



**Victorian
Public Sector
Commission**

Guide to pre-employment misconduct screening when hiring executives in public entities

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About this public entity executive misconduct screening guide

This guide helps you implement the [Model Policy on Pre-employment Misconduct Screening – Executive Recruitment in Public Entities \(DOCX, 121KB\)](#).

The policy supports public sector executive employment so that:

- we base hiring decisions on merits
- employees work in line with the [public sector values](#) and employment principles as required by the Public Administration Act 2004

In accordance with s 63 of the Act, the VPSC recommends that within a reasonable and practicable timeframe, your public entity:

- reviews its executive recruitment policies and processes to determine whether appropriate pre-employment misconduct screening is being undertaken, and
- align its current policies and processes to conform with the Model Policy and the Guide in relation to executive recruitment.

Who the policy applies to

The policy applies to:

- all public entity executive roles (however described) covered by the [Public Entity Executive Remuneration Policy](#)
- all public entities prescribed under regulation 5 of the [Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards \(Prescribed Public Entities\) Regulations 2019](#) (as amended from time to time) or their successor entities not yet prescribed
- any other public entity referred to in section 5 of the [Public Administration Act 2004](#) that the Victorian Public Sector Commission notifies in writing



This policy doesn't apply to:

- public entities that are health services covered by the Health Executive Employment and Recruitment Policy
- public entities already covered by or applying the Victorian Public Sector Commission's Victorian Public Service Pre-employment Screening Policy
- persons employed under Part 2.3 and Part 2.4 of the [Education and Training Reform Act 2006](#)

If your entity isn't listed, you can still adopt this policy if the Victorian Public Service Pre-employment misconduct screening policy does not apply to you.

What the policy does

The policy:

- addresses integrity vulnerabilities in recruitment practices
- sets a minimum standard for prescribed public entities to follow
- seeks to stop an employee move to a role without disclosing their misconduct history
- helps you assess misconduct declarations against a role's inherent requirements

There is a template declaration and consent form available for you to use.

How we define misconduct

Misconduct by public sector employees can:

- put the safety of others at risk
- reduce public value
- erode public trust

We define misconduct as per the [Public Administration Act 2004](#) (PAA), which includes

- "a contravention of a provision of the PAA, 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 the PAA 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.”

Our definition is indicative only. It doesn't exclude conduct by people not employed under Part 3 of the PAA.



Pre-employment misconduct screening policy principles

Principle 1: comply with public sector values

Pre-employment screening demonstrates the [public sector values](#) of integrity, impartiality, accountability and human rights.

Public sector employees are bound by the [Code of Conduct](#) and public sector values from the day they're employed.

Principle 2: protect the public interest

Public sector employees are obliged to [promote and protect the public interest](#) of the Victorian community in their role.

Principle 3: comply with the employment principles and standards

Public sector employees are bound by the public sector employment principles in the [Public Administration Act](#).

We've [issued 6 standards](#) that define the essential parts of these principles:

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



Principle 4: consider equal opportunity and human rights

Don't exclude a candidate from being hired if your reason isn't based on the inherent requirements of a role.

If a candidate has a history of misconduct, check your assessment is in line with the:

- [Charter of Human Rights and Responsibilities Act 2006](#)
- [Equal Opportunity Act 2010](#)

Principle 5: apply natural justice

If you find a history of misconduct, the candidate has a right to natural justice and procedural fairness.

This means:

- discuss any misconduct findings with them and give them a way to respond
- only those who need to know have access to misconduct declaration information
- assess the risk to your organisation in relation to the role they've applied for

This also means don't rule them out of the role before you:

- validate the declaration
- assess if their history of misconduct is relevant
- assess the risk to your organisation in relation to the role they've applied for

Principle 6: take a risk-based approach

Work out what level of pre-employment screening you need to do based on a role's responsibilities and level of risk.

If the role has a lot of responsibility, you may want to do more screening than one with less.

Principle 7: be consistent with other policies and processes

This policy sets a minimum standard for pre-employment misconduct screening.

Make sure it's consistent with:

- government or employer directives
- requirements for specific workforces, including those in higher-risk roles
- relevant legislation and regulations

If your organisation already has a screening policy, make sure it meets the minimum standards in this policy.

If your policy is more comprehensive or your declaration has different questions, incorporate our model policy into yours. Don't replace or duplicate those processes



How to screen for misconduct

This section shows you how to integrate this policy with your existing processes.

How you do this depends on your organisation's size and existing recruitment practices.

The key priorities are:

- the candidate receives and completes the misconduct forms
- the hiring manager never sees any of the information in a candidate's misconduct forms
- you assess the level of pre-screening you do on the role's level of risk

You can choose when you'd like to screen candidates based on the role's level of risk. It's usually done at the preferred candidate stage.

Tell candidates about your use of pre-employment screening in all stages of the hiring process. This includes that they'll need to complete a declaration and consent form.

This helps discourage them from:

- giving false information
- exploiting your process or integrity weaknesses
- continuing misconduct in new jobs

Who you have to pre-screen

You must pre-screen for all executive positions covered by the [Victorian Government Public Entity Executive Recruitment Policy](#).

This includes candidates:

- in your organisation
- in the Victorian Public Service
- in the public sector
- from outside the public sector

Mandatory forms

Preferred candidates must complete a [statutory declaration and consent form \(DOCX 151KB\)](#).

The statutory declaration for executive recruitment must include the following statements:

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

Or if a candidate can't use the statutory declaration, they can use the [misconduct declaration form \(DOCX 135KB\)](#).

Consent form

Informed consent is important.

This means:

- the candidate fully understands what they are consenting to
- you have given the candidate information about what you're collecting and how you'll use and store it

The consent form asks candidates to consent to you:

- contacting their current or former employers to get information about their misconduct history
- verify their declaration

The candidate needs to give you consent:

- for former and current employers to give you personal information including sensitive information

- as you're using the information you collect about them for misconduct screening, which is a different purpose than what their employers originally collected it.

Statutory declaration

A statutory declaration is a written statement on a form 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.

Independent consideration panel

You need to set up an independent consideration panel to review and assess misconduct declarations.

An HR team set up this panel and it can be a person or persons with a high level of seniority, in addition to strong HR or investigative skills.

The panel must have the authority to represent your organisation and make decisions.

The panel:

- maintains confidentiality and reduces the risk of unlawful discrimination and bias to the candidate
- reviews the declaration and validates the information by contacting the previous employers
- makes a recommendation to the hiring panel on whether the candidate is suitable or not
- never shares any information with the hiring panel

Integrity impacts

If a candidate knowingly makes a false statement in recruitment, this may be against the [public sector values](#).

This means your organisation may:

- not consider them for the role
- terminate their employment if you've already hired them

Planning and designing a role

Work out what level of pre-employment screening you need to do when you plan and design a role.

You need to assess:

- if a candidate can do the inherent requirements
- if you're comfortable with the level of risk if someone in that role previously committed misconduct

Screening against inherent requirements

Inherent requirements are those that are essential or fundamental to the position.

They may include:

- personal characteristics
- skills
- accountabilities
- capabilities
- knowledge
- qualifications
- accreditation

Pre-employment screening helps identify potentially relevant issues about past conduct that affects the person's ability to fulfil the inherent requirements.

These include:

- reference and police checks
- confirmation of qualifications

- misconduct declarations
- declarations of conflicts of interest

Screening for the level of risk

You need to consider the risk level of the position when designing a role.

You can then work out what level of screening you need to do based on the role’s seniority and responsibilities. Don’t apply the same level for all roles.

Factors that will impact a role’s level of risk are:

- oversight of public sector assets
- financial delegations
- responsibility for vulnerable members of the community
- access to personal or sensitive government information or data.

As most executive roles are high risk, we recommended you check the accuracy of candidate declarations, even if they have no relevant history of misconduct.

This policy is the minimum standard for misconduct screening.

For some executive roles, you may want to screen for matters not captured in this policy’s forms. But if you want to do this, seek legal advice.

Examples of where to use pre-employment screening

These are examples of the standard and role-specific screening processes, where you can use pre-employment misconduct screening.

You can use these to assess if a person meets the inherent requirements of the role:

Administrative requirements

What you need to check	How to check this
------------------------	-------------------

Confirmation of identity and address	100-point identity-check
Confirmation of declaration of criminal history	National Police Check International Police Check (if the person has lived overseas within a relevant period)
Declaration and management of conflicts of interest	Conflict of Interest declaration and policy Australian Securities and Investment Commission (ASIC) company director personal name search.

Standard inherent requirement checks

What you need to check	How to check this
Performance in prior roles	Reference checks
History in prior roles of personal qualities and conduct in line with the Code of Conduct	Reference checks Pre-employment misconduct screening

Role-dependent inherent requirements checks

What you need to check	How to check this
------------------------	-------------------

Working with vulnerable clients

Working with Children Check
Disability Worker Exclusion Scheme
Check
Psychometric or aptitude testing
Pre-employment misconduct screening

Access to and handling of sensitive or confidential information

Confidentiality agreement
Security clearance
Psychometric or aptitude testing
Pre-employment misconduct screening

Access to and use of specialist equipment and weapons

Licensing and training check
National Police Check for relevant offences
Pre-employment misconduct screening

Oversight of or access to significant assets or resources

National Police Check for relevant offences
Psychometric or aptitude testing
Pre-employment misconduct screening

Operation of a vehicle

Driver licence check
Check for traffic or vehicle offences with relevant road corporations, such as VicRoads or similar
Pre-employment misconduct screening

Physical requirements

Medical check

Professional or other qualifications

Confirmation of qualification and currency with issuing entity and equivalency and recognition in the State of Victoria.

Writing position descriptions

In the position description, you must tell candidates how:

- How you're going to screen them
- the role's inherent requirements
- the role's risk level

Here's some example text:

—

Pre-employment misconduct screening requirements

This position has the following inherent requirements, which we've assessed as having a higher level of risk:

- [requirement 1]
- [requirement 2]

As part of our recruitment process, preferred candidates must complete a pre-employment misconduct screening declaration and consent form.

Read more about pre-employment misconduct screening at [\[link\]](#) or by calling [XXXX XXXX].

—

Writing job advertisements

You must base your job advertisements on the inherent requirements of the role.

Your advertisement must have a statement that tells preferred candidates:

- they may undergo pre-employment screening
- how you use their information you collect
- you only screen for relevant misconduct history
- they'll still undergo other checks, such as a police check
- where they can read more about this policy, such as this website



If you want to screen more than the preferred candidate, write this in your advertisement and position description. But seek legal advice on how to word this.

Refer to your local recruitment policy and procedure for general guidance on advertising roles.

Interviewing candidates

Tell each candidate you interview you'll screen the preferred candidate for misconduct.

If you plan to screen more than the preferred candidate, let everyone you interview know.

In the interview, advise candidates of their rights to [informed consent](#).

Give them a link to this policy so they can read more.

Advising preferred candidates

When you advise the preferred candidate of their selection, tell them:

- any offer of employment is conditional on the outcome of the misconduct screening process
- they must complete the misconduct declaration form
- you may contact their previous and current employers to validate the information and declarations in the form

Candidates and validations

The policy says all preferred candidates must fill out the misconduct declaration form. Our form helps you standardise how you collect and validate the information.

We strongly encourage you to validate your completed forms. Do this even if the candidate:

- is an existing or new executive
- doesn't declare relevant misconduct

You may want to develop a process to record the validation outcomes and the impact these have on the employment offer.

Your process must comply with the [Information Privacy Principles](#) and best practice records management.

The benefits of this are to:

- track and evaluate your own process
- identify trends at a local level
- better respond to validation requests you get from other organisations
- support whole-of-Victorian-government analysis of the pre-screening policy

You can use our [misconduct declaration validation form \(DOCX 135KB\)](#)

Candidate confidentiality

Throughout your process, think about how you can protect the candidate's sensitive and private information.

If you use the phone to validate information, try to verify the identity of the caller or stop the call from being overheard by a third party.

Have a way to verify the identity of anyone who needs to release information to you. This includes the preferred candidate, current and former employers.

Always explain the process and confirm the person you're contacting has the authority to validate the candidate's information.

Take notes of the conversation and have the written record signed by both parties. This could be through an email confirmation of your notes.

Always remind the person you're speaking with that their comments need to:

- be honest and fair
- not be about the candidate's [protected attributes](#)
- not be about any personal characteristics not related to the candidate's ability to fulfil the inherent requirements of the role

A candidate is generally entitled to access any information you collect about them.



Making an offer

You can offer a candidate a role if there are no misconduct issues that would:

- stop them from doing the role's inherent requirements
- create an unacceptable level of risk

In their [executive contract](#), include a clause that states:

- the candidate agrees they've provided true and correct information in their application
- providing false or misleading information is likely to be a breach of the Public Sector Values
- consequences of this may include termination of their employment

Records management

Treat all information you send or receive as personal information, in line with the [Information Privacy Principles](#) and good records management.

This includes:

- secure storage and restricted access of screening forms and outcomes those who have a need to know
- rules on how long you'll store and when you'll update outcomes

Never store any of this information in your personal files, such as OneDrive.

You must develop a secure and restricted file storage location that only the people who pre-screen candidates can use.

Read the [Public Records Office of Victoria guide](#) on what you need to do.

Other times you may want to do screening

Temporary roles

You may choose not to use the misconduct forms if you have:

- temporary backfills
- short-term acting up arrangements
- short-term secondments within or between organisations
- asking staff to undertake a short-term task

But still apply some level of screening based on the role's level of risk.

If you decide to offer a temporary employee an ongoing role, you must have them fill out the misconduct declaration form.

Secondments and short-term roles

The organisation hiring the candidate is responsible for pre-employment screening.

This even includes temporary placements.

Decide if you want to use the misconduct declaration form, based on the:

- level of risk inherent to the role an executive is moving to
- length of time they'll be in the role

Base short-term offers on the outcome of any relevant screening you do.

Multiple appointments and bulk recruitment

If you select more than one preferred candidate for a role, each candidate must:

- fill out the misconduct declaration and consent forms
- go through pre-employment screening

Candidates with a history of self-employment

If a preferred candidate has been self-employed, you can customise the misconduct

declaration form and consent templates to seek information from previous clients.

Seek legal advice if you want to do this.

Alternative to the statutory declaration

This guide provides a non-statutory declaration you customise for your use.

It's an alternative to using a statutory declaration, which requires the document to be signed and witnessed either in person or electronically.

Only use this when a candidate can't complete a statutory declaration in person or electronically.

If your preferred candidate wants to electronically sign and witness their statutory declaration, they must comply with the [statutory declaration advice](#).

If your preferred candidate has a genuine reason why they can't complete the statutory declaration in person or electronically, you can:

- use a non-statutory declaration in the first instance
- advise the candidate they will need to complete a statutory declaration when their circumstances allow them to

Checklist for hiring managers for pre-employment screening

How to use this page

We recommend a hiring manager:

- marks down the date they completed each task in this table
- adds this completed table to the selection report

Like your other documents, it's a good idea to follow good records keeping advice with any use of this checklist.

Area of your process	What you need to update
Planning and designing a role	I've: <ul style="list-style-type: none">• undertaken an assessment of the role to determine the risk level involved in its inherent requirements• determined if pre-employment screening validation is recommended, due to it being a high-risk role• identified where to use pre-employment screening the hiring process
Position description	I've: <ul style="list-style-type: none">• included a statement about pre-employment screening in my position description
Job advertisement	I've: <ul style="list-style-type: none">• included a statement about pre-employment screening in my job advertisement



Interviews

I've:

- let each candidate know that the preferred candidate will undergo pre-employment screening
- advised candidates about their rights to informed consent
- given candidates a link to the pre-employment screening policy on the Victorian Public Sector Commission's website

Advising preferred candidates

I've told the preferred candidate:

- their offer is conditional on the outcome of the screening process
- they must complete the misconduct declaration form and consent form
- you may contact their previous and current employers to validate the information and declarations in the form

I've told HR or equivalent role:

- who my preferred candidate is so they can start the pre-employment screening process

Making an offer

I've:

- received a recommendation from the independent consideration panel on if the candidate is suitable for an offer of employment



Example process of how to validate misconduct declarations

This is an example of how pre-employment misconduct screening could work in an organisation.

How you implement this policy will depend on the size of your organisation.

The key priorities are that:

- the candidate receives and completes the misconduct forms
- the hiring manager never sees any of the information in a candidate's misconduct forms
- you assess the level of pre-screening you do on the role's level of risk

Consider how you may use your existing processes in recruitment to do this.

Step 1: make candidates aware of pre-screening

Who does this

Hiring manager

What they do

The hiring manager needs to make it clear that the preferred candidate may undergo pre-employment misconduct screening in:

- the position description
- the job advertisement
- interviews

Try not to frame the communication about pre-employment screening in a way that would discourage any candidate.

The hiring manager tells HR who their preferred candidate is after they've finished



interviews.

Step 2: send forms to the preferred candidate

Who does this

HR team or equivalent role that does these duties

What you need to do

The HR team or equivalent role that does these duties sends the preferred candidate the forms they need to fill out.

The candidate must send these back to the HR team and not the hiring manager.

This is to keep sensitive and any non-relevant misconduct information separate from the hiring decisions.

This helps prevent:

- discrimination and bias in the recruitment process
- the hiring manager from seeing information not relevant to the role

Step 3: identify who you need to contact

Who does this

HR team or consideration panel

What you need to do

If the candidate hasn't given you this, the HR team or consideration panel asks the candidate who at their previous employer to talk with and any relevant contacts.

If the candidate does not provide a contact, you may need to contact the HR team or equivalent of the candidate's current or former employers for the past 10 years.



If they're not the right team, they'll be able to put you in touch with who is.

Here are some examples of who is best to contact in a situation:

- where the candidate has declared a termination due to misconduct, you need to contact the hr team of that employer
- where the candidate has declared substantiated findings of misconduct, you need to contact the hr team of the employers or employers for the past 10 years
- where the candidate has declared an open misconduct investigation, you need to contact their current or immediate past employer

If you're validating information from past or current Victorian Public Service (VPS) employers, contact your portfolio department.

Your portfolio department will be able to put you in touch with the VPS representative who takes care of misconduct declarations.

Step 4: understand what you're looking for

Who does this

Consideration panel

What you need to do

Before you validate a candidate's declaration, be familiar with some of these types of misconduct or issues you may come across.

Declaration of adverse conduct history

The candidate may declare they have been terminated due to misconduct, had substantiated findings of misconduct, or there may be an open misconduct investigation.

You will need to validate this with their previous employer/s to find out what kind of misconduct was involved, to assess the risk it poses to the role advertised.

You must give the candidate a chance to explain the adverse conduct history before making any decisions about whether to employ them or not.

Declarable associations

Declarable associations are where a person has an association with a person or group whose alleged unlawful activity could reasonably be seen as increasing the risk of a conflict of interest (COI).

A declarable association is when:

- a candidate is connected to people who have allegedly taken part in unlawful activity
- a reasonable person would see this unlawful activity as raising the risk of a conflict of interest

It can be an actual, potential or perceived [conflict of interest](#).

This declaration needs to be part of your pre-employment screening.

A candidate must declare these associations where they're relevant to the inherent requirements of the role.

Access the [declaration and management of conflict of interest form template \(DOCX 40KB\)](#).

Declarable private interests

Declarable private interests are a candidate's actual or perceived [conflicts of interests](#).

This declaration needs to be part of your pre-employment screening.

A candidate must declare any interests that could improperly influence or be seen to influence how they perform in the role.

Access the [declaration and management of private interests form template \(DOCX 120KB\)](#).

False or contradictory declarations

If a candidate's declaration contradicts what a current or former employer says, there may be a few reasons:

- the candidate has made a false declaration
- the candidate is bound by a separation or confidentiality agreement
- the candidate has made a genuine error

Before you decide whether to employ the candidate, you must let the candidate respond to the contradictory information from their previous employer.

If you're satisfied the candidate hasn't made a false declaration:

- record this in your consideration panel report
- add any other information given to you by the candidate and their previous employers

If you think the candidate has made a false declaration, seek legal advice on how to proceed.

Knowingly making a false statutory declaration is a criminal offence under the [Oaths and Affirmations Act 2018](#).

Separation agreements or other confidentiality obligations

Sometimes candidates or employers can't disclose relevant information because of:

- confidentiality or non-disclosure obligations
- legislation
- industrial workplace instruments, such as enterprise agreements
- directions from an anti-corruption or law enforcement body

To comply with their obligations, candidates, current and former employers may not be able to give you all the information you need.

For example, a candidate may resolve a misconduct issue with a separation agreement or deed of release to agree they'll leave their job. This agreement or deed of release would likely have a legally binding confidentiality obligation in it.

You need to be mindful of these obligations when conducting misconduct screening.

On the misconduct declaration form, a candidate may answer with 'do not know/cannot answer'. To minimise the risk of a confidentiality or contract breach when you validate this, ask:

- "Did you select 'do not know/cannot answer' because you can't answer that question because of legal reasons?"

If the candidate answers “yes”, don’t ask them anything else about that matter.

You can’t deem a candidate unsuitable for a role based on a confidentiality obligation.

Base your decision on other information you have and the level of risk inherent in the role.

If you’re entering a separation agreement

If you need to enter a separation agreement with an employee, think about what integrity risks this presents for future employers.

If you can’t avoid a separation agreement, you may want to word the agreement to permit the sharing of some information.

See the Victorian Equal Opportunity and Human Rights Commissions’ [Preventing and responding to workplace sexual harassment](#) Guideline, pages 89 to 90, for guidance on tailoring the agreement, and if necessary, seek legal advice.

External recruitment agencies

Regardless of where or how you source your executives, they all must go through pre-employment screening.

This includes consultants, contractors or other non-direct hiring where you have used an external recruitment agency.

You must include the requirement for pre-employment screening in all hiring contracts if you’re not using the [staffing services contract](#).

If you use third parties to run your recruitment services, they must implement a process in line with this policy.

Step 5: validate the information with previous or current employers

Who does this

Consideration panel

What you need to do

To contact previous or current employers, you may want to email them first to set up a time or call them directly.

If you use the phone to validate information, it's hard to verify the identity of the caller or stop the call from being overheard by a third party.

Think about how you can minimise the risk of this and protect the candidate's sensitive and private information.

You also need to have a way to verify the identity of anyone who needs to release information to you. This includes the preferred candidate, current and former employers.

Some examples of risks here are:

- Two people may share the same name, date of birth and previous job
- A person may have changed their name

Make all reasonable efforts to verify their identity and previous employment history.

You'll need to explain the process and confirm the person you're contacting has the authority to validate the candidate's information.

We recommend you use the misconduct declaration validation form [\[insert link\]](#). The form is a guide as to what information you need to collect.

You must:

- send a copy of the declaration and consent form to the past employer
- receive a confirmation in writing they've received the request

To then validate the information, they can choose to:

- fill out the validation form for you
- have you fill out the form over a phone call with them
- have you take notes of your conversation

Always remind the person you're speaking with that their comments need to:



- be honest and fair
- not be about the candidate's **protected attributes** not related to the candidate's ability to fulfil the inherent requirements of the role
- comply with any confidentiality obligations, such as in a separation agreement

If someone hasn't declared any history of misconduct, don't take this at face value.

As per **IBAC's corruption and misconduct risks** report, and **VAGO's personnel security report**, think about what other checks you can do to verify, such as:

- checking their qualifications are valid
- confirming training they've highlighted is authentic

Any information provided to the consideration panel must never be sent to the hiring panel.

All the hiring panel needs to know is if a candidate is suitable for the role.

If you can't find a record of misconduct

In some cases, it may be hard for you to validate a candidate's declarations. This could be through poor record-keeping or processes.

If you can't validate a record, base your decision to hire on the other information you have, taking a risk-based approach.

If you can't validate the information in the form

You need to record what parts of the candidate's form you couldn't validate and the potential risk this may have if you employ them.

This may include things like:

- overseas work histories
- organisations unable to confirm or locate information about past employees



Seek further information (optional)

This is an optional step if you're not satisfied with what you've validated.

As all executive roles are high risk, you can seek further misconduct information when you validate what's in the form.

Seek legal advice if you want to do this. The candidate will need to fill out more declarations and give you consent.

Step 6: assess the conduct and make a recommendation

Who does this

Consideration panel

What you need to do

An independent consideration panel:

- reviews the completed declarations
- validates the information in the declaration with previous employers
- assesses any findings of misconduct or adverse conduct history
- records their findings and assessment in a confidential report
- makes a recommendation to the hiring panel on whether they're suitable to be hired or not
- never share any information with the hiring panel.

How to respond to a negative or incomplete misconduct history

Only the consideration panel assesses misconduct history.

Hiring panels are never involved nor allowed to see any information collected as part of pre-employment screening.

Assessing an adverse conduct history

If a candidate has a history of misconduct, the consideration panel must assess if this will:

- affect the candidate's ability to do the inherent requirements of the role
- create an unacceptable level of risk.

The candidate has a right to natural justice, which means:

- you give them a way to respond to any declaration of misconduct and provide any further information they think is relevant
- you protect them from unlawful discrimination

You also need to assess the risk of any claims the candidate may make against your recruitment processes and have a robust process in place.

Only rule out candidates where their history of misconduct is relevant to the inherent requirements of the role and level of risk.

The consideration panel will assess this on a case-by-case basis against these criteria:

- circumstances of the candidate at the time of the conduct
- nature and seriousness of the conduct
- relevance of the conduct to the position applied for
- risk to the Victorian public sector and the Victorian community
- time that has elapsed since the conduct took place
- type and severity of any penalty imposed



- if there's a pattern of behaviour
- any evidence of rehabilitation including subsequent work experience
- other information including references from persons who are aware of the conduct history

The consideration panel will advise the hiring panel whether the candidate is suitable to employ or not.

If hiring managers don't make an offer due to misconduct

If you decide not to offer a candidate the role based on the advice of the consideration panel, record this decision and any supporting evidence with HR on the selection report.

The candidate has a right to natural justice.

This means where they're eligible, they can use your existing appeals or complaints process about any decision you make about their misconduct

You must let any internal review or complaints process finish before you offer the role to another candidate.

You still need to screen your next preferred candidate.

If you do make an offer despite misconduct

If you decide there is a low level of risk for the organisation and offer a candidate the role, record this decision and any supporting evidence with HR on the selection report.

You can then continue your normal recruitment process and complete all other pre-employment screening required.

Incomplete conduct history

If there's not enough evidence to assess the candidate, you must make a risk-based judgement and record your decision and any supporting evidence with HR.



If you're asked to validate employment information

Develop a process on how you'll respond to requests from other organisations to validate a candidate's employment history.

We recommend you have a single point of contact for all requests, as this helps maintain candidate privacy.

What to check when you receive a request

When you receive a request, you must be provided with:

- a completed misconduct declaration form
- a completed consent form that outlines what the candidate has consented to being shared
- a written request asking you to validate the candidate's declarations

What to check before you provide information

Before you provide information about a candidate, you must check what you're restricted from sharing from:

- separation agreements in place
- provisions in the relevant enterprise agreement
- other industrial agreements
- [records keeping guidelines](#)

Make sure you're confident:

- of the identity of the person making the request
- they're an independent person or panel, not the hiring panel
- the identity of the person whose misconduct records you're checking

Seek legal advice if you need help with what you can and can't share.

The **principle of natural justice** applies to anything you share.

