



1. Title

Employment Screening

2. Purpose

To set out the circumstances in which employment screening may be conducted for a person required to perform relevant duties in the Queensland Public Service.

3. Legislative provision

Public Service Act 1996 — Section 34 and Part 9A

4. Related legislation

- *Criminal Law (Rehabilitation of Offenders) Act 1986*
- *Commission for Children and Young People and Child Guardian Act 2000*
- *Public Service Regulation 2007*

5. Application

This directive applies to public service employees and intending public service employees.

6. Effective date

4 April 2008

7. Definitions

Employment Screening means for the purposes of this Directive criminal history checking pursuant to Part 9A of the *Public Service Act 1996*, and/or special provisions dealing with screening for child-related/associated employment and/or special requirements applying under Commonwealth legislation. Within this definition employment screening comprises three sub-definitions:

- **Child-associated employment** is employment providing services and activities that involve children, but do not typically include children as the primary or a significant client group¹.
- **Child-related employment** is employment 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 occurs creates an unacceptable level of risk² for the child/children³.
- **Criminal history checking** is a tool that can be used as part of a risk management strategy. It is the process of carrying out relevant criminal history checks authorised by legislation on a recommended person proposed to be engaged to perform relevant duties.

Risk management in the context of this directive is the process of identification, assessment and control of risks and implementing measures to manage those risks in order to foster child-safe and child-friendly service environments.

8. General provisions

Role descriptions

- 8.1. The requirement for employment screening to be conducted on a recommended applicant must be stated in the role description along with information on the employment screening process.

Consent

- 8.2. Employment screening may be conducted only on a recommended person. In addition, it may be conducted because of a current employee's changed circumstances as described in Section 8.6 of this Directive. In either case it can only occur with their written consent. Written consent should be given by the recommended applicant within seven days of being requested to do so.

Refusal to consent

- 8.3. If the recommended person does not provide written consent to obtain a criminal history report and acceptable documents which support proof of identity within the required

¹ For example, employment providing medical services in a public hospital which may involve contact with children.

² When evaluating the level of risk, agencies 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 contact. Agencies can consider the frequency test in the *Commission for Children and Young People and Child Guardian Act 2000*, as a guide in assessing whether a role involves child-related employment.

³ For example, employment providing medical services in a children's hospital.

timeframe without reasonable explanation, the chief executive is not required to consider or further consider the person for engagement to perform relevant duties.

Non-disclosure

- 8.4. A person must not be asked by a selection panel (either before or during an interview to decide the recommended person) to disclose anything about their criminal history, other than information necessary to allow the conduct of an employment screening process.
- 8.5. Public service employees are not to disclose information of relevance to an employment screening process except for the purpose of assessing the suitability of a recommended person for a particular job.

Changed circumstances

- 8.6. A current employee can be asked to undergo employment screening because of changed circumstances to a job, department or across government, which warrants the screening, or because 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.
- 8.7. If, in the circumstances outlined above, a current employee is unable to be engaged to perform particular duties as a result of an employment screening process for the employee, the employee is to be placed in another job at their equivalent (substantive) classification level.

Employee duty to disclose

- 8.8. A current employee must disclose any charges and convictions in accordance with section 5 of the *Public Service Regulation 2007*. Failure to do so may result in disciplinary action.

Natural justice

- 8.9. The principles of natural justice must be followed before a decision is made that is adverse to the interests of the employee on the basis of an employment screening process.
- 8.10. The person must be given:
- a copy of the relevant information that will inform the decision; and
 - a reasonable opportunity to make written representations as to why the person believes the information obtained through the employment screening process should not render them unsuitable to perform the relevant duties.

Request to Queensland Police Service

- 8.11. A request for a criminal history check to be conducted on a recommended person must be sent to the Police Information Centre, Queensland Police Service.

Assessment of suitability

8.12. In making an assessment about the suitability of a person to perform particular duties in relation to the person's criminal history, the chief executive must have regard to the relevance of any offence to the nature of particular duties to be performed, and should have regard to:

- a) the seriousness and frequency of any relevant offence;
- b) the amount of time that has elapsed since any relevant offence happened;
- c) whether any relevant offence is still a crime; and
- d) any relevant work history of the person in the Queensland public service.

Retention of employment screening information

8.13. Information relating to employment screening must be managed in accordance with Information Standard No 42 – Information Privacy.

8.14. Relevant documentation held by an agency in relation to an intending employee must be destroyed following an adverse decision about the person's suitability to perform particular duties, after judicial review timeframes have expired.

8.15. Relevant documentation held by an agency in relation to all other current employees must be stored in a separate confidential file with restricted access.

8.16. Relevant documentation about a recommended person 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 duties as a result of employment screening.

Appeals

8.17. A decision not to engage an employee to perform relevant duties because of an employment screening process may be subject to an appeal by the employee. In this case, an appeal

- can be lodged directly with the Public Service Commissioner for determination;
- must be lodged within seven calendar days of the employee being notified of an adverse decision by a chief executive.

Duplication of screening

8.18. If there has previously been an employment screening process conducted on a current or intending employee, including a professional registration process, the employing entity should, 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.

9. Specific provisions

Criminal history checks

9.1. A chief executive:

- a) may decide to conduct a criminal history check on a recommended person proposed to be engaged to perform relevant duties in certain circumstances not already covered by other specific legislation dealing with criminal history; and
- b) must have regard to criminal history information about a person to ensure their suitability to perform relevant duties.

9.2. A decision by a chief executive that it is necessary to have regard to the criminal history of a recommended person must be based on the nature of the relevant duties to be performed. The following circumstances may also be considered:

- a) the perception of public and client confidence in the performance of relevant duties and in the department; and/or
- b) the occupational values, code of behaviour and client service required by the performance of relevant duties.

Child-related employment screening

9.3. Employing agencies which have legislative authority to do so are required to screen employees eligible for child related employment to the full extent provided for in the 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).

9.4. Entities without explicit legislative authority to undertake screening commensurate with that conducted under Part 6 of the *Commission for Children and Young People and Child Guardian Act 2000* (the CCYPCG Act) must carry out criminal history checking for employees eligible for child related employment in accordance with Part 9A of the *Public Service Act 1996* and the provisions of this directive.

Other screening

9.5. Entities are to comply with the employment screening requirements (eg. security clearances and/or other background checking) of other government jurisdictions. 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.

10. Risk management strategies for child-related and child-associated employment

- 10.1. Entities to whom this directive applies are required, in collaboration with the Commission for Children and Young People and Child Guardian, 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*.
- 10.2. The chief executive must ensure the agency has a risk management strategy in operation within 12 months of the commencement of this directive.

Superseded

Schedule A

Risk management strategies for child related and child associated employment

Risk management principles

Risk management principles are essential for agencies providing services to 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 agency with child related employment or child associated employment, 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.

Agencies 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 agency including details of the agency's risk management strategy, or where the risk management strategy can be accessed;
 - Training materials for persons engaged by the agency to –
 - Help identify risks of harm and how to handle disclosures and suspicions of harm; and
 - Outline the agency's risk management strategy.

Reporting

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

Annual Review

The chief executive officer of an agency with child related or child associated employment is to ensure that monitoring and review mechanisms are established to review risk management strategies on an annual basis.