



17 October 2024

Tēnā koe

Official Information Act request

Thank you for your email of 26 August 2024, requesting information relating to employment of ex-prisoners.

I have considered your request under the Official Information Act 1982 (the Act). Please find my decision on your request set out below. For the sake of clarity, I will respond to your request in parts.

1. *To what capacity does MSD allow ex-prisoners to work for them?*
 - a. *Do they allow them outright, with restrictions, or don't allow them outright?*
4. *What are the guidelines for MSD when considering employing someone who may have criminal records or a history of criminal conviction?*

Please find attached our vetting guidelines and standards, which is designed to assist with making an informed decision for the suitability of an individual to work for the Ministry.

2. *Does MSD allow ex-prisoners in third party companies to work on external jobs/contracts for it?*
 - a. *If there are restrictions to the capacity/types of job - what are they?*
 - b. *If MSD don't allow this, why?*
 - c. *How does MSD monitor the staff of third party companies who may be working on MSD contracts?*

For our commercial contracts, the Ministry does not contractually prohibit the employment of ex-prisoners by third party companies to work on external jobs/contracts.

For certain contracts, such as external security and cleaning, Ministry of Justice and Police checks are required for third party staff working in Ministry of Social Development sites.

The Ministry requires third party companies to understand and agree to the terms of the Ministry for Business, Innovation, and Employment's Supplier Code of Conduct whilst undertaking work for the Ministry. For high risk/high value contracts monthly and quarterly staff reporting is required, which includes any Ministry of Justice or Police checks for new staff.

Te Kāhui Kāhu (Social Service Accreditation) assess providers that the Ministry contracts to deliver social services, to provide assurance to service users, communities and government that services are safe. Assessments are conducted against a suite of standards which include requirements for a range of policies, processes and systems such as recruitment, vetting, decision-making and effectively managing staff with a conviction. You can read more on the Te Kāhui Kāhu's website here: www.tekahuikahu.govt.nz/accreditation/standards.html.

3. *How many ex-prisoners are currently working in MSD, if any?*
 - a. *How many ex-prisoners are working on MSD contracts in external companies, if any?*

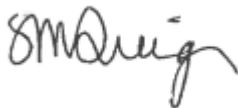
As noted in the attached vetting guidelines, the Ministry's background checks cover criminal history checks. However, the Ministry does not keep this information on record. As such, this request is refused under section 18(e) of the Act, under the basis that this information does not exist, or despite reasonable efforts, cannot be found.

I will be publishing this decision letter, with your personal details deleted, on the Ministry's website in due course.

If you wish to discuss this response with us, please feel free to contact OIA_Requests@msd.govt.nz.

If you are not satisfied with my decision on your request, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at www.ombudsman.parliament.nz or 0800 802 602.

Ngā mihi nui

pp. 

Magnus O'Neill
General Manager
Ministerial and Executive Services



MSD vetting guidelines and standards

Robust standards of integrity and personnel security enable the public and organisations to have trust and confidence in our workforce. These standards help ensure the suitability of the people we employ and promote and that our workforce continues to meet high standards for integrity and honesty.

These guidelines and standards have been designed to assist with making an informed decision for suitability of an individual, either currently employed and/or intending to work for MSD. These guidelines and standards also apply to non-employees such as Contractors or Service Providers.

Vetting services

Vetting Services complete a range of background checks which include:

- Insolvency checks
- Veda Trace (for aliases only)
- MSD systems checks
- Criminal history checks
- Serious misconduct checks.

They compare the outcome of the background checks against these guidelines and standards and make a recommendation to the applicable manager.

A manager has discretion to continue with the appointment process in the following two situations:

- background check results show no insolvency, serious misconduct, benefit history concerns or criminal background
- background check results fall into the *generally acceptable* category.

If a background check result any of the *generally unacceptable* factors, without an exception or exemption applying, we would not generally continue with the process.

Any vetting request with an 'Incomplete' result must be forwarded to the hiring manager and Human Resources Consultant to follow up with the applicant.

If the hiring manager wants to recommend the person is appointed, approval from the relevant DCE is needed.

Please talk to AskHR for further information about the process to follow when a *generally unacceptable* outcome is received.

Please note that references to repealed legislation are still relevant as they were the relevant legislation at the time of the event/issue. For example, monetary penalties imposed under s86(2) of the Social Security Act 1964 are still relevant for penalties imposed before 26 November 2018. After that monetary penalties were imposed under s354 of the *Social Security Act 2018*.

Insolvency

GA

Generally acceptable

Any of the following:

- discharged bankrupt (one only)
 - where the bankruptcy occurred seven or more years ago
- No Asset Procedure (NAP)
 - where the person has been discharged under a NAP over 12 months ago
- when the bankruptcy is the result of the activities of their spouse or other people.

GU

Generally unacceptable

Any of the following:

- the person is currently bankrupt or has been adjudicated within the last seven years
- the person has repeated bankruptcies of either a personal or business nature at any time
- the person is currently in a No Asset Procedure or was discharged within the last 12 months.

MSD systems check

GA

Generally acceptable

Any of the following:

- innocent breaches
- one warning letter
- doubtful breach
- current/non-current debt.

GU

Generally unacceptable

Any of the following:

- prosecution
- [section 354](#) Monetary Penalty (Recovery of penalty from beneficiary who obtains by fraud amount in excess of entitlement) – previously s82(2) Social security Act 1964
- multiple warning letters.

Important Information

When considering the results of benefit systems checks, the Vetting Services team uses information relating to the complete check rather than individual parts. Therefore, it is important to consider:

- *Social Security Act* section 354 penalty size and length of time since it was created
- debt size and how the debt was established
- age, number and relevance of warnings letters.

If any of the above is questionable, the Vetting Services team may make the decision to refer to Workplace Integrity for further directions. Following an investigation, Workplace Integrity will refer the case back to the Vetting Services team with a recommendation to proceed or not.

Criminal offences, convictions, and fines

Offences against: **The Crimes Act 1961** (and its amendments)

GA

Generally acceptable

A person convicted of an offence in relation to the *Crimes Act 1961*, and sentenced to any of the following:

- a fine
- discharged
- a community-based sentenced (see note below)
- where a Court makes an order to come up for sentence if called upon to do so more than 12 months ago

and

- provided no other offences¹ have occurred and there is a period of seven years from the date of the last conviction.

GU

Generally unacceptable

A person convicted of an offence in relation to the *Crimes Act 1961*, and sentenced to any of the following:

- a term of imprisonment
- a period of corrective training
- a suspended sentence of imprisonment
- where a Court makes an order to come up for sentence if called upon to do so less than 12 months ago
- a sentence of home detention
- more than one conviction under the *Crimes Act 1961*¹

Except:

- where there is a single conviction for dishonesty offences eg
 - theft
 - false pretenses
 - fraud
- or
- where there is a single conviction for sexual crimes under the *Crimes Act 1961*.

¹ Note that 'no other offences' and 'more than one conviction' includes all those normally in the 'Generally acceptable' category, under any of the acts as listed on page 1, 3a – i. If the person has a number of offences in this category, Vetting Services will decide if this should then be treated as 'Generally unacceptable' (based on the number, type and nature of offending) and will advise the Hiring Manager accordingly.

Offences against: **Section 308 Accident Compensation Act 2001** (and its amendments).

Sections 290-295 of Social Security Act 2018 relating to Offences (commonly known as benefit fraud).

GU

Generally unacceptable

A person convicted of any offence in relation to *Section 308 Accident Compensation Act 2001* (or equivalent provisions of subsequent legislation) or *Section 290-295 Social Security Act 1964*.

Offences against: **Misuse of Drugs Act 1975** (and its amendments)

GA

Generally acceptable

A person convicted of an offence in relation to the *Misuse of Drugs Act 1975* for the possession and/or use of [Class B](#) and [C](#) controlled drugs and sentenced to any of the following:

- a fine
- a community-based sentence²
- where a Court makes an order to come up for sentence if called upon to do so more than 12 months ago
- a single conviction of possession of a [Class C](#) drug (including Cannabis) and
- provided no other offences have occurred and there is a period of seven years from the date of the last conviction.

GU

Generally unacceptable

A person convicted of an offence in relation to the *Misuse of Drugs Act 1975* for any of the following:

- the possession and/or use of [Class A](#) controlled drugs
- dealing in controlled drugs of any Class
- more than one conviction for the possession and/or use of controlled drugs of any Class.

A person convicted of an offence in relation to the *Misuse of Drugs Act 1975* and sentenced to any of the following:

- a term of imprisonment
- a period of corrective training
- a suspended sentence of imprisonment less than 12 months ago
- where a Court makes an order to come up for sentence if called upon to do so less than 12 months ago
- a sentence of home detention
- more than one conviction under the *Misuse of Drugs Acts 1975*¹.

² A community-based sentence is defined as a sentence of community work, community detention, supervision or intensive supervision (Section 44, Sentencing Act 2002). Home detention is not a community-based sentence.

Outstanding fines

GA

Generally acceptable

- Where there are outstanding fines that are paid immediately, or a repayment arrangement is established.

Note the applicant should provide proof that they have started repayments.

GU

Generally unacceptable

- Unpaid fines which, in the absence of a repayment arrangement, or are not paid in full.

Minor offences

GA

Generally acceptable

A person convicted:

- by a court for a summary/minor offence for which the defendant is not liable on conviction to a sentence of imprisonment eg Minor found on licensed premises or related to registration of a dog.

GU

Generally unacceptable

- If a number of offences are recorded which indicate a possible integrity issue then it may be necessary to seek further advice before making Generally unacceptable.

Convictions under the Land Transport Act 1998

GA

Generally acceptable

A person convicted of an offence against any of the provisions of the *Land Transport Act 1998* or against any regulation or bylaw made under any other enactment and relating to the use of vehicles or parking places or transport stations and is sentenced to any of the following:

- a fine
- one disqualification (either current or expired)
and
- provided no other offences¹ have occurred and there is a period of seven years from the date of the last conviction.

GU

Generally unacceptable

A person convicted of an offence against any of the provisions of the *Transport Act 1998* or against any regulation or bylaw made under any other enactment and relating to the use of vehicles or parking places or transport which involved careless, reckless or dangerous driving, driving while disqualified, driving without a license, driving while under the influence of alcohol or drugs, or other offences where:

- a second conviction or repeated convictions have occurred
- a person convicted of an offence in relation to the *Land Transport Act 1998* and sentenced to any of the following:
 - a term of imprisonment
 - a period of corrective training
 - a suspended sentence of imprisonment
 - a sentence of home detention
 - more than one conviction under the *Land Transport Act 1998*¹.

Other offences

Other offences not covered by those above where a custodial sentence or a significant fine may be imposed (eg *Customs and Excise Act 2018*, *Human Rights Act 1993*, or *Income Tax Act 2007*)

GA

Generally acceptable

A person is convicted and sentenced to any of the following:

- a fine
- A community-based sentence²
- Where a Court makes an order to come up for sentence if called upon to do so in respect of an offence not punishable by imprisonment

and

- provided no other offences¹ have occurred and there is a period of seven years from the date of the last conviction.

GU

Generally unacceptable

A person convicted by a criminal or military court for an offence and sentenced to any of the following:

- a term of imprisonment
- a period of corrective training
- a suspended sentence of imprisonment
- a sentence of home detention.

Additional Police information

These guidelines are to enable a consistent MSD-wide approach regarding non-conviction Police reports.

When an exception check is requested from the Police Vetting Service, in addition to conviction reports, results can also contain some of the following:

- family violence occurrences
- intelligence notings
- comments.

GA

Generally acceptable

Applicant's role in the event:

Witness/Informant only

- at any time and for any number of occurrences.

GU

Generally unacceptable

Applicant's role in the event:

Offender

- multiple occurrences
- any offence against a child (at any time and any number of occurrences)
- police charges pending.

GAC

Generally acceptable with important considerations

Applicant's Role in the event:

- victim
- witness
- offender
- person at risk
- subject of

Any additional information received regarding a candidate's involvement with any vulnerable person, the Hiring Manager is encouraged to seek guidance to ensure decisions remain centred on the health and safety of those in the care of the Ministry. A general guide when assessing an "amber" result is to apply a seven-consecutive-year approach for any individual, in line with the *Criminal Records (Clean Slate) Act 2004*.

Children's Act 2014

Employers are responsible for safety checking employees who work closely with children. The new checking process will make it easier to identify the small number of people who are a risk to children.

The Act prohibits people with specific serious convictions, such as child abuse, sexual offending and/or violence convictions, from being employed as a core worker. Employers can be charged with an offence under the Children's Act if they breach the workforce restriction.

Note the Vulnerable Children's Act 2014 was renamed the Children's Act 2014.

GA

Generally acceptable

- A person who has applied for/or being considered for placement in [core Children's Worker role](#) convicted of a specified offence:
 - where an Exemption **has been** granted under section 35 of the *Children's Act 2014* and approval has been sought and obtained.

GU

Generally unacceptable

- A person who has applied for/or being considered for placement in [core Children's Worker role](#) convicted of a specified offence:
 - where **no** exemption has been granted.

GAC

Generally acceptable with important considerations

When considering results returned from the Police and **before** engaging a candidate or when re-vetting an existing children's worker under the *Children's Act 2014*, it is important to take the following considerations into account:

- the position the applicant is being considered for or the staff member's role within MSD
- the applicant's role in the event
- the applicant's age when the event took place
- whether the nature or frequency of offending indicates any specific or general risk to child or young person or other vulnerable person(s)
- whether the person who offended was in a relationship of trust and confidence with the victim
- any treatment undertaken and assessment of successful rehabilitation of the candidate
- the severity of any incident
- the time of offending - timeframe since offence occurred, whether any further offending occurred, whether behavioral change has occurred in the interim
 - the frequency - number of incidents and other offences committed.

Useful information

- list of Specified Offences as set out in Schedule 2 of the *Children's Act 2014* can be found [here](#)
- how to apply for a Core Worker Exemption can be found [here](#).

Serious misconduct checking - overview

The Workforce Assurance Model Standards were issued by Te Kawa Mataaho (Public Service Commission) in August 2020, under Section 19 of the *Public Service Act 2020*. Integrity, fairness and trustworthiness are public service values³ and we do not want to see people moving from one public service organisation to another, with serious integrity issues not being disclosed.

While rare, these situations have the potential to erode the public's trust and confidence in the Public Service. The Workforce Assurance Model Standards outline expectations of enhanced reference checking backed up by consent-based disclosure of records of serious misconduct for agencies when recruiting staff.

Scope – Public Service organisations defined

The Workforce Assurance Model Standards, which require us to complete this check, define Public Service as:

- **Public Service Departments** eg Department of Inland Revenue, Ministry of Health
- **Statutory Crown entities including Crown agents** eg ACC, Kāinga Ora – Homes and Communities
- **Autonomous Crown entities** eg Public Trust, Heritage New Zealand Pouhere Taonga
- **Independent Crown entities** eg Mental Health and Wellbeing Commission, Health and Disability Commissioner.

Te Kawa Mataaho Public Service Commission's website [lists the agencies covered](#) by this process.

Other public sector organisations and the private sector are not covered by these model standards as they are not expected to maintain records and respond to requests in the required format.

Scope – who must be checked

Applicants:

- who apply to become MSD employees and contractors
- who are preferred applicants (or in the preferred applicant groups)
- who have worked as a Public Service employee (ie had an employment contract) in the three years prior to the job application.

Contractors

If the serious misconduct occurred as a Public Service contractor there will not be a record of it as serious misconduct records for contractors are not maintained by Public Service agencies.

The referee check for contractors must cover whether the candidate has ever to their knowledge had a serious misconduct investigation upheld or currently occurring or has had their contract terminated for misconduct.

³ See sections 16 of the Public Service Act 2020 for a list of the public service values: [Public Service Act 2020 No 40 \(as at 29 April 2021\)](#), [Public Act 16 Public service values – New Zealand Legislation](#) – retrieved 1 June 2021.



Generally unacceptable but fair consideration must be made

Consent not given by applicant

If the applicant does not consent to their previous Public Service employer disclosing serious misconduct, it does not mean they cannot be employed. The hiring manager can ask the person why they are refusing to consent and consider those reasons in deciding whether to progress the application.

Serious misconduct confirmed

All information gathered through screening checks must be considered by the manager on a case-by-case basis. Any concerns should be discussed by the hiring manager with the HR Consultant and assessed against the risk profile of the role, the requirements of the position, how recent any serious misconduct was, any counselling, retraining or rehabilitation a person has undergone, and the explanation provided by the applicant.

The hiring manager should also consider whether strategies need to or can be put in place to minimise potential risk to MSD, co-workers and others the person may come into contact with.

Disclosure of serious misconduct does not mean the person cannot be employed but allows MSD to make an informed decision and ensure any risks are mitigated.

Fair consideration

MSD should ensure the prospective employee has a full and fair opportunity to put forward their view of events. All information gathered through screening checks must be considered by the hiring manager on a case-by-case basis including against the risk profile of the role, the requirements of the position, how recent the serious misconduct was, any counselling, retraining or rehabilitation a person has undergone and the explanation provided by the candidate.

The hiring manager should consider whether strategies need to, and can be, put in place to minimise potential risk to the organisation, co-workers and others the person may come into contact with. Disclosure of serious misconduct does not mean the person cannot be employed but allows the agency to make an informed decision and ensure any risks are mitigated.

Serious Misconduct questions asked in the job application form

1. For external applicants only. (Internal candidates please type: Internal or N/A).

If you have worked for a public service organisation, please list them in the free text box below. If you haven't worked for a public service organisation, please type: N/A.

Please copy and paste this link into a new browser window to see the list of public sector departments and crown entities:

<https://www.publicservice.govt.nz/our-work/state-sector-organisations/>

2. For external applicants only.

Have you ever been subject to a serious misconduct investigation, either concluded and upheld or currently under investigation within the last three years?

Please copy and paste this link into a new browser window to read more details about this:

<https://www.publicservice.govt.nz/resources/workforce-assurance/>

3. The below Serious Misconduct Check questions are applicable for external applicants only.

"Do you consent to the disclosure to the Ministry of Social Development of whether you have been subject to a serious misconduct investigation, either concluded and upheld or currently under investigation, from all previous Public Service and statutory Crown entity employers for the last three years? Should you be selected as the preferred candidate, your response will be checked with your previous employer(s) at that stage. We will not conduct this check prior to you being selected as the preferred candidate".

Please copy and paste this link into a new browser window to see the list of public sector departments and crown entities:

<https://www.publicservice.govt.nz/our-work/state-sector-organisations/>

Questions asked when MSD does a serious misconduct check for another Public Service organisation

Has [candidates name] been subject to a serious misconduct investigation, either concluded and upheld or currently under investigation, within the last three years?

Have they been dismissed from employment?

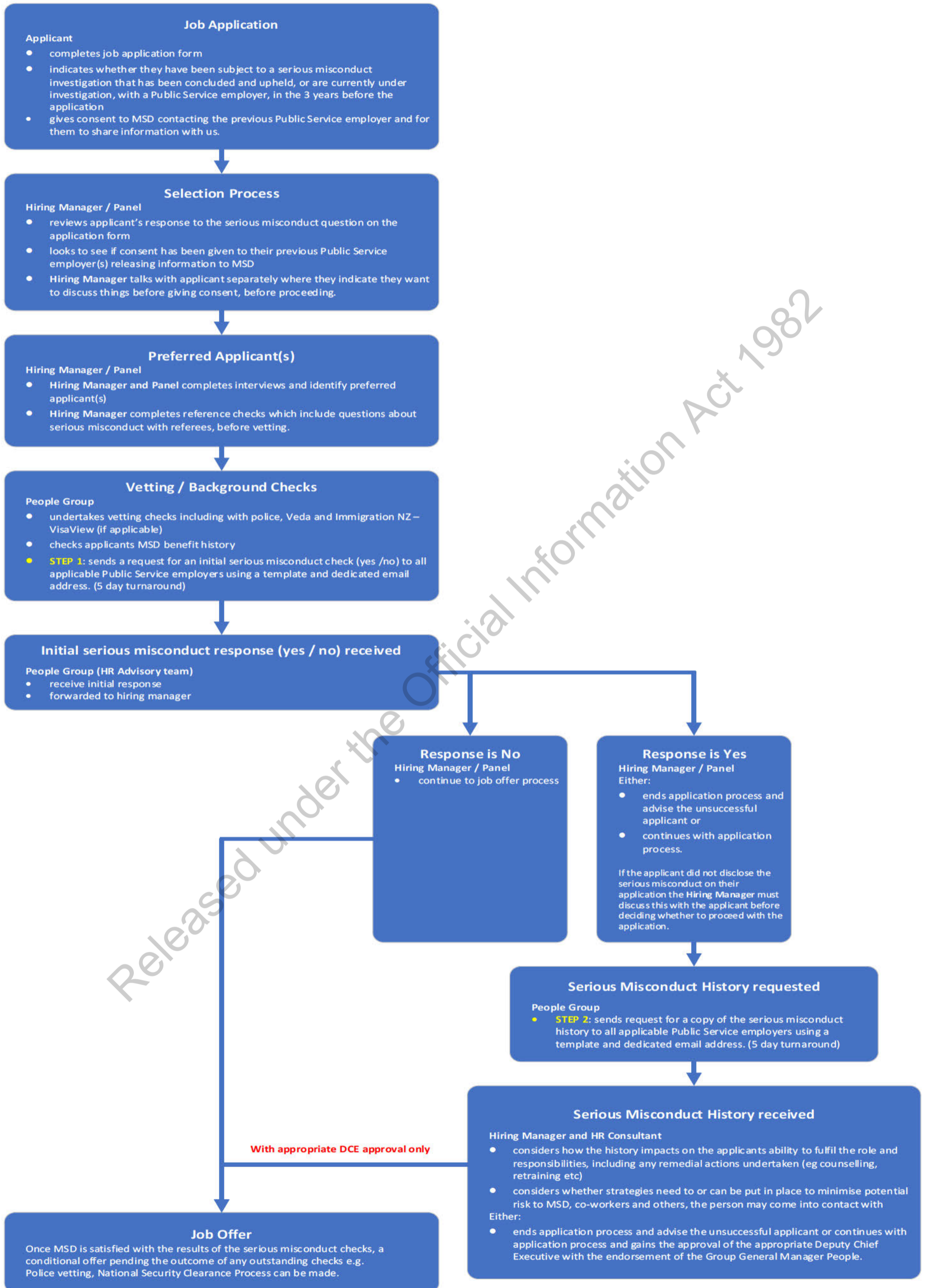
Have you ever had any reason to question their integrity?

- If so, what was the situation?

Would you hire them again?

- If not, why not?

MSD Serious misconduct checking process flow



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Australian Criminal History Checks

Important Information

Candidates who require a New Zealand Police Check and have lived in Australia for 12 months or more in the past 10 years also require an Australian Police Check.

Results returned from these checks may indicate convictions in Australia covered by Australian law. MSD's Vetting Guidelines and Standards relate to New Zealand law. Any similar Australian conviction will be considered using the same guidelines.

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