



# DIRECTIVE

**No: 2/04**

(refer Section 34 of the *Public Service Act 1996*)

## 1. TITLE: Criminal History Checks

## 2. PURPOSE:

The purpose of this Directive is to set out the circumstances in which criminal history checks may be conducted on a recommended person proposed to be engaged to perform relevant duties in the Queensland Public Service.

## 3. LEGISLATIVE PROVISION:

- *Public Service Act 1996* – Section 34, Part 9A

## 4. RELATED LEGISLATION

- *Criminal Law (Rehabilitation of Offenders) Act 1986*
- Any Commonwealth, State or Territory legislation that deals with criminal history
- *Public Service Regulation 1997*
- Directives about recruitment and/or criminal history

## 5. APPLICATION

This Directive applies to public service employees and potential employees, unless their criminal histories are dealt with under specific legislation.

## 6. EFFECTIVE DATE: 2 April 2004

## 7. DIRECTIVE:

### Decision to Conduct a Criminal History Check

#### 7.1 A chief executive:

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

- 7.2 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.

## Job Advertisements and Job Descriptions

- 7.3 The requirement for a criminal history check to be conducted on the recommended person must be stated in any advertisement for the job and details about the conduct of the criminal history check must be included in the job description.

## Non-Disclosure

- 7.4 A person must not be asked to disclose personal criminal history information to a selection panel or other public service employee before or during an interview to decide the recommended person.

## Consent and Proof of Identity

- 7.5 (a) A criminal history check may be conducted only on a recommended person with written consent through the Queensland Police Service. Consent should be given within seven calendar days of being requested to do so.
- (b) The consent form should contain the following:
- (i) person's full name and any previous names, date and place of birth;
  - (ii) name of department;
  - (iii) title of the job for which the criminal history check is required to be conducted;
  - (iv) consent to conduct a national criminal history check including reference to any or all Australian police services;
  - (v) provision of satisfactory proof of identity;
  - (vi) acknowledgement that the Queensland Police Service will disclose to the specific department criminal history allowable through relevant Commonwealth, State or Territory law or policies;
  - (vii) signed and dated by person;
  - (viii) signed and dated by authorised witness.
- 7.6 (a) If a recommended person gives written consent to a criminal history report being provided, the person must also provide the following to the department within seven calendar days of being requested to do so and before a request to the Queensland Police Service for a criminal history check can be made:
- (i) full name and previous name/s (if applicable); and
  - (ii) date and place of birth; and
  - (iii) satisfactory proof of identity.
- (b) Acceptable documents to support a person's identity include any of the following:
- (i) Driver's licence; or
  - (ii) Current Australian or overseas passport; or
  - (iii) Birth certificate (extract will suffice). If a birth certificate is provided one of the following must also be provided:
    - Current credit card, or account card from a bank, building society or credit union; or
    - Passbook from a bank, building society or credit union; or
    - Australian naturalisation or citizenship document or immigration papers issued by the Commonwealth Department of Immigration and Multicultural and Indigenous Affairs.

- 7.7 If the recommended person does not provide:
- written consent to obtain a criminal history report; or
  - documents which support proof of identity,

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

## Request to Queensland Police Service

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

## Assessment of Suitability

- 7.9 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;
- (i) the seriousness and frequency of any relevant offence;
  - (ii) the amount of time that has elapsed since any relevant offence happened;
  - (iii) whether any relevant offence is still a crime; and
  - (iv) any relevant work history of the person in the Queensland public service.

## Natural Justice

- 7.10 The principles of natural justice must be followed before a chief executive makes an adverse decision on the basis of a criminal history report relating to engaging a person to perform relevant duties. The person must be given:
- a copy of the criminal history report; and
  - a reasonable opportunity to make written representations as to why the person is suitable to perform the relevant duties.

## Changed Circumstances to Employee

- 7.11 (a) A current employee can be asked by a chief executive to undergo a criminal history check because of changed circumstances to a job, department or across government, which warrants criminal history checking. These changed circumstances can include:
- redeployment, secondment, transfer and appointment to a position; or
  - work performance or interchange arrangements; or
  - starting training as an apprentice or trainee; or
  - incorporation of new tasks or responsibilities into a job.
- (b) If, in the circumstances outlined above, a current employee is unable to be engaged to perform particular duties following an adverse decision by the chief executive in relation to a criminal history report about the employee, the employee is to be placed in another job.

## Appeals

- 7.12 A decision by a chief executive not to engage an employee to perform relevant duties in a department because of a criminal history report may be subject to an appeal by the employee. In this case, appeals
- (i) can be lodged directly to the Public Service Commissioner for determination, as the matter is not required to be resolved within the department by the usual grievance procedures;
  - (ii) must be lodged within seven calendar days of an adverse decision by a chief executive;
  - (iii) will proceed to hearing as a Fair Treatment appeal without a preliminary conference.

## Documentation

7.13 Criminal history information must be managed in accordance with Information Standard No 42 – *Information Privacy*.

7.14 Criminal history documentation must be destroyed following assessment about a person's suitability to perform particular duties after appeal or judicial review timeframes have expired.

Criminal history documentation about a recommended person includes:

- the consent form;
- correspondence to and from the Queensland Police Service;
- correspondence to and from the person regarding the criminal history report; and
- the chief executive's reason for finding the person unsuitable to perform relevant duties as a result of a criminal history.

SUPERSEDED