business community and the wider public, highly sensitive information about the finances of the Government, or an employee who manages those in a prescribed role that have these responsibilities
- The performance of functions or the undertaking of activities of a type prescribed by government policy and/or legislation
- High level of financial accountability, and/or direct responsibility for the collection and administration of financial transactions/records
- Chauffeuring responsibilities for statutory position holders.

The above attempts to provide some assistance to delegates in determining prescribed roles requiring consideration of a criminal history/record check before approving an appointment. This process will also ensure that the requirements detailed in the purpose are met.

Applicant Refuses a Criminal History / Record Check

If an applicant refuses to consent to a criminal history/record check, the Under Treasurer or delegate will document that they were unable to fully assess suitability of the applicant for the role, as the applicant failed to meet the required pre-employment provisions and is therefore excluded from selection.

Applicant Criminal History / Record Check – “Clear”

In the event that the criminal history/record check is “clear” (i.e. contains no relevant court outcomes and/or pending matters) and other screening procedures such as reference checks and pre-employment declarations have been completed, the applicant may be offered employment.

Applicant Criminal History / Record Check – “Not Clear”

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Applicant’s Access to Criminal History/Record Checks

In most circumstances potential and existing employees will have a legal right to access personal information/documents held under the *Freedom of Information (FOI) Act 1991*.

However, a criminal history/record check document is considered an exempt document under the provisions of the Act, and accordingly an agency may refuse access pursuant to Part 3 Division 1 clause 20(1)(c) of the *FOI Act*.

If applicants wish to exercise their rights by seeking access to their offender history, they may be shown the information as held by DTF. However, copies are not permitted to be made and applicants should be advised to apply directly to DCSI.

Frequency of Criminal History/Record Checks

A new criminal history/record check will be required each time individuals seek re-employment, transfer or promotion to a prescribed role, regardless of whether they are existing public sector employees or not, or existing DTF employees.

In circumstances where individuals are employed, either in an ongoing capacity or for significant periods of time, in areas identified as high risk, the frequency of criminal history/record checks should be determined by the delegate to ensure that individuals have not committed an offence which compromises the integrity of their ability to perform the duties of their role since their initial employment date.

Should DTF employees be required to provide services to other agencies where security issues exist then criminal history/record checks are to be undertaken in accordance with that agency’s policy requirements.

Payment of Criminal History/Record Checks

Payment for criminal history/record checks will be the responsibility of the Branch within which the potential employee may be employed. DTF will be invoiced by DCSI on a quarterly basis.

The Branch may use its discretion and negotiate payment of the fee by the individual, if deemed appropriate.

Assessing Criminal History / Record Checks

The result of a criminal history/record check should form part of the overall assessment of an applicant’s suitability for obtaining employment and compliment normal selection guidelines. An applicant should not be precluded automatically from gaining employment on the basis of having a criminal history.

When assessing an applicant’s suitability for employment, consideration should be given to the relevance of the criminal history/record check to the role for which the applicant is being considered. Important factors to consider include:

- The nature of the offence and the relationship of the offence to the particular role for which the applicant is being considered
- The period of time that has elapsed since the offence took place
- Whether the Court recorded a conviction for the offence/s
- Punishment/s imposed by the Court
- Whether there is evidence of an extensive criminal history
- Whether the offence was committed as an adult or a juvenile. Offences of a minor nature committed during youth may be viewed differently from the same offences committed by an adult
- The number of offences committed. An accumulation of individual minor offences may be sufficient to warrant rejection. The question to be decided is whether or not the offences are considered to establish a pattern of behaviours, which renders the applicant unsuitable for employment
- Mitigating or extenuating circumstances, which might be revealed in relation to the offence(s), committed i.e. provocation or peer pressure and the circumstances in which the offence was committed or effects of alcohol. Mitigating circumstances, however, may not necessarily always be in favour of the applicant
- Evidence of the applicant's good character since the offences were committed. Relevant factors may include whether the person is currently employed and, if so, referee reports on their performance, other referee reports, steady employment record and favourable reports by past employers.

Any decision made to offer employment or appointment must be justifiable and should be fully documented.

Matters Pending Investigation

If an applicant is under investigation for an offence which if found guilty would make them ineligible for employment under this policy, no offer of employment should be made until the investigation is finalised. This applies to investigations carried under police powers, or under the *PS Act 2009*.

Existing employees charged with an offence (whether or not punishable by imprisonment) or given notice of a disciplinary inquiry where the outcome would significantly affect their ability to perform their role, have a duty under the *PS Act 2009* to notify their Manager/Supervisor. Individuals should seek the assistance of Corporate Human Resources in these circumstances.

Confidentiality and Document Control

An applicant's criminal history/record check will not be disseminated or disclosed to any unauthorised individual. The only exception is in the case of requests where a grievance or appeal has been lodged against a decision in relation to employment and the persons history record is required to be disclosed to the appeal board as part of a formal process.

The information **will not** be copied, electronically recorded or entered onto any database or otherwise duplicated. If results of a criminal history/record check need to be transferred, the information must be securely packaged prior to postage and sent by registered post. Information **must not** be transmitted by fax or electronically. The information relating to the results of criminal

history/record check **must not** be maintained on an employee’s personnel file or advertised vacancy file.

Negligent handling of information and the accidental or deliberate misuse of this information may provide grounds for disciplinary action.

Information obtained by criminal history/record checks is not to be used for any purpose other than to determine suitability for appointment/employment to a role, continuing employment in a different capacity or the provision of services to clients.

Details of criminal history/record check outcomes will be managed in accordance with the *State Records Act 1997*. Reference should be made to the [DTF Records Management Policy \(COR133\)](#), which details the framework under which official records of the Department are created and managed.

Privacy

In accordance with Cabinet Administrative Instruction 1/89 – Information Privacy Principles (also known as Premier and Cabinet Circular 12) DTF has obligations for the collection, use, access, disclosure and storage of personal information.

Application of this Policy must satisfy Information Privacy Principles:

- Storage (file security and/or appropriate disposal)
- Use (clear purpose, clear definition of authority, clear and fair guidelines for assessment of the information)
- Disclosure (clear definition of authority and results of misuse).

DTF will notify (and in the case of criminal history/record checking gain consent) an individual of the intent to collect information, the purpose of the collection, the usual practices in which information may be disclosed, and, only collect what is lawful and fair.

Authorised officers involved in the handling of a person’s criminal history records must ensure that the privacy of individuals and confidentiality of the records is maintained at all times, and stored separately from normal filing systems in a secure area.

Accordingly, information relating to the results of criminal history/record check **must not** be maintained on an employee’s personnel file or advertised vacancy file.

General Disposal Schedule

In relation to criminal history/record checks, any details of personal history records must not be retained on a personal file or advertised vacancy file or recruitment/selection/appointment file.

All records relating to an employee’s criminal history/record check are to be disposed confidentially in accordance with the General Disposal Schedule 15, Personnel Security section 12.94.1, for State Government Agencies.

Grievance/Complaints Procedure

Applicants may write to the Under Treasurer or delegate if they believe that a decision not to employ them was unfairly or unreasonably based on pre-employment screening information. They will be required to outline why they believe the decision was unfair and unreasonable.

For further information, contact the Corporate Human Resources or refer to the [DTF Grievance Resolution Procedure \(COR099\)](#).

Note: This will not affect an employees right to access the formal Grievance and Promotional Appeal Processes.

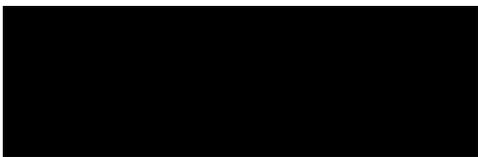
International Criminal History / Record Checks

Preferred candidates who have recently arrived in Australia or those who have recently worked in an overseas country and are required to provide a criminal history/record check before a formal offer of employment can be made should contact the relevant overseas Police Force direct.

Some countries will not release information regarding an individual's police record to either individual or a third party. In circumstances where a criminal history/record check cannot be made, referee checks must be conducted with a number of individuals who personally knew the candidate whilst they were living in the country. The credentials of referees must be thoroughly vetted and verified and can include previous employers, government officials and family members.

RELATED DOCUMENTS

- [DTF Grievance Resolution Procedure \(COR099\)](#)
- [DTF Records Management Procedure \(COR114\)](#)
- [DTF Records Management Policy \(COR133\)](#)
- [Informed Consent Form Guidelines](#)

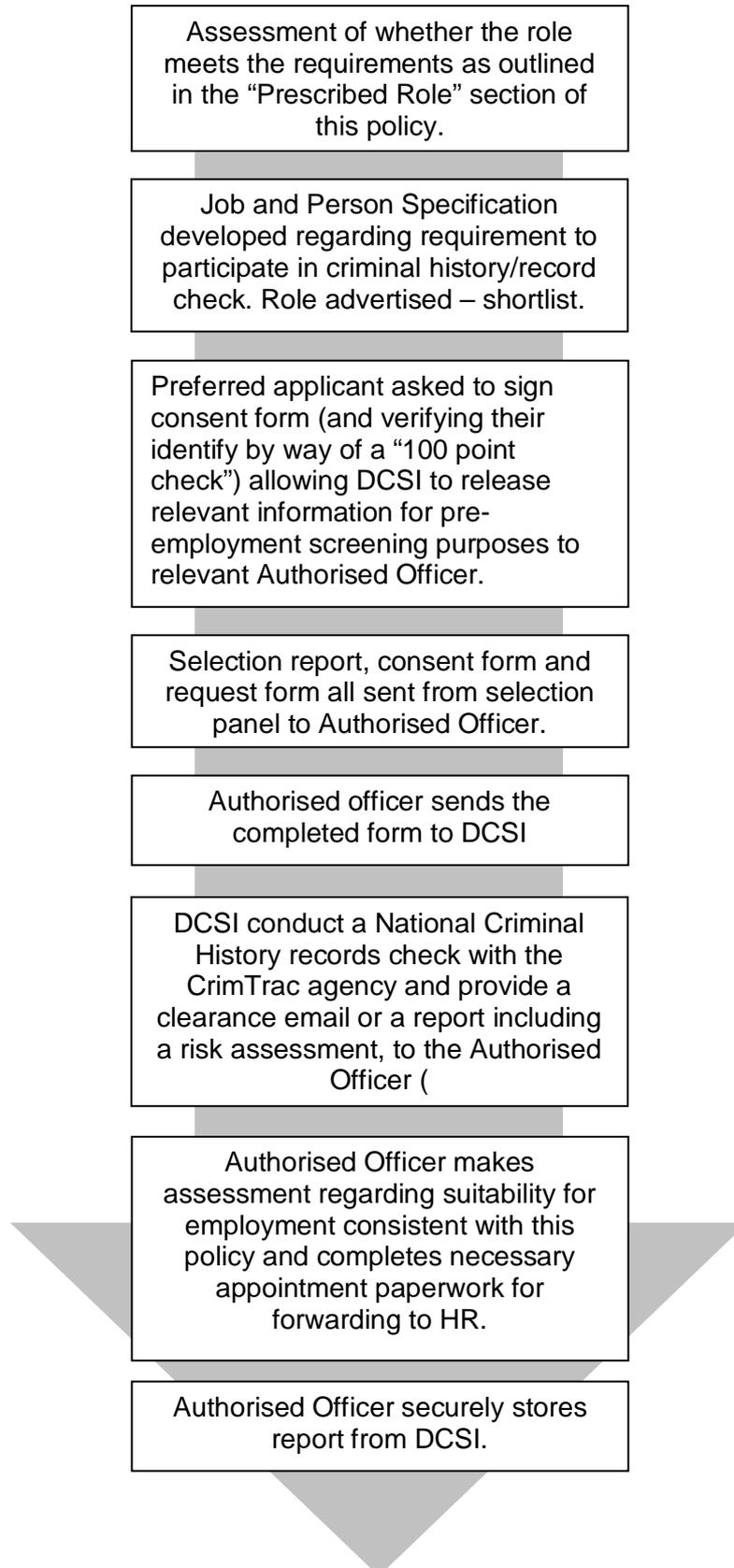


Brett Rowse
UNDER TREASURER

7/ 04/ 2014

Appendix A

Procedure for processing Criminal history/record checks within DTF



**GENERAL EMPLOYMENT / PROBITY
MATRIX FOR ASSESSING CRIMINAL HISTORY INFORMATION**

*** This matrix refers to all offences where a CONVICTION has been recorded*

