

Ministry of Transport

Review of employment
screening practices

19 December 2016

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1. Executive summary

1.1 Background

Following a recent investigation into allegations of significant breaches of the Ministry of Transport's code of conduct by a former senior staff member, a complaint was laid with the Serious Fraud Office (SFO). The SFO is investigating the matters raised in the complaint and the matter is before the courts.

In light of what has happened, the Ministry of Transport (Ministry) sought a review of its current employment screening policies, procedures and practices against good practice, which included identifying and making recommendations for improvement.

1.2 Objective, scope and approach

Objective

The objective of the review was to address the following three questions:

1. How do the Ministry's current documented recruitment policies and procedures compare to employment screening good practice generally, and in particular in the State sector?
2. How do the Ministry's current practices align with these policies and procedures?
3. What recommended changes should be made for improvements to address any gaps between current policies, procedures and practices and good practice?

Scope

Review the Ministry's employment screening policies, procedures and practices against good practice, and identify and make any recommendations for improvement, focusing on eligibility and character areas covering:

- ▶ Identity and personal history/background checks.
- ▶ Criminal record checks.
- ▶ Confirmation of immigration status.
- ▶ Qualification and CV verification.
- ▶ Conflicts of interest.
- ▶ Reference checks.
- ▶ Ongoing post-employment checks including notification of changes in circumstances whilst in employment.

The following areas were in scope for the review:

- ▶ External recruitment, internal recruitment, and secondments from external agencies and contractors that have financial delegations.
- ▶ The extent to which employment screening requirements should be based on specific job/job type/level, and which should apply to all staff.

The following areas were out of scope for the review:

- ▶ Internal rotations, internal secondments, and external secondments and contractors that do not have financial delegations.
- ▶ Any comment on the professional competence of any individual, or that calls into question the general competence or conduct of any individual.
- ▶ All matters relating to the SFO investigation.

The period under review was 1 July 2015 to 10 August 2016 (the 'period under review').

The terms of reference for the review is in Appendix A.

Work performed

In carrying out our review, we:

- ▶ Obtained and reviewed current documented policies and procedures against good practice.
- ▶ Met with the State Services Commission (SSC) and the New Zealand Protective Security Requirements team (the 'PSR team') to understand their good practice expectations of employment screening in the State sector.
- ▶ Interviewed Ministry senior managers, and human resources (HR) and recruitment staff to understand how the employment screening processes operated in practice.
- ▶ Selected and tested a sample of staff that have been recruited or seconded within the period under review, to determine whether actual practice aligns to the policies and procedures.

Limitations

We draw attention to the limitations inherent in this report:

- ▶ Within the context of this specific engagement we were not required to, and did not undertake an audit in accordance with International Standards of Auditing ('ISA (NZ)'). Consequently, no assurance has been expressed.
- ▶ Our review covered the period 1 July 2015 to 10 August 2016. Any events or transactions that occurred outside the period, which we refer to in this report, have been included for information purposes only.
- ▶ The scope of our work was limited to a review of documentation and information made available to us and specific enquiries undertaken to address the terms of reference for the review. As we were not engaged to perform an audit, we have not verified the authenticity or validity of the documentation made available to us.

1.3 Summary of findings and recommendations

Pre-employment screening is the foundation of good recruitment practice, and ongoing assessment of suitability for employment is equally important.

In the New Zealand State sector, the Protective Security Requirements (the 'PSR') approved by Cabinet in December 2014 sets out the government's expectations and mandatory requirements for managing personnel security, as well as protocols, standards and good practice guidance.

Agencies are required to adopt a risk management approach to protective security, with the personnel security policies and procedures within an agency to be based on each agency's personnel security risk assessment.

The PSR's mandatory requirements for personnel security apply to all people working with and for government (employees, temporary staff or contractors). Agencies are required to carry out pre-employment screening for *all* staff, with the recommended base level pre-employment checks being: identity verification (in line with the Department of Internal Affairs' Evidence of Identity standard), confirmation of citizenship, confirmation of right to work in New Zealand, criminal records check, confirmation of employment history, and character references.

Agencies are also required under the PSR to have policies and procedures in place to assess and manage the ongoing suitability for employment of all staff and contractors.

Key findings - policies and procedures

The key findings from our review of the Ministry's employment screening policies and procedures against the PSR's mandatory requirements and other good practice are:

Findings - Mandatory State sector requirements

- ▶ The Ministry's policy for screening all staff as part of a recruitment process is set out in a May 2013 Security Policy. This policy requires most, but not all of the base-level pre-employment checks required by the PSR. The key areas where the Ministry's policy does not meet the base-level requirements are:

- ▶ The Security Policy does not require a formal check of criminal history. It only requires a criminal history self-declaration. The policy does state that employees may be required to undergo police and/or security vetting for the position.
- ▶ The Ministry's policy does not refer to the requirement to meet the State sector standards for establishing a person's identity (the Evidence of Identity standard). The use of a driver's licence to confirm identity, as outlined in the offer of employment pack, is not in accordance with the standard.
- ▶ The Ministry's Security Policy is silent on the timing of the pre-employment screening checks. There is also no other formal procedure documented which explains the standards that apply to all checks, when and how pre-employment screening activities should be completed, and how they should be documented. The PSR does not impose any particular requirements about the timing of pre-employment checks. We were advised by the PSR team that the expectation is that the sequencing and timing of the pre-employment checks is a matter to be considered in an agency's policies and procedures taking a risk-based approach. However, the checks are expected to be carried out pre-employment, i.e. before an offer of employment is made, or with explicit conditions placed on the offer for the checks that are outstanding. The Department of Internal Affairs' guidance reinforces the need for identity to be established before capability and eligibility checks take place.
- ▶ Other than police and security vetting requirements, the Ministry's Security Policy does not address other screening requirements that may be outstanding at the time an offer of employment is made. Confirmation of identity and right to work in New Zealand is only sought when the letter of offer is sent but no provisions are made in the standard letter of offer for the other screening checks that are yet to occur, such as the confirmation of identity, and the eligibility to work in New Zealand.
- ▶ The Ministry does not have clear policies or procedures in place to assess and manage the ongoing suitability for employment for all staff, as required by the PSR. In particular, what ongoing checks should be completed for currently employed staff, how they should be completed, and what specific changes in circumstances should be considered for suitability for employment? The Ministry's Security Policy is silent in this regard.
- ▶ The Ministry's Security Policy pre-dates the PSR. The policy was being reviewed but the review has not been completed. The policy we were provided was a draft dated 30 June 2014. The PSR requires security policies to be reviewed every two years or sooner if changes in risks or the agency's operating environment dictate.

Other findings

- ▶ The Ministry has not performed a personnel security risk assessment to inform its personnel security policies or procedures, at an agency, business unit or job level, as is expected under the PSR. This includes not identifying positions for which further checks may be required over and above the mandatory checks, and positions that require additional security vetting, i.e. national security clearances.
- ▶ The Ministry introduced a Recruitment Guide in November 2015 to assist staff involved in the recruitment process. However, the guide was never promulgated wider than the HR team and, with the exception of reference checks, it makes no reference to the Security Policy's pre-employment screening requirements. It also does not give any guidance as to when or how pre-employment screening activities must take place, the standards that apply, or how it should be documented.
- ▶ The Ministry's policy or procedures do not require any pre-screening activities, such as the completion of application forms and declarations in regards to the pre-employment screening checks to be performed, as is considered good practice. The Ministry has recently introduced a new applicant tracking system in August 2016, which is now used to track applicants for jobs, and includes a set of initial screening questions and declarations on matters such as criminal history and right to work in New Zealand before interviews take place.
- ▶ The Ministry has taken some steps recently to plan improvements to its policies and procedures to bring them into line with the PSR mandatory personnel security requirements. The Ministry's first PSR Self-Assessment, reported to the PSR team in March 2016, identified some, but not all of the gaps against the mandatory PSR employment screening requirements identified in this review. The Ministry noted that it planned to develop a separate recruitment policy in the coming 12 months

that would include all the required pre-employment checks and more comprehensive guidelines for the recruitment of employees and contracted/temporary staff. The Ministry also noted its intention to undertake a formal security risk assessment once it had relocated to its new premises in August 2016.

Key findings - practice

The key findings from our review of the Ministry's actual practice in complying with its employment screening policies and procedures are:

- ▶ It was evident from our interviews with Ministry recruitment staff that they were not aware of the employment screening requirements in the Security Policy. The pre-employment checks that were undertaken were based on the past knowledge and experience of recruitment staff, with inconsistencies in the type of information required from applicants during the recruitment process.
- ▶ From our interviews and testing we found that, since November 2015, the Ministry of Justice criminal history check has been completed, which is a positive step to bring practice in line with the mandatory State sector requirements.
- ▶ Insufficient documentation is retained of the employment screening checks that are carried out. We tested a 30% sample (12 out of 40) of recruitments completed during the period under review. None of the personnel and recruitment files had documentation to evidence that all the required screening checks had been undertaken. Missing documentation included applicant declarations, proof of identity, proof of right to work in New Zealand, confirmation of qualifications and employment history, conflicts of interest forms, and notes from reference checks.

Recommendations

Our recommendations are summarised below, with further detail provided in sections 3 and 4 of the report.

1. A personnel security risk assessment should be completed to allow the Ministry to identify and prioritise its personnel security risks, including identifying appropriate measures and monitoring activities to mitigate those risks. This should be completed at a Ministry, business unit and position level, and should take into account the guidance that is provided in the PSR management protocol 'Agency Personnel Security' and other good practice guidance.
2. A recruitment policy should be developed which addresses the Ministry's risk-based policy requirements for employment screening of employees and contracted/temporary staff, in addition to the mandatory requirements of the PSR. Comprehensive procedural expectations and guidance for pre-employment screening should also be developed. This should include guidance on the level of documentation that should be retained and for how long.
3. The review of the Security Policy should be completed and the policy updated to address the requirements of the PSR, and the Ministry's own policy requirements, as informed by the risk assessment.
4. The Ministry's policies and procedures for assessing the ongoing suitability of staff for employment should be reviewed and updated to be consistent with the PSR expectations and as informed by the risk assessment. Policies and procedures need to be developed to address the PSR requirements for those seeking or holding a national security clearance.
5. A communication and training programme should be developed and implemented to educate all staff about the Ministry's personnel security policy expectations, and their roles and responsibilities. The programme should be tailored to fit the particular needs of HR and recruitment staff, and hiring managers.
6. Governance and assurance processes should be reviewed, and changes made, to allow the Ministry to assess the ongoing effectiveness of the personnel security policies, procedures and controls, and their application in practice. These processes should allow the Ministry to conduct an annual security assessment against the PSR mandatory requirements, and report the assessment information as requested by the government's lead security agencies.

2. Background

2.1 The Ministry of Transport

As the Government's principal adviser on transport policy, the Ministry's purpose is to ensure that the transport system helps New Zealand thrive. The Ministry seeks to achieve this through three overarching priorities: having efficient and effective transport systems to support economic growth and productivity, delivering greater value for money, and improving the safety of our transport.

The Ministry has overall responsibility for the annual 4 billion dollar transport budget, but is relatively small, employing about 150 staff. The Ministry uses a matrix operating model, where all staff have a sector team, but can be allocated to projects based on their knowledge and experience, to provide the Ministry with the flexibility to respond to changing priorities.

Although only some of the Ministry's staff are required to hold security clearances, particularly those involved in emergency management and aviation and maritime security issues, much of the information staff handle in preparing advice is commercially sensitive.

The Ministry had a staff turnover rate of 16% in 2016. This has led to the Ministry having a recruitment drive over recent months to increase its capacity and capability. The Ministry also has a graduate programme with an annual intake of eight graduates.

The Ministry's current HR team has two full-time staff, two part-time staff, and one temporary staff member. The majority of the current staff were all recruited within the last year, with a high turnover rate recently within the team.

2.2 Good practice in employment screening

There is considerable guidance available about good practice in employment screening. The key source of good practice for public sector agencies is the PSR. Other sources of good practice are outlined in Appendix B.

Protective Security Requirements

For New Zealand government agencies, the PSR sets out the government's expectations for managing personnel, physical and information security. Cabinet approved the PSR in December 2014, and directed all public service departments to implement the PSR. The PSR are considered security best practice.

Agency chief executives are accountable for the implementation and oversight of the PSR's four-tier structure to protective security within their agencies. The PSR have mandatory requirements which apply to all agencies but are also designed to be flexible and risk-based to enable agencies to implement a security approach that reflects their individual risk environments and business needs.

The overall mandatory requirements for personnel security are:

- ▶ Agencies must ensure the people they employ are suitable and meet standards for integrity, honesty and tolerance. Where necessary, people must be security cleared to the appropriate level.
- ▶ Agencies are also responsible for managing personnel throughout their employment to prevent accidental or intentional security breaches.

The personnel security requirements encompass three main components:

1. Identifying suitable staff to access agency information, resources and assets.
2. Educating staff about their security responsibilities.
3. Monitoring and evaluation of staff for their continuing suitability.

The mandatory requirements for personnel security (referred to as 'PERSEC' in the PSR) are outlined in PERSEC's 1-7.

PERSEC1 sets the foundation for personnel security in the public sector, and provides the mandatory requirements for employment screening in the State sector. It applies to all people working with and for government (employees, temporary staff or contractors), regardless of whether or not an individual will or does hold a national security clearance.

PERSEC's 2-7 relates to national security clearance vetting and management (outside the scope of this review).

Sections 3 and 4 of the report provide further information about the PSR mandatory requirements and good practice in employment screening.

Our discussions with the PSR team and the State Services Commission

We met with the PSR team and the State Services Commission (the 'SSC') to understand their good practice expectations of employment screening in the State sector. Key points from the discussion were:

- ▶ The PSR codifies much of the expectations that were in previous good practice or other guidance documents. This includes the SSC and Department of Internal Affairs' guidance referenced in Appendix B. The employment screening requirements in PERSEC1 (outlined in section 3.2 below) are foundational requirements and are not new.
- ▶ The PSR's baseline requirements apply to all mandated agencies regardless of their size or context.
- ▶ Employees do not require a national security clearance to access material protectively marked IN CONFIDENCE, SENSITIVE or RESTRICTED. Access to this material is granted by chief executives on the basis of the agency's own pre-employment checks and risk assessment.
- ▶ Agencies must not use the national security vetting process as a general trustworthiness check for current or potential employees.
- ▶ The PSR team will be considering and developing further material as part of a current cross-government initiative to strengthen personnel security across the State sector.

3. How do the Ministry's employment screening policies and procedures compare to good practice?

3.1 Background

The Ministry has two relevant documents that provide policy and other procedural guidance on pre-employment screening - the Security Policy and the Recruitment Guide.

The Ministry's Security Policy issued in May 2013 defines the Ministry's policy for the protection of information, equipment, property and personnel. The policy is required to be reviewed every two years, with some specific events also triggering a need for review.

The policy applies to all staff of the Ministry (including temporary staff and contractors), visitors and service contractors. It provides policy guidance on the 'appropriate staff recruitment processes', noting that the recruitment and selection process must include checks for:

- ▶ Suitability for employment by checking references.
- ▶ The accuracy of qualifications and curriculum vitae.
- ▶ Confirmation of identity and eligibility to work in New Zealand (copy of passport and work permits).
- ▶ A criminal history declaration.

The policy also states that all letters of offer of employment will contain the statement "You may be required to undergo police and/or security vetting for this position. Should this be required and you fail to successfully obtain appropriate checks, your employment may be terminated".

The Ministry also has a November 2015 Recruitment Guide for staff that provides an outline of the recruitment process and aims to give practical guidance and resources to assist with the implementation of this process. It states the need for adequate documentation to be kept of the recruitment process and results of the process.

Applicants apply for positions with a curriculum vitae and a cover letter.

The recruitment guide specifies that two verbal reference checks be carried out for the preferred candidate(s). The referee form, appended to the recruitment guide, notes that the referee's name and title is to be verified with the organisation, where possible.

For a successful applicant, an employment offer pack is sent which, along with the standard employment onboarding forms, asks a copy of the driver's licence or passport and a copy of the work visa.

The Ministry requires that staff sign a declaration they will abide by the Ministry's Code of Conduct, which provides the Ministry with some ability to take action to enforce the Code in cases of breach.

The Ministry will, of course, also benefit from the implied common law duties of good faith and fidelity (and potentially fiduciary duties, including a duty to disclose wrongdoing, in respect of very senior staff). The duty of fidelity (underpinned by the statutory duty of good faith) requires employees to refrain from conduct that is likely to damage the Ministry's business (including reputational damage or damage to goodwill) or that is likely to undermine the trust that the Ministry is entitled to place in the employee.

While common law employee duties provide some protection, it would be expected that these would be supplemented by additional contractual obligations and employment checks. The development of such policies and procedures should be built using the results of the personnel security risk assessment so it can be tailored according to the risk of each staff member and the roles they are in.

3.2 PSR mandatory requirements and good practice

Pre-employment screening

Mandatory State sector requirements

Agencies are required to conduct pre-employment screening in accordance with the SSC recommendations. The recommended base level employment checks in SSC's October 2013 guidance for pre-employment checks are:

- ▶ Identity verification: Agencies are expected to meet the Department of Internal Affairs' baseline Evidence of Identity (EOI) standard. Establishment of identity should take place before any background checking or other verification takes place.
- ▶ Confirmation of citizenship.
- ▶ Confirmation of right to work in New Zealand.
- ▶ Criminal records check.
- ▶ Confirmation of employment history.
- ▶ Character references.

Agencies are expected to base any decisions regarding personnel security on their personnel security risk assessment.

Other good practice

Some agencies will undertake more detailed checks relevant to the nature of work undertaken by their employees, such as occupational specific qualifications and a right to practice.

Several good practice guides also outline the need to consider further checks, some of which depend on the nature of the job and can be identified through a formal risk assessment of the role/person. Additional checks include:

- ▶ Credit checks - Does the way a person conducts their personal finances impact the role? Certain roles involve 'significant financial risk' such as handling accounts, finance and investment, etc., and may require the person to show good financial management in all aspects of life.
- ▶ Online presence and social media checks - the use of the internet and social media for employment reasons is growing and becoming more widespread. Employers are increasingly reviewing the online presence of candidates as part of recruitment processes as a check on character. Good practice guidance is available for organisations wanting to do so, including the need to take legal advice before proceeding.

While completing any form of pre-employment checks, it is important that agencies also consider any privacy implications.²

Application forms and pre-screening questions typically provide the majority of the information needed for pre-employment screening, as a clear statement that pre-screening will take place is important not only from a legal perspective, it also has deterrent value.

Verification checks, such as identity and right to work, should be completed on or before the day of the interview.

When an offer of employment is made, it should be conditional on outstanding checks being satisfactorily completed.

The employment screening requirements should apply whether or not it is an external or internal recruitment. If the applicant is internal to the organisation, the guidance provided is not to assume that previous checks were undertaken or done as strongly in the previous role.

Procedures should set out when and how pre-employment screening activities should be completed and how it should be documented.

² For guidance on how the Privacy Act 1993 applies to employment screening, refer to <https://www.privacy.org.nz/assets/Files/Brochures-and-pamphlets-and-pubs/Privacy-at-Work-2008.pdf>

Ongoing suitability for employment

Mandatory State sector requirements

Under the PSR, agencies are required to have policies and procedures in place to assess and manage the ongoing suitability for employment of all staff and contractors to guard against the 'trusted insider' threat, reflecting that people and their circumstances do change.

Other good practice guidance

Policies and procedures should include what ongoing checks should be completed, how they should be completed, and what specific changes in circumstances should be considered.

The approach taken will be driven by each agency's risk profile and mitigated through, for example, fit for purpose operating procedures, risk and assurance processes, codes of conduct, periodic individual performance feedback sessions.

The PSR provides guidance on where an employee might be considered unsuitable for security vetting, and has requirements for reporting changes in personal circumstances. While these relate to security vetting, it also has relevance for agencies in considering the risk-based requirements and guidance they should establish for assessing the ongoing suitability of all staff.

3.3 Findings and recommendations

Pre-employment screening

Findings - Mandatory State Sector requirements

- ▶ The Ministry's policy for screening all staff as part of a recruitment process is set out in a May 2013 Security Policy. This policy requires most, but not all of the base-level pre-employment checks required by the PSR for all staff. The key areas where the Ministry's policy and procedures do not meet the base-level requirements are:
 - ▶ The Security Policy does not require a formal check of criminal history. It only requires a criminal history self-declaration. The policy does state that employees may be required to undergo police and/or security vetting for the position. From our interviews and testing we found that, since November 2015, the Ministry of Justice criminal history check has been completed in practice. The Security Policy has not yet been updated to reflect this change.
 - ▶ The Ministry's policy does not refer to the requirement to meet the Department of Internal Affairs' EOI standard. The use of a driver's license to confirm identity, as outlined in the employment offer pack, is not in accordance with the EOI standard, which only allows it to be used for the corroboration of identity information provided.
- ▶ The Ministry's security policy is silent on the timing of the pre-employment screening checks. There is also no other formal procedure documented which explains the standards that apply to all checks, when and how pre-employment screening activities should be completed, and how they should be documented. The PSR does not impose any particular requirements about the timing of pre-employment checks. We were advised by the PSR team that the expectation is that the sequencing and timing of the pre-employment checks is a matter to be considered in an agency's policies and procedures taking a risk-based approach. However, the checks are expected to be carried out pre-employment, i.e. before an offer of employment is made, or with explicit conditions placed on the offer for the checks that are outstanding. The Department of Internal Affairs' guidance reinforces the need for identity to be established before capability and eligibility checks start.
- ▶ Other than police and security vetting requirements, the Security Policy does not address other screening requirements that may be outstanding at the time an offer of employment is made. Confirmation of identity and right to work in New Zealand is only sought when the letter of offer is sent, but no provisions are made in the standard offer of employment for the other screening checks that are yet to occur, such as the confirmation of their identity, their right to work in New Zealand, and any conflicts of interest that may impair the ability to hold the job position.
- ▶ The Ministry's Security Policy pre-dates the PSR, and is out of date. The policy was being reviewed, but the review had not been completed. The policy we were provided was a draft dated 30 June

2014. The PSR requires security policies to be reviewed every two years or sooner if changes in risks or the agency's operating environment dictate.

Other findings

- ▶ The Ministry has not performed a personnel security risk assessment to inform its personnel security policies or procedures, at an agency, business unit or job level, as is expected under the PSR. This includes not identifying positions for which further checks may be required over and above the mandatory checks, and positions that require additional security vetting, i.e. national security clearances.
- ▶ The Ministry introduced a Recruitment Guide in November 2015 to assist staff involved in the recruitment process. However, the guide was never promulgated wider than the HR team and, with the exception of reference checks, it makes no reference to the Security Policy's pre-employment screening requirements. It also does not give any guidance as to when and how pre-employment screening activities must take place, the standards that apply, and how it should be documented.
- ▶ The Ministry's policy or procedures did not require any pre-screening activities, such as the completion of application forms and declarations in regards to the pre-employment screening checks to be performed, as is considered good practice. Instead, the screening process only began once interviews were completed, with reference checks being completed for the preferred candidate(s).
- ▶ The use of the referee form in the Recruitment Guide is not mandated. From our interviews with staff, we understand the current practice is to have two reference checks, with at least one of these being from a past manager of the applicant. However, this is not specified in the Recruitment Guide.

Ongoing suitability for employment

- ▶ The Ministry does not have clear policies or procedures in place to assess and manage the ongoing suitability for employment for all staff, as required by the PSR. In particular, what ongoing checks should be completed for currently employed staff, how they should be completed, and what specific changes in circumstances should be considered for suitability for employment? The Ministry's Security Policy is silent in this regard.

The Ministry's recent and planned improvements to policies and procedures

The Ministry has taken some steps recently to improve and plan further improvements to its employment screening policies and procedures to bring them into line with the PSR mandatory personnel security requirements.

The Ministry reported to the PSR team in March 2016 for the first time, as required, on the results of its self-assessment against the PSR. The Ministry identified some, but not all of the gaps against good practice that we have identified, such as identifying the differences between the Ministry's Security Policy and the PERSEC1 requirements, and the need to carry out a formal risk assessment. The Ministry noted that it planned to develop a separate recruitment policy in the coming 12 months, that includes more comprehensive guidelines for the recruitment of employees and contracted/temporary staff, which would detail all required pre-employment checks. The Ministry also noted that its intention to develop an internal communications plan to raise the profile of security risks and requirements.

On 5 August 2016, a new applicant tracking system called Phoenix went live. This system is used to track applicants for jobs, and includes a set of initial screening questions before interviews take place that applicants must make a declaration on matters such as criminal history and right to work in New Zealand. This is a positive step from past practice when no pre-interview screening activities took place.

Recommendations

Based on our findings, we make the following recommendations. The nature of findings of this review do not lend themselves to individual recommendations. Rather, the recommendations in this section and section 4 are of a general nature and are intended to assist the Ministry in fundamentally addressing the PSR requirements and good practice expectations in employment screening, both pre-employment and ongoing suitability for employment.

Recommendation 1

A personnel security risk assessment should be completed to allow the Ministry to identify and prioritise its personnel security risks, and identify and implement appropriate measures and monitoring activities to mitigate those risks. This should be completed at a Ministry, business unit and position level, and should take into account the guidance provided in the PSR management protocol 'Agency Personnel Security' and other good practice guidance.

Recommendation 2

A recruitment policy should be developed which addresses the Ministry's risk-based policy requirements for employment screening of employees and contracted/temporary staff, in addition to the mandatory requirements of the PSR. Comprehensive procedural expectations and guidance for pre-employment screening should also be developed. In particular:

- a. The pre-employment checks should be made consistent with PSR's mandatory requirements.
- b. Other good practice pre-employment screening checks that should be considered, as informed by the risk assessment.
- c. The establishment of identity should be consistent with the requirements outlined in the DIA EOI standards 2.0.
- d. Formally documented procedures should be developed which outlines the recruitment process, and when and how the pre-employment screening activities should occur in line with good practice.
- e. Guidance should be provided on specific job types and levels that may require further screening and a national security clearance, as informed by the risk assessment. It should detail what further screening activities are required, and why they are required.
- f. Guidance should be provided on the level of documentation that must be retained, and for how long, to evidence that such activities have taken place and results of the process.

Recommendation 3

The review of the Security Policy should be completed and the Policy updated to address the requirements of the PSR, and the Ministry's own policy requirements.

Recommendation 4

The Ministry's policies and procedures for assessing the ongoing suitability of staff for employment should be reviewed and updated to be in line with the PSR expectations and as informed by the risk assessment. In particular, the policies and procedures should include the following:

- a. The requirements and process for ongoing post-employment checks. The PSR's personnel security management protocol for 'reporting changes in personal circumstances' can be used as a guideline. Particular areas that could be considered include:
 - i. Changes in financial circumstances.
 - ii. Changes in health or medical circumstances.
 - iii. Involvement in criminal activity.
 - iv. Any disciplinary procedures.
 - v. Any other changes in circumstance that may be of concern to the Ministry.
- b. For those with national security clearance, considerations of circumstances that must be reported should be made consistent with the 'reporting changes in personal circumstances' section of the PSR's personnel security management protocol. This could be completed as part of an annual declaration and disclosure mechanism.
- c. Guidance on what level of documentation must be retained to evidence that such activities have taken place.
- d. The documentation of the process for obtaining national security clearance at all levels. This should be made consistent with personnel security requirements in the PSR.

Recommendation 5

A communication and training programme should be developed and implemented to educate all staff about the Ministry's personnel security policy expectations, and their roles and responsibilities. The programme should be tailored to fit the particular needs of HR and recruitment staff, and hiring managers.

4. How do the Ministry's practices align with its policies and procedures?

4.1 Background

To review the Ministry's actual practice in complying with its employment screening policies and procedures and employment screening good practice (as outlined in section 3), we:

- ▶ Interviewed Ministry senior managers, and HR and recruitment staff to understand how the employment screening processes operated in practice.
- ▶ Selected and tested a sample of recruitments that occurred during the period 1 July 2015 to 10 August 2016. Out of a total population of approximately 40 recruitments within the scope of this review, we selected a sample of 12 to test, split proportionately between external recruitment, internal recruitment, and secondments from external agencies. The Ministry confirmed it did not recruit any contractors with financial delegations within the period under review.

4.2 Good practice

The Ministry's Recruitment Guide and the PSR states the need for adequate documentation to be kept of the recruitment process and results of the process. This is also a general good practice expectation. Not retaining this documentation means there is no formal auditable record of the activities that took place. It creates the risk where the Ministry is unable to defend themselves if there is a recruitment or employment dispute, and expose the Ministry to security and integrity risks with new staff if their identity, eligibility, and character are later proved to be in doubt.

4.3 Findings and recommendations

It was evident from our interviews with Ministry recruitment staff that they were not aware of the employment screening requirements in the Security Policy.

From our interviews, we also understand that the pre-employment checks that were undertaken for the period under review were done based on past knowledge and experience of recruitment staff, with inconsistencies in the type of information required from applicants during the recruitment process.

From our interviews and testing, as noted in the section above, we found that since November 2015, the Ministry of Justice criminal history check has been completed in practice, which is a positive step to bring practice in line with the mandatory State sector requirements.

Our testing found a lack of evidence in the personnel and recruitment files that pre-employment screening checks have been performed. This included the lack of the following documentation which we expect to be retained from the Ministry's policy expectations and procedural guidance:

- ▶ Copies of the applicant signed declarations.
- ▶ Proof of identity.
- ▶ Proof of eligibility to work in New Zealand.
- ▶ Criminal history declaration.
- ▶ Confirmation of qualifications and employment history.
- ▶ Applicant signed conflicts of interest form.
- ▶ Notes from reference checks.

None of the 12 personnel and recruitment files we tested had sufficient documentation to evidence that all the pre-employment screening checks required by Security Policy were completed. A small minority of files only had some of the required screening checks documented.

External recruitments

Of the nine external recruitment samples we found that only:

- ▶ Two had a passport as confirmation of identity. One confirmed the applicant was a New Zealand resident, and the other had a work visa documented as confirmation of eligibility to work in New Zealand. Although not explicitly required by Ministry's procedures, neither of these documents were signed as verified from original documentation by a Ministry staff member. In line with good practice, eligibility to work can also be checked directly through Immigration New Zealand's VisaView online system.
- ▶ One had a driver's licence documented to confirm identity, but only a passport is accepted as per the Security Policy for confirmation of identity. Also, a driver's licence is not an accepted form of documentation to confirm the existence of identity as per the Department of Internal Affairs' EOI standard.
- ▶ Five had criminal history declarations completed.
- ▶ One had a Ministry of Justice (MoJ) criminal history confirmation letter, but no criminal history declaration completed.
- ▶ Two had signed MoJ criminal history forms, but no criminal history declarations had been completed.
- ▶ Seven had completed registers of interest.
- ▶ Four had two reference checks with past employers documented, and one that had a certificate of service from their past employer.
- ▶ One that had the applicant's academic transcript and a letter from the university faculty staff confirming the transcript's authenticity. The Security Policy required accuracy of the qualifications to be checked.

None of the samples documented how the accuracy of the entire curriculum vitae had been checked, as was required by the Security Policy.

Internal recruitments

Of the two internal recruitment samples, we found no documentation on file of the consideration of what checks were needed to be done for internal recruitment. The good practice guidance provided is not to assume that that previous checks were undertaken or done as strongly in the previous role. We noted that:

- ▶ Only one which had a reference check with their current line manager.
- ▶ The other had no documentation of the reference check completed, but the recommendation for appointment noted a conversation with the applicant's direct report as a referee used, when good practice is that it should be with their direct line manager. From our interviews with staff, we understand the current practice is to have two reference checks, with at least one of these being from a past manager of the applicant.

Secondment from external agencies

Finally, in the one secondment from an external agency, we did not find any documentation of any screening checks completed by the Ministry, including seeking a criminal history declaration. While the Ministry may be able to directly confirm with the external agency some of the screening requirements, we expected documentation on personnel files on how the screening requirements of the Security Policy were met.

Recommendations

Recommendation 2f in section 3 of the report addresses the need for guidance to be provided on the level of documentation that must be retained, and for how long, to evidence the employment screening activities that have taken place and results of the process.

We also make the following recommendation based on the findings of our review.

Recommendation 6

Governance and assurance processes should be reviewed, and changes made, to allow the Ministry to assess the ongoing effectiveness of the personnel security policies, procedures and controls, and their application in practice. These processes should allow the Ministry to conduct an annual security assessment against the PSR mandatory requirements, and report the assessment information as requested by the government's lead security agencies.

Appendix A Review Terms of Reference

The Terms of Reference for the review is outlined below.

Terms of Reference - Review of recruitment practices

1. Assess the effectiveness of the recruiting policies, procedures and practices currently in place in the Ministry of Transport against industry best practice to ensure the integrity of the recruiting process and to provide assurance around candidate identity, qualifications, personal history and experience, including but not limited to:
 - a. Identity and personal history/background checks.
 - b. Criminal record checks.
 - c. Confirmation of immigration status.
 - d. Qualification and CV verification.
 - e. Conflicts of interest.
 - f. Reference checks.
 - g. Post-employment checks including whether or not, national security vetting is appropriate.
2. Make recommendations for improvement in respect of the above.
3. Provide comment and/or advice on any other matters of relevance not included in this Terms of Reference.

In scope

External recruitment, internal recruitment, secondments from external agencies and contractors that have financial delegations, notification of changes in-service (e.g., convictions).

The extent to which requirements should be based on specific job/job type/level, and which should apply to all staff.

Out of scope

Internal rotations, internal secondments, external secondments and contractors that do not have financial delegations.

The review will not make any comment on the professional competence of any individual, or call into question the general competence or conduct of any individual.

Deliverables

The provider will provide a report setting out the findings of the review, and in particular addressing the following three key questions:

1. How do the Ministry of Transport's current documented recruitment policies and procedures compare to best practice in the state services sector?
2. How does the Ministry of Transport's current practice align with these policies and procedures?
3. What recommended changes should be made for improvements to address any gaps between current policies, procedures and practices and best practice?

Please note the Ministry of Transport's intention to publish the final report. For this reason, the provider is requested to:

- ▶ Provide a report that does not provide the names or personal details of anyone within or outside the Ministry of Transport, other than references to the primary representative of the client who is: Nick Brown, General Manager, Aviation and Maritime, Ministry of Transport.
- ▶ Write in an easily accessible 'plain English' style accordingly.

Appendix B Sources of good practice

The New Zealand Protective Security Requirements <https://protectivesecurity.govt.nz/>

The State Services Commission: Pre-employment checks: Guidance on establishing identity in recruitment processes (October 2013) available at <http://www.ssc.govt.nz/preemployment-checks>

The Department of Internal Affairs: Guidance for Establishing identity in recruitment processes (December 2012). The Guidance can be accessed from the Evidence of Identity Standard section of the Department's website, in the Further Information area. The link is http://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Resource-material-Evidence-of-Identity-Standard-Index?OpenDocument

United Kingdom Centre for the Protection of National Infrastructure (CPNI): Pre-employment Screening, A Good Practice Guide (January 2015) available at www.cpni.gov.uk. The Guide is to read in conjunction with other CPNI publications:

- ▶ Good Practice Guide on Pre-Employment Screening - Document Verification.
- ▶ How to obtain an Overseas Criminal Record Check.
- ▶ Media Screening - Use of the Internet in Employment Decisions: a good practice guide.
- ▶ Personnel Security Risk Assessment: a guide.
- ▶ Ongoing Personnel Security: a good practice guide.
- ▶ Personnel Security in Offshore Centres.
- ▶ Personnel Security and Contractors: a good practice guide for employers.

The Employers and Manufacturers Association. The below resources have member only access available at www.ema.co.nz.

- ▶ Pre-employment checks: Our guide for Employers and Managers (May 2016).
- ▶ Qualifications: Our guide for Employers and Managers (September 2014).
- ▶ References: Our guide for Employers and Managers (December 2015).

The Human Resources Institute of New Zealand:

- ▶ Employment references (n.d.) available at http://www.hrinz.org.nz/Site/Resources/Knowledge_Base/Q-Z/References.aspx
- ▶ Pre-employment background checks (February 2016) available with member only access at http://www.hrinz.org.nz/Site/Resources/Guides/Pre_Employment_Background_Checks_2016.aspx.

The New Zealand Office of the Auditor-General: Fraud awareness, prevention, and detection in the public sector (June 2012) available at www.oag.govt.nz.

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