



INDEPENDENT COMMISSION
AGAINST CORRUPTION
NEW SOUTH WALES

DESIRED EMPLOYMENT

POSITION _____

ARE YOU EMPLOYED NOW? ☐ YES ☐ NO IF SO MAY WE INQUIRE OF YOUR PRESENT EMPLOYER? _____

EVER APPLIED TO THIS COMPANY BEFORE? ☐ YES ☐ NO

EVER WORKED FOR THIS COMPANY BEFORE? ☐ YES ☐ NO

REASON FOR LEAVING _____

NAME OF LAST SUPERVISOR AT THE _____

WHO REFERRED YOU TO THIS COMPANY? ☐ EMPLOYER ☐ OTHER _____

STATE OF RESIDENCE _____

UNIVERSITY _____

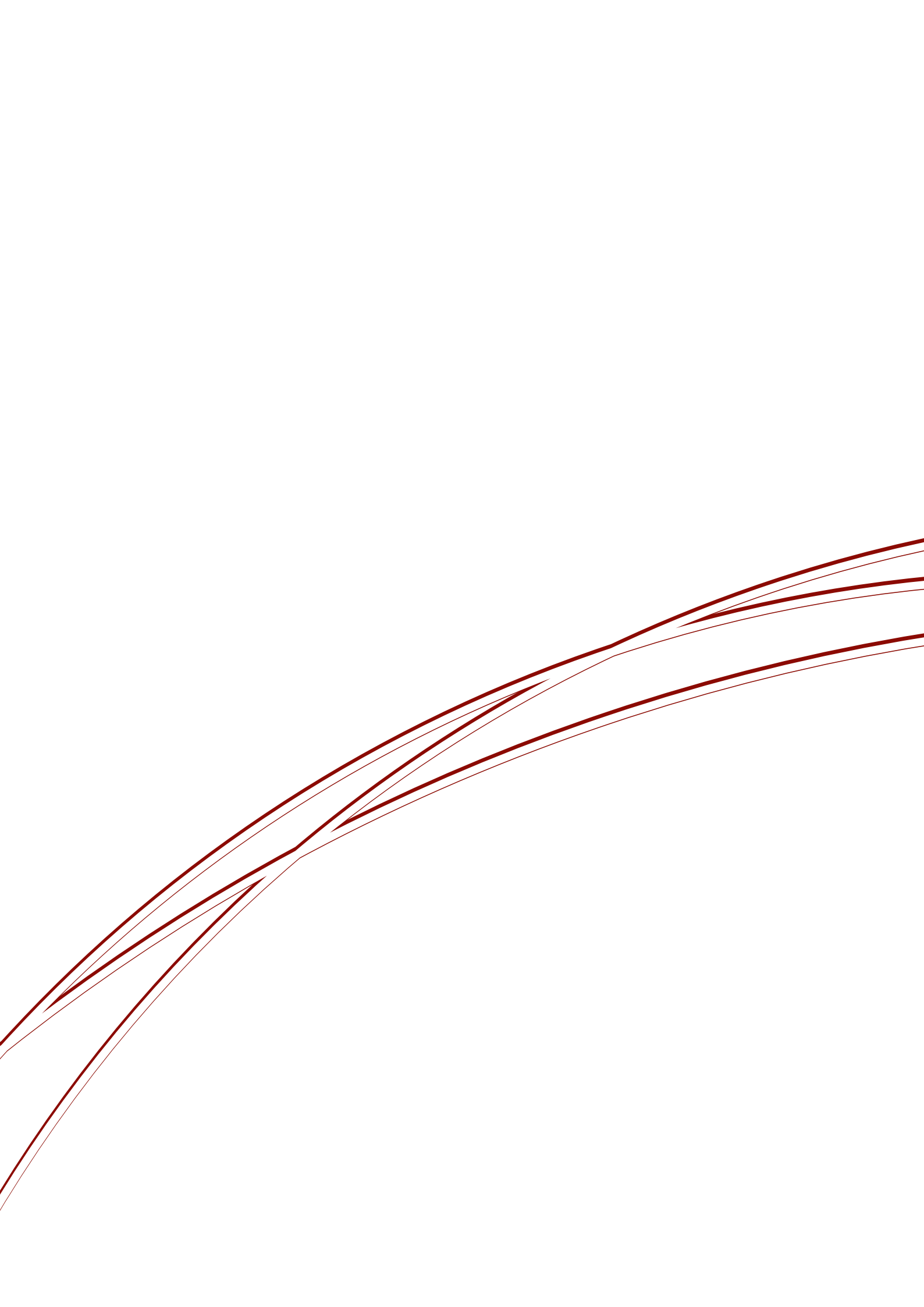
SCHOOL _____

TO: _____ COMPANY _____

EMPLOYEE REFERENCE CHECK

STRENGTHENING EMPLOYMENT SCREENING PRACTICES IN THE NSW PUBLIC SECTOR

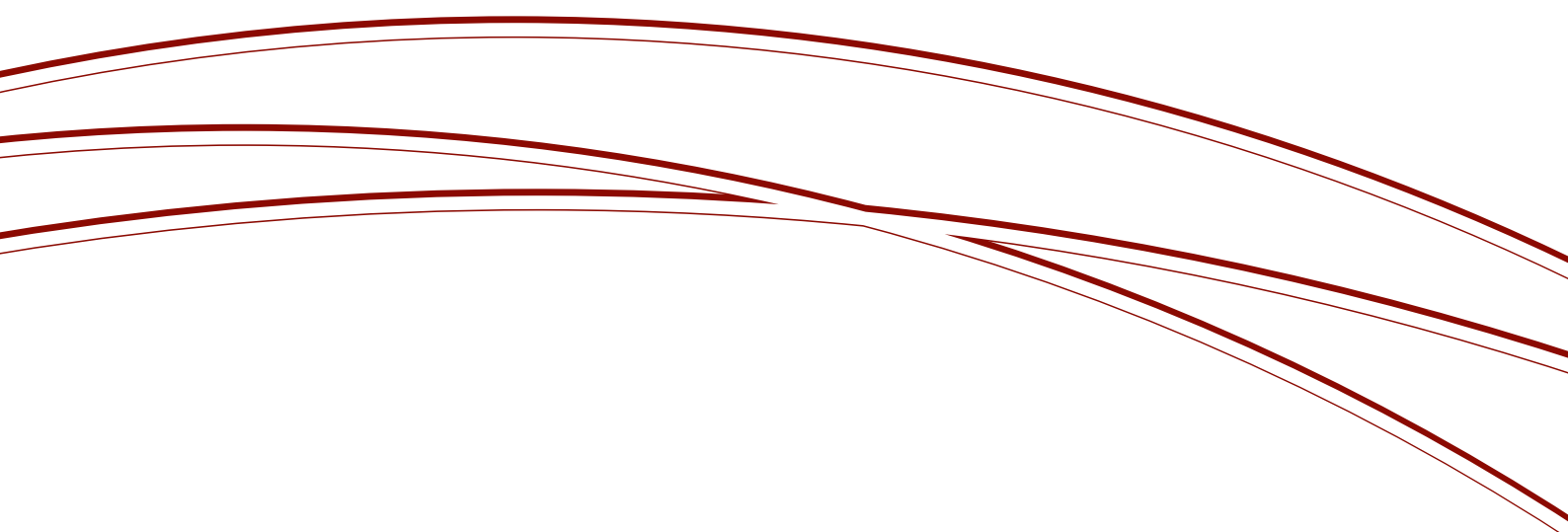
FEBRUARY 2018





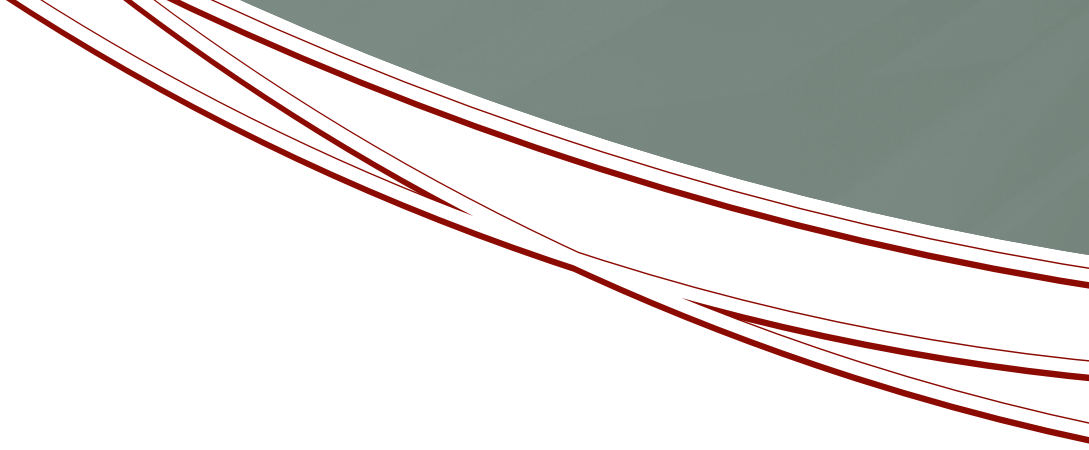
INDEPENDENT COMMISSION
AGAINST CORRUPTION

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STRENGTHENING EMPLOYMENT SCREENING PRACTICES IN THE NSW PUBLIC SECTOR

FEBRUARY 2018



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Public sector organisations are welcome to refer to this publication in their own publications. References to and all quotations from this publication must be fully referenced.



INDEPENDENT COMMISSION
AGAINST CORRUPTION
NEW SOUTH WALES

Level 7, 255 Elizabeth Street
Sydney NSW 2000 Australia

Postal Address: GPO Box 500
Sydney NSW 2001 Australia

T: 02 8281 5999

1800 463 909 (toll free for callers outside metropolitan Sydney)

F: 02 9264 5364

TTY: 02 8281 5773 (for hearing-impaired callers only)

E: icac@icac.nsw.gov.au

www.icac.nsw.gov.au

Business Hours: 9 am - 5 pm Monday to Friday

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Executive summary

The NSW Independent Commission Against Corruption (“the Commission”) has undertaken several investigations over the past few years that have exposed corrupt conduct in the NSW public sector that was brought about, or in some way attributable to, inadequate employment screening practices.

This report provides a range of techniques and tools that agencies can apply to address employment application fraud. These measures include designing a risk-based employment screening framework, assigning roles and responsibilities for employment screening, improving the quality of employment screening checks and screening non-permanent workers.

Employment application fraud is both costly and common. Typically, between 20% and 30% of job applications contain some form of false information, ranging from minor omissions to serious falsehoods. Undetected employment application fraud can undermine merit-based selection and result in hiring an employee who lacks integrity or requisite expertise for the role. This can have a range of detrimental effects for an agency, including health and safety risks, poorer provision of public services, and impairment of public trust and confidence. Moreover, employees who engage in employment application fraud sometimes commit other acts of corrupt conduct once afforded access to an agency’s assets.

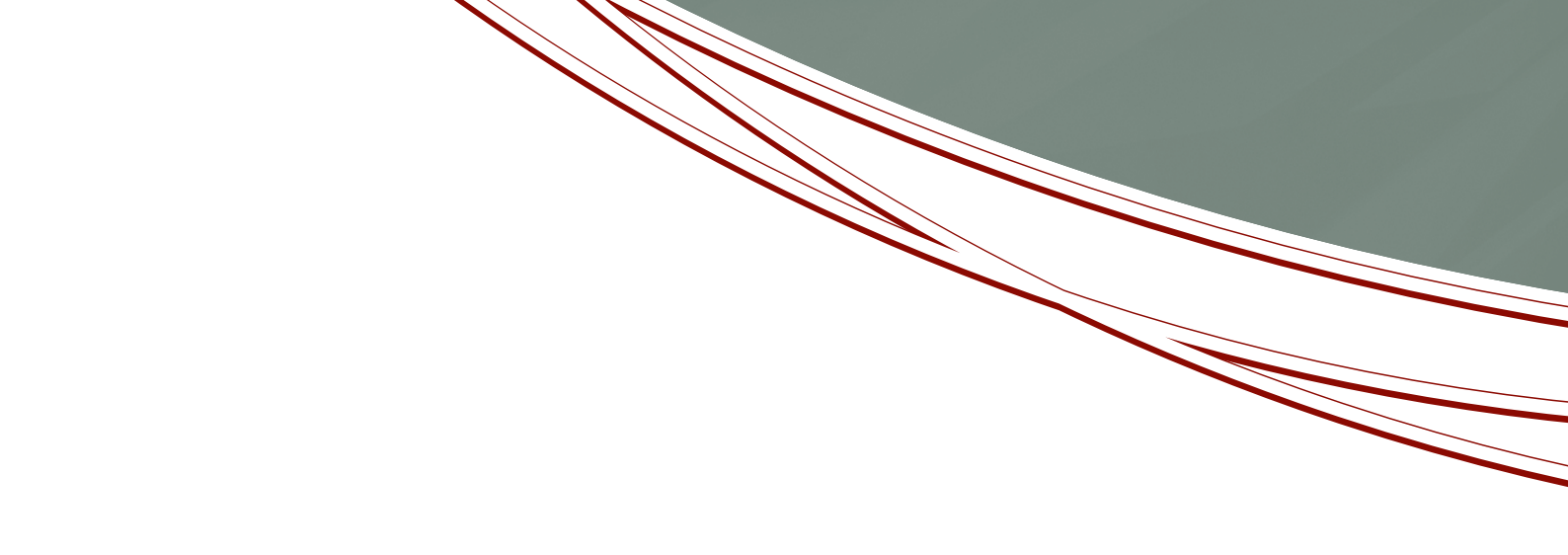
This report recommends that agencies adopt a risk-based approach for preventing employment application fraud and ensure that any screening checks are standardised and justifiable. A risk-based approach involves tailoring the screening to the characteristics of specific roles. However, the roles that require the most screening are not necessarily the most senior or well-paid roles, as a number of relatively junior roles can have considerable risks attached to them. A risk-based approach can also inform post-employment screening, which can be triggered by a

change in the risk profile of a role. In addition, re-screening may be conducted periodically or triggered by a change in personal circumstances.

The successful implementation of an employment screening framework requires that relevant roles and responsibilities be carefully assigned. Ownership of the employment screening framework and policy should reside with a specific senior manager. While there should be a single point of accountability for assessing the risks associated with specific roles, both the human resources (HR) and risk business units should be involved in these risk assessments.

Assigning responsibilities for conducting checks on specific candidates depends on whether the checks are to be conducted by agency staff or a third-party provider. HR staff should be responsible for in-house checking but utilise relevant industry-specific knowledge held by hiring managers. Third-party screening arrangements should be carefully managed, both in terms of applying due diligence before engaging a potential supplier and in obtaining evidence of the checks actually conducted by engaged suppliers. Agencies should also have a robust process for responding to red flags that arise from employment screening checks, and assign responsibility for monitoring, reviewing and updating the employment screening framework.

There is a variety of ways in which an otherwise robust employment screening framework can be undermined by poor checking methodologies. Better practice methodologies exist for a range of employment screening checks, including verifying identity, qualifications and employment history, and for performing criminal history checks and reference checks. Additionally, most legal issues related to employment screening can be addressed by obtaining informed consent from job applicants and ensuring that any checks conducted can be justified by the



nature of the role in question. Finally, screening-related resource pressures can be managed by several approaches, including outsourcing checks, obtaining early upfront consent for checks, screening only preferred candidates, and utilising workforce planning outcomes to predict when screening demand is likely to be greatest.

Non-permanent workers should be subject to employment screening checks in the same way as those undertaken on permanent employees. The corruption risks associated with contingent workers can be at least as serious as those associated with comparable permanent employees; although, it may be appropriate to reduce screening requirements for a very short, low-risk contingent engagement. While engaging contingent workers has both procurement and recruitment elements, HR should be responsible for conducting checks upon contingent workers; although, this may simply involve ensuring that a recruitment company has adequately performed the agreed checks. The risk that contingent workers with histories of misconduct or poor performance are rehired can be managed via ensuring that agencies have visibility of their contingent hire workforce through effective planning and oversight of contingent workers and by recording misconduct and performance data.



Chapter 1: Introduction

How would you feel if the surgeon who was about to operate on you in a public hospital falsified their medical degree? How would you react if you learned that a financial controller at a government agency had a hidden fraud conviction? Would you like your daughter to work for a public sector manager who was allowed to quietly resign from his last job after sexually harassing his female colleagues?

When members of the public deal with public officials, they have a legitimate expectation that those officials possess the skills and qualifications necessary to perform their job, were not appointed on the basis of a lie and can meet necessary standards of personal integrity. Unfortunately, some candidates applying for public sector roles lack the necessary skills, honesty and integrity. This is why all public sector agencies should screen potential staff members and in some cases, should also re-screen existing staff. This report provides guidance on how to do this.

Employment application fraud can involve acts of commission (for example, falsely claiming to have a particular degree) and acts of omission (for example, failing to mention being dismissed from a previous job for disciplinary breaches). Specific examples uncovered by the Commission include candidates claiming degrees and qualifications that had never been awarded, falsifying work histories or work achievements, concealing a history of criminal or disciplinary activity and using false or misleading referees.

When an official is senior or performs high-risk activities, employment application fraud alone can be enough to amount to serious corrupt conduct warranting the Commission's attention. However, employment application fraud at any level of seniority can undermine confidence in public administration. Applicants who have engaged in employment application fraud, once they are able to secure a position, sometimes go on to engage in other forms of corrupt conduct, as shown in case study 1 (on page 8).

Basis of the Commission's interest

Section 8(2A) of the *Independent Commission Against Corruption Act 1988* ("the ICAC Act") states that "fraudulently obtaining or retaining employment or appointment as a public official" can constitute corrupt conduct. Published investigation reports by the Commission, and unpublished enquiries, have uncovered numerous examples of what can be described as employment application fraud.¹

¹ This report uses the term "employment application fraud" to generally describe a job application that is deliberately false or misleading in any respect. It is not necessarily limited to just the resumé or written application. In addition, it does not imply that an actual fraud allegation or conviction has been made. Employment application fraud can also cover internal promotions, transfers, secondments and acting placements.

Case study 1: Employment application fraud can be a red flag for future corrupt conduct and other acts of dishonesty

This is a particularly striking example of an individual who obtained a role in the Queensland public service on the basis of falsified and hidden information, and then engaged in further improper behaviour. This individual claimed several false qualifications and academic awards, and had a criminal history that was not detected by the agency in question. He was appointed to a series of senior roles that he used to ultimately defraud the agency of \$16.69 million. In addition to defrauding the agency, this individual performed poorly and frequently engaged in a wide range of misconduct, including bullying, taking excessive leave, not completing timesheets, having unexplained absences, misusing an agency car and falsifying that car's log book to conceal the misuse.²

The adverse effects of employment application fraud

There are four ways in which employment application fraud can harm a public authority.

First, employment application fraud can confer a considerable benefit on a dishonest person, while penalising honest applicants for the position, resulting in an agency not hiring the best available person for the job. This can result in incompetence and poor performance which, in some cases, can affect public or workplace safety. For instance, a (NSW) Health Care Complaints Commission investigation found that an individual, who was responsible for running two trauma clinics and providing counselling services, misrepresented that he was a psychologist and listed a number of false degrees, including a doctorate. This individual treated clients for several years, posing a threat to their wellbeing and safety.³ Another example involved a nurse who falsified his work history to hide a history of drug addiction. Once hired, this individual stole painkillers and lit a fire to conceal his theft.⁴

² Crime and Corruption Commission, *Fraud, financial management and accountability in the Queensland public sector: An examination of how a \$16.69 million fraud was committed on Queensland Health*, September 2013.

³ Health Care Complaints Commission, *Public Statement and Statement of Decision in relation to Mr David Kaye (aka Ali Davut Sarikaya)*, 10 October 2016.

⁴ Coroners Court NSW, *Inquiry: Fire at Quakers Hill Nursing Home*, 9 March 2015.

Secondly, a candidate hired on the basis of employment application fraud may subsequently engage in other forms of corrupt conduct, fraud or dishonesty. For instance, in the Commission's Operation Misto investigation, an information technology manager claimed false degrees and professional memberships, and falsified his employment history, in successful applications to work at multiple universities. Subsequent to being hired by these universities, he engaged in further corrupt conduct by causing them to pay false invoices totalling \$146,165.⁵ This is just one of several examples where an initial employment application fraud has led to the employment of an individual who goes on to engage in different, often more serious, forms of corruption.

Inadequate screening can even lead to the employment of an individual who is currently engaged in criminal activity, has an existing network of criminal associates or who applies for public sector employment with the intention of engaging in criminal activity (such as misappropriation of personal or confidential information).

Thirdly, once employment application fraud has been detected, the agency incurs the expense of an investigation and disciplinary processes. This can easily exceed the cost of a proportionate, risk-based employment screening program, especially if the agency has to review key decisions made by a person whose appointment was made on the basis of a false application.

Finally, to the extent that all of the above is visible, an agency can suffer reputational damage. This can have an adverse impact on staff morale and limit an agency's ability to attract and recruit talent. Such adverse effects may escalate over time. An individual may engage in employment application fraud to gain an entry-level position but then obtain more senior positions, thereby inflicting greater harm to an organisation's reputation.

The prevalence of employment application fraud

Employment application fraud is a common problem. A number of studies indicate that between 20% and 30% of applications contain verifiably false information.⁶ For instance, one 2015 study attempted to verify the details provided in a sample of Australian and New Zealand job applications, finding discrepancies in 25% of applications.⁷

⁵ NSW ICAC, *Investigation into the conduct of a university manager and others in relation to false invoicing*, June 2015.

⁶ First Advantage, *Asia Pacific Employment Screening Trends Report*, 2016, and T Prater and SB Kiser, "Lies, lies and more lies", *SAM Advanced Management Journal*, vol. 67, 2002, pp. 9–14.

⁷ First Advantage, *Asia Pacific Employment Screening Trends Report*, 2016.

About two-thirds of these discrepancies were related to a candidate's employment history, such as listing incorrect roles or employment dates, and about one-fifth related to a candidate's education, such as listing false qualifications or incorrect graduation dates.

The prevalence of employment application fraud extends across all levels of role seniority, affects both the private and public sectors, and can arise from competition for roles. Adding extra qualifications and work experience can make a candidate appear more competent for a given role, providing them with a motive to falsify such information.

This motivation was bluntly expressed by the corrupt individual in the Commission's Operation Avoca investigation who stated that, "I completely disregard my past and I prepare a job application for them to have a good impression of me".⁸ Applicants may also think that employment application fraud is "worth the risk" because of the belief that their employment application will not be checked thoroughly and that there will be few consequences even if it is detected.

The value of an employment screening framework

The Commission believes that agencies should adopt mechanisms to detect falsified and hidden integrity-related information in employment applications. A number of Commission investigations have identified public officials who were hired on the basis of falsified information or a failure to detect important integrity-related issues, such as a relevant criminal history or prior misconduct.

Broadly speaking, an employment screening framework aims to prevent merit-based selection processes from being undermined by false or incomplete information. As the gateway to obtaining employment, merit-based selection is a fundamental part of public sector recruitment. The purpose of merit-based selection is to ensure that the best person for the job is selected and it stands to reason that applicants who submit false job applications are unlikely to be meritorious candidates.

Even if a candidate has the necessary skills and experience for a role, a recruitment process may be impaired if an organisation fails to detect a hidden criminal history, bankruptcy, a prohibition against working with children or prior misconduct and performance issues. Candidates may be strongly motivated to conceal events of this nature, as shown in case study 2.

⁸ NSW ICAC, *Investigation into attempted corrupt payment and submission of false resumés to public authorities*, August 2010.

Case study 2: The importance of detecting relevant integrity-related information when screening employees

In its Operation Sonet⁹ investigation, the Commission found that an individual with an undetected fraud conviction was appointed to the role of acting information and communication technology (ICT) manager. Once in this role, he made a corrupt profit of \$1.14 million by overcharging for ICT project items.

Similarly, in its Operation Siren¹⁰ investigation, the Commission found that an agency had hired an individual without contacting the listed referees. Had thorough reference checks been completed, it might have been discovered that the individual failed probation in a previous role due to incompetence. This individual subsequently authorised over \$300,000 worth of improper payments.

Components of an employment screening framework

An employment screening framework comprises a series of policies, procedures and practices that guides an organisation's approach to screening employees and non-permanent workers (for example, temporary employees and contingent workers).

Employment screening typically consists of checks on a candidate's identity, integrity and credentials.¹¹ Identity checks aim to verify that a person is who they claim to be. Verifying the name, address and personal details of candidates can protect an agency from identity fraud. Integrity checks are used to assess the soundness of a person's character, and involve criminal record checks and reference checks. Credential checks are used to verify that a candidate has relevant skills and experience such as educational qualifications, professional qualifications, licences or employment experience to perform a role.

There are a number of better practice resources available to inform employment screening.¹²

⁹ NSW ICAC, *Investigation into the conduct of a TAFE NSW ICT manager*, March 2016.

¹⁰ NSW ICAC, *Investigation into corrupt conduct of Sydney Water employees and others*, March 2011.

¹¹ Standards Australia, AS 4811-2006, Employment screening.

¹² For example, the Protective Security Policy Framework is a resource developed for Australian Government entities to manage potential security risks to assets, people and information. The Australian Government Personnel Security Protocol provides some guidance and principles related to employment screening.

For example, the Australian Standard on Employment Screening standard informs how to perform better practice identity, integrity and credential checks.¹³ Other standards, such as the International Standard on Anti-bribery Management Systems, recognise the importance of performing due diligence on employees. For example, this standard recommends that organisations take steps to verify the accuracy of qualifications, obtain satisfactory references, assess whether a person has been involved in bribery, and identify whether they are associated with other public officials.¹⁴

It should be noted that this report specifically focuses on improving employment screening practices. It does not provide advice on controlling other forms of corruption associated with recruitment, such as conflicts of interest, collusion and favouritism.

Legal and regulatory requirements

The NSW public sector is subject to a number of legal and regulatory requirements, some of which relate to employment screening. Extracts from the relevant sections of legislation at the time of writing are summarised below (a more detailed explanation of these requirements is set out in the appendix).

- The *Government Sector Employment Act 2013* (“the GSE Act”) identifies four main areas related to employment screening, including citizenship requirements, formal requirements, security clearances and health clearances.
- The Government Sector Employment (General) Rules 2014 (“the GSE Rules”) elaborate on these four areas. While the citizenship requirements are clearly defined, the extent to which the other rules apply depends on the nature of the agency. The GSE Rules also specify that part of the comparative assessment process and suitability assessment process involves employment screening such as screening for essential requirements, reviewing a resumé and performing reference checks.
- The Government Sector Employment Regulation 2014 specifies that public service employees must report charges and convictions for serious offences and must notify their agency

if their financial circumstances change (for example, declaring bankruptcy).

- The *Privacy and Personal Information Protection Act 1998* specifies that information or an opinion related to the suitability of a person for a public sector role is exempt from the definition of personal information.
- Both the *Child Protection (Working with Children) Act 2012* and *Disability Inclusion Act 2014* specify areas of work where specific checks must be performed (for example, a working with children check or a criminal record check).

While the GSE Act and the associated rules and regulations address some aspects of employment screening, they do not provide an exhaustive or prescriptive list of employment screening requirements. It is, therefore, largely up to agencies to decide the types of employment screening checks performed.

This report aims to assist agencies to make this determination by providing better practice employment screening guidance and building on existing advice provided by the NSW Public Service Commission (PSC).¹⁵ One function of employment screening is to ensure that the candidate has the capability to perform the role, and the PSC provides guidance on this topic through its capability framework. This report therefore does not seek to supplant existing requirements on performing a merit-based selection. Rather, it is intended to assist agencies to ensure that merit-based selection is not adversely affected by dishonesty.

Research methodology

To understand better practice with respect to employment screening, as well as current practices within the NSW public sector, the Commission used three approaches.

First, to identify better practice employment screening, the Commission performed a desktop review of employment screening literature. This included reviewing case studies and newspaper articles discussing instances of employment application fraud, reviewing articles on employment screening from academic journals and professional publications, and reviewing the Australian Standard on Employment screening¹⁶, together with the associated Employment Screening Handbook.¹⁷

¹³ Standards Australia, AS 4811-2006, Employment screening. At the time of writing this report, AS 4811-2006 was withdrawn because it had been 10 years since its release. Despite this, the standard is still a useful resource for employment screening.

¹⁴ International Standard, ISO 37001, Anti-bribery management systems – requirements with guidance for use.

¹⁵ NSW Public Service Commission, Pre-employment screening checks, at <https://www.psc.nsw.gov.au/workforce-management/recruitment/recruitment-and-selection-guide/deciding-and-appointing/pre-employment-screening-checks>.

¹⁶ Standards Australia, AS 4811-2006, Employment screening.

¹⁷ Standards Australia, HB 323-2007, Employment Screening Handbook. The handbook has been withdrawn, as 10 years have passed since its development. Nevertheless, it is still a very useful resource.

Secondly, the Commission distributed a survey to NSW state and local government organisations (to which it received 141 responses)¹⁸ to understand current employment screening practices. This survey's items asked about the:

- organisation's assessment of the risks associated with different roles
- circumstances in which the organisation conducts employment screening checks
- circumstances in which another entity conducts employment screening checks on the organisation's behalf
- identity, integrity and credential checks performed by the organisation and the methodology used to perform them
- reasons for performing or not performing identity, integrity and credential checks
- barriers to conducting high-quality employment screening.

Thirdly, the Commission conducted a series of interviews and focus groups from both inside and outside the NSW public sector with HR, risk and employment screening professionals. In total, 24 interviews and three focus groups were held.

Chapters 2 to 5 provide agencies with advice on employment screening arrangements. More specifically:

- chapter 2 addresses how to design a risk-based employment screening framework
- chapter 3 discusses how to assign employment screening roles and responsibilities and manage third-party providers of employment screening
- chapter 4 provides guidance on performing specific types of employment screening checks
- chapter 5 addresses the challenges associated with screening non-permanent workers.

¹⁸ A response rate of 49%.

Chapter 2: Designing an employment screening framework

A robust employment screening framework provides a sound basis for determining which checks should be performed on potential employees. Without this framework, screening decisions are based on historical practices or the discretion of hiring managers. This may result in either under-screening employees or screening employees excessively; both of which ultimately result in poorer quality hiring decisions.

Under-screening occurs when an organisation does not perform enough checks or the right kinds of employment screening checks. This can lead to inappropriate hiring decisions, such as when a local council appointed a director who failed to disclose that he was bankrupt. While his financial status was easily verifiable, the council failed to verify his (false) declaration that he was not bankrupt. When his falsehood was eventually discovered, the council terminated the director's employment. Correcting this poor hiring decision cost the council nearly \$250,000.

Over-screening occurs when an organisation performs excessive checks, which wastes time and resources. Performing unnecessary checks can also reduce the applicant pool with little appreciable benefit to the organisation. It can also generate complaints about unfair discrimination. For instance, one agency with which the Commission spoke had a blanket ban on hiring people with drink driving offences, even for administrative roles where driving was not required.

Better practice guidelines, such as the Australian Standard on Employment Screening, recommend that organisations use a risk-based approach to employment screening.¹⁹ This means that the checks performed on potential employees, including current employees applying for a different position, are tailored to the specific roles for which they are applying. Risk profiles for roles can be developed by performing a risk assessment on these roles. For example, a role with considerable financial delegations is likely

to receive more extensive screening than one with no authority to commit public funds.

A risk-based approach to employment screening has many potential benefits, including:

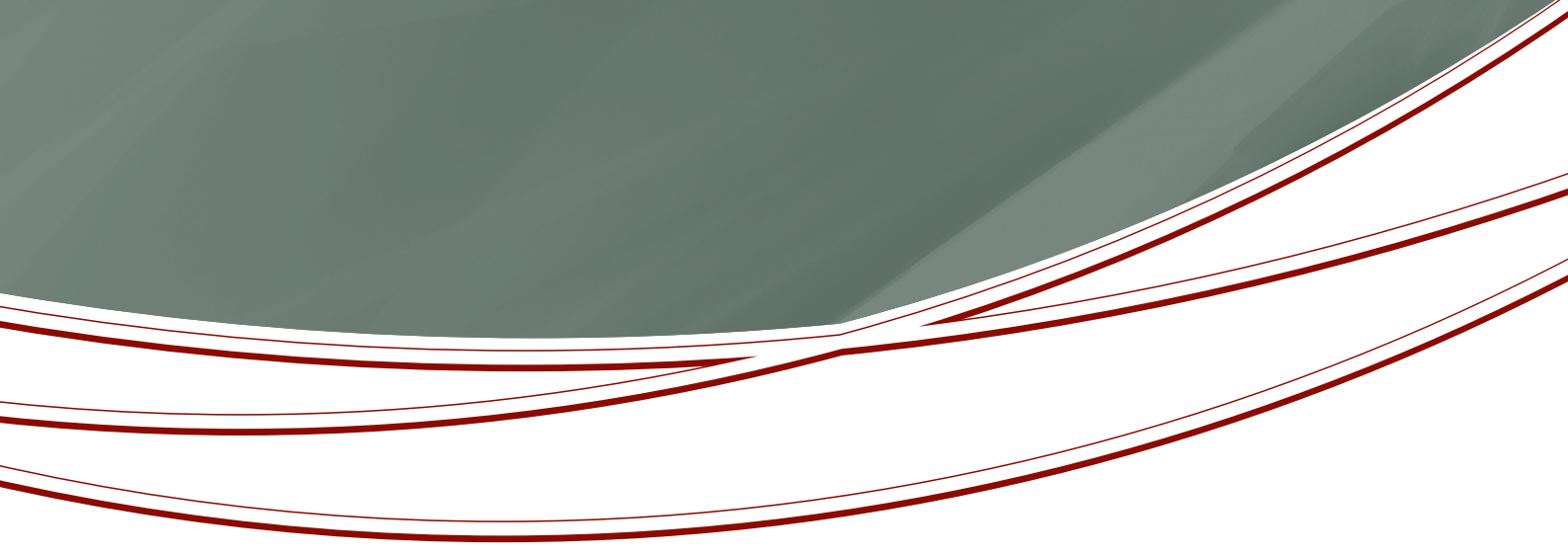
- establishing a clearer and more defensible rationale for employment screening that is based on the role and avoids assertions that screening is simply a “digging exercise”
- standardising screening throughout the organisation, which reduces the reliance on hiring managers to determine what checks are appropriate and ultimately reduces the likelihood of under-screening or over-screening potential candidates
- using resources more effectively as the amount of screening performed is more tightly linked to the agency's needs
- improving an agency's overall risk management as roles that unexpectedly carry large risks can be identified.

Applying a risk-management approach to employment screening

All NSW public sector agencies should already have sound risk-management processes in place. While this is not a report about risk management, this section sets out some guidance on how to apply risk-management principles to employment screening.

First, aim for simplicity. For most agencies, employment screening is not a core function and comparatively few agencies have specialist in-house teams dedicated to employment screening. This means that, if the process is

¹⁹ Standards Australia, AS 4811-2006, Employment screening.



too complicated or over-engineered, it is likely to invite non-compliance.

For instance, a number of agencies told the Commission that their practice is to group roles by common risk characteristics (for example, similar delegations, discretion or access to resources), which can avoid the time and expense of risk rating each individual role. For most agencies, dividing roles into simple low-, medium- and high-risk levels will meet their needs.

Secondly, while an employment screening framework should be flexible enough to accommodate common sense and new information, agencies should avoid performing risk management “on the run”. This means that the relevant risk ratings and associated checks should be agreed in advance. If someone is pondering which screening checks to perform in the middle of a recruitment process, the chance of under-screening increases.

Thirdly, the outcomes of the risk-rating process should be incorporated into business-as-usual practices. Unfortunately, it is not unusual for the outcomes of a risk-assessment process to be transposed into a risk register, never to be seen again. To prevent this from happening, there should be points in the recruitment/promotion process that automatically trigger the commencement of employment screening. There should also be a hold-point in the process that prevents finalisation of a recruitment process or probation period if the required checks are yet to be completed.

Fourthly, and at the risk of contradicting the first point about simplicity, the roles requiring the most thorough screening process are not necessarily just the most senior or well paid; there are many less-senior roles that entail significant risk, such as:

- executive assistants, who often have access to confidential documents, electronic signatures and personal information
- accounts payable officers, who can potentially amend the vendor master file and cause payments to be made
- system administrators, who can change passwords, create new user profiles and change system permissions
- payroll officers, who can change rates of pay, add new payees to the employee master file and amend overtime payments
- accounting staff, who can write off bad debt, allocate expenditure to different cost codes and control budgets
- stores or logistics staff, who control large volumes of inventory and verify the delivery of goods
- security staff, who have unsupervised and/or after-hours access to assets and files.

Fifthly, as set out in chapter 5, non-permanent staff can also entail significant risk. Employment screening frameworks should therefore consider an agency’s contractor workforce.

Sixthly, continuous improvement is more important than creating the perfect system. Accepted risk-management techniques promote continuous refinement of controls and this is also true for employment screening.

Identify which risks to assess

For some roles, it is mandatory to hold certain qualifications. Fields such as medicine and law require practitioners to hold recognised tertiary qualifications and certifications. A number of other professions and trades also regulate who may use certain titles or perform certain roles. In other cases, legislation or agency policy mandates certain types of checks or certifications such as proof of citizenship, working with children checks and valid safety accreditation.

Where it is mandatory to hold certain qualifications or perform certain checks, agencies must not take a risk-based approach to their screening activities. Instead, a compliance-based approach should be taken.

However, where an agency has discretion to determine which employment screening checks are required, a risk-based approach should be followed. Table 1 summarises some of the roles and functions that could be considered low, medium or high in risk. The table is illustrative only and agencies should modify their approaches to their own circumstances.

One additional factor to consider when developing screening requirements is the impact of an agency's overall risk-management approach. An agency with a lower risk appetite may wish to mandate a stronger suite of employment checks. In addition, the roles themselves can potentially be redesigned in order to lessen the need for checking. For instance, by ensuring that key tasks associated with a role are segregated or supervised, its overall risk rating can be reduced.

Linking risk levels to employment screening

Agencies need to convert their risk ratings into an agreed set of employment screening checks for each role. This is a matter for each agency to determine for itself but one possible approach is described below. A number of organisations with which the Commission spoke use a simple matrix to set out the specific checks that are performed for each level of risk.

Most specialist employment screening companies offer tiered sets of screening checks that allow clients to differentiate between basic or low-risk roles (which require fewer, less expensive checks) and complex or high-risk roles (which entail more detailed and expensive checking). While the usual caveat warning applies, agencies may be able to consider advice from a third-party provider of screening services when designing a screening framework.

Table 1: Example of categorising functions based on risk levels

Risk category	Level of risk		
	Low risk	Medium risk	High risk
Decision-making authority	<ul style="list-style-type: none"> Minimal levels of discretion (for example, junior roles and short-term staff) 	<ul style="list-style-type: none"> Contract managers People managers 	<ul style="list-style-type: none"> Executives and senior managers Key process owners (for example, finance, payroll and security)
Financial delegation	<ul style="list-style-type: none"> Staff with no financial delegations 	<ul style="list-style-type: none"> Roles with modest financial delegations Staff with purchase cards or corporate credit cards 	<ul style="list-style-type: none"> Staff with significant financial delegations
Financial functions	<ul style="list-style-type: none"> Staff with no financial functions 	<ul style="list-style-type: none"> Roles that process non-cash revenue 	<ul style="list-style-type: none"> Staff with access to bank accounts and cheque signatories Staff who handle cash
Job requirements	<ul style="list-style-type: none"> Roles that do not require evidence of formal qualifications 	<ul style="list-style-type: none"> Formal qualifications are desirable but not necessarily crucial to the role Role requires a valid driver's licence 	<ul style="list-style-type: none"> The relevant qualifications are mandatory or crucial to the job
System access	<ul style="list-style-type: none"> Contractors with no system access 	<ul style="list-style-type: none"> Staff with access to sensitive information 	<ul style="list-style-type: none"> System administrators and master users

Case study 3 outlines the approach that one agency (interviewed by the Commission) uses which links specific risks to screening requirements.

A hypothetical example follows the case study, which demonstrates how a risk-based approach can be applied.

Case study 3: A public sector regulatory agency's approach to linking risks to employment screening requirements

A regulatory agency classifies roles into four risk levels ranging from lowest risk (access to information) to highest risk (inspectorial roles). As the level of risk increases, more thorough checking is performed, as displayed in table 2.

Table 2: An example of risk-based employment screening based on specific types of roles

Level of risk	Employment screening checks
1. Lowest (has access to information)	All employees receive the following checks because all employees have access to confidential information: <ul style="list-style-type: none"> • identity check • open source probity check • criminal record check • conflict of interest declaration.
2. Second lowest (has customer or industry engagement)	Roles with customer or industry engagement responsibilities receive: <ul style="list-style-type: none"> • level 1 checks • directorship search for possible conflicts of interest.
3. Second highest (has managerial responsibilities)	Roles with managerial responsibilities receive: <ul style="list-style-type: none"> • level 1 and 2 checks • qualifications check • employment references.
4. Highest (has inspectorial roles)	Inspectorial roles receive: <ul style="list-style-type: none"> • level 1, 2 and 3 checks • bankruptcy check • inquiry by the commissioner of police.

The agency's approach effectively links risk levels with screening requirements. As each risk level is discrete, it makes it relatively easy to determine what screening a person should receive. For example, an employee either has managerial duties or not, and this classification is not based on a subjective decision. Additionally, because this process produces an index of the checks required, the screening process is standardised rather than at the discretion of the hiring manager.

A hypothetical example of assessing risk severity

After performing a review of the risk register, an organisation's HR manager identified that the risks attached to three key roles required updating. These roles were senior executives, accounts payable staff in non-managerial roles²⁰ and IT staff in non-managerial roles. A role-based risk assessment identified the following risk categories:

- protecting the health and safety of vulnerable clients
- ensuring the integrity of financial transactions made by financial staff and staff with financial delegations
- ensuring decisions are made in the best interests of the organisation and are not compromised by conflicts of interest or a lack of qualifications and experience.

To rate the severity of these risks for the three roles, the HR manager used a risk matrix to populate table 3 (page 16) and consulted with key stakeholders and employees within the roles to ensure that correct assumptions had been made about the nature of the roles.

²⁰ For simplicity, this example has been limited to assess only a few risk categories and roles rather than a full, plausible range of risks and roles within an organisation.

Table 3: Capturing the results from a risk severity assessment

Role	Risk category	Level of risk (likelihood x consequences of risk)	Comments
Senior executive	1. Vulnerable clients	Medium	While no direct contact is involved, they make decisions and view sensitive information regarding vulnerable client groups.
	2. Finance	High	Substantial financial delegation.
	3. Decision-making	High	Responsible for making important decisions.
Accounts payable staff (non-managerial)	1. Vulnerable clients	Low	No interaction with vulnerable client groups.
	2. Finance	Medium	Staff have access to financial systems and approve expenditure but these are reviewed by managers and other controls, such as random audits, are used.
	3. Decision-making	Low	Limited decision-making authority.
IT staff (non-managerial)	1. Vulnerable clients	Medium	Access to information related to vulnerable client groups.
	2. Finance	Low	No financial delegation or role.
	3. Decision-making	Low	Limited decision-making authority.

The HR manager consulted table 4, which links specific risks to employment screening requirements.

Table 4: Documenting the employment screening requirements based on information from a risk-severity assessment

Risk category	Level of risk		
	Low	Medium* Checks in low-risk category plus...	High* Checks in low-risk and medium-risk categories plus...
1. Vulnerable client groups	<ul style="list-style-type: none"> Identity check HR checks²¹ Reference check 	<ul style="list-style-type: none"> Working with Children Check Qualifications check Criminal record check 	<ul style="list-style-type: none"> Overseas criminal record check
2. Finance	<ul style="list-style-type: none"> Identity check HR checks Reference check 	<ul style="list-style-type: none"> Qualifications check Professional memberships check Criminal record check Bankruptcy check Directorship search 	<ul style="list-style-type: none"> Overseas criminal record check
3. Decision-making	<ul style="list-style-type: none"> Identity check HR checks Reference check 	<ul style="list-style-type: none"> Qualifications check Professional memberships check 	<ul style="list-style-type: none"> Contact additional referees

* The number of checks is cumulative. In line with a risk-based approach, as the risk increases, the number of employment screening checks increase, and so the "medium risk" category involves "low risk" checks plus "medium risk" checks. In addition, the checks across different risk categories (for example, vulnerable client groups and finance) are additive.

The HR manager was then able to determine the specific checks required for each role being analysed.

²¹ Human resources checks ("HR checks") are also known as "conduct and services checks". The purpose of this check is to verify details such as transferrable leave entitlements, dates of employment, job titles and performance and misconduct issues.

Conducting post-employment screening

Most employment screening is performed when an employee or contractor first joins an agency. However, post-employment screening may be important when:

1. the role is inherently risky and ongoing checks need to be conducted
2. the role requires ongoing evidence that relevant qualifications and licences have not lapsed
3. a person is promoted or moved to a different role
4. a person has the same role but is given new or different responsibilities
5. a contractor becomes an employee.

Post-employment screening plays an important role in preventing corruption and managing risk. Given that risk is not static, and roles often change over time, the initial pre-employment screening used when hiring an employee may not be sufficient to control the risk associated with their employment over time. Further post-employment screening may be required throughout an employee's tenure, as shown in case study 4.

Case study 4: How a job promotion can change the level of risk associated with an employee

An acting manager dishonestly obtained \$1.14 million from an agency by inflating prices for the purchase of IT goods and services.²² When first hired as a teacher, this individual was found to have a history of fraud, but he was hired despite this history because the offence was deemed irrelevant to the role. Over time, he was promoted into managerial roles where this criminal history was relevant, ultimately being appointed as acting information communications and technology manager with a \$150,000 financial delegation. This provided him with the opportunity to engage in corrupt conduct, which was exposed by the Commission. It was a failure to consider the change in risk profile and perform thorough post-employment screening that facilitated his corrupt conduct.

The Commission observed that many public sector agencies do not perform post-employment screening. Often, instead of assessing whether an employee's circumstances have changed, there is a reliance on voluntary disclosure. This is despite the fact that employees are often motivated *not* to make such declarations (because, for example, declaring a relevant criminal offence may result in dismissal).

Approaches to post-employment screening

There are two approaches to post-employment screening.

1. **Triggered rescreening** occurs when a change in personal or professional circumstances results in new checks being performed or previously conducted checks being reapplied.
2. **Periodic rescreening** occurs when some checks that were initially performed on an employee are reapplied after a set period of time.

An agency can apply triggered and periodic rescreening in tandem – it does not need to choose one approach over the other. For example, an employee may be re-screened upon being promoted but may also be subject to annual screening to ensure relevant professional credentials have not expired.

Triggered post-employment screening

Triggered post-employment screening may be required when an employee's risk profile has materially changed. For example, one public sector regulatory agency conducts further screening when employees transfer from a non-managerial to a managerial role (as described in case study 4). However, if an employee transfers from one managerial role to another, no further screening is conducted because the screening requirements are the same for all managerial positions.

It can be challenging to detect when the risk profile associated with a role has changed. For example, an employee may take on additional responsibilities without a change in job title, or the nature of an employee's duties can change gradually over time.

One private sector organisation told the Commission that to keep on top of changes in screening requirements, risk managers work closely with HR and supervisors to monitor the movement of staff to determine when further employment screening is needed. Some agencies use electronic systems to flag when role-related changes necessitate further screening. One of these agencies took this further by having controls that would remove the person from their position (in the system) if the identified checks were not performed within two weeks. Another solution is to occasionally review all holders of high-risk roles and verify whether the required checks have been applied.

²² NSW ICAC, *Investigation into the conduct of a TAFE NSW ICT manager*, March 2016.



Periodic post-employment screening

Periodic post-employment screening involves re-performing certain checks on some employees on a regular basis. This approach does not necessarily mean that all employment screening checks need to be repeated. For instance, one regulatory agency that operates in a risky environment requiring a high level of integrity has implemented a system that requires all employees to undergo further screening every two years. This agency recognises that checks, such as criminal record checks, are just a point-in-time control and that a person's history can change over time. Consequently, criminal history checks, directorship searches and open source checks are performed biennially on current employees. However, identity and qualifications are not rechecked unless new qualifications have been claimed.

Similarly, a financial services company conducts annual screening for all individuals in roles that are classified as high-risk. Typically, academic qualifications are not re-checked, as these should not change. However, screening measures such as bankruptcy checks, criminal record checks and open source checks are completed on an ongoing basis. To help encourage compliance, this company does not implement pay increases until employees have completed all the necessary checks.

Challenges to address when implementing post-employment screening

Regardless of the type of post-employment screening method used, it is important to manage relevant HR issues such as staff engagement and consent. Both the financial services company and regulatory agency described above addressed these issues. For example, the regulatory agency's first attempt to implement further post-employment

screening failed due to staff resistance arising from a lack of communication and consultation. However, its second attempt addressed these issues, and now both initial and post-employment screening are conditions of employment. Both the financial services company and regulatory agency obtain upfront consent for both pre- and post-employment screening.

Additionally, if an agency has not previously sought consent to perform post-employment screening checks, it may need to implement new forms of checking gradually or on a selective basis.

While it can be difficult to detect changes in an employee's personal circumstances, one company addresses this challenge by collecting data on excessive sick leave and reviewing conduct issues to flag potential problems to help inform when further screening may be required. Another approach suggested by a background screening expert is to use random audits to assess changes in personal circumstances and to determine whether sufficient employment screening has been performed. For example, this can include updating conflict of interest declarations and associations, performing new criminal record checks and reviewing HR files to ensure that previous checks have been completed. This mechanism may be useful for high-risk agencies that are particularly concerned that employees may not declare important risks.

Chapter 3: Roles and responsibilities for employment screening

This chapter describes who within an agency is best placed to perform employment screening activities and have ownership over them. It also addresses how to manage third parties that conduct employment screening checks.

The roles and responsibilities for the employment screening process can be divided into five areas as follows:

1. ownership of the framework
2. identifying the risks associated with roles
3. executing the checks
4. actioning the results
5. monitoring and assurance.

Ownership of the framework

The Australian Standard on Employment Screening recommends that the chief executive officer of an organisation be held accountable for its employment screening framework. Most agencies with which the Commission spoke assigned accountability for employment screening to a senior manager.

However, the attitude of senior managers towards employment screening is critical to the effectiveness of an agency's framework. For example:

- two organisations advised the Commission that implementing improvements to employment screening was difficult due to a lack of senior managerial support
- an internal auditor described how the general manager of a local council simply viewed employment screening as a cost, making it impossible for any process improvements to be introduced
- a state government probity manager commented

that senior public sector managers often do not understand the risks associated with poor screening practices and do not realise that they are personally accountable for employment screening failures.

While the head of the agency does not need to personally oversee the employment screening framework, it is important that it has their endorsement.

Key elements of good practice include that:

- there is a single employment screening policy/process owned by a senior manager with authority to implement and enforce its requirements (typically the head of HR)
- key users of the process (for example, hiring managers and the head of risk) are consulted during the drafting of the policy/process
- the process has the support of senior management, including the agency head and the audit and risk committee
- financial and human resources have been allocated to implement the policy/process.

Identifying the risks associated with roles

As set out in chapter 2, it makes little sense to apply expensive and time-consuming employment screening checks to every role in the organisation. Consequently, someone needs to decide on the specific checks that will be performed for each role or category of role. This entails designating a risk rating or similar classification to each role.

A failure to assign clear responsibilities for the role assessment process can result in ad hoc, rushed or unnecessary screening processes.

The Commission's analysis suggests that risk-rating roles within the organisation are best allocated to a single point of responsibility; typically HR or the risk unit. Individual hiring managers or frontline business units are unlikely to have the expertise or organisation-wide perspective necessary to determine the checks required for each role.

Each agency is best placed to decide whether HR, the risk unit or another unit should be responsible and, in practice, this will be a function of the size, capacity and status of the relevant unit. However, while having a single point of responsibility is recommended, it is expected that relevant parties will be consulted during the process.

Key elements of good practice include that:

- there is a single point of accountability for ensuring that each role has a risk rating or similar classification that determines the employment screening checks to be performed (usually HR or the risk unit)
- other parties, including the relevant frontline or hiring manager(s), should have input into the risk rating
- there is no ambiguity about the specific checks that are to be applied for each role
- when a new role is created or an existing role is substantially modified, a new risk rating or classification should be assigned as a matter of course, and checks associated with the risk rating automatically applied.

Executing the checks

There are many different arrangements that agencies can use to execute checks. Agencies can perform checks in-house or outsource some or all of their checks to third parties such as background screening companies or shared services functions.²³ Regardless of the type of arrangement used, it is important to ensure that employment screening checks are performed by an appropriately skilled person to minimise the risks associated with hiring an unqualified job applicant.

Performing checks in-house

When conducting checks in-house, the relevant hiring manager needs to be involved in the screening process.

²³ For simplicity, this report uses the term "third party" to refer to arrangements where an agency does not perform its own employment screening. These third-party arrangements include suppliers such as recruitment companies, specialist background screening companies and shared services providers that may be either external or internal to the agency.

However, there are four main reasons why specialists such as HR staff are better placed to perform the actual checks in contrast to the hiring manager.

First, recruitment is a non-core, infrequent activity for most hiring managers and executing reliable employment screening checks requires a degree of skill and experience. For instance, processing criminal record checks and interpreting the results requires a level of procedural and content knowledge. An experienced HR officer is also more likely to be able to identify a suspicious or inconsistent job application than a hiring manager; however, hiring managers are likely to have detailed industry knowledge that can be useful in identifying red flags. For example, the hiring manager might be well placed to spot exaggerated claims or misleading position titles in a job application. As a result, although HR managers are likely to own the checking process, it is important for the hiring manager to have some input.

Secondly, a hiring manager may not be in a good position to assess the overall risk of employment application fraud. Most HR staff have some experience dealing with false or misleading job applications and therefore will have a better grasp of the likelihood and consequences of employment application fraud.

Thirdly, a hiring manager may be under pressure to fill an existing vacancy as quickly as possible and may therefore not have an incentive to complete all screening checks with the necessary degree of rigour. In addition, given that checks are generally performed on the preferred candidate, the hiring manager may suffer from a form of confirmation bias; that is, they might not place sufficient weight on any red flags because a positive impression of the candidate has already been formed.

Finally, adopting a decentralised approach – where individual hiring managers are responsible for their own checks – can lead to inconsistency, duplication of work and non-conformance with policy. Giving one individual or business unit overall accountability for employment screening outcomes can prevent these problems. It also helps to ensure that agencies maintain appropriate records and control the dissemination of personal information. Again, this is usually the HR unit, which also controls the formal process of making offers of employment.

By their size and nature, some agencies have specialist staff that perform certain types of checks. For example, agencies that provide services to young people are likely to have a dedicated resource to manage working with children checks and agencies with high safety risks usually have a repeatable process for verifying staff safety certifications. This is consistent with the Commission's general advice that checks be performed by skilled staff.

Key elements of good practice include that:

- where screening checks are performed in-house, they are executed by a dedicated resource (usually an experienced officer in HR or other subject matter expert)
- hiring managers and operational staff, who have industry-specific knowledge that can identify or resolve red flags, are involved in the process
- if checks have to be performed by different parties within the agency, the results should be reported in one place so there is a single source of truth and appropriate document control
- the execution of checks should be part of a repeatable, business-as-usual process, and any offer of employment or finalisation of probation should be linked to the satisfactory completion of checks.

Engaging third parties to perform checks

Most agencies rely on third-party providers to perform at least some employment screening. In NSW, a Government Assessment Services Panel Contract (A1651200) has been established that includes a number of pre-qualified suppliers that specialise in performing employment screening checks. At the time of writing, use of this panel was mandatory for certain agencies wishing to outsource their screening services. In selecting a supplier from this panel, agencies should perform their own due diligence; that is, they should screen their screener, just like any other important service provider.

Some agencies also rely on shared services arrangements to carry out screening checks.

The Commission's research indicates that, much like any type of service provider, companies that provide screening services differ widely in price, experience and quality. Engaging a third-party provider should involve a competitive process that follows the agency's normal procurement framework. In most cases, this will involve consultation between procurement staff and users of the service. Similarly, the agency's relevant contract or management framework should be observed.

Two main challenges associated with managing third-party providers²⁴ are:

- underdelivery, which can arise if the third-party provider fails to perform the required checks or if the checks lack rigour

- overservicing, which may occur if a third party convinces an agency to conduct checks that it does not need.

While some of these challenges impact both contracted checking and shared services arrangements, others are more pertinent to one particular type of third-party arrangement, as shown in table 5 (page 22).

Overservicing is best managed through a robust process of assigning required checks to roles (as discussed in chapter 2) whereas underdelivery is best managed through careful management of third-party providers.

Agencies should specify the exact checks that a third party is required to perform as well as the minimum standards of quality. In the absence of clear, documented expectations, an agency risks underdelivery. For example, an agency should know whether its third-party provider will:

- take responsibility for obtaining the applicant's permission to conduct a criminal record check
- sight original documents or accept verified copies
- check the bona fides of any justice of the peace (JP) or solicitor that verifies documents
- check overseas qualifications and experience
- check a candidate's entire work history or just their most recent jobs
- verify every qualification listed on a candidate's application, or just the main ones
- verify the legitimacy of references
- perform the required reference checks and, if so, what questions are asked
- perform open source checks, including analysis of social media²⁵
- subcontract some checks (for example, overseas checks) to another party.

Agencies should not assume that suppliers on the relevant Government Assessment Services Panel Contract already know which checks to perform or that the standard set of tests offered by the provider will be suitable. Agencies can and should contract for the specific tests that they require. The Commission recommends that, once the required checks are determined and agreed, they are formalised in a service level agreement or other form of contract.

²⁴ Third-party arrangements include suppliers such as recruitment companies, specialist background screening companies and shared services providers that may be either external or internal to the agency.

²⁵ As with any other type of employment screening check, whether social media checks are justifiable depends on the nature of the role. The extent to which this check is necessary can be identified during the risk-assessment process.

Table 5: Key risks associated with different third-party employment screening arrangements

Key risk	Third-party arrangement	
	Contracted checking suppliers	Shared services providers
Underdelivery	<ul style="list-style-type: none"> Typically, recruitment companies are not paid unless a candidate is placed. As a result, recruitment companies may be incentivised to perform fewer checks to place a candidate quickly and expend less time and money. Background screening companies are less likely to underdeliver because their reputation is dependent on the quality of checks that they perform. 	<ul style="list-style-type: none"> Shared services providers may be under time constraints or have resource limitations that encourage underdelivery. Because they may not specialise in employment screening, shared services providers may lack the necessary experience to carry out a full range of rigorous checks. Similarly, because shared services providers often have a number of clients, they may lack a detailed understanding of an agency's business or priorities.
Overservicing	<ul style="list-style-type: none"> Background screening companies make more short-term profit by maximising the number of checks they perform. If an agency has already engaged a contracted checking company to perform an adequate suite of checks for a given role, any additional checks conducted may constitute over-screening. 	<ul style="list-style-type: none"> A shared services provider may have an incentive to overservice if its contract or service agreement is structured on a fee-per-check basis.

Agencies also need to understand whether their third-party provider is giving positive assurance (for example, by verifying that candidate X did earn a doctorate from university Y) or negative assurance (for instance, by stating that nothing was found to suggest that candidate X did not earn a doctorate from university Y). While negative assurance can be less resource-intensive it may yield screening results that are less reliable.

It is sometimes the case that a third-party provider cannot complete all the agreed checks. In some instances, the required information is simply not available or relevant parties decline to cooperate. However, in a small number of circumstances, this may be because the third-party provider either misrepresents or fails to specify the nature of the checks it performs, as shown in case study 5.

In any case, it is important that agencies understand whether their provider has completed all of the required checks.

To have some assurance that the checks have been performed, the Commission recommends that agencies have access to the source documentation and work papers of any third-party provider. This can include documentation such as call logs, email correspondence, file notes, screen shots and research notes. Alternatively, periodic audits of the checks performed by third-party providers can be conducted.

Case study 5: The underdelivery of employment screening by external shared services

Two agencies told the Commission about poor service by shared services providers.

In the first case, the shared services provider did not have the capability to perform criminal record checks as it did not have the appropriate accreditation. The agency incorrectly assumed that a "nil" return from the provider meant that there was no relevant criminal record.

In the second case, the shared services provider was only able to perform urgent checks because of a lack of resources. The agency assumed that criminal record checks were performed for all new hires because their induction paper work was completed and the service provider did not raise any issues. It was not until this agency requested an audit that it became apparent that the checks had not been performed.

Key elements of good practice include that:

- agencies buy from the established NSW government panel of employment screening suppliers. This should follow the agency's normal procurement and contract management

processes. A contract or service level agreement should be in place

- to maintain consistency, third-party providers should have an agreed point of contact within the agency or at least an agreed liaison protocol
- the owner of the agency's employment screening framework should agree and document the exact checks that will be performed by any third-party provider as well as the minimum standards of quality. The agency should also maintain records reflecting the results of checks performed by third-party providers (however, care should be taken to ensure that checks are destroyed and/or stored in line with the relevant privacy legislation)²⁶
- an agency representative, typically a HR officer, verifies that the third party has performed the checks and/or understands why certain checks cannot be completed. Among other things, this helps assist with tracking the performance of third parties.

Actioning the results

As noted in chapter 1, a significant percentage of job applications contain false or misleading information. This means that a decision needs to be made about whether and how to action red flags that arise during the checking process.

Occasionally, a serious red flag will be identified that makes it obvious that the relevant candidate should not be appointed (for instance, a candidate with a recent serious fraud conviction applying for a financial role). However, it is more common for employment screening checks to produce information that is ambiguous, incomplete or does not necessarily mean that the candidate is unsuitable. It is also possible for reasonable people to disagree about whether a red flag is serious enough to disqualify the candidate.

It is not practical to list all the possible red flags and how to respond to them, but here are some examples that could be difficult to resolve without further information or discussion:

- a service history check reveals a history of some minor misconduct
- there is a slight mismatch between the candidate's submitted job application and their social media profile
- an applicant for a finance role used to run a small business that became insolvent

- the applicant's overseas work history cannot be verified because a previous employer is uncontactable
- it is not clear whether red flags relate to the actual candidate or another person with the same name
- there is an unexplained gap in the applicant's employment history.

One challenging task is making appropriate determinations when a criminal record check reveals disclosable court outcomes that are not directly applicable to the role;²⁷ for example, a criminal record or history that is no longer relevant or relates to less serious offences. In this situation, a policy that strictly prevents appointment of anyone with a criminal record could deprive an agency of a valuable employee that has, for instance, a minor traffic offence. Alternatively, a lax or subjective policy, or a failure to investigate red flags, could lead to the appointment of a candidate with serious integrity issues.

Key elements of good practice include that:

- any red flags are documented and made available to both the hiring manager and HR²⁸
- preferably, both the hiring manager and HR (and any other relevant party) should agree on a course of action, which also should be documented. However, if agreement cannot be reached, a protocol for escalation should be in place
- red flags should be followed up or resolved where possible by conducting further checks or research
- if necessary, the candidate is given an opportunity to respond to the red flag(s) or provide further evidence of their integrity
- if there is a reasonable suspicion of employment application fraud then the Commission should be notified. Relevant professional registration bodies or boards should also be notified if false qualifications are claimed (for example, false registration as a doctor, psychologist, accountant, lawyer, builder and so forth).

²⁷ When a criminal record check is performed, a disclosable court outcome may be reported, which indicates that there is police history information that can be released. This may include court appearances, matters awaiting court hearing, police intelligence, matters currently under investigation, good behaviour bonds, traffic infringements and so forth. For further information, see Australian Human Rights Commission, *Human rights: Discrimination in employment on basis of criminal record*, discussion paper, December 2004.

²⁸ However, care should be taken to ensure that information from a criminal record check is not retained and is securely destroyed in line with legislative requirements.

²⁶ For example, see NSW State Archives & Records, "Managing personnel records", 2013.



Monitoring and assurance

Just like any other important process, an agency's employment screening framework should be kept under review and from time to time, management should obtain independent assurance that the framework is operating efficiently and effectively.

Key elements of good practice include that:

- the employment screening framework is supervised in accordance with normal management responsibilities (the job description and performance agreement of the owner of the overall framework should reflect this)
- HR's business-as-usual performance reporting incorporates the execution, outcomes and results of employment screening checks (for example, number and quality of checks performed and red flags)
- the potential for employment application fraud is represented in some way in the agency's risk registers and the risk rating is monitored in accordance with the overall risk policy
- the framework is reviewed when an investigation or disciplinary process suggests that it has failed or a "near miss" is detected
- internal audit provides periodic independent assurance over the framework. This assurance should be provided to both management and the audit and risk committee.

Chapter 4: Improving the quality of employment screening checks

Improving the quality of employment screening practices increases the likelihood that employment application fraud, hidden criminal histories, poor work histories and so on, are detected, ultimately improving recruitment outcomes and preventing corruption. As discussed in case study 6, the Commission's Operation Avoca investigation showcases the wide range of employment application fraud that may remain undetected when poor quality employment screening checks are used.

Case study 6: An example of extensive employment application fraud

In the Commission's Operation Avoca²⁹ investigation, a public official used multiple means to undermine potential employment screening checks. This individual falsified his employment history, making it appear that he was employed by organisations at which he had never worked (among other things).

To make his employment history harder to check, he would sometimes list fictitious prior experience at local councils that had since merged because it would be difficult to verify his prior employment at organisations that no longer existed. He also arranged for a friend to pose as a work referee on multiple occasions, and used a mobile telephone number to make it more difficult to detect that neither of them had worked at the relevant organisation.

These anomalies were not detected because employment screening checks were not properly done.

How checking is poorly performed

While there are many types of employment screening checks and ways in which they can be poorly performed, this chapter focuses on checks that are frequently used and have common weaknesses. These include:

- verifying identity
- verifying employment history
- checking criminal history
- performing reference checks.

In addition, this chapter also addresses legal issues, such as obtaining consent for employment screening checks and managing resource pressures faced by HR.

Poor quality employment screening checks can occur when agencies perform too few checks, do not perform relevant checks or select a poor checking methodology. A failure to perform role-relevant checks usually points to either a failure to assess the risks associated with a given role, which was addressed in chapter 2, or an organisational environment that does not adequately support employment screening, which was discussed in chapter 3.

While results from the Commission's employment screening survey (chapter 1) indicate that almost all state and local government agencies perform some specific checks, the quality of these checks appears to differ markedly across NSW public sector organisations. Poor quality checking methodologies are risky because they can give the false perception that a qualification or criminal record has been verified, as shown in case study 7 (page 26).

²⁹ NSW ICAC, *Investigation into attempted corrupt payment and submission of false resumés to public authorities*, August 2010.

Case study 7: The effect of selecting a poor quality checking methodology

The Commission's Operation Bosco³⁰ investigation provides a good example of how poor quality employment screening checks can fail to detect employment application fraud. In this investigation, the Commission found that a public sector employee used false academic qualifications to obtain a number of lucrative senior roles in the public and private sector for over 15 years. When asked to verify his qualifications over this period, he simply presented photocopies of his degree. These photocopies were false documents because he had dishonestly inserted his name onto other people's legitimate degrees. As his career progressed, he misrepresented these photocopies to a JP so that they would be certified as true copies of an original document.

As a result of this investigation, the Commission recommended that academic and professional qualifications be verified with the issuing institution when they are required for the position or play a significant role in the decision to appoint a candidate.

A summary of the Commission's advice for conducting employment screening checks is shown in table 6 (pages 28-29).

For some high-risk roles, in addition to screening the applicant, it may be appropriate to extend certain employment screening activities to an applicant's family and associates. Agencies should consider this as part of a risk-based approach but screening of associates could be necessary in order to determine whether:

- officers in law enforcement or compliance roles have associates or family members that are involved in criminal activity
- an applicant's family and financial dependents are in jobs that directly conflict with the applicant's duties
- to approve an application for secondary employment
- an applicant has associates that would benefit from highly confidential information to which that applicant will have access.

Verifying identity

Identity checks are a key part of any employment screening process. A prospective employee may present inaccurate or incomplete identity information in order to conceal a history of criminal activity, misconduct or poor work performance or to obtain a role that they legally cannot occupy (for example, due to visa restrictions).

The use of false identity information may invalidate any other employment screening checks, as the information collected from those checks may not correspond to information about the person being screened. In one case of identity fraud, a man adopted the identity and medical qualifications of a doctor overseas, moved to Australia, and then used this identity and qualifications to falsely gain work as a doctor in NSW hospitals for 11 years.³¹

Identity checks can be compromised by relying on a single form of identity that is easily falsified. Better practice identity checking involves verifying multiple types of identity documents. For example, many agencies perform a 100-point identity check, which involves the production of a variety of identity documents from different predetermined categories. For one agency with which the Commission spoke, the 100-point check is performed by a hiring manager and the agency's probity unit also checks that identity documents obtained are sufficient for the purposes of a 100-point check.

Some large agencies augment the 100-point check process by verifying identity multiple times. For example, one agency verifies identity both during the candidate assessment process and when the candidate has been recommended for an appointment. Another agency rechecks identity when issuing its security access passes. Other agencies perform a 100-point check both when employees join the organisation, and whenever they are promoted or transferred to a new role.

Identity checking can also be undermined if the relevant identity information is inaccurately recorded. For instance, one agency observed instances where the name initially provided by a candidate did not match the name in the HR system.

In addition to simply being vigilant, there are a number of mechanisms agencies can use to ensure that identity information is accurately recorded. For instance, one agency records both legal names and nicknames in its records. Another agency has built-in electronic mechanisms to verify identity that compare name data across different electronic systems, with an alert being sent to the probity unit for review if an issue arises.

³⁰ NSW ICAC, *Report on investigation into Mr Glen Oakley's use of false academic qualifications*, December 2003.

³¹ Australian Health Practitioner Regulation Agency, "AHPRA successfully prosecutes NSW fake doctor and welcomes proposed new powers", media statement, 3 April 2017.

Verifying qualifications

Qualification checks help verify that a candidate has the knowledge, skills and abilities that they have claimed. They also assist the agency to assess the candidate's honesty. Qualification checks can include verifying educational qualifications, training courses, certificates, licences, professional associations and memberships. Which qualifications are verified will depend on both the contents of a candidate's application and the role for which they have applied.

Even if a candidate falsifies a qualification that is not essential for the role, merit-based selection processes can be undermined. This type of dishonesty could cause the selection panel to erroneously conclude that the candidate is hardworking, has good research skills or is capable of completing complex tasks.

There are many approaches that can be used to verify qualifications but many of these methods provide little defence against even moderately sophisticated fraud. For instance, a number of agencies rely on sighting copies of qualifications that have been certified by a JP. However, this is of limited value, as a JP merely certifies that a *copy* of a given document is genuine, not that the *document itself* is genuine. Furthermore, according to one background screening expert, very few people check whether the person purporting to be a JP is qualified to certify the documents. Another method that agencies use is to sight original qualifications but it can be very difficult for hiring managers or HR staff to recognise whether qualifications are genuine, especially when international qualifications are presented.

Better practice sources recommend that issuing institutions be contacted to verify qualifications.³² The issuing institution is both capable and motivated to help verify qualifications, as its reputation may be adversely affected by qualifications fraud. Verification with the issuing authority is especially important if the candidate cannot produce the original qualification (perhaps because it is lost or stolen).

However, according to Commission interviews, most agencies do not regularly contact the issuing institution. This is because they do not know how qualifications should be verified, and are unaware of the limitations associated with different qualification check methods and/or perceived time or cost limitations.

The Commission also recommends that agencies check the bona fides of unfamiliar tertiary institutions. There are organisations, sometimes known as "degree mills" or "diploma mills", which specialise in providing qualifications

that are either false or awarded without having to perform any meaningful academic work. In other cases, the issuing institution may not be a registered or recognised educational body.

The cost of verifying qualifications with the issuing institution is relatively low. In many cases, calling the university or institution admissions office to verify a degree is free. Moreover, while universities often charge a processing fee for producing additional academic information such as transcripts, this cost can be reduced by only screening preferred candidates. While international qualifications can be more challenging to verify, background screening companies are experienced in verifying these qualifications and are usually able to do so for a reasonable price.

Certain qualifications may need to be periodically re-verified because they might have expired. While some qualifications such as degrees are permanent, other qualifications such as professional accreditations or licences may lapse. If such qualifications are important to a role, an agency may need to periodically re-verify them.

Verifying employment history

In addition to qualifications fraud, candidates may falsify details of their employment history. This can entail making false claims about the:

- organisation(s) where the candidate has worked
- candidate's previous clients, projects and accomplishments
- candidate's title, seniority and salary
- candidate's period of employment (or unemployment)
- circumstances of the candidate's exit and any evidence of misconduct or disciplinary action.

According to one report cited earlier, about two-thirds of employment application discrepancies relate to employment history.³³

One approach used by a number of agencies is to contact the HR business units of previous employers to verify details of a candidate's employment history. While these checks are usually termed "conduct and services checks" when performed within the NSW public sector, this report uses the term "HR checks" because this term is also used outside the NSW public sector. Moreover, a need to verify employment history applies regardless of whether the prior employment was within the NSW public sector.

³² For example, the Standards Australia, HB 323-2007, Employment screening handbook..

³³ First Advantage, *Asia Pacific Employment Screening Trends Report*, 2016.

Table 6: Common issues to consider when performing employment screening checks

Check	Recommended practice
General	<ul style="list-style-type: none"> Alert all job candidates of your agency's employment screening practices. This can be done in advertisements, job packages or on an agency's website. This can deter candidates that might otherwise engage in employment application fraud. Obtain written consent from candidates to perform employment checks. If necessary, advise candidates that your agency reserves the right to conduct informal reference checks and prefers to obtain a report from the successful candidate's current manager. Advise candidates in the consent form and job advertisement that any evidence of employment application fraud, if detected after their appointment, could be grounds for disciplinary action, dismissal, referral to the Commission and referral to relevant professional associations. For applicants who have engaged in employment application fraud and are unsuccessful in gaining employment, consider referring them to relevant professional associations, adding them to an internal "do not employ" list or referring them to the Commission. Where appropriate, ensure that all checks are completed before the appointment. Failing this, checks should be completed prior to the end of the successful candidate's probationary period.
Identity	<ul style="list-style-type: none"> Perform a 100-point check.³⁴ Where possible, avoid relying on copies of identity documents. Consider performing identity checks at multiple points throughout the hiring process or on promotion. Accurately record identity information in HR systems. Record both legal names and nicknames in HR systems. Ensure that staff have a unique identity number.
Qualifications	<ul style="list-style-type: none"> Verify qualifications with the issuing institution (including for overseas issued qualifications). Note that sighting JP-certified copies or original qualifications provides limited protection against degree fraud. Sighting original qualifications is slightly better than relying on photocopies of qualifications or JP certified copies; however, it can be challenging to determine whether these qualifications are genuine. If reliance is placed on JP-certified copies, verify the identity of the JP, which can typically be done by viewing an online register. Check the bona fides of unfamiliar tertiary institutions to protect against degree mills that produce false or worthless degrees.
Employment history	<ul style="list-style-type: none"> Perform HR checks for public and private sector roles. If necessary, conduct checks on the candidate's previous employers (for example, check the website, ABN and location). Maintain full, accurate records of misconduct and disciplinary action so that misleading information is not provided to the future employer of a staff member.
Criminal record	<ul style="list-style-type: none"> Ensure the correct name is used (based on a completed 100-point identity check). Obtain written consent to perform a criminal record checks (for example, NSW, national and/or international criminal record checks). Ensure that criminal record check decisions take into account the nature of the role. Ensure that responsibility for assessing the outcome of a criminal record check is appropriately assigned to an appropriately experienced and knowledgeable person. Use an international criminal record check if relevant. Ensure that relevant documentation is securely stored or destroyed in accordance with relevant regulations.

³⁴ A 100-point check makes it harder for people to use a false identity because multiple identity documents are required from specific categories. For example, a candidate may be required to submit one or more primary documents such as a birth certificate or passport, and one or more secondary documents such as a driver's licence or Medicare card.

Check	Recommended practice
References	<ul style="list-style-type: none"> • Contact referees using corporate landline numbers to minimise the risk of a fictitious referee. • Verify the authenticity of written references (for example, is a work email address used, is it on letterhead, does it have an authentic signature and so on). • Call the organisation's switchboard or HR department to verify candidate and referee roles such as job titles. • Be aware that concerns about referees breaching privacy legislation are misplaced. If appropriate, remind referees that the information they provide is not classed as "personal information" under NSW privacy legislation (see table 7 in the appendix). • If organisations are reluctant to provide information, consider using a signed release form to facilitate information sharing between organisations. • Verify information obtained from one reference check with additional reference checks and other types of employment screening checks. • Consider conducting informal reference checks. • Ensure consent is obtained for conducting reference checks. • To avoid contacting a current employer unnecessarily and jeopardising a candidate's current employment, consider contacting current employers only for preferred candidates, after other referees have been contacted and at the end of the screening process.
Open source checks	<p>A variety of open and/or free sources are available that can be used to obtain useful information about candidates. While not an exhaustive list, the following sources may be useful:</p> <ul style="list-style-type: none"> • Google and online mapping sites • social media • Australian Securities and Investments Commission databases • Australian Business Register for ABN search • Australian Charities and Not-For-Profits Commission • Australian Financial Security Authority Bankruptcy Register Search • NSW Land and Property Information • White and Yellow pages directories • NSW Fair Trading and Service NSW public registers (which contain information about certain licence holders) • professional associations and peak bodies • conference websites • academic journals and publications • legal and case law databases • the Commission's published investigation reports and lists of prosecution outcomes. <p>Open source checks can also be used to identify any relevant associations that a candidate might have. Some agencies and companies search for "politically exposed persons" in order to uncover possible conflicts of interest or inappropriate associations.</p>

In the case of the Commission's Operation Avoca investigation, HR checks would have identified various falsehoods in the corrupt individual's declared employment history and revealed his poor performance at organisations where he had actually worked.³⁵

While HR checks can be very useful, their value can be diminished if a HR unit:

- is unwilling to divulge information because of either an incomplete disciplinary investigation or a general reluctance to share information
- does not have access to relevant information, such as why employment was terminated. In some cases, such as when the candidate worked for a very small company or was a sole-trading consultant, there may be no HR unit to contact.

One approach to managing these challenges is to contact multiple previous employers. Performing HR checks with multiple past employers can reveal a pattern of poor performance and misconduct, even if one or more prior employers is unwilling to disclose information. Moreover, even if a lack of information means that prior conduct or performance issues are not revealed, misrepresentations such as those of role seniority and employment duration can usually still be detected.

Completing disciplinary investigations and performance managing employees both play an important role in preventing the recycling of staff with a history of misconduct or poor performance. If employees engage in misconduct, and disciplinary action is not taken (or recorded), they might be hired by another agency, or even rehired by the same agency, if the relevant hiring managers cannot obtain information regarding the candidate's history.

Additionally, agencies are typically poor at collecting data on the conduct and performance of contingent workers, which means that HR checks tend to be of limited value for these staff.³⁶ This issue is addressed further in chapter 5.

Finally, officers of the Commission are sometimes asked whether information about a former employee's disciplinary record can be revealed. The Commission's advice is that:

- when an investigation and disciplinary process has been completed and procedural fairness has been observed, factual information about any allegations that has been substantiated can be conveyed as part of a HR check

- information about any allegations that have been investigated and not been substantiated should not be conveyed as part of a HR check
- in cases where a person has resigned from an agency before allegations of misconduct can be fully investigated, it is acceptable to convey factual information about the matter as part of a HR check. That is, the agency can advise that the individual resigned during an investigation and can provide information about the allegation, but it should not advise that the allegations were substantiated.

Checking criminal history

There are two key problems that can impair the quality of criminal record checks. First, the name used to check a criminal record may be false or incorrect. This can result in the pertinent criminal history of a candidate not being detected or the pertinent criminal history of a different person being assessed. Secondly, following the evaluation of a candidate's criminal history, an inappropriate employment decision may be made. This can result in either an unacceptably risky candidate being hired or unfair discrimination against a candidate who was not hired (for example, a minor, historical offence being used to disqualify an otherwise suitable candidate).³⁷

The risk that a criminal record check returns a criminal record of a person other than the candidate can be managed by having a rigorous approach to verifying the identity of candidates. A number of agencies stated that ensuring that the correct name is entered into the criminal record check can be challenging if the name is mistyped, unusually spelt or is a commonly used name. One agency added that candidates may provide their correct name for a criminal record check but provide another name for their job application, making it difficult to link a candidate to their criminal record. To avoid such issues, one agency is very selective in terms of which identity documents candidates must submit with their application, allowing them to ensure that the documents attached to the application are the same documents used for the criminal record check. Methodologies for verifying identity have been discussed earlier in this chapter.

As discussed in chapter 3, carefully assigning accountabilities for criminal record checks can ensure that a sufficiently knowledgeable individual makes determinations to manage the risk of making an inappropriate hiring decision. As a general rule, an experienced HR professional

³⁵ NSW ICAC, *Investigation into attempted corrupt payment and submission of false resumés to public authorities*, August 2010.

³⁶ Audit Office of NSW, *Contingent workforce: procurement and management*, April 2017.

³⁷ Australian Human Rights Commission, *Human rights: Discrimination in employment on basis of criminal record*, discussion paper, December 2004.

is best placed to perform that assessment and advise the hiring manager of any red flags. In addition, as outlined in chapter 2, a risk-based approach can help identify the relevant risks associated with roles that may need to be considered when reviewing a criminal history.

The Commission's research identified three key concerns among agencies about criminal record checks – their cost, the time taken to conduct them, and the fact that national criminal record checks do not detect international criminal histories.

Some agencies identified cost as a concern with criminal record checks but these concerns primarily arise because of substantial differences in the prices different agencies pay for criminal record checks. For instance, one agency indicated that the cost of conducting criminal record checks acted as a barrier but it turned out that it paid close to three times the price that a police station charged for the same checks.³⁸ Further, some agencies have entered into arrangements that decrease the price below that charged by the NSW Police Force. Agencies that pay a more reasonable price for criminal record checks generally view them as good value-for-money, given the reduction in risk that they achieve.

While the time taken to conduct criminal record checks was also raised as an issue, mechanisms can be implemented to manage any delays. A number of agencies commented that obtaining the results of a criminal record check could take some time, particularly when disclosable court outcomes were returned.³⁹ A delay might also occur because of difficulty in identifying a staff member who has the appropriate delegation to assess disclosable court outcomes. As discussed in chapter 3, this risk can usually be managed by ensuring that the responsibility for assessing criminal records lies with an experienced officer. Additionally, if the role is not high-risk, a candidate can commence working with their continued employment conditional on successfully completing the check.

A failure to assess the international criminal record of a candidate who has spent considerable time overseas can expose an agency to unacceptable risk. As previously noted, national criminal record checks only provide information about Australian criminal offences. Several individuals interviewed by the Commission expressed concern that criminal offences committed by candidates who had spent substantial periods of time overseas were not being detected. For instance, a Queensland public

official employee who ultimately defrauded his agency of \$16.69 million was hired despite having two relevant New Zealand criminal convictions.⁴⁰

The Commission recommends that, based on their risk assessment, agencies should perform international criminal record checks by engaging a member of the Government Assessment Services Panel Contract.

When performing a criminal record check, an applicant may display a clean record (that is, have no disclosable court outcomes) despite having a former criminal history due to the spent convictions scheme. The *Criminal Records Act 1991* specifies when certain convictions may become spent in NSW.⁴¹ One purpose of the spent convictions scheme is to reduce discrimination towards people with spent convictions who apply for employment. For most agencies, it is unlawful to obtain information about spent convictions or ask applicants about spent convictions.⁴² Some additional detail is included in the appendix.

Maximising the usefulness of reference checks

Obtaining valuable information from a reference check involves obtaining the right information from the right person. Since reference checks involve assessing a referee's opinions, it is important that the referee in question has views based on their actual experience of the candidate.

Ensuring the right person is approached

An agency's requirement for a candidate to supply certain referees may be undermined if they provide a false written or verbal reference. For instance, in the Commission's Operation Avoca investigation, a public official provided false written references and arranged for his friend to pose as his referee on multiple occasions. One practitioner told the Commission that some call centres exist that provide candidates with false references. One company appears to have taken the provision of false references one step further by providing a service where they create fictitious or virtual companies at which candidates have supposedly worked to bolster the "references" they provide from these

³⁸ The cost of a police check is \$55.90, according to the Criminal Records Section information sheet No. 1 Version 4.6, June 2016. Accessed on 24 August 2017 at http://www.police.nsw.gov.au/_data/assets/pdf_file/0004/273982/Information_Sheet_1_ver_4.6.pdf

³⁹ As defined earlier in chapter 3, police checks can return disclosable court outcomes such as a record of court convictions and pending charges.

⁴⁰ Crime and Corruption Commission, *Fraud, financial management and accountability in the Queensland public sector: An examination of how a \$16.69 million fraud was committed on Queensland Health*, September 2013.

⁴¹ Section 7 notes that convictions for various serious offences, including sexual offences and convictions carrying prison sentences of more than six months, are not capable of being spent.

⁴² However, according to the *Criminal Records Act 1991*, there are some exceptions. For example, some law enforcement agencies can obtain information about spent convictions.

companies.⁴³

To manage the risk of false references, the Commission recommends that agencies consider:

- contacting the referee on a corporate landline number or via the switchboard
- verifying the referee's title and role when performing the HR checks (even if the referee is a former employee)
- performing separate open source checks on the referee and his/her organisation
- communicating with the referee via a corporate email address
- verifying the authenticity of written references (for example, the use of letterhead and signatures)
- validating written references with a telephone call to the referee.

Obtaining the right information

Given that referees are nominated by the candidate, there is a likely limit to the amount of candid information that referee discussions will provide.

A failure to obtain the right information from a reference check may result in red flags being missed. In the Commission's experience, individuals who engage in corrupt conduct sometimes engage in other risky workplace behaviours such as absenteeism, failing to take leave, neglecting assigned duties or improper hoarding of information. Reference and HR checks should therefore seek information about these less serious forms of misconduct.

However, conducting reference checks can be challenging because:

- some private sector organisations have a "no references" policy, and may only provide minimal information such as commencement and completion dates. Some organisations have this policy in place because they are concerned about the potential legal repercussions if incorrect information is provided
- some NSW government agencies are reluctant to provide information to individuals who are not employed within the same cluster
- referees can be reluctant to provide frank information because they are concerned a

candidate might find out what a referee has said about them, especially as reference checks are potentially subject to the *Government Information (Public Access) Act 2009*

- referees may be concerned about potentially breaching privacy legislation.

Concerns about referees breaching privacy legislations are misplaced. Under s 4(3)(j) of the *Privacy and Personal Information Protection Act 1998*, "information or an opinion about an individual's suitability for appointment or employment as a public sector official" is explicitly exempt from the definition of personal information.

These barriers can potentially be overcome by:

- requiring the candidate to sign a consent/release form that, among other things, indemnifies former employers from legal action
- contacting multiple referees and following up any obvious discrepancies
- comparing the information provided by referees with other information collected during the recruitment process such as information obtained from interviews and the candidate's resumé
- requiring the candidate to provide examples of written work, which could then be discussed in more detail with the relevant referee
- asking candidates to include their current supervisor as a referee. Some candidates are reluctant to alert their current supervisor that they are applying for jobs. This reluctance can be overcome by only contacting the supervisor of the preferred candidate, or by performing the check during the candidate's probation period
- conducting "informal" reference checks; that is, contacting individuals other than the candidate's nominated referees. Agencies may decide to inform candidates that informal reference checks could form part of the screening process.

In instances where an organisation is reluctant to share information due to concerns about potential legal action, it may be useful to use a signed release form. For example, one reference checking guide obtained by the Commission includes a sample of a consent form, which is signed by the candidate and directs organisations to share information. This form protects and releases the organisation and their workers from potential legal action provided the answers are not fraudulent or deliberately false.⁴⁴

⁴³ S Adams, "This man's business is providing fake job histories and references," *Forbes*, 20 December 2013. Accessed on 6 June 2016 at <http://www.theage.com.au/victoria/stoush-over-melbourne-public-housing-set-to-take-a-fresh-turn-20180201-p4yz6r.html>.

⁴⁴ Standards Australia, HB322-2007, Reference checking in the financial services industry.

Better practice approaches to reference checking adopt mechanisms that attempt to verify the information provided by referees. For instance, information from reference checks can be compared with information obtained from other employment screening checks (for example, HR checks). The effectiveness of this approach can be enhanced by deliberately including questions in the reference check that could be verified by the other checks, such as the candidate's duties, tenure and title.

For information that may be difficult to verify by other employment screening checks, there are additional mechanisms that can be used to assess the veracity of information provided by referees. For instance, the opinions of multiple different referees could be compared. Alternatively, the information provided by a referee could be verified by individuals that they have not listed as a referee, such as a candidate's line manager.

Several private and public sector organisations have taken the approach of conducting "informal reference checks". This entails contacting individuals that have not been nominated as referees but who might have relevant information about the candidate. A number of agency managers advised the Commission that conducting informal referee checks had helped to identify employment application fraud and save their agency from hiring a dishonest person. Agencies should ensure that when conducting informal reference checks, they do not incorporate irrelevant information into their decision.

When using these approaches to verify the information provided by referees it is important that legal considerations such as consent are managed. This is particularly important given the potential consequences to a candidate of some of these approaches – for instance, contacting a line manager may adversely affect a candidate's current employment. To avoid contacting a preferred applicant's current employer unnecessarily, HR may delay making contact until all other checks have been conducted and other referees contacted.

In instances where a candidate does not want their current employer contacted, potential strategies may include performing the checks after a conditional offer of employment has been accepted or during the probation period. Whether these approaches are appropriate will depend on the risks associated with the role and the extent to which reference checks are needed.

Controlling legal issues

In the course of its research, the Commission became aware of agencies that either avoided performing employment screening because of legal concerns, such as concerns about privacy or industrial legislation, or performed employment screening checks with little

apparent consideration of the relevant legal framework. In the Commission's Operation Avoca investigation, for instance, the general manager of one council did not conduct employment screening because he believed it was prohibited by privacy legislation. Similar concerns about perceived legal barriers to employment screening have been raised by the Victorian Ombudsman's Office, which reported that:

I am concerned that there is a marked tendency for privacy requirements to be mistaken and misused as a barrier preventing the appropriate exchange of information between public sector agencies in such circumstances ... Any uncertainty regarding privacy considerations can be resolved by ensuring candidates understand and consent to the agencies [sic] pre-employment screening procedures.⁴⁵

It is beyond the scope of this report to discuss specific legal issues but there are two broad approaches that agencies can use to help manage them. The first is to ensure that checks are relevant to a role (obtaining advice if necessary) and the second is to ensure that proper consent is obtained.

Legal issues associated with employment screening often arise because a check is perceived as just "fishing for information". While such an approach is usually not legally appropriate, it is permissible to conduct checks that relate to the genuine requirements of the role in question, and a risk-based approach can help justify the checking an agency performs. In addition to consulting with appointed legal advisers, agencies can also obtain policy advice from the NSW Public Service Commission and consult with the NSW Information and Privacy Commission on privacy-related issues.⁴⁶

Once the justifiability of checks has been established, consent forms can be an effective way of addressing any remaining legal issues. For instance, an expert in the area advised the Commission that informed consent for checks that were relevant to the role tended to deal with most privacy issues. This expert added that information about required checks could also be placed in job advertisements or criteria in a similar way to qualification or experience criteria. This has two advantages: it helps to ensure that consent is informed, and it tends to make the screening process run more smoothly because individuals who would fail the relevant checks would often not apply for the role.

It is usually advantageous to obtain consent early in the recruitment process. This reduces the chance that the recruitment will be affected by a preferred candidate refusing to give consent and delaying the process.

⁴⁵ Victorian Ombudsman, *Report on issues in public sector employment*, November 2013, p. 19.

⁴⁶ It should be noted that these agencies provide general policy advice, not legal advice.



Managing resource pressures

The amount of resources dedicated to screening processes can markedly impact the effectiveness of specific employment screening checks. Screening-related resource pressures are quite common across the NSW public sector. For example, in the Commission's survey of state and local government organisations, the most commonly reported barrier to conducting employment screening was a lack of resources.⁴⁷ Resourcing pressures can arise from a lack of time or a lack of financial resources.

When insufficient resources are assigned to screening, shortcuts may be taken leading to poorer quality checks and ultimately increasing the likelihood that an individual is hired despite not being appropriate for the role. For instance, a number of organisations indicated that resource pressures on HR staff often lead to poor or non-existent verification of information supplied by candidates.

There are a number of strategies that can be used to reduce resource pressures. These include:

- outsourcing employment screening checks to third-party providers (chapter 3 discusses how to manage third-party arrangements)
- using an upfront consent form early on in the process
- screening only preferred candidates⁴⁸
- employing people subject to further screening
- collecting data on seasonal recruitment trends and planning accordingly.

⁴⁷ A total of 62% of respondents, who reported a barrier, listed resourcing issues as one such barrier.

⁴⁸ Standards Australia, HB 323-2007, Employment screening handbook.

Generally speaking, resource pressures can be better managed if they can be predicted in advance through workforce planning. One agency discussed an approach that can be used to predict when resources were likely to be needed for screening. Rather than simply consider recruitment from a reactive perspective, this agency examines patterns in recruitment such as seasonal trends to gain a more general understanding of when it is likely to require a high volume of screening. It has also undertaken a range of other measures such as developing a talent pool to make recruitment more efficient in general, allowing it to devote greater resources to screening.

Chapter 5: Screening non-permanent workers

While a large proportion of NSW public sector workers are engaged as permanent employees, agencies also hire non-permanent staff such as casual, fixed contract and contingent hires.⁴⁹ It has been the Commission's experience that permanent employees in NSW are generally screened more effectively by NSW government agencies than non-permanent workers.

For instance, one agency informed the Commission that an employee, whose employment was terminated for fraud, was rehired by the same agency as a contingent worker for three years. It was not until they applied for a permanent position in the agency, as a result of more stringent standards for screening permanent employees, that their fraud was detected. The Commission has observed that in extreme cases, entire categories of non-permanent workers are hired without any screening, substantially limiting the effectiveness of an agency's screening framework.

Due to the nature of their engagement, non-permanent workers can pose greater corruption risks to an organisation. This is because:

- many non-permanent workers make their living by performing temporary assignments for different clients/employers (in what is sometimes termed "the gig economy"). This means that non-permanent workers may have less allegiance to an agency because of the short-term nature of their engagement. In addition, non-permanent workers may operate outside the agency's prevailing culture, performance management and disciplinary systems
- line managers may not supervise temporary staff as closely as they do permanent employees,

which can entail additional risk if the non-permanent worker has been engaged to provide specialist expertise that does not exist in-house

- a non-permanent worker may be motivated to improperly delay or expand a project to extend their employment (that is, to prolong or obtain the next gig). In addition, they may improperly use agency resources to develop or augment an income stream. For instance, one agency informed the Commission that a non-permanent worker had stolen its intellectual property for a private benefit
- non-permanent workers are more likely to have other sources of income and other clients (that is, multiple, simultaneous gigs), which may create conflicts of interest
- it may not be economical to induct or train non-permanent workers in fundamental policies and procedures in areas such as procurement, delegations or the code of conduct. Agencies may also be more tolerant of short-term, non-permanent staff using workarounds (for example, temporary password sharing or bypassing procurement procedures)
- in most organisations, the HR department owns or oversees the key processes associated with recruiting and inducting permanent employees, but non-permanent workers are often engaged by anyone with a procurement delegation
- increasingly, non-permanent workers are performing the core business of public sector agencies. For instance, it is not unusual for contractors to exercise or influence financial delegations, supervise staff and manage key programs

⁴⁹ A key feature of non-permanent workers is that they are paid a wage or salary for the time they work, which distinguishes them from freelancers, consultants, and other independent contractors, who are paid on the basis of a completed task or project.

- some non-permanent workers can become entrenched in an organisation and take on responsibilities normally only accorded to permanent employees, as shown in case study 8. In addition, because they are not permanent employees, these workers may not be subject to certain controls that apply to permanent employees, such as HR policies and induction processes. While the NSW Public Service Commission recommends that contingent workers are not engaged for more than six months⁵⁰, the Commission is aware of instances where contingent workers have been at the same agency for 10 years⁵¹, and other sources have reported that contingent workers have been engaged for 20 years or more.⁵²

Case study 8: When contingent workers are viewed as de facto employees

The Commission's Operation Barcoo⁵³ investigation identified a large number of contingent IT workers who were often afforded discretion well beyond what was needed to perform their nominal roles, and which were not subject to the same controls as permanent employees. This included sitting on recruitment panels, identifying the need for project resources and certifying the delivery of services by vendors. These duties provided the contingent workers with undue access to agency assets and decision-making that facilitated the corrupt conduct that the Commission found.

Assign responsibility for the screening of contingent workers

Workers engaged as contingent labour⁵⁴ are, perhaps, the most challenging to screen. Casual and fixed-term employees are sometimes engaged using the same procedures that apply to permanent employees. But other non-permanent workers are often engaged via a labour hire company or

a decentralised procurement process, which complicates efforts to ensure that they undergo adequate screening.

One key issue in relation to the screening of contingent labour is assigning responsibility for checking. For instance, representatives from several agencies told the Commission that they are unsure who is expected to run or initiate screening for contingent candidates, and agencies often assume that labour hire companies will conduct screening in the absence of an explicit request to do so. Similarly, internal responsibilities for labour hire processes may be confused or misplaced.

Responsibility of labour hire companies

It is a mistake to assume that labour hire companies will conduct employment screening checks without being explicitly instructed to do so. Indeed, labour hire companies may be incentivised to *avoid* conducting checks, as they make the most profit by placing a candidate using the smallest amount of resources possible. Labour hire companies might also be reluctant to take action if they identify red flags about a candidate that has already been recommended to a client.

In an interview with the Commission, one agency provided a good example of how a labour hire company's inadequate approach to conducting checks resulted in the engagement of a highly risky individual. The labour hire company simply asked this candidate whether they had a criminal record. In response, the candidate did not declare their history of identity theft. Because the labour hire company did not attempt to verify this information, the candidate was ultimately hired, and the agency faced a range of costs and challenges once their criminal record was revealed.

The current whole-of-government prequalification scheme for contingent labour (the "0007 scheme") does not guarantee that recruitment companies conduct adequate employment screening. Hiring agencies have a responsibility to communicate their background screening needs and expectations to suppliers.⁵⁵ Consequently, agencies cannot assume that 0007 companies will conduct any screening without being explicitly directed to do so. Furthermore, unlike the C100 contract that preceded it, the vetting requirements for 0007 companies are quite limited, meaning that the quality of 0007 companies varies considerably. Finally, the government department responsible for managing the 0007 scheme has little oversight of the quality of work done by scheme members and does not play a role in enforcing the quality of services provided.

One approach that agencies use to help ensure that labour hire companies conduct adequate screening is to specify

⁵⁰ "Agencies should avoid inappropriate use of contingent labour, such as engagement on a long term basis (as a guide, more than six months) or continually re-engaged without a re-evaluation of market conditions," NSW Public Service Commission, *Contingent workforce management guidelines*, December 2014, p. 11.

⁵¹ NSW ICAC, *Managing IT contractors, improving IT outcomes*, August 2013.

⁵² Audit Office of NSW, *Contingent workforce: procurement and management*, April 2017.

⁵³ NSW ICAC, *Investigation into alleged fraud on the former NSW Department of Education and Training*, January 2012.

⁵⁴ Instances when contingent hires are engaged include when there is a short-term need for specialist knowledge, to fill a gap in capability where there is a market shortage or to fill a role while an employee is on leave as a short-term solution.

⁵⁵ NSW Public Service Commission, *Contingent workforce management guidelines*, December 2014, p. 11

the expected screening requirements and verify that they have been performed. For instance, a labour hire company could be required to verify a candidate's work history and provide notes and supporting documentation associated with its checks, as discussed in chapter 3.

Another approach that a number of agencies have used is to form subpanels of preferred suppliers from the 0007 scheme. As argued by one agency, in addition to making procurement-related processes more manageable, subpanels may incentivise labour hire companies to properly screen candidates to ensure that they remain on the subpanel. This approach overcomes the 0007 scheme issue of variable supplier quality, as poor quality labour hire companies on the subpanel can simply be replaced.

Responsibilities of internal staff

Because contingent labour hire is a hybrid of procurement and recruitment, it is important to agree who has responsibility for ensuring that relevant screening checks are completed. While HR usually has a clear governance role in relation to recruitment activities, it is less likely to have such a clear role in relation to contingent labour. Instead, responsibilities for contingent labour are sometimes located in procurement or operational business units that tend to be less familiar with employment screening issues. In other cases, these responsibilities may be poorly specified because of confusion about whether contingent labour is a HR or procurement function, which can result in them not being fulfilled given that no business unit owns them.

Several agencies informed the Commission that they limit employment screening risks associated with contingent labour by ensuring that HR is either strongly involved in the process or has full responsibility for it. One agency's contingent labour process is coordinated by HR with the screening of contingent workers done internally by the agency's probity unit. Another agency places all responsibility for the hiring of contingent workers, including the screening of candidates, with HR. In addition to ensuring that these responsibilities are appropriately assigned, both approaches provide better consistency in relation to screening contingent workers, as in each case the same unit is in charge of hiring and screening all permanent and non-permanent workers.

Because many non-permanent workers are engaged via a procurement process rather than a recruitment process, they (or their parent company) are more likely to be entered as a supplier on the vendor master file than as a payee on the payroll system. This means that HR might not even be aware of the number or nature of non-permanent workers performing important duties.

One solution is for HR to have read-access to data sources including the vendor master file, finance system (to identify relevant purchase orders and contracts), security profiles

(to identify individuals who have been issued with security passes) and IT profiles (to identify individuals who have been issued with agency email accounts and system access). Visibility of non-permanent workers can also be increased through careful workforce planning to ensure non-permanent workers are engaged in appropriate roles in the first place.

Consider length of engagement as a risk factor

Agencies tend to have limited oversight of contingent hires and the duration of their tenure. This is in part due to a lack of accurate and reliable information about contingent hires and because the engagement of contingent hires is not informed by agency-level workforce plans.⁵⁶ However, when determining what employment screening is adequate for a contingent worker, the length of engagement becomes an important risk factor. For instance, as discussed earlier, contingent workers that are hired for an extended period of time can essentially become poorly controlled de facto permanent employees, increasing an agency's risk exposure. Indeed, it is generally true that the longer a contingent worker is engaged by an agency, the greater the need for further screening.

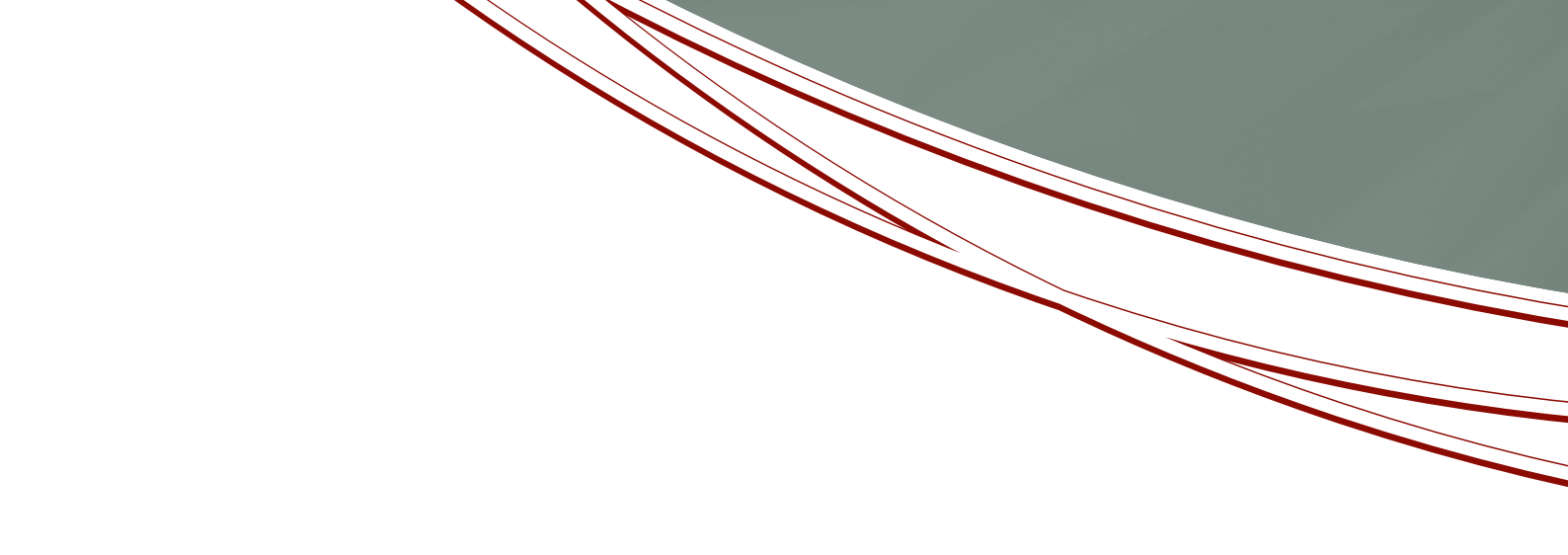
Very short-term contingent engagements typically entail little risk. Contingent workers are sometimes urgently needed to fill gaps for very short periods, sometimes as short as one or two days. In such circumstances, there may be value in starting a contingent worker with minimal screening, as the cost of more comprehensive screening may be excessive for the risk involved. This can only be appropriate, however, if two conditions are met:

1. the contingent worker is performing a low-risk role
2. a more comprehensive employment screening approach is used if the engagement is extended or the worker is re-engaged (for example, for different duties and/or by a different business unit).

Controlling contingent workers who are engaged multiple times by different parts of an organisation is more difficult than controlling the extension of a single engagement.

For example, a representative of one agency told the Commission that they had, by chance, become aware of several contingent workers who were rehired in other parts of their cluster after their engagement was terminated for misconduct. The risk is that the contingent worker continues to engage in poor performance or misconduct over a long period of time as they gain employment in other units or agencies within the same cluster. Therefore, it is important

⁵⁶ Audit Office of NSW, *Contingent workforce: procurement and management*, April 2017



that agencies document all evidence of misconduct by non-permanent workers and that this evidence be visible to relevant HR/hiring managers within the cluster or organisation, on a need-to-know basis.

Ensuring that contingent workers are only used for a specific business need can reduce the likelihood that their engagements are extended. This lessens the chance that a contingent worker has long-term access to agency decision-making, reducing both their risk profile and the employment screening consequently needed. One way to manage this risk is to capture the intended end date for the worker's services in the payroll or accounts payable system (depending on how payment is being made), thereby preventing (or at least flagging) payments for services that post-date the agreed term. Similarly, where relevant, a contingent worker's security access and IT permissions should be set to expire on the agreed end date.

Effective planning of contingent labour engagements can also help facilitate an assessment of the risk. If a contractor's tenure, deliverables and permissions are not known at the time of appointment, it is very difficult to perform the right set of screening checks. An agency that engages contingent workers frequently may find it efficient to formalise the role assessment process (see chapter 2) so that it can readily assess risks associated with roles filled by contingent workers.

One challenge is that a contingent worker's duties may change over time in subtle ways that may be difficult to detect. Indicators that a contingent worker may be operating beyond the agency's acceptable level of risk may include if they:

- have been given system procurement delegations (for example, the ability to approve purchase orders, receipt goods and services or approve timesheets)
- have used or approved an agency credit card

- are supervising other staff
- are performing accounting functions
- are being paid via both payroll and accounts payable
- are invoicing for work performed at unusual hours.

To gain greater visibility of contingent workers, HR managers at several agencies told the Commission that they currently use, or plan to implement, an information system that records the details of contingent labour engagements. Tracking the details of contingent engagements enables for a more complete assessment of the risks posed by a contingent worker and makes it easier to ensure that they are subject to adequate employment screening. For example, agencies may collect the following data to track labour hire engagements:

- start date and finish date (for both current and prior engagements)
- recruitment company used
- rate charged (for both the recruitment company and worker)
- business unit for which the contingent worker is employed
- manager who oversees the contingent worker
- list of duties as hired
- additional duties (as role changes)
- conduct issues
- performance issues.

Finally, the Commission recommends that agencies maintain complete records of any disciplinary matters involving non-permanent staff. These records may be valuable to other agencies wishing to conduct future HR checks. They may also prevent an agency from rehiring a contractor with a history of misconduct.

Appendix

Table 7: NSW legal and regulatory employment screening requirements

Source	Guidelines provided
<i>Government Sector Employment Act 2013</i> ("the GSE Act")	<p>Section 54 of the GSE Act specifies that the engagement of a public service employee <i>may</i> be subject to specific conditions such as:</p> <ul style="list-style-type: none"> • citizenship or residency requirements • formal requirements • security and other clearances • health clearances.
Government Sector Employment (General) Rules 2014 ("the GSE Rules")	<p>The following text contains excerpts from the GSE Rules that relate to employment screening.</p> <p>Rule 6 citizenship or residency requirements</p> <p>According to rule 6, a person is not to be employed as a public service employee unless they are:</p> <ul style="list-style-type: none"> • an Australian citizen, or • a permanent resident of Australia, or • a New Zealand citizen with a current New Zealand passport, or • a citizen of another country with a current visa that allows the person to work in Australia. <p>Rule 7 formal qualifications</p> <ul style="list-style-type: none"> • This rule applies to a public service employee whose engagement in a public service agency is made subject to a condition that the person is required to have such qualifications as the employer may determine to be necessary for performing the duties of the role to which the person is to be assigned. • A person who is required to have any such qualifications but who has not provided evidence of the qualifications may be employed on the condition that the person provides that evidence in the time and manner determined by the employer <p style="text-align: right;">cont...</p>

Government Sector
Employment (General)
Rules 2014 (“the GSE
Rules”) continued

The following text contains excerpts from the GSE Rules that relate to employment screening.

Rule 6 citizenship or residency requirements

According to rule 6, a person is not to be employed as a public service employee unless they are:

- an Australian citizen, or
- a permanent resident of Australia, or
- a New Zealand citizen with a current New Zealand passport, or
- a citizen of another country with a current visa that allows the person to work in Australia.

Rule 7 formal qualifications

- This rule applies to a public service employee whose engagement in a public service agency is made subject to a condition that the person is required to have such qualifications as the employer may determine to be necessary for performing the duties of the role to which the person is to be assigned.
- A person who is required to have any such qualifications but who has not provided evidence of the qualifications may be employed on the condition that the person provides that evidence in the time and manner determined by the employer

Rule 8 security and other clearances

- This rule applies to a public service employee whose engagement in a public service agency is made subject to a condition that the person is required to have such security or other clearances as the employer determines are necessary for performing the duties of the role to which the person is to be assigned.
- A person who is required to have any such security or other clearances must ensure that those clearances are maintained.

Rule 9 health assessment

- This rule applies to a public service employee whose engagement in a public service agency is made subject to a condition that the person’s fitness to perform the duties of the role to which the person is assigned has been confirmed by a health assessment.
- For the purposes of this rule, fitness to perform the duties of a role includes the ability to carry out the role without endangering the health and safety of the public, of other persons employed in the public service agency, or of the person concerned.

The rule also defines forms of health assessments (for example, a declaration or medical examination).

Rule 17 comparative assessment

Screening for essential requirements such as a qualification or licence, reviewing an application and resume, referee checks against the pre-established standards for the role

Rule 18 suitability assessment

Screening for essential requirements such as a qualification or licence, reviewing an application and resume, referee checks against the pre-established standards for the role.

Government Sector Employment Regulation (“the GSE Regulation”)	<p>9 Reporting charges and convictions for serious offences</p> <ul style="list-style-type: none"> • A public service employee who is charged with, or is convicted of, a serious offence must immediately report that fact in writing to the agency head. • Convicted of an offence includes being found guilty of the offence without the court proceeding to a conviction. Serious offence has the same meaning as in s 69 of the GSE Act. <p>10 Employee to report bankruptcy</p> <ul style="list-style-type: none"> • If a public service employee (other than a person employed in casual employment) becomes bankrupt or makes a composition, arrangement or assignment for the benefit of the employee’s creditors, the employee must: <ul style="list-style-type: none"> – immediately notify the agency head in writing of the bankruptcy, composition, arrangement or assignment, and – within such period as the agency head specifies, provide the agency head with such further information with respect to the cause of the bankruptcy or of the making of the composition, arrangement or assignment as the agency head requires. • If any such employee is the head of a public service agency, sub clause (1) applies as if references to the agency head were references to a minister to whom the agency is responsible. • An agency head may, as a condition of the engagement of a person in a role in the public service agency relating to financial management in the agency, require the person to declare, before the person is engaged in that role, whether or not the person has at any time been declared bankrupt or made a composition, arrangement or assignment for the benefit of the person’s creditors.
<i>Privacy and Personal Information Protection Act 1998 (“PPIPA Act”)</i>	According to s 4 of the PPIPA Act, “personal information” does not include “information or an opinion about an individual’s suitability for appointment or employment as a public sector official”. This means that legitimate employment screening activities are not subject to the information protection principles in the PPIPA Act.
<i>Child Protection (Working with Children) Act 2012</i>	Part 2, Division 1 of this Act defines child-related work and provides a list of areas of work that involve child-related work (for example, child development, children’s health services and religious services). Part 2, Division 2, s 9A specifies that the employer must verify that a worker that carries out child-related work holds a children check clearance that authorises the work or has made an application to the child’s guardian for a clearance.
<i>Disability Inclusion Act 2014</i>	This Act refers to particular departmental workers that require probity checks, including a criminal record check and reference check (see Part 5).
<i>Criminal Records Act 1991</i>	<p>Part 2 of this Act addresses which convictions are capable of being spent and when a conviction is spent.</p> <p>Part 3 describes consequences for the unlawful disclosure of information concerning spent convictions and offences for improperly obtaining information concerning spent convictions. For example, Part 3 s 14 states that:</p> <p><i>A person who, fraudulently or dishonestly, obtains or attempts to obtain information concerning a spent conviction from records of convictions kept by or on behalf of a public authority is guilty of an offence.</i> <i>Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.</i></p>



INDEPENDENT COMMISSION
AGAINST CORRUPTION
NEW SOUTH WALES

Level 7, 255 Elizabeth Street
Sydney NSW 2000 Australia

Postal Address: GPO Box 500
Sydney NSW 2001 Australia

T: 02 8281 5999

1800 463 909 (toll free for callers outside metropolitan Sydney)

F: 02 9264 5364

TTY: 02 8281 5773 (for hearing-impaired callers only)

E: icac@icac.nsw.gov.au

www.icac.nsw.gov.au

Business Hours: 9 am - 5 pm Monday to Friday