

Title: Employment Screening

1. Supersedes: 8/08

2. Purpose:

To set out employment screening requirements for persons engaged or proposed to be engaged to perform:

- a) duties that the chief executive determines make a check of the person's criminal history relevant to a consideration of the person's suitability for the duties; or
- b) child-related duties.

To set out risk management requirements to be implemented by employing entities performing child-related or child-associated duties.

3. Legislative Provision: *Public Service Act 2008* — Section 53 and Chapter 5, Part 6

4. Effective date: 15 December 2008

5. Definitions:

Employment Screening means for the purposes of this directive:

- criminal history checking for relevant duties pursuant to Chapter 5, Part 6, Division 2 of the *Public Service Act 2008*; and
- police information checking for child-related duties pursuant to Chapter 5, Part 6, Division 3 of the *Public Service Act 2008*.

Employing Entity means departments and public service offices as described in the *Public Service Act 2008*.

Relevant duties means duties, other than child-related duties, that the chief executive of an employing entity decides may require criminal history checking as part of the assessment of the person's suitability for the duties.

Child-related duties means duties that the chief executive of an employing entity decides are likely to involve providing dedicated services or activities where a child or children is/are the primary or significant client group or where the nature of contact with a child or children, and the context in which that contact happens, creates an unacceptable level of risk for the child/children.

Criminal history checking for the purposes of this directive is the process of carrying out relevant criminal history checks on a recommended person proposed to be engaged to perform relevant duties. A criminal history check for relevant duties will not disclose convictions that have been rehabilitated under the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

Police information checking for the purposes of this directive is the process of carrying out police information checks on a recommended person or current employee engaged or

proposed to be engaged to perform child-related duties. A police information check is not limited by the operation of the *Criminal Law (Rehabilitation of Offenders) Act 1986* and may disclose:

- recorded or unrecorded convictions and charges for offences in Queensland or elsewhere;
- investigative information¹ about the person;
- information as to whether the person is or has been
 - (i) a relevant disqualified person²; or
 - (ii) the subject of an application for a disqualification order³; or
 - (iii) named as the respondent to an application for an offender prohibition order⁴.

Risk management for the purpose of this directive is the process by which an employing entity identifies, assesses and manages potential risks arising from the performance of child-related or child-associated duties by that entity in order to foster child-safe and child-friendly service environments.

Child-associated duties means duties that the chief executive of an employing entity decides may involve a child or children but do not amount to child-related duties.

General provisions

6 Candidates to be advised of screening requirements

An employing entity must inform candidates about employment screening requirements for any job involving relevant or child-related duties.

During selection a candidate must not be asked to disclose anything about their criminal history or police information, other than information necessary to allow the conduct of an employment screening process.

7 Who may be screened

7.1 Employment screening of candidates may be conducted only on recommended persons.

7.2 Employment screening of a current employee may be conducted as a result of changed employment circumstances which warrants the screening or as a result of the notification of a relevant charge or conviction by the employee. These changed circumstances can include:

- redeployment, secondment, transfer and appointment to a job;
- work performance or interchange arrangements;
- starting training as an apprentice or trainee; or
- incorporation of new tasks or responsibilities into a job.

¹ Refer to the *Commission for Children and Young People and Child Guardian Act 2000*, schedule 4.

² Refer to the *Commission for Children and Young People and Child Guardian Act 2000*, schedule 4.

³ A disqualification order is an order made under the *Commission for Children and Young People and Child Guardian Act 2000*, section 126C or under the *Child Protection (Offender Prohibition Order) Act 2008*, section 25.

⁴ Refer to the *Child Protection (Offender Prohibition Order) Act 2008*, schedule (dictionary).

7.3 The Public Service Regulation 2008 prescribes persons that are to be exempt from police information checking.

8 Consent required for screening

8.1 Employment screening can only occur with written consent of the person to be screened.

8.2 Written consent to screening may be sought at any time during the selection process but may only be conducted on the recommended person.

8.3 Written consent to screening must be sought from current employees engaged in child-related duties at least every 2 years.

9 Refusal to consent

9.1 If the person from whom consent to screening is requested does not provide both written consent and acceptable documents which support proof of identity within 7 days from the request and without a reasonable explanation, the person will be deemed to have refused consent.

9.2 Where a person refuses consent, the chief executive is not required to consider or further consider that person for engagement to perform the relevant or child-related duties which required screening.

9.3 Where the person who refuses or withdraws consent is a current employee, the chief executive must ensure the person does not perform the duties which required screening. This may require the chief executive to relocate/transfer the employee to another job at their equivalent (substantive) classification level where employment screening is not required.

10 Proof of identity

10.1 The chief executive may only accept the following documents as proof of a person's identity for the purposes of a screening process:

- 2 primary identification documents; or
- 1 primary identification document and 1 secondary identification document; or
- any other document or documents that, in the chief executive's opinion are capable of establishing the person's identity;

provided that the document or documents show between them the person's full name, date of birth and signature.

10.2 Where the name shown on the documents differs from the person's current name, the person must provide the chief executive with sufficient evidence of their change of name.

10.3 Primary identification documents are: birth certificate, citizenship certificate, current Australia or overseas passport, current Department of Immigration and Citizenship travel document, current driver's licence, or current proof of age card.

10.4 Secondary identification documents are: current identification card issued by the Commonwealth or a State as evidence of the person's entitlement to a financial benefit (e.g. Medicare card, pensioner concession card), financial institution cards or statements, student identification cards issued by an Australian educational institutional or recent notice of assessment issued under the *Income Tax Assessment Act 1997 (Cth)*.

11 Employee's duty to disclose

- 11.1 A current employee must notify any charges and convictions for indictable offences in accordance with section 181 of the Public Service Act 2008. Failure to do so may result in disciplinary action.
- 11.2 Penalties under section 171 of the Public Service Act 2008 may also apply to any person that gives a chief executive information that the person knows is false or misleading.

12 Request to Queensland Police Service

- 12.1 A request for a criminal history or police information check to be conducted on a person for the purposes of screening must be sent to the Police Information Centre, Queensland Police Service.

13 Natural justice

- 13.1 The principles of natural justice must be followed before a chief executive decides against a person's suitability to perform relevant or child-related duties on the basis of employment screening information.
- 13.2 The person must be given:
- a copy of all information used to inform the decision; and
 - a reasonable opportunity to make written representations as to why they believe the information obtained through the employment screening process should not render them unsuitable to perform the relevant or child-related duties.

14 Appeals

- 14.1 A decision not to engage a current employee to perform either child-related or relevant duties because of an employment screening process may be subject to a fair treatment appeal to the Public Service Commission chief executive⁵.
- 14.2 A decision by the police commissioner that information about a person is investigative information may be subject to an appeal by a candidate or current employee proposed to be engaged or engaged in child-related duties. In this case, an appeal:
- may be lodged with the Magistrates Court; and
 - must be lodged within 14 days after the person is notified of the decision and that the information has been given to the chief executive who requested the screening.

15 Management of employment screening information

- 15.1 Employment screening information must not be disclosed to anyone except for the purpose of assessing the suitability of the person for particular duties.
- 15.2 Employment screening information must be managed in accordance with Information Standard No 42 or 42A – Information Privacy, whichever is applicable⁶.
- 15.3 Employment screening information held by an employing entity must be destroyed after judicial review and fair treatment appeal time frames have expired following:
- a decision about a person's suitability; or

⁵ Refer to Directive 06/08 (Appeals Directive).

⁶ Information Standard n° 42A applies to the Queensland Department of Health.

- the completion of a recruitment process; or
- the completion of employment screening for a current employee.

15.4 Employment screening information about a candidate or current employee includes, for example:

- the consent form;
- any correspondence to or from the screening entity or the employing entity;
- correspondence to and from the person regarding the employment screening process; or
- the reason for finding the person unsuitable to perform relevant or child-related duties as a result of employment screening.

16 Costs associated with employment screening

16.1 An employing entity which undertakes an employment screening process must meet the costs associated with the screening process.

16.2 These costs may include charges by the Queensland Police Service for criminal history or police information checks and costs arising from an arrangement pursuant to section 165 of the Public Service Act 2008.

17 Other screening requirements

17.1 Employing entities are to comply with other screening requirements (e.g. security clearances and/or other background checking) under Commonwealth or State legislation which are not covered by this directive or the Public Service Act 2008. Contact the Security and Planning Coordination area of the Department of the Premier and Cabinet for further information on security clearances for Queensland Public Service employees.

17.2 Employing entities may also have authority under legislation other than the Public Service Act 2008 to conduct screening of candidates or current employees eligible for child-related duties. These employing entities are to conduct such screening to the full extent provided for in their legislation. This applies to the extent that the legislative authority is commensurate with the level of screening conducted under Part 6 of the Commission for Children and Young People and Child Guardian Act 2000 (the CCYPCG Act).

18 Duplication of screening

18.1 If there has previously been an employment screening process (other than screening under this directive) conducted on a current or intending employee, including a professional registration process, the employing entity may, before initiating further screening, consider:

- the scope of previous screening, including whether further screening will provide additional, relevant information for the purposes of determining the person's suitability;
- the purpose for which the previous screening process was undertaken; and
- the time elapsed since the previous screening process and any monitoring that has been in place.

Provisions specific to employment screening for relevant duties

19 Criminal history checking for relevant duties

- 19.1 A decision by a chief executive to conduct criminal history checking on a person must be based on the nature of the relevant duties to be performed. The following circumstances may also be considered:
- whether screening has been conducted under other legislation dealing with criminal history;
 - the perception of public and client confidence in the performance of relevant duties and in the department; and
 - the occupational values, code of behaviour and client service required by the performance of relevant duties.

20 Assessment of suitability

- 20.1 In assessing a person's suitability to perform relevant duties and upon receipt of criminal history information, the chief executive must have regard to the relevance of any offence to the nature of relevant duties to be performed, and should have regard to:
- the seriousness and frequency of any relevant offence;
 - the amount of time that has elapsed since any relevant offence happened;
 - whether any relevant offence is still a crime; and
 - any relevant work history of the person in the Queensland public service.
- 20.2 If, in the circumstances in section 20.1, a current employee is unsuitable to perform relevant duties as a result of criminal history information, the employee is to be placed in another job at their equivalent (substantive) classification level.

Provisions specific to employment screening for child-related duties

21 Police information checking for child-related duties

- 21.1. If a chief executive decides that certain duties are child-related duties, the chief executive is to:
- seek written consent from the person to police information checking; and
 - upon receipt of written consent, conduct the police information checking.
- 21.2 A person must not be engaged in child-related duties unless police information checking has been conducted by the employing entity within the previous 2 years and the entity's chief executive has no indication that the information has changed.

22 Matters that a chief executive may have regard to when deciding that certain duties are child-related

- 22.1 In deciding whether the job is likely to provide dedicated services or activities where child/children is/are the primary or significant client group, the chief executive may have regard to the frequency of contact with children that the job involves.
- 22.2 In deciding whether the nature of contact with a child or children, and the context in which that contact happens, creates an unacceptable level of risk, the chief executive should consider factors such as the level and degree of supervision (e.g. is a child likely to be alone with the person, whether the person is in a position of trust or authority, if the child is particularly vulnerable) and the frequency of the contact.

23 Assessment of suitability

- 23.1 Assessment of a person's suitability is in respect of police information checking only and does not imply that the person will be appointed to the job. A suitable person may not be appointed to the job due to supervening reasons including, but not limited to, an adverse referee report or misrepresentation of the person's experience to work with children.
- 23.2 In assessing a person's suitability to perform child-related duties, the safety and wellbeing of children must be paramount.
- 23.3 The chief executive must consider the police information obtained through the screening process as part of assessing a person's suitability to perform child-related duties.
- 23.4 Without exception, a person is suitable where there is no police information about the person⁷ and is unsuitable if they are a relevant disqualified person⁸ other than because of a temporary offender prohibition order.
- 23.5 Save for exceptional cases, a person is suitable where:
- There is no conviction against the person but there is investigative information about the person; and/or there is a current charge for an offence (other than a disqualifying offence); and/or a charge for a disqualifying offence⁹ that has been dealt with; or
 - There is a conviction for an offence other than a serious offence¹⁰.
- 23.6 Save for exceptional cases, a person must be considered unsuitable where there is a conviction for a serious offence¹¹ against the person; or the person is subject to a temporary offender prohibition order or has at any time been a relevant disqualified person.
- 23.7 In deciding that an exceptional case should render a person suitable or unsuitable the chief executive must consider:
- In relation to the commission or alleged commission of an offence:
 - whether it is a conviction or a charge;
 - whether the offence is a serious and disqualifying offence;
 - when the offence was committed or is alleged to have been committed;
 - the nature of the offence;
 - if a conviction, the penalty imposed by the court and, where no imprisonment or disqualification order was made, the court's reasons for its decision;
 - and
 - any other matters relevant to the person's suitability to perform child-related duties.
 - In relation to investigative information:
 - (i) when the acts or omissions constituting the alleged offence to which the investigative information relates were committed; and

⁷ There are no recorded or unrecorded convictions, charges, investigative information or information indicating that the person is or has been a relevant disqualified person; or the subject of an application for a disqualification order; or named as the respondent to an application for an offender prohibition order.

⁸ See *Commission for Children and Young People and Child Guardian Act 2000*, section 120D.

⁹ See *Commission for Children and Young People and Child Guardian Act 2000*, section 120B.

¹⁰ See *Commission for Children and Young People and Child Guardian Act 2000*, schedule 2.

¹¹ See *Commission for Children and Young People and Child Guardian Act 2000*, schedule 2.

- (ii) any other matters relevant to the person's suitability to perform child-related duties.

23.8 If, in the circumstances outlined above, a current employee is unsuitable to perform child-related duties as a result of police information checking, the employee is to be placed in another job at their equivalent (substantive) classification level.

24 Changes in police information

24.1 If a chief executive is advised of a change to a person's police information, a further assessment of a person's suitability to perform child-related duties must be undertaken.

24.2 If the change to a person's police information is due to a charge for a serious child-related sexual offence¹², disqualifying offence¹³ or the person becomes subject to a temporary offender prohibition order¹⁴, a chief executive must immediately suspend the person from child-related duties¹⁵.

24.3 If the change to a person's police information results in a person becoming a 'relevant disqualified person'¹⁶, a chief executive must immediately removed the person from child-related duties and place them in another job that does not involve child-related duties at their equivalent (substantive) classification level.

Risk management strategies for child-related and child-associated duties

25 Risk management strategies

25.1 Employing entities to which this directive applies are required to implement risk management strategies covering child-related and child-associated employment, as set out in Schedule A. This applies only to the extent that entities are not otherwise legislatively required to implement a risk management strategy under the *Commission for Children and Young People and Child Guardian Act 2000*.

25.2 The chief executive must ensure the agency has a risk management strategy in operation within 12 months of the commencement of this directive.

¹² See the *Commission for Children and Young People and Child Guardian Act 2000*, schedule 2B and 2C.

¹³ See the *Commission for Children and Young People and Child Guardian Act 2000*, schedule 4.

¹⁴ Under the *Child Protection (Offender Prohibition Order) Act 2008*

¹⁵ See section 137 of the *Public Service Act 2008* (Suspension other than as disciplinary action).

¹⁶ See section 150 of the *Public Service Act 2008* and schedule 4 of the *Commission for Children and Young People and Child Guardian Act 2000*.

Schedule A

Risk management strategies for child-related and child associated duties

Risk management principles

Risk management principles are essential for employing entities providing services involving children. The primary objective is to protect children from harm and promote their wellbeing through the creation of child-safe, child-friendly service environments.

Risk management strategies

The chief executive of an employing entity performing child-related or child-associated duties must develop and implement risk management strategies to promote the wellbeing of children and protect them from harm, if they are not otherwise legislatively required to do so.

Employing entities must include the following matters in their risk management strategy:

- A statement about commitment to the safety and wellbeing of children and the protection of children from harm;
- Procedures for recruiting, selecting, training and managing persons engaged or proposed to be engaged in child-related employment;
- Policies and procedures for criminal history checks;
- Policies and procedures for the handling of disclosures or suspicions of harm including reporting guidelines;
- Policies and procedures for implementing and reviewing the risk management strategy;
- Plan for managing breaches of the risk management strategy;
- Risk management plans for high risk activities and special events;
- Strategies for communication and support, including:
 - Written information for parents and persons engaged by the employing entity including details of the entity's risk management strategy, or where the risk management strategy can be accessed;
 - Training materials for persons engaged by the employing entity to –
 - Help identify risks of harm and how to handle disclosures and suspicions of harm; and
 - Outline the entity's risk management strategy.

Reporting

The chief executive of an employing entity with child-related or child associated duties is to ensure that each annual report of the entity includes an implementation statement giving details of the action taken during the reporting period to implement risk management strategies.

Annual Review

The chief executive of an employing entity with child-related or child associated duties is to ensure that monitoring and review mechanisms are established to review risk management strategies on an annual basis.