

1 Title: Employment screening

2 Purpose:

- (a) Employment screening aims to ensure safety and security for the Queensland community, particularly children, and maintain public confidence in the integrity of the Queensland public service.
- (b) This directive assists department chief executives to:
 - (i) conduct employment screening for persons engaged, or proposed to be engaged, to perform relevant duties or prescribed duties in the Queensland public service, and
 - (ii) implement a risk management strategy for agencies performing child-related duties.

3 Application:

This directive applies to public service employees, contractors, students and volunteers engaged in departments.

Note: this directive does not apply to employees (including employees employed under the *Public Service Act 2008*), contractors, students or volunteers engaged by the Commission for Children and Young People and Child Guardian (refer to the *Commission for Children and Young People and Child Guardian Act 2000*).

4 Legislative provision:

Public Service Act 2008 - section 53; chapter 5, part 6; chapter 9, part 5

5 Effective date: 17 June 2011

6 Definitions:

For the purposes of this directive:

adverse decision as defined in section 173 of the *Public Service Act 2008*

child-related duties as defined in section 156 of the *Public Service Act 2008*

CCYPCG means the Commission for Children and Young People and Child Guardian

CCYPCG Act 2000 means the *Commission for Children and Young People and Child Guardian Act 2000*

CCYPCG Commissioner means the Commissioner for Children and Young People and Child Guardian

commission chief executive means the commission chief executive of the Public Service Commission

criminal history screening means screening under chapter 5, part 6, division 2 and division 3A of the *Public Service Act 2008* and which will not disclose convictions that have been rehabilitated under the *Criminal Law (Rehabilitation of Offenders) Act 1986*

department means a department as defined in sections 7 and 22(2) of the *Public Service Act 2008*

department of communities as defined in section 155A of the *Public Service Act 2008*

employment screening means criminal history screening and prescribed duties screening

prescribed duties means child-related duties and regulated employment as defined in section 165A of the *Public Service Act 2008*

prescribed duties screening means screening for child-related duties and regulated employment under chapter 5, part 6, division 3 and 3A of the *Public Service Act 2008* and chapter 8 of the *CCYPCG Act 2000*

regulated employment as defined in section 156 of the *CCYPCG Act 2000*

relevant duties as defined in section 151 of the *Public Service Act 2008*

volunteer as defined in section 165 of the *CCYPCG Act 2000*

7 Provisions:

7.1 General principles for employment screening

(a) Information to be provided on employment screening requirements

- (i) Applicants for public service roles must be informed of employment screening requirements in accordance with the directive relating to recruitment and selection.
- (ii) A chief executive must take reasonable steps to inform contractors, students and volunteers of employment screening requirements.

(b) Consent required for employment screening

- (i) Employment screening must only occur with the written consent of the person to be screened.

(c) Employment screening of applicants for public service roles

- (i) Written consent to employment screening can be sought at any time during the selection process for public service roles but can only be conducted on persons the chief executive proposes to engage to perform relevant duties or prescribed duties.

(d) Employment screening of current public service employees

Employment screening of a current public service employee may be conducted as a result of:

- (i) changes to employment screening-related provisions in relevant legislation including the *Public Service Act 2008* and/or the *CCYPCG Act 2000*
- (ii) changed employment circumstances as per, but not limited to, chapter 5, part 6 of the *Public Service Act 2008*, and

- (iii) the notification of a relevant charge or conviction by the employee (refer to sections 7.1(e) and 7.2.3 of this directive).

(e) Duty to disclose changes in employment screening information

A person:

- (i) must notify their chief executive of any charges or convictions for indictable offences in accordance with section 181 of the *Public Service Act 2008*. Failure to do so may result in disciplinary action.
- (ii) engaged by the department of communities to perform relevant duties is to disclose changes in criminal history in accordance with section 155B of the *Public Service Act 2008* and section 7.2.3 of this directive.
- (iii) holding a positive prescribed notice or positive exemption notice who has a change in their police information is to notify their employer and the CCYPCG¹.

(f) Penalties for providing false or misleading information

- (i) Penalties under section 171 of the *Public Service Act 2008* may apply to a person who gives a chief executive written consent (or another document) that contains information that the person knows is false or misleading.
- (ii) Penalties under section 155C of the *Public Service Act 2008* may apply to a person engaged by the department of communities who fails to disclose a change in criminal history or who makes a false, misleading or incomplete disclosure to the chief executive of the department.

(g) Provision of natural justice in relation to employment screening information

- (i) Prior to making an adverse decision about a person's suitability to perform duties as a result of information obtained through employment screening, the chief executive must provide the person with:
 - a copy of the information used to inform the decision, and
 - a reasonable opportunity to make written representations as to why they believe the information obtained through the screening process should not render them unsuitable to perform the duties.
- (ii) Complaints regarding a decision by a chief executive not to engage a current public service employee to perform duties as a result of the employment screening process are to be lodged in accordance with the provisions of the relevant directive issued by the commission chief executive.
- (iii) For additional requirements applying to a person engaged by the department of communities to perform relevant duties, refer to section 7.2.3(d) of this directive.

(h) Management of employment screening information

- (i) Employment screening information must be managed in accordance with section 172 of the *Public Service Act 2008* and relevant legislation governing information privacy.

(i) Costs associated with employment screening

Costs associated with:

¹ By submitting a *Notification-Change in Police Information* form

- (i) criminal history screening for public service employees performing relevant duties are to be met by the department.
 - (ii) screening for duties which are considered to be child-related under section 156 of the *Public Service Act 2008* can be met at the discretion of the chief executive of the department.
 - (iii) screening for child-related duties which fall within regulated employment are to be met in accordance with section 202 of the *CCYPCG Act 2000*.
- (j) Other screening requirements**
- (i) Where appropriate, a chief executive must comply with screening requirements under Commonwealth and State legislation (e.g. security clearances and other background checking) which are not covered by the *Public Service Act 2008*, the *CCYPCG Act 2000* or this directive.

7.2 Criminal history screening for public service employees

7.2.1 Criminal history screening for public service employees performing relevant duties

(a) Decision by a chief executive to conduct criminal history screening for relevant duties

Under section 151 of the *Public Service Act 2008*, a chief executive may decide that:

- (i) due to the nature of the particular duties, it is necessary to conduct criminal history screening on a person in assessing the person's suitability to perform the duties, and
- (ii) the particular duties are not likely to involve regulated employment or child-related duties.

(b) Matters for a chief executive to consider when deciding to conduct criminal history screening for relevant duties

- (i) A decision by a chief executive to conduct criminal history screening on a person must be based on the nature of the relevant duties to be performed.
- (ii) A decision by a chief executive to conduct criminal history screening on a person may be informed by:
 - screening conducted under other legislation covering criminal history
 - the scope and purpose of any previous screening and whether further screening will provide additional, relevant information
 - the time elapsed since any previous screening and any monitoring that has been in place
 - the perception of public and client confidence in the performance of relevant duties, and in the department, and
 - the occupational values and code of conduct applying to the relevant duties.

7.2.2 Criminal history screening for public service employees performing relevant duties or prescribed duties

(a) Proof of identity for criminal history screening

- (i) A person must provide documents acceptable to the chief executive as proof of their identity for the purposes of criminal history screening.

(b) Failure to consent to criminal history screening

- (i) A chief executive is not required to consider a person for engagement to perform the duties which required screening if the person:
 - does not provide written consent and acceptable documents to support proof of identity within seven days from the chief executive's request to conduct criminal history screening, and in lieu of a reasonable explanation, or
 - refuses to consent to criminal history screening, or
 - withdraws consent to criminal history screening.
- (ii) Where a current public service employee does not provide consent, refuses or withdraws consent to criminal history screening, the chief executive must ensure the person does not perform the duties which required screening.

(c) Assessment of suitability

- (i) On receipt of a criminal history report and in assessing a person's suitability to perform the duties which required screening, the chief executive must consider the relevance of any offence to the nature of the duties to be performed.
- (ii) Subject to 7.2.2(c)(i), the chief executive may consider:
 - the seriousness and frequency of any relevant offence
 - the amount of time elapsed since any relevant offence happened and the penalty imposed
 - whether any relevant offence is still a crime
 - any relevant work history of the person in the Queensland public service, and
 - any relevant risk contained in the agency's risk management strategy under section 7.4 of this directive.

(d) Outcome of criminal history screening

- (i) Where a person is being considered for engagement to perform relevant duties or prescribed duties, and the person is determined by the chief executive to be unsuitable to perform those duties as a result of criminal history screening, a chief executive is not required to consider the person for engagement to perform those duties.
- (ii) Where a current public service employee is determined by the chief executive to be unsuitable to perform relevant duties or prescribed duties as a result of criminal history screening, a chief executive must ensure the employee does not perform the duties that required screening. The employee is to be placed in another role at their substantive classification level.

7.2.3 Changes in criminal history of persons engaged by the department of communities to perform relevant duties

- (a) A person engaged by the department of communities to perform relevant duties must immediately disclose the details of a change in their criminal history² to the chief executive of the department in accordance with section 155B of the *Public Service Act 2008*.
- (b) Information to be provided when disclosing a change in criminal history must include:
- the existence of the conviction or charge
 - when the offence was committed or alleged to have been committed
 - the details of the offence or alleged offence, and
 - for a conviction, whether or not a conviction was recorded and the sentence imposed on the person.
- (c) Subject to 7.2.3(a) and (b), the chief executive of the department of communities may conduct criminal history screening to assess a person's suitability to continue to be engaged by the department to perform relevant duties.
- (d) Prior to using the information obtained through criminal history screening to assess a person's suitability to continue to be engaged by the department of communities to perform relevant duties, the chief executive of the department must:
- disclose the information to the person, and
 - allow the person a reasonable opportunity to make representations to the chief executive about the information.
- (e) In assessing a person's suitability to continue to be engaged by the department of communities to perform relevant duties, the chief executive of the department must consider:
- when the offence was committed, is alleged to have been committed, or may have been committed
 - the nature of the offence and its relevance to the nature of the duties to be performed
 - any representation made to the chief executive by the person under section 7.2.3(d), and
 - anything else the chief executive considers relevant to the assessment of the person.
- (f) In accordance with section 155G of the *Public Service Act 2008*, the chief executive of the department of communities must make guidelines for dealing with the criminal history screening information of persons engaged by the department.

² If a person does not have a criminal history, the acquisition of a criminal history constitutes a change in the person's criminal history.

7.3 Screening for prescribed duties

7.3.1 General provisions

- (a) A chief executive is to determine whether duties are child-related duties which fall within a category of regulated employment and whether screening is required under the *CCYPCG Act 2000*.
- (b) Subject to section 7.3.1(a), a chief executive is to decide whether duties are considered to be child-related duties under section 156 of the *Public Service Act 2008*.

7.3.2 Screening for child-related duties that fall within a category of regulated employment under the *CCYPCG Act 2000*

- (a) In assessing the suitability of persons to be engaged in duties that are regulated employment, a chief executive must comply with chapter 8 of the *CCYPCG Act 2000*.

7.3.3 Screening for duties that are considered to be child-related duties under section 156 of the *Public Service Act 2008*

(a) Matters for a chief executive to consider when deciding that certain duties are child-related

- (i) A chief executive may decide that:
 - certain duties are child-related duties
 - that these duties are not likely to involve regulated employment, and
 - that it is necessary to conduct screening for child-related duties to ensure the person is suitable to perform the duties.
- (ii) In deciding whether duties are child-related duties under section 156 of the *Public Service Act 2008*, a chief executive must consider:
 - whether the duties are to be performed at a place, and in a role, where services are provided only or mainly to a child or children, and
 - whether the duties involve contact with a child or children that is of a kind, or happens in a context, that may create an unacceptable level of risk for the child or children.
- (iii) Subject to 7.3.3(a)(ii), a chief executive of a department performing child-related duties under section 156 of the *Public Service Act 2008* must document the kinds of places, roles and duties deemed to be child-related by the department.
- (iv) In deciding whether duties are child-related duties under section 156 of the *Public Service Act 2008*, a chief executive may consider:
 - the frequency of contact with a child or children, and
 - the level and degree of supervision of a child or children (e.g. whether a child is likely to be alone with the person; whether the person is in a position of trust or authority; whether the child is particularly vulnerable).

(b) Screening requirements for child-related duties

- (i) If a chief executive decides that certain duties are child-related duties, the chief executive must ensure that a person does not perform child-related duties, unless:

- the person has a current positive prescribed notice or current positive exemption notice³, or
 - the chief executive has applied to the CCYPCG Commissioner for a prescribed notice or exemption notice about the person, or
 - the person has a current positive prescribed notice if the person is engaged as a volunteer and is not a police officer or registered teacher.
- (ii) The application by the agency chief executive for a prescribed notice or exemption notice must be made, and dealt with, under the *CCYPCG Act 2000*.

(c) Appointment on probation

- (i) For persons other than current public service employees, a chief executive may appoint the person on probation⁴ where the chief executive has applied to the CCYPCG Commissioner and a prescribed notice or exemption notice about the person is pending.

(d) Outcome of screening for child-related duties

- (i) Where a current public service employee:
- withdraws their consent to screening for child-related duties, or
 - is issued a negative prescribed notice or negative exemption notice, or
 - has their positive prescribed notice or positive exemption notice suspended or cancelled,

a chief executive must ensure the person does not perform child-related duties. The employee is to be placed in another role at their substantive classification level.

- (ii) For a person appointed on probation a chief executive:
- may only confirm the person’s appointment if the person is issued a positive prescribed notice or positive exemption notice, and
 - must not confirm the person’s appointment if the person withdraws their consent to screening for child-related duties or the person is issued a negative prescribed notice or negative exemption notice.

7.3.4 Criminal history screening for prescribed duties

- (a) An agency chief executive may ask a person⁵ for written consent for the chief executive to obtain the person’s criminal history if:
- (i) the chief executive proposes to engage the person to perform prescribed duties, and
- (ii) the CCYPCG Commissioner:
- has undertaken screening of the person for child-related duties
 - issues a positive prescribed notice or positive exemption notice to the person, and

³ If the agency is not the original employer, the agency is required to submit to CCYPCG an *Authorisation to confirm a valid blue card/application for government paid employees form* or *Authorisation to confirm a valid blue card/application form*

⁴ Refer to section 126 of the *Public Service Act 2008* for provisions applying to public service officers

⁵ Excludes persons engaged as contractors, students and volunteers

- gives the chief executive of the department a notice stating that the chief executive may need to undertake a further assessment of the person to determine suitability to perform prescribed duties.
- (b) Subject to 7.3.4(a), criminal history screening of the person may be undertaken in accordance with section 7.2.2 of this directive.

7.4 Risk management strategies for child-related duties

- (a) The chief executive of a department performing child-related duties must:
- (i) develop and implement a risk management strategy⁶ that aims to protect children from harm and promote their wellbeing through the creation of child-safe service environments
 - (ii) ensure that the risk management strategy complies with the minimum requirements specified in the *Commission for Children and Young People and Child Guardian Regulation 2001*
 - (iii) review the risk management strategy on at least an annual basis, and
 - (iv) ensure that the action taken to implement a risk management strategy is included in the department's annual report.

7.5 Transitional provisions

- (a) A person:
- (i) engaged by a department in child-related duties under section 156 of the *Public Service Act 2008* before 1 April 2010
 - (ii) who continues to perform those duties from 1 April 2010, and
 - (iii) who has a current positive prescribed notice obtained through the employing department for the purposes of performing the child-related duties

may continue to perform those duties until the expiry date on the positive prescribed notice.

⁶ This provision applies only to the extent that agencies are not otherwise legislatively required to implement a risk management strategy under the *CCYPCG Act 2000*