

Employment Direction No. 7

PRE EMPLOYMENT CHECKS

Operative Date: 4 February 2013

Directive

Pursuant to Section 17 of the *State Service Act 2000*, I hereby direct that the arrangements and requirements set out in this Employment Direction are to apply.



Issued by authority of the Minister administering the *State Service Act 2000*.

Date: 4-2-13

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1. Purpose

The purpose of this Direction is to outline the policy and procedure in relation to pre-employment checks within the State Service. These include:

- Conviction Checks; and
- Identity Checks; and
- Disciplinary Action in Previous Employment Checks.

This Direction does not include the determination of educational qualifications or Aboriginality. These are covered in the Employment Direction No. 1 – Employment in the State Service and Employment Direction No. 10 – Aboriginal and Torres Strait Islander Employment in the State Service.

2. Application

This Direction is to apply to all State Service Agencies and officers and employees within those Agencies and to persons seconded under section 46(1)(a) of the Act.

3. Definitions

'The Act' means the *State Service Act 2000*.

'The Minister' means the Minister administering the Act.

'Employee' means a permanent or fixed-term employee appointed under Section 37 of the Act.

'Officer' means a person appointed as a holder of a prescribed office, senior executive or equivalent specialist in accordance with Section 31 of the Act.

'Head of Agency' is the person holding that office for the purposes of the Act in accordance with Section 30 of the Act.

'The Employer' is the Minister administering the *State Service Act 2000* in accordance with Section 14 of the Act.

'Employment Direction' means an Employment Direction relating to the administration of the State Service and employment matters as issued by the Employer in accordance with Section 17 of the Act.

'Head of the State Service' means the person appointed by the Premier to perform the functions and powers of the Employer, other than the power to issue Employment Directions, in accordance with Section 20 of the Act.

'Position' refers to an allocation of duties by a Head of Agency in accordance with section 34(1)(c) of the Act.

'Gazette' refers to the State Service Notices Section of the Tasmanian Government Gazette.

'Delegation' means all functions and powers exercised in accordance with this Direction are subject to an approved delegation.

4. Legislation/Award Basis and Related Documents

State Service Act 2000 Part 4 (sections 14,15,16) and sections 15, 17, 20, 21, 31, 37 and 46.

Employment Direction No.1 of 2001 - Employment in the State Service.

Records of Offences Act 1981 - sections 6 and 10.

5. Date of Operation

This Direction will take effect from the date the issue and will remain in force until varied or revoked.

6. Directive

- 6.1 Various positions within Agencies will require a pre-employment check of prospective employees because of the nature of the duties and responsibilities attached to those positions.
- 6.2 The procedures that follow balance an individual's right to privacy with the responsibility of management to undertake a pre-employment check for appointment, promotion or transfer to certain positions.
- 6.3 Unless such checks are provided for in any other enactment, Agencies are not authorised to conduct checks of pre-employment in relation to applicants for any position or category of positions without first obtaining approval from the Head of the State Service pursuant to section 15(1) of the *State Service Act 2000*.

Note

Careful consideration needs to be given when deciding whether a position requires a pre-employment check.

The following things need to be considered:

- the nature of the duties and responsibilities attached to the position. For example positions that require the regular handling of drugs, money and/or dangerous items;
- does the position have regular client contact and what level of contact genuinely occurs?;
- duty of care associated with a position, eg. Teachers, Nurses, Child-Care workers, etc; and
- any requirements of other legislation.

- 6.4 If checks are made without such approval and action is taken on the information obtained to preclude a person from employment, then that person may initiate a complaint where such action is seen to be inappropriate or discriminatory.
- 6.5 Agencies are to provide the Director, State Service Management Office with the following information for each position, or category of positions, for which a determination is sought pursuant to section 15 (1) of the *State Service Act 2000*:
- a. a copy of the current statement of duties; and
 - b. a statement as to why it is in the public interest for a pre-employment check to be carried out. This is to relate the need for the check directly to the responsibilities of the duties.
- 6.6 When advertising a position Agencies are to state in the position advertisement that the Director, State Service Management Office has determined the requirement of a pre-employment check prior to appointment, promotion or transfer to the position.
- 6.7 The following is to be included in the advertisement for the position under essential requirements in the statement of duties:
- a. the Director, State Service Management Office has determined that the person nominated for this position is:
 - to satisfy a pre-employment check before taking up the appointment, promotion or transfer.

The following checks is/are to be conducted:

 1. conviction check in the following conviction areas:
 - *Conviction Area 1*; and
 - *Conviction Area 2*.
 2. identification; and
 3. disciplinary action in previous employment.

Note

The generic conviction areas include:

- Crimes of Violence; and
- Sex Related Offences; and
- Serious Drug Offences; and
- Crimes Involving Dishonesty; and
- Serious Traffic Offences.

The above conviction areas are not exclusive and Agencies can make application to the Director, State Service Management Office for other conviction areas.

- 6.8 Agencies may not carry out any checks prior to the final selection of a candidate. Following the interview process and after the preferred candidate has been selected, the Chair of the interview panel is to contact their Human Resources Branch to organise a conviction check. The HR Branch has two options:
- request that the candidate provide a check in the form of a Record of Conviction from the Department of Police and Emergency Management (DPEM). The Record can be requested and obtained from any major Police Station. Request forms are also available on the Internet at www.police.tas.gov.au. Persons in other parts of Tasmania may write to the Operational Information Services Branch of the DPEM and obtain the final documentation from the nearest Police station following notification from the DPEM that the Record is ready for collection. Subject to suitable identification, this service is provided free-of-charge to all members of the public who are inquiring about their own records; or
 - alternatively, the preferred candidate may give written approval to the HR Branch for them to carry out this check. In this case, and prior to the commencement of the selection process, the Agency must request and receive from the DPEM approval to be added to the list of organisations to which information will be disclosed. Agencies that need to access information for large numbers of persons can negotiate a bulk annual fee with the DPEM DPPS.

Note

The Record of Conviction is certified and indicates either no record of conviction or lists the convictions in chronological order.

- 6.9 The Agency's selection panel is to give reasons to the candidate for the pre-employment check. The candidate is to fully disclose the requested information and to provide an appropriately certified copy of their Record of Conviction to the HR Branch.
- 6.10 Candidates should not be compelled to disclose a Record of Conviction but have a duty to do so. If candidates are unwilling to provide their Record of Conviction the process of their application for the position ceases. **The Agency cannot ask the Department of Police and Emergency Management (DPEM) to provide a Record of Conviction for the candidate without written approval from the candidate.**
- 6.11 The Record of Conviction is to be provided personally to the HR Branch who will assess any prior conviction(s), or disciplinary action in relation to the responsibilities of the position. When considering a record of conviction the HR Branch is to take the following into account:
- nature and frequency of offence(s);
 - relevance of offence(s) to position;
 - age at which offence(s) committed;
 - how recent was the offence(s);

- degree of rehabilitation. (With the consent of applicant, panel may ascertain if further information is available on attitude and behaviour of applicant);
- general character since the offence (e.g. employment record); and
- whether the offence is still a crime.

6.12 The Agency may also seek from the Director, State Service Management Office a determination that the following checks be performed prior to a successful applicant being appointed, promoted or transferred into a position.

- a. the Chair of the selection panel may seek the identification information outlined in the attachment from the preferred candidate as to confirmation of their identity; and
- b. the HR Branch may seek a declaration from the preferred candidate that they have not been the subject of disciplinary action while in previous employment. The Agency may also seek the candidate's approval to carry out any relevant checks of information held by other jurisdictions or bodies.

6.13 If the HR Branch considers any matter to be relevant, the principles of natural justice are to be followed, and the candidate is to be invited to discuss the issues. The HR Branch may involve the Chair of the selection panel with the permission of the candidate regarding the requirements of the duties. Circumstances to be considered are:

- nature and frequency of offence(s);
- relevance of offence(s) to position;
- age at which offence(s) committed;
- how recent was the offence(s);
- degree of rehabilitation. (With the consent of applicant, panel may ascertain if further information is available on attitude and behaviour of applicant);
- general character since the offence (eg. employment record); and
- whether the offence is still a crime.

And any other aspects which either the HR Branch, Chair or the candidate may deem relevant.

6.14 The HR Branch is to inform the candidate if the Record of Conviction, or any other information obtained as above, has been or is likely to be the deciding factor in their loss of preferred candidate status which will disqualify them from appointment, promotion or transfer to the position. The candidate is to be given the right to respond formally in a written submission to the HR Branch giving reasons why the Record of Conviction, identification records or disciplinary action, should not disqualify the candidate from appointment to the position.

- 6.15 At the conclusion of discussion, the Chair of the interview panel should note on file that the pre-employment checks have occurred and any documents relating to the Record of Conviction, identification records, or records of disciplinary action are to be returned to the candidate immediately. The original or copies of the Record Conviction, identification records or records of disciplinary action are not to be kept or filed by the Agency.
- 6.16 If an employee has been refused appointment, promotion or transfer to a position on the grounds of the documentation they have supplied and is aggrieved by this decision then the employee can ask the Tasmanian Industrial Commission to review the decision. The Tasmanian Industrial Commission may direct the employee to provide the documents as evidence in the Review.
- 6.17 If a candidate who is not an employee has been refused employment on the grounds of the documents supplied and is aggrieved by this decision then the employee can approach the Ombudsman's Office or, if they believe it is a case of discrimination, the Anti-Discrimination Commissioner's Office.

7. Reporting and Monitoring

Not applicable.

8. Review

This Direction will be reviewed by 4 February 2014.