



# Criminal history check procedure

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## Audience

All Department of Education (the department) employees (excluding classroom teachers, school leaders and heads of programs) and individuals applying for employment with the department.

## Purpose

This procedure outlines the department's procedure for conducting criminal history checks on current employees and individuals applying for employment who have been recommended for engagement.

This procedure does not cover circumstances where an employee's criminal history changes due to charges or conviction for an offence.

## Overview

Under the [Employment screening \(Directive 08/23\)](#) the Director-General may conduct a criminal history check for an employee or applicant. A criminal history check may only be conducted on an individual who has given written consent and provided satisfactory proof of identity.

Engagement **cannot commence** with the department until a determination has been made regarding the relevance of the criminal history to the work being undertaken, unless an exemption is granted by an appropriate delegate. A delegate may only authorise the commencement of duties prior to receiving the outcome of a criminal history check for temporary or relieving roles and only for a period of up to three months.

For all roles, other than those specified below or roles that from time to time the Director-General exempts, a criminal history check **will** be initiated for an employee or applicant, for any duration of employment, who is:

- recommended for engagement (permanent, temporary or casual); or
- is undertaking higher duties or is relieving at, below or above level; and
- has not previously undergone a criminal history check with the department in the past two years.

A criminal history check **may** be initiated for a contractor engaged by the department in any role for any period of time provided the provision for doing so is included in the agreed terms of engagement.

Although exempt from the criminal history check requirement, where an individual holds professional registration for which a relevant criminal history check is a pre-requisite, a criminal history check may be initiated. This includes:

- registration as a health practitioner with the Australian Health Practitioner Regulation Agency; or
- registration as a legal practitioner under the [Legal Profession Regulation 2017 \(Qld\)](#) or a Legal Profession Regulation or Act of any state of Australia.

For any role not requiring a criminal history check, a check may be initiated for any reason at the discretion of the selection panel. Where a panel chooses to initiate a criminal history check for appointment to a role not requiring a criminal history check, the selection report should state the reason a check was undertaken.

## Responsibilities

### Employee and applicant for employment

- Provide consent for a criminal history check.
- Provide relevant proof of identity to accompany the request for a criminal history check.

### Human Resources Branch

- Ensure all documentation in relation to criminal history checks is managed in accordance with the [information privacy and right to information procedure](#).
- Ensure the departmental requirement for conducting a criminal history check is included in role descriptions for all positions.
- Determine whether further criminal history checks are required for current employees who have changed employment circumstances and who have previously undertaken a criminal history check during their employment with the department.
- Ensure information provided to the Queensland Police Service is complete.
- Review criminal history check results and assess if an applicant's criminal history poses a risk to the department.
- Update the department's human resource information system as required.

### Manager, principal, supervisor, selection panel

- Ensure written consent is obtained to undertake criminal history checks prior to making offers of employment.
- Ensure all documentation in relation to criminal history checks is managed in accordance with the [information privacy and right to information procedure](#).
- Ensure all criminal history information is kept strictly confidential at all times and not included in the selection documentation or disclosed to anyone except for the purpose of assessing the suitability of the person for particular duties.

### HR delegate

- Approve or reject the recommendation of the selection panel.

- Approve assessment of criminal history check.
- Consider human rights when making decisions about selection panel recommendations, assessment of criminal history check and eligibility for employment.

### **Authorised officer**

- Submit a request for a criminal history check.

### **Director-General (or nominated delegate)**

- Determine, following recommendation through the review process, whether an individual should or should not be appointed to a role because of their criminal history.
- Determine, following recommendation through the review process, that a current employee be deployed to other duties where ongoing employment in their current role poses an unacceptable degree of risk to the department, but they are still suitable for employment in another role with the department.
- Consider human rights when making decisions about criminal history checks and recommendations made through the review process.

### **Payroll Services**

- Updates employee records with criminal history check information and clearance.

## Process

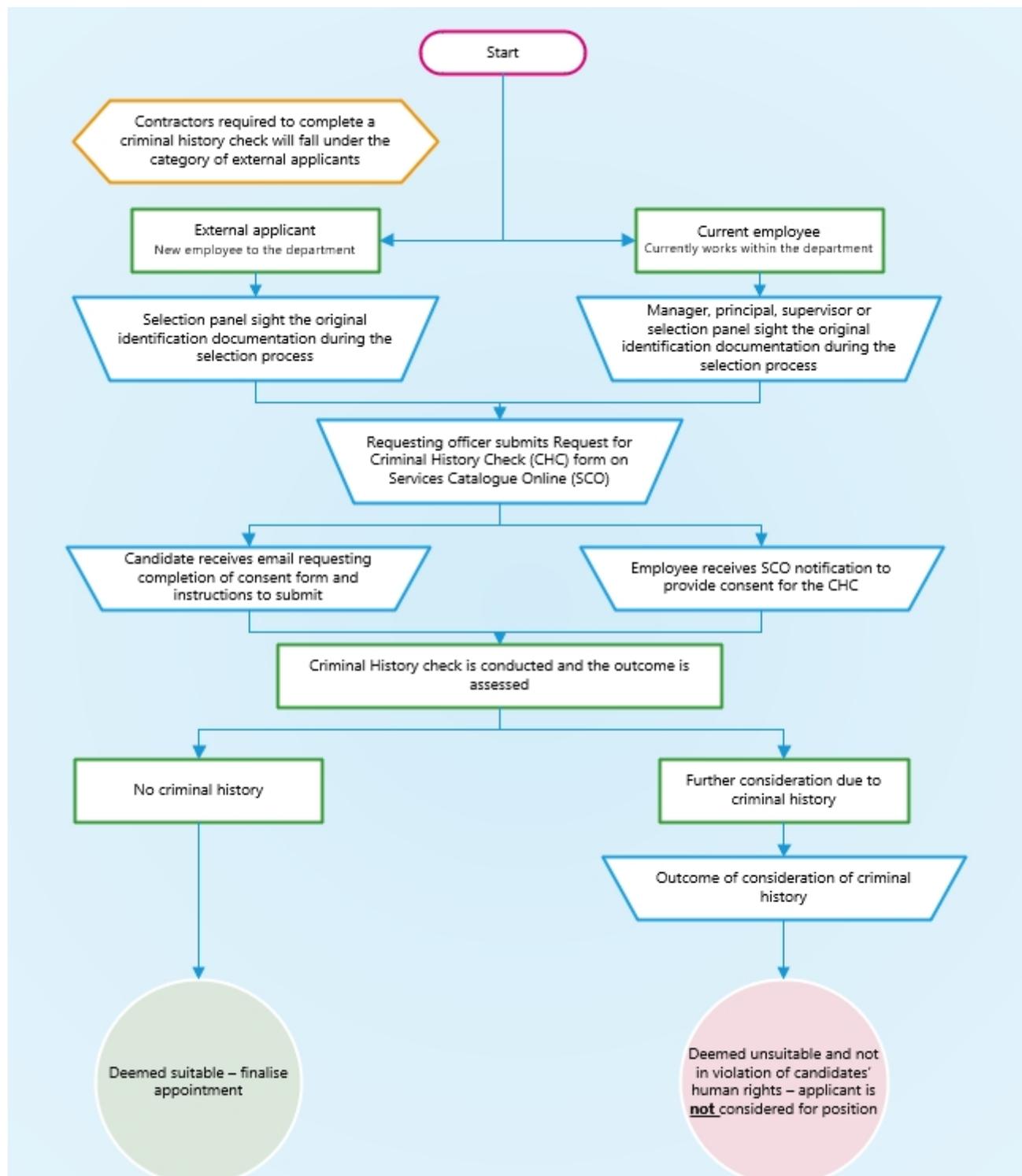


Image 1: Criminal history check process flowchart

**Option A: During the recruitment process.****Nominated applicant to complete the consent form and provide proof of identity for criminal history check during the recruitment process**

The panel chair (or manager, principal or supervisor responsible for leading the recruitment process) must inform applicants during the recruitment process:

- the department's requirement to conduct a criminal history check by the Queensland Police Service for the nominated applicant
- that no criminal history information will be stored on any personnel or other departmental file
- all information is private and confidential.

As part of the criminal history check process, the panel chair, manager, principal or supervisor must sight and verify two forms of identification that show the applicant's proof of identity (see definitions). This verification can occur at a time during the selection process the panel chair, manager, principal or supervisor deems appropriate to the situation, usually during an interview. This can occur either face to face or over video connection.

When validating identification, the panel chair, manager, principal or supervisor must:

- review two primary forms of identification, or one form of primary identification and one form of secondary identification that show proof of identity
- verify the identification documents are valid and have not expired
- note the legal name and date of birth provided on the identification documentation
- verify that photo identification matches the candidate.

The panel chair, manager, principal or supervisor must attempt to sight and verify original identification rather than make or receive a copy of the identification. If digital or hard copies of the identification are received, the panel chair, manager, principal or supervisor must destroy these copies once verification is complete or within 30 days, whichever comes first.

**Once the preferred applicant/s has been identified**

Alternatively, the [criminal history check and consent](#) form can be requested once the preferred applicant/s has been identified.

For applicants who have resided in New Zealand, a [New Zealand Police vetting consent](#) form is required to be completed as well.

**Engagement of contractors**

Where a contractor is engaged directly or through a third party, the engagement agreement may require the contractor or third party to provide a criminal history check for each contractor, or for the third party to obtain consent for the department to undertake the criminal history check.

Contractors are not able to commence work with the department until a determination has been made by the HR delegate regarding the relevance of the criminal history to the work being undertaken.

Contractors that are required to undertake a criminal history check with the department will be treated as external applicants for the request and submission processes.

## **Option B: Employee relieving at or below level or higher duties**

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The panel chair, manager, principal or supervisor is to ensure the employee has provided a copy of their My Employee Details report from MyHR and confirmed in writing that their criminal history has not changed since their last criminal history check was undertaken.

Where the criminal history check occurred greater than two years prior or a criminal history check has not ever been undertaken, the panel chair, manager, principal, supervisor must request the employee's consent to undertake a criminal history check.

The panel chair, manager, principal, supervisor is responsible for maintaining a record of the declaration and providing this information where requested in line with record keeping requirements detailed in step 6.

### **1. Request for criminal history check**

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For all applicants:

- the panel chair, manager, principal or supervisor must sight and validate the original identification for the candidate during the selection process.
- the requesting officer submits the request through [Service Catalogue Online](#) (SCO).

If the applicant is an existing departmental employee, they will receive an email advising them to complete the [Request for CHC form](#) through SCO. Note that internal employees without a departmental email address may complete the [CHC consent form](#).

If the applicant is external to the department, they will receive an email advising them to complete the [CHC consent form](#) and instructions to submit the completed form.

On receipt of the completed form, the HR Branch confirms the requirement to undertake the criminal history check and submits the request to the Queensland Police Service for processing.

### **2. Criminal history check assessment outcome**

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On receipt of the criminal history report from the Queensland Police Service, HR Branch reviews the criminal history check result.

Where there is no criminal history, proceed to **step 3**.

Where there is a criminal history and further consideration is required, proceed to **step 4**.

### **3. No criminal history**

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Where the individual's criminal history report is clear, the HR Branch emails the relevant panel chair (or manager, principal, supervisor) advising that they can proceed with the offer of employment for the individual.

The panel chair, manager, principal or supervisor can then finalise the appointment.

Proceed to **step 6**.

#### 4. Further consideration required – criminal history information exists

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Where the criminal history check identifies criminal history, the HR Branch will assess if the criminal history poses a risk to the department by determining the relevance of the information through consideration of:

- the nature of the offence/s committed
- their imputed effects on the outcome of the position in question
- the nature of the relevant duties to be performed, including
  - the perception of public and client confidence in the performance of relevant duties and in the department
  - the occupational values, code of conduct and client service required by the performance of relevant duties
- the date of the offence
- any other matters the Director-General (or delegate) deems relevant.

#### 5. Outcome of consideration of criminal history information

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##### Criminal history does not pose a risk to the department

Where the criminal history report provided by the Queensland Police Service has been considered and the individual does not pose a risk, the HR Branch emails the relevant panel chair (or manager, principal, supervisor in the case of an employee) advising that they can proceed with obtaining approval for the selection recommendation and then make the offer of employment to the individual.

The panel chair, manager, principal, supervisor can then finalise the appointment. HR Branch requests that Payroll Services updates the employee record with criminal history check information and clearance.

##### Criminal history may pose a risk to the department

HR Branch asks the applicant to provide a written submission in response to the criminal history check within seven calendar days. HR Branch will detail specifically in the request the information required from the applicant.

HR Branch considers the written response and:

- **deems the individual suitable.** HR Branch emails the panel chair (or manager, principal, supervisor) advising that they can proceed with the offer of employment. HR Branch requests that Payroll Services Unit updates the employee record with criminal history check information and clearance and any special conditions of employment as a result of the criminal history.

HR Branch informs the work unit supervisor of any adjustments that may be required to duties undertaken by the individual as a result of their criminal history.

OR

- **makes a preliminary decision that the applicant is not suitable.** HR Branch informs the individual in writing of the preliminary decision and provides the applicant with a final opportunity to submit

additional information to inform the decision. The written advice to the individual will detail how this additional information needs to be submitted and any relevant deadlines.

HR Branch considers the additional information and makes a recommendation to the HR delegate for approval.

- If deemed suitable, proceed with an offer of employment in line with above step '**deems the individual suitable**'.
- If deemed not suitable, the applicant is advised in writing that they have been deemed unsuitable and will not be considered for the position.

Where a current employee's criminal history check has resulted in a decision that they are not suitable for the role they have applied for, HR Branch will assist their supervisor to consider the employee's criminal history in the context of their current role. Should it be considered that they are unsuitable for their current role based on their criminal history, there may be a need to consider movement to a more suitable role or to modify their current role.

In the case of recruitment decisions, ensure the selection report makes reference to the applicant not being eligible for further consideration due to their criminal history. No other detail or information is to be recorded in the selection report.

## 6. Documentation management and retention

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The department will store all criminal history check records in a confidential and secure location at all times until the expiry of the public service appeals and judicial review timeframes (three month period), after which all documents must be destroyed confidentially. This includes:

- Criminal history check – **clear**. For three months, after which all documents will be destroyed.
- Criminal history check – **adverse**. Until the expiry of judicial review (28 days) and Fair Treatment Appeal timeframes (21 days), after which all documents will be destroyed (see **step 7**).

While the records are being stored, the department will ensure that the information is handled in accordance with the [information privacy and right to information procedure](#). At the completion of the recruitment process, the selection panel ensure all [criminal history check and consent](#) forms obtained from other shortlisted applicants are destroyed confidentially.

## 7. Appeals against an adverse criminal history decision

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### Employees (Queensland Public Service)

A departmental employee may lodge a complaint using the [Individual employee grievances procedure](#).

A Queensland government employee may also lodge an appeal against an adverse criminal history decision directly with the Public Service Commission. These appeals will proceed to hearing as a Fair Treatment Appeal without a preliminary conference. The appeal must be lodged within 21 calendar days of receipt of an adverse decision.

## Applicant for employment (non-Queensland public service employees)

Individuals who are not currently employed within the Queensland public service do not have the right of appeal against an adverse criminal history decision. However, the applicant may request a statement of reasons for an adverse criminal history decision under the [Judicial Review Act 1991 \(Qld\)](#).

## Definitions

Term	Definition
<b>Applicant</b>	Any individual (including a current employee of the department or another Queensland Government department) applying for a role.
<b>Contractor</b>	<p>Any person engaged directly or through a third party, who is named and engaged under a contract for an agreed rate of pay, and is solely and personally responsible for work they undertake at the direction of an employee of the department.</p> <p>For example, a software developer named in a contract between the department and another agency and paid an hourly or daily rate and supervised by an employee of the department is considered a contractor. A software developer who undertakes work on behalf of another agency and whose responsibilities are not determined by an employee of the department, or whose rate of pay is not disclosed, is not considered a contractor.</p> <p>For example, a tradesperson who undertakes work on behalf of a school and who determines how the work will be undertaken and who also may assist to undertake the work (such as an apprentice or sub-contractor) is not considered a contractor for the purpose of conducting criminal history screening.</p>
<b>Criminal history</b>	The conviction/s for criminal offences recorded against a person. Criminal history does not include spent convictions (for example, quashed convictions, pardons or those convictions for which a person was not sentenced or where the rehabilitation period has ended). Refer to <a href="#">Employment screening (Directive 08/23)</a> for more detailed information.
<b>Employee</b>	Any person employed by the department in a permanent, temporary or casual capacity.
<b>Employment screening</b>	The process of undertaking criminal history checks or other relevant checks authorised by legislation to determine the suitability of a recommended applicant.
<b>Engaging a person/ engagement</b>	Acting, relieving, higher duties, appointing, employing, promoting, redeploying, transferring or seconding an individual, including under a work performance or interchange arrangement.

Term	Definition
<b>Proof of identity</b>	<p>Proof of identity may be one of the following, (providing that the document or documents show between them the person's full name, previous name/s, address, date of birth and signature):</p> <ul style="list-style-type: none"> <li>• two primary identification documents</li> <li>• one primary identification document and one secondary identification document</li> <li>• any other document or documents that, in the chief executive's opinion, are capable of establishing the person's identity.</li> </ul> <p><b>Primary identification documents:</b> birth certificate, citizenship certificate, current Australian or overseas passport, current Department of Immigration travel document, current driver's licence, or current proof of age card.</p> <p><b>Secondary identification documents:</b> current identification card (issued by the Commonwealth, State or Territory) as evidence of the person's entitlement to a financial benefit (for example, Medicare card, pensioner concession card), financial institution cards or statements, student identification cards issued by an Australian educational institution or recent notice of assessment issued under the <a href="#">Income Tax Assessment Act 1997 (Cwlth)</a>.</p>
<b>Relevant duties</b>	Duties, other than child related duties, that the Director-General decides requires criminal history checking as part of the assessment of the person's suitability for employment.
<b>Special conditions</b>	Any conditions that an employee needs to comply with as part of their employment with the department.
<b>Supervisor</b>	A person in any role with the department that has responsibility for the day to day supervision of a staff member(s) as outlined in their approved role description, and who is formally assigned associated HR delegations relating to staff management.

## Legislation

- [Employment screening \(Directive 08/23\)](#)
- [Recruitment and selection \(Directive 07/23\)](#)
- [Public Sector Act 2022](#)
- [Information Privacy Act 2009 \(Qld\)](#)
- [Judicial Review Act 1991 \(Qld\)](#)
- [Legal Profession Regulation 2017 \(Qld\)](#)
- [Human Rights Act 2019 \(Qld\)](#)

## Delegations/Authorisations

- [HR delegations manual](#) (DoE employees only)

## Policies and procedures in this group

- [Recruitment and selection policy](#)
- [Employee separation procedure](#)
- [Recruitment and selection procedure](#)
- [Recruitment of classified teacher positions \(school leaders and heads of program\) procedure](#)
- [Relinquish from position procedure](#)
- [Relocation of classified teachers \(school leaders and heads of program\) procedure](#)
- [Transfer at level procedure](#)
- [Unattach from position procedure](#)
- [Workplace reform permanency procedure](#)

## Supporting information for this procedure

- [Criminal history check and consent form](#)
- [New Zealand Police vetting consent form](#)

## Other resources

- [Individual employee grievance procedure](#)
- [Information privacy and right to information procedure](#)
- [Corporate and school support staff – recruitment and selection](#)

## Contact

For further information, please contact:

### Non-teaching roles

Email: [Recruitment.HR@qed.qld.gov.au](mailto:Recruitment.HR@qed.qld.gov.au)

### Teaching roles

Email: [TeacherRecruit.HR@qed.qld.gov.au](mailto:TeacherRecruit.HR@qed.qld.gov.au)

## Review date

23/10/2022

## Superseded versions

*Previous seven years shown. Minor version updates not included.*

3.0 Criminal History Checks

4.0 Criminal History Checks

5.0 Criminal history check

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