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EMPLOYMENT OF PERSONS CONVICTED
OF OFFENCES.

The Public Service Board advises that it has reviewed its policy in respect of the employment of persons convicted of offences. The revised policy does not represent any significant departure from past policy, but has been reviewed to bring it into line with current circumstances and to take account of privacy issues. A copy of the policy is attached for your information.

Over recent months it has come to the Board's attention that certain of the procedures relating to criminal record checks are not being observed by some departments.

The first area of concern is that checks are not being made on all staff, particularly casual or temporary staff. The purpose of conducting criminal record checks is to ensure that, where a person has been convicted of an offence or offences, the circumstances surrounding the offence(s) can be examined to determine whether or not that person is suitable for employment. It is most important, therefore, that names of all candidates recommended for immediate employment be submitted in accordance with the provisions of the Recruitment and Employment Manual.

The second area of concern is that, in some instances, checks are not being made until after people have commenced duty. The Recruitment and Employment Manual states that checks are to be made prior to the offer of employment, and it is essential that no offer of employment be made until the person's record of convictions (if any) has been examined by an officer of the Board's Recruitment Office and discussed with the person, if necessary. Offers of employment should not be made on the assumption that the person has no convictions.

The third area of concern is that criminal record checks are being requested for candidates on eligibility lists. The Board's policy, which reflects the guidelines established by the Privacy Committee, states that, except with the special approval of the Board, a criminal record check is only to be made on the successful candidate and at a time immediately prior to an offer of employment being made.

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In conformity with the policy of the Board and the Privacy Committee's guidelines, no information in relation to offences will be given by the Board's Recruitment Office when informing the department of the suitability or otherwise of a candidate for employment.

It would be appreciated if you would ensure that the procedures on criminal record checks are adhered to within your administration.

B.V. McKay
Secretary

EMPLOYMENT OF PERSONS CONVICTED OF OFFENCES

1. GENERAL

In formulating any policy for the employment of persons convicted of offences the impracticability of laying down hard and fast rules is recognised. Although broad guidelines and examples can be given, it may appear at times that there is some lack of consistency in the treatment of cases. Some single offences are so serious that rejection is virtually automatic. In other cases offences may be of such a minor nature that acceptance is equally automatic. However, a series of individually insignificant offences may indicate that an applicant is not a "fit and proper person" for employment. Again a serious offence with absence of further convictions may not warrant rejection for employment.

The Board recognises that the State must accept some responsibility for the rehabilitation and reform of ex offenders and, subject to the considerations that follow, the major factor to be considered is the suitability of a person for a particular job and the adequacy of his/her performance. The Board also recognises the individual's right of privacy in respect of convictions. The following are the privacy aspects taken into account with examination of all cases.

PRIVACY CONSIDERATIONS

The Board recognises the four basic principles to be applied in protection of the privacy of individuals with convictions, as established by the N.S.W. Privacy Committee, these being:

(a) Ten Year Limit:

No questions should be asked or information given relating to convictions or release from imprisonment which occurred more than ten years ago.*

(b) Openness:

No criminal record checking should be carried out without the subject's knowledge.

(c) Discussion:

No adverse decisions should be taken without giving the subject the opportunity for prior discussion.

(d) Review:

All adverse decisions should be subject to an appropriate review.

Note: * If, however, offence data are revealed within the ten year period, the user may present reasons for requiring information of other offences occurring outside the period.

2. FACTORS CONSIDERED IN DETERMINING CASES

The main factors which the Board takes into account in determining individual cases are:

NATURE OF OFFENCE(S)

This is of prime importance. As a generalization offences involving dishonesty, violence or drugs or sex offences normally would be regarded seriously. Any decision on employment would have regard to the relationship of the offence(s) to the particular position for which the applicant is being considered.

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Whilst all cases considered by the Board are given careful attention, there are certain areas of the Public Service which are particularly sensitive. These are:

- (a) Areas where, because of a relationship with a particular sector of the community, the employing authority must set special standards, e.g., Department of Corrective Services, Department of Youth and Community Services, Department of Education, Department of Technical and Further Education.
- (b) Areas where the appointee is required to police the law or regulations made under a statute, e.g., various inspectorial roles and Police Department.
- (c) Areas where the appointee is responsible for the conduct of Courts or for the investigation, recommendation and supervision of persons before the Court or persons who have been released from prison, e.g., Sheriff's Officers, Probation and Parole Officers.

As well, there are areas where a particular type of offence might debar an applicant for employment. These might include:

(a) Offences involving Dishonesty:

Where the duties would involve the handling of moneys and/or stores, ready access to homes or property of members of the public, positions where there are ample opportunities for dishonesty, e.g., Cashiers, Housing Officers, Watchmen and Caretakers, Stores Officers.

(b) Sex Offences:

Where duties would result in contact with young people or people in care, e.g., Nursing and Paramedical staff in State Psychiatric Hospitals, staff of Youth and Community Services' establishments, Schools and Colleges of Technical and Further Education.

(c) Driving Offences:

Where duties involve the driving of departmental vehicles.

(d) Drug-Related Offences:

Where duties may provide further temptation, or involve working with young people, e.g., Nursing and Paramedical staff in State Psychiatric Hospitals, staff of Youth and Community Services' establishments, Schools and Colleges of Technical and Further Education.

NUMBER OF OFFENCES

An accumulation of individual minor offences may be sufficient to warrant rejection. The question to be decided is whether or not the offences are considered to establish a pattern of behaviour which renders the applicant unsuitable for employment.

SEVERITY OF PUNISHMENTS

The severity of the punishment imposed is taken into account although, in the light of the considerable variations which occur in sentencing, this is often not a good guide to the seriousness of the offence.

AGE AT WHICH OFFENCES ARE COMMITTED

The age at which offences are committed can often be an important factor. Certain offences committed during youth may be viewed in an entirely different light to the same offences committed by a person of mature years.

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LAPSE OF TIME SINCE COMMISSION OF OFFENCES

It is impossible to establish hard and fast rules on the effect of lapse of time since offences were committed, as this question can only be considered in relation to other aspects of the particular case.

As a general rule, persons under bond for offences of any seriousness are scrutinised very closely before being accepted for employment, as some measure of the degree of rehabilitation must await the trouble-free completion of the period of the bond.

Contact may be made with the Probation and Parole Service to ascertain if information is available on the attitude and behaviour of the applicant for employment. Probation and Parole can provide an objective appraisal of the released person and give some indication of the likelihood of the applicant not offending in the future. This information can be of considerable assistance in the decision-making process.

MITIGATING OR EXTENUATING CIRCUMSTANCES

Consideration is given to any mitigating or extenuating circumstances which might be revealed in relation to the offence(s) committed. These might include provocation, effect of alcohol, peer group pressure at the time of the offence and the circumstance in which the offence was committed.

In relation to offences committed by Aborigines, account is taken of the demonstrated fact that in towns with a high Aboriginal population, i.e., towns with a comparatively high proportion of Aborigines compared to the New South Wales average of 1%, a higher percentage of persons are charged with minor offences in public places than in towns throughout the State as a whole.

GENERAL CHARACTER SINCE THE OFFENCE

This aspect can also have an important bearing in some cases. The following factors may be relevant:

- (a) Whether the applicant was or is employed in the Public Service and, if so, reports on his/her service and departmental recommendation.
- (b) Evidence of genuine regret and efforts towards rehabilitation.
- (c) Steady employment record.
- (d) Favourable reports by past employers, interviewing officers, or officers of the Probation and Parole Service.

3. LIMITATIONS ON THE DISCLOSURE OF CRIMINAL RECORD INFORMATION

In applying the above principles to the decision-making process other information not taken into consideration, in compliance with the guidelines established by the Privacy Committee, relates to the practices adopted in the disclosure of conviction records by the Police Department.

The following matters will not be disclosed in routine criminal record checks:

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- (a) offences over 10 years old (provided that, if the person has been in prison within the 10-year period, details of that offence may be given);
- (b) dismissed charges, convictions successfully appealed against, and other matters disposed of without conviction;
- (c) dismissals and expired recognizances under s.556A of the Crimes Act, 1900;
- (d) recognizances falling under s.579 of the Crimes Act, 1900, after 15 years;
- (e) juvenile offences, unless a conviction s.83(3) of Child Welfare Act or s.556A recognizance was recorded.

4. FAIR PROCEDURES FOR THE USE OF CRIMINAL RECORDS

Where there are pending charges, where a date has been fixed for hearing, or where convictions have appeals pending, it may be possible to employ the candidate on a temporary basis, subject to the nature of the position and the nature of the charge, or else defer the decision regarding employment pending the resolution of the outstanding matter(s) by the Court.

A candidate's criminal record is not to be considered until a decision has been made as to whether he/she would otherwise have been the successful candidate.

A final decision to reject an application (or to take any other adverse action against the person because of his/her record) will not be made until the person has been given adequate opportunity to discuss the record in order to:

- (a) verify that it relates to him/her;
- (b) check it for accuracy, and
- (c) provide any details of extenuating circumstances or his/her subsequent conduct.

Under no circumstances will a candidate's convictions be disclosed to any third party, whether or not the candidate has been approved for employment.

Candidates who have been rejected for employment on the basis of their criminal record may request a review of the decision by the Chairman of the Public Service Board. Candidates are to be informed of the reason for the decision, as well as the fact that they can request a review by the Chairman of the decision provided that any such request is made in writing within fourteen days of being informed of the decision.

The Board will destroy records of convictions six months after the last action has been taken on them.