CRIMINAL RECORD CHECK POLICY

1. POLICY STATEMENT

The Government of the Northwest Territories (GNWT) conducts criminal record checks including, if applicable, vulnerable sector checks as part of the staffing process to:

- Protect the public interest in the delivery of GNWT programs and services;
- Ensure the safety of clients and employees;
- Safeguard public funds, property and assets; and
- Ensure and maintain public confidence and trust in the public service.

2. PRINCIPLES

The GNWT adheres to the following principles when implementing this Policy:

(1) The requirement for a satisfactory criminal record check including, if applicable, a satisfactory vulernable sector check is based on factors directly related to the duties and responsibilities of the job and must be a *bona fide* occupational requirement.

(2) The requirement for a criminal record check, including if applicable a vulernable sector check should be clearly stated on all staffing advertising.

(3) The requirement to obtain and maintain information related to an individual's pending charges, convictions or criminal record must be balanced with the requirement to maintain an individual's right to privacy and confidentiality.

3. SCOPE

This Policy, and the applicable guidelines, applies to all individuals applying for positions in the public service as well as all employees in GNWT Departments and Agencies, except the Northwest Territories (NWT) Power Corporation.

4. DEFINITIONS

The following definitions apply to this Policy:

***Bona Fide* Occupational Requirement** – means a condition of employment that is imposed and is necessary for the safe, efficient, and reliable performance of the job, the absence of which would be impossible to accommodate without undue hardship to the employer.

Criminal Record Check – means screening for the presence of criminal convictions against the Canadian Criminal Real Time Identification Services national repository of criminal record information.

Deputy Head – means the deputy minister of a department, superintendent of a divisional education council, chief executive officer or president of a board, authority, agency or any such person as may be appointed as deputy head.

Highly Sensitive Positions – means those positions with duties involving contact with vulnerable members of society such as children, the elderly, persons with disabilities or residents in the GNWT's care (e.g., teachers, social workers, health care workers, youth workers). Such positions require a vulnerable sector check.

Positions of Trust – means those positions that must be staffed with individuals whose trustworthiness, integrity, character and identity would not place the GNWT or its clients at risk. Such positions require a criminal records check. Positions of trust feature at least one of the following criteria:

- Duties involving laying charges, investigating offences, attending court proceedings, dealing with evidence admitted to court and providing security for prisoners
- Duties involving direct control of large amounts of cash, goods or restricted drugs
- Duties involving international travel
- Duties involving access to secure systems or facilities
- Duties involving responsibility for the security of public property and assets
- Decision making at the executive and senior management level in the public service, or
- Duties involving the provision of support or advice directly to members of the Executive Council including Executive Assistants.

Satisfactory Criminal Record Check – means either:

- A clear criminal record or vulnerable sector check that indicates no criminal record, or record suspensions regarding a vulnerable sector check exist.

  or
- A criminal record check that indicates criminal record exist and that an evaluation/assessment by the Deputy Head of the employing Department or Agency has found the record convictions and/or pending charges are not relevant to the duties being performed or do not present a significant risk to the GNWT, its clients or the public.

Vulnerable Sector Check – means screening for the presence of criminal convictions and sexual offence convictions that are subject to a pardon or a record suspension, against the Canadian Criminal Real Time Identification Services national repository of criminal record information.

5. AUTHORITY AND ACCOUNTABILITY

(1) General

This Policy is issued under the authority of the Financial Management Board. The authority to make exceptions and approve revisions to this Policy rests with the Financial Management Board. Authority and accountability is further defined as follows:

(a) Ministers

The Minister of Finance is accountable to the Financial Management Board for the implementation of this Policy.

(b) Deputy Minister

The Deputy Minister of Finance is accountable to the Minister of Finance for the administration of this Policy.

(2) Specific

(a) Ministers

Ministers are accountable for the implementation of this Policy in their Departments and Agencies.

(b) Minister of Finance

(i) Makes recommendations to the Financial Management Board for amendments to this Policy.
(ii) May establish ministerial policies or guidelines necessary to the implementation of this Policy.

(c) Deputy Minister of the Department of Finance

(i) Provides support, direction and assistance to Deputy Heads on this Policy and associated procedural and/or guideline issues.

(ii) Review the decision to deny a job offer to an individual as the result of a criminal record check including, if applicable, a vulnerable sector check when requested by the individual.

(iii) Ensures that all staff is aware that criminal record check information is to be treated in confidence.

(d) Deputy Heads

(i) Authorizes interim hiring of individuals on the basis of a statutory declaration by the individual until satisfactory checks are received.

(ii) Conducts assessments to determine whether the employment of an individual who has a criminal record places the GNWT or its clients at risk.

(iii) Makes final staffing decision and authorizes hiring of individuals where a criminal record exists after evaluation of the criminal conviction, and pending charges.

(e) Department of Finance

(i) Provides advice and assistance to Departments on the application of this Policy, including assisting Deputy Heads in the administration of statutory declarations for the purpose of interim hiring and the assessment of criminal records.

(ii) Confirms that the requirements of this Policy and associated procedures and/or additional guidelines are followed during the recruitment process.

6. PROVISIONS

(1) Job Duties/Types of Employment

(a) Criminal record checks are required for all appointments and placements to positions which, based on established job duties, meet the definition of position of trust or highly sensitive position. The Employer shall also use hiring risk assessment tools to determine what type of verification positions require.

(b) Criminal record checks may be required for any type of employment including:

- Indeterminate
- Term
- Casual

- Relief
- Job-share
- Executive Management contract
- Board of Management contract
- Transfer assignment
- Secondment
- Direct appointment
- Summer student

(c) Employees who have not undergone the required type or level of check in relation to their duties involving vulnerable people shall be required to undergo these checks on request. Continued employment in a position working with vulnerable persons shall be assessed upon receipt of the results of the criminal records check, and if applicable a the vulnerable sector check.

(d) Employees who apply on different positions or who are being considered for transfer or promotion to a position of trust or a highly sensitive position, or who assume such additional duties in their current positions, are required to submit a satisfactory vulnerable sector check or an interim statutory declaration prior to appointment, transfer or reclassification.

(2) Interim Hiring

(a) If it is necessary to extend a job offer to an individual prior to receiving the results of a criminal record check and a vulnerable sector check (including a record suspension), a Deputy Head may authorize the use of a Statutory Declaration, confirming the individual does not have a criminal record pending charges; or providing the details of an existing criminal record, as an interim measure until the criminal record check and vulnerable sector check process is complete. The final job offer is subject to a satisfactory check.

(b) Interim Statutory Declarations reduce the liability of the GNWT but do not eliminate all risks to the GNWT or the public. Deputy Heads must carefully consider the risks associated with hiring an individual prior to receipt of their criminal record or vulnerable sector check.

(3) Assessment

(a) Should a criminal record exist, an assessment is required to determine whether the record places the GNWT or its clients at risk. The Deputy

Head makes a determination based upon an evaluation of the following factors for criminal convictions and outstanding charges:

i. The relevance of the recorded incident or pattern of incident(s) to the duties and responsibilities of the position;
ii. The nature and severity of the abuse of trust that would occur in the event that the individual was to behave in a manner specified in their record;
iii. The time that has elapsed between a conviction and the job application;
iv. The conduct of the individual since the conviction;
v. An established pattern of repeat adverse behaviour relevant to the duties and responsibilities of the position; and
vi. Any reason to suggest that adverse behaviour may be repeated and threaten the GNWT's ability to carry on business safely and efficiently.

(b) Individuals are provided an opportunity to discuss the circumstances of the criminal record and to provide information relevant to an assessment of the above factors.

(4) Review

(a) Individuals who are denied a job offer as the result of a criminal record check including, if applicable, a vulnerable sector check are provided two working days to raise any concerns with the Deputy Minister of Finance, who will review the decision.

(5) Payment of Fees

(a) Individuals are responsible for payment of all fees required for the completion of a criminal record check and, if applicable, a vulnerable sector check.

(6) Validity

(a) Criminal record check and vulnerable sector check results supplied by applicants are valid for a period of six months and may be used during this period to determine the applicant’s suitability for subsequent competitions.

(7) Confidentiality

(a) The confidentiality of information obtained through criminal record checks policy must be respected in accordance with the *Access to Information and Protection of Privacy Act*.

(b) Disclosure of the information resulting from a criminal record check or a vulnerable sector check is restricted to individual staff members necessary to and directly responsible for the staffing and management of the position of trust or highly sensitive position.

(c) In some circumstances, the information may be disclosed to other appropriate human resources or legal advisors and management in the chain of command, provided the information is necessary for and directly related to the carrying out of their duties.

(d) Criminal record checks and vulnerable sector checks obtained during the staffing process are sealed and retained for a period of one year, after which they are destroyed.

(e) Any employee who fails to comply with this Policy may be subject to disciplinary action up to and including dismissal.

7. PREROGATIVE OF THE FINANCIAL MANAGEMENT BOARD

Nothing in this Policy shall in any way be construed to limit the prerogative of the Financial Management Board to make decisions or take action with respect to security and protection of the public service or the public interest.

Chair of the Financial Management Board