

Operational Procedures

Department of Communities

Disability Services Queensland

Title: Prohibition Notices
Related Policy No.: 355-2
Policy Category: Child care and family support > child care

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Purpose:

These procedures provide guidance as to the situations in which the Department will consider issuing a show cause (prohibition) notice or a prohibition notice and the steps that must be undertaken in those circumstances.

Process:

A prohibition notice prohibits a person from doing any of the following:-

- providing child care in the course of a child care service;
- being engaged as a carer in, or a staff member of, a child care service;
- providing care of a child, other than a child of whom the person is a parent or guardian, for reward.

A prohibition notice may be given to any person. The person does not need to be responsible for providing care to children at the time the prohibition notice is given (section 106 of the *Child Care Act 2002*).

Basis for issuing a prohibition notice

The Chief Executive may issue a prohibition notice to a person if the Chief Executive is satisfied there would be an unacceptable risk of harm to children if the person were responsible for providing care for the children (section 103 of the Act).

The meaning of harm, to a child, is contained in section 9 of the *Child Protection Act 1999*. Harm, to a child, is any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing. Harm can be caused by physical, psychological or emotional abuse or neglect; or sexual abuse or exploitation.

In making the determination, the decision maker will consider all the relevant facts available to him/her.

Any information provided by a person outside the department will be investigated as far as reasonably possible to determine its accuracy and whether the information is corroborated, either by first hand accounts, by documents or an admission by the person to whom the prohibition notice will be addressed.

If the concern has arisen out of observations and the first hand knowledge of an authorised officer in the course of undertaking his/her monitoring and enforcement duties under the *Child Care Act 2002*, the facts on which the concerns are based will be documented by the authorised officer in a detailed file note. If possible, steps will be taken to gather any corroborating evidence, eg the statements of co-workers, parents etc, or photographs where appropriate, including evidence obtained by other government agencies, eg the Queensland Police.

A prohibition notice or a show cause (prohibition) notice may be issued to a person even though the department has not interviewed the person. The show cause process enables the person to respond by allowing the person to provide a written submission about the proposed prohibition.

Show cause process

Unless the Chief Executive has formed the view that in the interests of the wellbeing and safety of children, it is necessary to immediately issue a prohibition notice to the person (section 104(2)), a show cause notice must be issued (section 104(1)).

A written show cause notice (prohibition) must be provided to the person:-

- stating that the Chief Executive proposes to give the person a prohibition notice; and
- stating the reasons for the proposed prohibition; and
- inviting the person to give a written submission about the proposed prohibition within a stated time of at least 14 days.

If a written submission is received from the person, the chief executive must consider the submission before deciding whether to give the person a prohibition notice (section 105(2)).

Immediate issue of prohibition notice

A prohibition notice will only be issued without a show cause process if the Chief Executive is satisfied it is necessary in the interests of the wellbeing and safety of children, to immediately issue a prohibition notice to the person (section 104(2)).

The following circumstances would be relevant to such a determination:-

- where the Chief Executive is satisfied a child or specific children are in immediate danger, or
- where the Chief Executive is of the view that the show cause process will prolong harm to a child or is likely to cause the person to impact greater harm on the children for whom the person cares, and the facts before the Chief Executive are of such a nature as to warrant the immediate issue of the prohibition notice.

Content of a prohibition notice

Section 107 of the *Child Care Act 2002* requires a prohibition notice given to a person to state –

- (a) that the person is prohibited from doing any of the following –
 - (i) providing child care in the course of a child care service;
 - (ii) being engaged as a carer in, or staff member of, a child care service;
 - (iii) providing care of a child, other than a child of whom the person is a parent or guardian, for reward;and
- (b) that the person may apply for cancellation of the notice; and
- (c) how an application for cancellation must be made.

As the decision to issue a prohibition notice is a reviewable decision the notice must also contain the reasons for the decision and advise that within 28 days after receiving the notice, the person may apply to the Children Services Tribunal to have the decision reviewed. Information regarding how the person may apply for the review must also be included in the notice (sections 163 and 164).

Internal departmental procedure

The Legislation Unit, Office for Children is responsible for making recommendations to the Chief Executive, in consultation with the relevant regional office and the Statewide Quality Team, concerning issuing show cause (prohibition) notices and prohibition notices.

In circumstances where an officer of the Department forms a view that it is appropriate for a prohibition notice or a show cause (prohibition) notice to be issued to a person, the officer will first consult with his/her Manager, Community Capacity & Service Quality and Regional Director. If the Manager and Regional Director are in agreement, the officer will then prepare a detailed memorandum outlining all the relevant facts upon which the officer has formed the view that a prohibition notice should be issued, including a chronology of relevant events (eg. incidents, complaints to the department, any contact or correspondence with the person, co-workers, parents, Queensland Police) and attach copies of all relevant supporting documents. The memorandum will be sent to the Legislation Unit, Office for Children.

In appropriate circumstances, the Legislation Unit, Office for Children will co-ordinate the following procedures:-

- a memorandum recommending a show cause (prohibition) notice or a prohibition notice be issued to the person, for the consideration and approval of the Chief Executive. The completed show cause notice or prohibition notice will be attached to the memorandum;
- after the time for receipt of the written submission from the person issued with the show cause notice has elapsed, a memorandum recommending whether a prohibition notice should be issued, for the consideration and approval of the Chief Executive. The memorandum will contain all relevant facts and the written submission of the person if one has been received.

- If the recommendation is that a prohibition notice should be issued, the completed prohibition notice must be attached to the memorandum;
- If the recommendation is that a prohibition notice should not be issued, a letter to the person advising that a prohibition notice will not be issued must be attached to the memorandum for the signature of the Chief Executive (section 105(3)).

If a prohibition notice is issued, the Legislation Unit, Office for Children must record the details of the person on the Child Care Database. If a prohibition notice is cancelled those details must also be recorded on the Child Care Database.

Cancellation of a prohibition notice

A prohibition notice must be cancelled by the Chief Executive if he/she is satisfied that there is not a sufficient reason for the prohibition notice to remain in force for a person (section 108). This may occur following receipt of additional information or a change in circumstances and/or a request to have a prohibition notice cancelled by a person who is the subject of a notice.

If circumstances come to the attention of an officer of the Department, indicating that it is no longer appropriate for a prohibition notice to remain in force, the officer must inform his/her Manager, Community Capacity & Service Quality and the Legislation Unit, Office for Children.

If appropriate, the Legislation Unit, Office for Children will prepare a memorandum for the consideration and approval of the Chief Executive, recommending that a prohibition notice be cancelled. If the Chief Executive is satisfied that there is not sufficient reason for a prohibition notice to remain in force for a person, the person to whom the notice relates will be immediately advised in writing of the cancellation.

The *Child Care Act 2002* also allows a person who is the subject of a prohibition notice, to apply to the Chief Executive to cancel the notice. The application:-

- must be in the approved form (Child Care Form 23 – Application to Cancel Prohibition Notice);
- must be signed by the person;
- must be accompanied by the prescribed fee of \$50.00, unless the person was issued with a prohibition notice without first receiving a show cause notice and has not previously applied for cancellation of the notice; and
- may state anything the person considers relevant to the Chief Executive's decision about whether there would be an unacceptable risk of harm to children if the person were responsible for providing care for the children, including, in particular, any change in the person's circumstances since the prohibition notice was issued or since any previous application for cancellation (section 108).

All applications to cancel a prohibition notice will be considered on their merits and any new information provided by a person to support the application will be investigated prior to a decision being made.

Notice to the Commissioner for Children and Young People and Child Guardian

Section 107A of the *Child Care Act 2002* requires the Chief Executive to give written notice of the decision to issue a prohibition notice to the Commissioner for Children and Young People and Child Guardian. The notice must include:

- the person's name, address and date of birth;
- the decision and the reasons for the decision of the Chief Executive and any decision of the Children Services Tribunal;
- when the conduct that resulted in the prohibition notice happened; and
- the nature of the conduct.

If the conduct relates to a particular child, the notice must not contain information that identifies, or is likely to identify, the child.

When determining an application for a suitability notice, section 102A(4) of the *Commission for Children and Young People and Child Guardian Act 2000* requires the Commissioner for Children and Young People and Child Guardian to consider certain disciplinary information about an applicant. Information received from the Chief Executive under section 107A of the *Child Care Act 2002* regarding his/her decision to issue a prohibition notice is disciplinary information and must be considered by the Commissioner for Children and Young People and Child Guardian.

Prohibition Notices

Related Legislation or Standard

Child Care Act 2002

Child Care Regulation 2003

Child Protection Act 1999

Related Government Guidelines or Policy

Portfolio Compliance Framework and Escalation Process

Forms

Child Care Form 23 – Application to Cancel Prohibition Notice

Rescinded Policies

Prohibition Notices (355-1)
