



PROTECTION OF CHILDREN IN THE WORKPLACE POLICY 5.31

PROTECTION OF CHILDREN IN THE WORKPLACE

DIVISION: GOVERNANCE

PILLAR: GOVERNANCE

FILE / BINDER:

OBJECTIVE

To protect children and young persons in the workplace and to comply with all relevant child protection legislation.

COUNCILS RESPONSIBILITIES

- Exclude prohibited persons from child related employment
- Background check applicants for all primary child-related employment.
- Report relevant proceedings or reportable conduct
- Keep records and protect confidentiality

EMPLOYEE RESPONSIBILITIES

- Comply with Child Protection Legislation and Council's policies for child protection in the workplace.
- To take all reasonable steps to ensure the safety of children under their care in the workplace
- To advise Council if they become a prohibited person during their employment with Council.
- Report any breaches of child protection or instances of child abuse in the workplace

SUB-CONTRACTORS

- When Council sub contracts the operation of a business that provides child-related employment, the undertaking of 'Working with Children Checks', will become the responsibility of the sub-contractor and will be expressed as a condition of the lease or licence agreement.

:RELEVANT LEGISLATION:

Commission for Children and Young People Act 1998
Freedom of information Act 1989
Ombudsman Act 1974
Ombudsman Amendment (Child Protection and Community Services) Act 1998
The Children and Young Person (Care and Protection) Act 1998

RELATED POLICIES:

The Working with Children Employer
Guidelines February 2008
Recruitment and Selection Policy
Local Government (State) Award 2007
Councils Code of Conduct
Complaint Management Policy 5.62

DELEGATIONS:

N

SUSTAINABILITY ELEMENT:

N

STAFF TRAINING REQUIRED?

N

**NEXT REVIEW DATE: November
2010**

PROCEDURE

PROTECTION OF CHILDREN IN THE WORKPLACE

1. Prior to advertising a vacant position, or engaging a volunteer, it must be determined whether or not the position is child-related employment. This is determined by completing the form '*Is the position child-related employment*' which is attached to the 'Approval to Recruit forms' in Council's Recruitment and Selection Policy.

Child related employment is defined as employment within **specified work settings** (e.g. Child care centres, schools, child protection services and entertainment venues), that **primarily involves contact** with children, involves **direct** contact with children and where the contact with children is **not directly supervised** by a person having the capacity to direct the employee within their employment.

2. If the position is determined to be child-related employment Managers must ensure that any advertisements, job descriptions and job offers for child related employment indicate that persons who are prohibited persons are prohibited for appointment and declarations in regard to their status will be sought as part of the recruitment and selection process.

It is an offence for prohibited persons to apply for child-related employment. A prohibited person is a person who is **convicted** of the following;

- Serious sex offence;
- Child-related personal violence offence;
- Murder of a child;
- Indecency offences punishable by imprisonment of 12 months or more;
- kidnapping (unless the offender is or has been the child's parent or carer);
- Offences connected with child prostitution;
- Possession, distribution or publication of child pornography; or
- Attempt, conspiracy or incitement to commit the above offences.

A person is **convicted** if a charge against them is proven in court and recorded as such. It includes a finding that the charge for an offence is proven, or that a person is guilty of an offence, even though the court does not proceed to a conviction.

A prohibited person includes a Registrable person under the *Child Protection (Offenders Registration) Act 2000*.

A person employed in child-related employment before 2 January 2007 who has previously been convicted of a child-related personal violence offence is not a prohibited person in relation to their current position.

3. All preferred applicants or volunteers for child related employment must be asked to complete a '*Prohibited Employment Declaration and Working with Children Background Consent Form*' if they are in paid employment.

Background checks for child protection are a formal process in determining an applicant's suitability to work with children or have unsupervised access to children in their work.

The working with children background check is a pre-employment check so must ordinarily be completed before an employee starts a position in child related employment. Employees cannot be checked at any other time and the check remains current while the employee remains in the same child related employment with Council.

However, if a position needs to be filled immediately, the person must fill out a prohibited employment declaration and be informed that their continued employment will be subject to a satisfactory background check. Modifications will be made to their work requirements until the check is completed.

4. The preferred applicant for a position, or volunteer, must be accurately identified prior to a background check being undertaken. This must include up to a minimum of 100 points as required by the 100 point check under the *Financial Transaction Reports Act 1988*. Confirmation of sighting the documents will be required by the Council Officer requesting the check.

The Chairperson of the interview panel will need to ensure that the applicants have filled in the relevant check documents and organise for an officer of Council who has the authorisation to request checks has sighted documents as outlined above. Employee Relations can assist with this process.

5. The working with children background check cannot be conducted on a person without their consent or on a position for which a check is not mandatory.
6. Declarations are to be forwarded to the Employee and Community Relations Branch to organise background checks and the safe keeping of documents. When an applicant is appointed, all documents will be placed on the employee's personnel file
7. The Commission for Children and Young People is the approved screening agency for Council and all background checks will be forwarded to the Agency prior to a job offer being made to a preferred applicant.
8. The agency will notify Council of the results of the check using the *Advice to employers – Results of Background check* letter. If there is no information to suggest that the preferred applicant poses any great risk to

children, the Chairperson of the interview panel will be advised and Council may decide to employ the applicant.

9. If there is a relevant record, the agency will do an estimate of the risk and provide it to Council. Relevant records include relevant criminal records, relevant apprehended violence orders and relevant employment proceedings. The estimation of risk is not a judicial decision as to the proven guilt of an individual in having committed an offence, which are the criteria for a prohibited person only. The risk estimate will consider not only the person, but all the circumstances of the case, including any risk from the particular workplace.

It is Council's decision whether or not to employ the applicant, however if the decision is not to employ then the Commission for Children and Young people must be notified.

Consultation with the General Manager must occur when any relevant record is notified to Council prior to any decision being made.

RELEVANT EMPLOYMENT PROCEEDINGS

A relevant employment proceeding is a completed disciplinary proceeding where Council has found reportable conduct has occurred.

Reportable conduct includes the following;

- any sexual offence, or sexual misconduct, committed against, with, or in the presence of, a child; or
- any child pornography offence or misconduct involving child pornography; or
- any child-related personal violence offence; or
- an offence of filming for indecent purposes committed against, with, or in the presence of, a child under section 21G or 21H of the *Summary Offences Act 1988*; or
- any assault, ill-treatment or neglect of a child; or
- any behaviour that causes psychological harm to a child, whether or not the child consents; or
- an act of violence committed by an employee in the course of employment and in the presence of a child has occurred; or
- There is some evidence that reportable conduct or an act of violence occurred, however the finding is inconclusive or there is insufficient evidence.

Relevant employment proceedings allow employers who are aware of serious harm occurring in workplaces to pass on this information to potential future employers.

All employers must notify any proceedings completed since 3 July 1995.

The person subject to the proceedings need not have been in child-related employment.

1. If an allegation of reportable conduct has occurred, Council will conduct a full investigation of the matter; make a finding and a decision regarding any possible disciplinary action.
2. When the investigation is complete, Council will notify the Commission.
3. Council must also notify the employee that the Commission has been notified of the relevant proceeding.
4. Notification is not necessary when the allegations are found to be false, vexatious or misconceived.
5. If a prohibited person applies for child related employment, they must be refused the position. If Council becomes aware that a current employee in child related employment has become a prohibited person, they must be moved out of position immediately. In either situation the Agency must be notified.
6. Council will endeavour to redeploy the employee to an alternative position that does not involve contact with children. Where redeployment is not possible, the employee's services will be terminated.
7. All staff that are involved in the employment screening process must ensure that they treat any information obtained throughout the process with the strictest confidence. Employees who breach confidentiality will be subject to disciplinary action.

ROLE OF THE OMBUDSMAN

Council is required to complete the *Relevant Employment Proceedings Summary* as outlined above, even though subjected to NSW Ombudsman scheme under Part 3A of the *Ombudsman Act 1974*.

The General Manager is required to notify the Ombudsman's Office of;

- Any child abuse allegation, or child abuse conviction against an employee of Council
- Whether or not Council proposes to take any disciplinary action and the reasons why it intends to take or not to take any such action.
- Any written submissions made to Council concerning the allegation or conviction that the employee wishes to have considered in determining what (if any) disciplinary action should be taken.

The notification to the Ombudsman must be made as soon as possible or within 30 days of the General Manager becoming aware of the allegation.

Child abuse means assault (including sexual assault of a child, ill treatment or neglect of a child or exposing or subjecting a child to behaviour that psychologically harms the child.

A child is a person under the age of 18 years.

The Ombudsman may monitor the investigation or conduct the investigation.

NOTIFICATION OF REPORTABLE CONDUCT IN THE WORKPLACE

It is the responsibility of all employees to report any instances of reportable conduct which is outlined in this policy. (See under relevant employment proceedings)

Reports should be made directly to the General Manager or the Manager of Employee & Community Relations.

Confidentiality regarding the matter must be kept at all times by all persons involved in the reporting and investigation process.

RECORD KEEPING AND CONFIDENTIALITY

1. All records of investigations and findings leading to relevant employment proceedings notifications must be kept for future reference.
2. All records must be kept confidential.
3. Records of disciplinary proceedings supplied to the Commission for Children and Young People will be retained by Council.
4. If the person who has been subjected to relevant employment proceedings makes an application to access documents which are part of the proceedings, they can do so under the *Freedom Of Information Act 1989*

AWARENESS RAISING

Council will take the following actions to raise staff and community awareness of child protection issues:

Include the following statement in all positions for child-related employment

This is an identified position under Child Protection Legislation and applicants will be required to sign a Prohibited Employment Declaration and undergo Working with Children Background Checks by the relevant government agency. It is an offence under the Commission for Children and Young People Act 1998 for a prohibited person to apply for this position'.

Include copies of Councils Working with Children Policy with all information packs to new employees who will be required to sign a declaration that they have read and understood the policy.

Incorporate awareness of reporting obligations for child protection into Councils Code of Conduct training.

Further information on any part of this policy can be obtained by referring to the Working with Children employer guidelines at www.kids.nsw.gov.au