

**CIRCULAR**

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<b>Contact</b>	Mr J Greville (02) 9219 7485 Staff Records Management Unit

**POLICY AND PROCEDURE FOR EMPLOYMENT SCREENING OF STAFF  
AND OTHER PERSONS IN CHILD RELATED AREAS.**

**1. INTRODUCTION**

This circular should be read in conjunction with Departmental Circular 97/80 "Procedures for Recruitment of Staff and Other Persons – Vetting and Management of Allegations and Improper Conduct" (certain parts are iterated in this circular) and Circular 99/65 "Ombudsman Amendment (Child Protection and Community Services) Act 1998 – Allegations of Child Abuse." Health Services should make themselves aware of provisions contained in the NSW Commission for Children and Young People document "Guidelines for Employers - The Working with Children Check".

The sections of this circular are as set out hereunder:

1. Introduction
2. Legislative Authority & Requirements
3. Health Service Responsibilities including Reporting
4. Confidentiality
5. Procedure for Adverse Screening Checks - Child Related Employment

Definitions are contained at Annexure E.

**WHO DOES THIS CIRCULAR APPLY TO?**

This circular applies to:

- All public health organisations as detailed in the schedules to the Health Services Act 1997, the Ambulance Service of NSW and the Department of Health. Hereinafter, the term, 'Health Services' will apply to those areas mentioned;
- All persons working in any capacity in the Health Service who have unsupervised access to children and other vulnerable groups.

Distributed in accordance with circular list(s):

A B C 51 D E  
F 9 G 8 H 17 I 5 J 36  
K L M N 14 P Q

73 Miller Street North Sydney NSW 2060  
Locked Mail Bag 961 North Sydney NSW 2059  
Telephone (02) 9391 9000 Facsimile (02) 9391 9101

*The following provides a short summary of the overall obligations of Health Services in this area. Detailed guidelines are set out later in the document.*

## **1.1 LEGISLATIVE AUTHORITY**

**This policy is designed to ensure Health Services comply with a number of relevant legislative provisions in respect of employment screening. The relevant statutes are:**

- **Health Services Act 1997**

This Act establishes requirements for employees and contractors to notify the respective Child Executive Officers where they have been charged or convicted with a “serious sex or violence offence”, or had a misconduct finding made against them, and makes provisions for action to be taken by a public health organisation after such a notification. The obligations under this Act apply to all types of employment.

- **Commission for Children & Young People Act 1998**
- **Child Protection (Prohibited Employment) Act 1998**
- **Ombudsman Amendment (Child Protection & Community Services) Act 1998**

Together, these three Acts establish a comprehensive scheme to protect children receiving health and other services by prohibiting certain persons from undertaking child related employment, and processes for the Office of the Ombudsman to oversee and undertake investigations where allegations of child abuse are made against public sector service providers.

The child protection employment legislation prohibits convicted sex offenders from working with children and broadens the checking of those who want to work with children. The check helps employers engage people who are suitable for child-related employment.

The legislation specifies requirements in respect to management and reporting of allegations and/or convictions of child abuse.

## **1.2 REQUIREMENTS UNDER THE NEW LEGISLATION**

- Any person convicted of a serious sex offence **will not** be permitted to work or seek work in employment which primarily involves direct contact with children where that contact is unsupervised (in either paid or unpaid role). ***These people are considered prohibited persons under the legislation.***
- All employers **must** obtain a prohibited person declaration form (Annexure A) from persons seeking or currently working in paid or unpaid employment which primarily involves direct contact with children where that contact is unsupervised. Staff must then declare whether they are a prohibited person or not and if there are a prohibited person, cease child-related employment within one month.

- All people commencing paid employment, which primarily involves direct contact with children where that contact is unsupervised, foster carers and ministers of religion must be checked against any relevant criminal record, any relevant apprehended violence order or any relevant disciplinary proceeding
- Employers may also choose to undertake relevant checks for other persons currently or seeking to work in other employment. It is not mandatory for such checks to be undertaken.
- Health Services are also responsible to enquire with prospective agency members if they are a "Prohibited Person" and provide a declaration form in this regard. (Annexure A)

## 2. SUMMARY OF LEGISLATION

### 2.1 Child Protection (Prohibited Employment) Act 1998

The Act aims to prevent a 'prohibited person' from gaining or remaining in specific types of child-related employment. An employer cannot employ a prohibited person for work which primarily involves direct contact with children where that contact is unsupervised.

A prohibited person is a person convicted of committing a serious sex offence.

A prohibited person may apply to the Industrial Relations Commission or the Administrative Decisions Tribunal for an exemption from this Act. However, an exemption will not be given unless it is considered that the person does not pose a risk to the safety of children. Under the Act all employers must ask all existing paid and unpaid employees engaged in positions which primarily involve direct contact with children where that contact is unsupervised if they are a prohibited person. Employees must make the declaration to their employer within one month of being requested to do so, if they are a prohibited person, they must remove themselves from child-related employment.

Where an existing employee notifies that they are a prohibited person they may remain in child-related employment for up to 3 months after the commencement of these procedures provided they comply with any requirement of the employer concerning unsupervised contact with children. Employers may consider transfers to other positions that are not child-related within the organisation. If no such alternative exists, the employee will be required to terminate their services with the employer.

Prior to commencement, employers must ensure that all applicants for child-related employment declare whether they are a prohibited person or not.

**It is an offence for an employer** to fail to ask whether a person is a prohibited person or employ a prohibited person. Maximum penalty - 100 penalty units, or imprisonment for 12 months or both.

**It is an offence for an employer** to employ a prohibited person. Maximum penalty - 100 penalty units, or imprisonment for 12 months or both.

**It is also an offence for an employee** not to disclose his or her prohibited person status. Maximum penalty - 100 penalty units, or imprisonment for 12 months or both. Employers should also ensure that once they have identified a position as being child-related, all information regarding the position clearly states that prohibited persons are not eligible to apply.

## **2.2 Commission for Children & Young People Act 1998**

Part 7 of the Act establishes a statutory process for screening persons employed or appointed to work in "child related employment".

The Act requires that all people commencing paid work that primarily involves direct contact with children where that contact is unsupervised, foster carers and ministers of religion must be screened. This screening process incorporates:

- A relevant national criminal record check
- A check of relevant apprehended violence orders, and
- A review of relevant completed disciplinary proceedings the applicant may have had in previous employment.

Under the Act employers may also screen current employees engaged in child-related employment and unpaid workers, such as volunteers. (Health policy 97/80 presently indicates that all prospective employees are screened.) Screening these people, however, is not mandatory (*under the CCYP Act*). Employers must request employment screening to be undertaken and ensure, where practicable, its completion before offering employment in any paid position that primarily involves direct contact with children where that contact is unsupervised. Should a situation arise where it is not practicable for screening to be undertaken prior to the commencement of employment/appointment. (*eg, Agency Nurses/Contractors etc.*) Employers must advise employees that their ongoing employment is conditional on the satisfactory completion of the screening process. However, conditional appointments must be with the approval of the Health Service CEO.

It is important to note that employment screening under the legislation will be phased in over a period of time. Initially, national criminal record checking will be available for those employees for whom employment screening is mandatory from July 2000. Apprehended violence order and disciplinary proceedings' checks will be available to employers later in 2000.

Under the legislation employers are required to notify the CCYP of any:

- Decision not to employ a person as a result of the findings of the employment screening process, and

- Completed disciplinary proceeding against an employee involving child abuse, sexual misconduct or acts of violence in employment where these acts:
  - Involve children
  - Are directed at children, or
  - Take place in the presence of children.

To facilitate this procedure, a completed Relevant Disciplinary Form (Annexure C) is to be submitted to the Manager, SRMU who will provide to the CCYP.

It is a requirement of the CCYP to monitor and audit compliance of employers and other related bodies with the employment screening requirements of the legislation.

The Act establishes strict confidentiality arrangements in relation to all information obtained during the screening process. It is an offence to inappropriately use any information obtained during the course of employment screening.

The Act also provides protection from liability or similar claim for any person who provides information in relation to employment screening in good faith and with reasonable care.

### **2.3 The Ombudsman Amendment (Child Protection & Community Services) Act 1998 (see DoH Circular 99/65)**

The legislation commenced in May 1999 and requires the Ombudsman to oversee and monitor investigations of child abuse against employees of the Department of Health, public health organisations and Ambulance Service. It also requires Chief Executive Officers to report to the Ombudsman any allegations or convictions of child abuse. (A copy of the relevant notification form is annexed to Department of Health Circular 99/65.)

## **3. HEALTH SERVICE RESPONSIBILITIES AND REPORTING**

### **3.1 Responsibilities**

In addition to the legislative requirements noted above, Health Services also have a duty of care to all patients and clients receiving services to provide a safe service.

In order to meet both legislative obligations, as well as a general obligation to patients Health Services, specifically the Chief Executive Officer, are responsible for:

1. Employment screening of all persons working for the Service, whether paid or unpaid in any capacity in their Health Service;
2. Reporting and managing allegations of any offence involving sexual activity, indecent acts, physical violence or the threat of physical violence by their staff upon

any person;

3. Education of staff specifically, to matters in relation to policy, procedures and reporting.

**This is detailed more comprehensively in NSW Department of Health Circular 97/80.**

Relevant employment screening, e.g. criminal record checks, structured reference checks and inquiries (*where appropriate*) through the Commission for Children & Young People and other Government Organisations **must** be conducted on all persons engaged in any capacity who have unsupervised access to children and vulnerable groups. This is inclusive of:

- All new staff and visiting practitioners;
- All current employees and visiting practitioners;
- All students undertaking placements;
- All new volunteers; and
- Persons engaged in any other capacity who, as part of their work requirement, will allow access to children & other vulnerable groups;

In relation to child-related employment checks will be conducted for the following:

- Charges or convictions for sexual offences;
- Charges or convictions for serious offences involving a threat or injury to another person;
- Any relevant disciplinary proceedings against the person in the NSW Health System or similar information held by the Commission for Children & Young People and other Organisations;
- Relevant apprehended violence orders.

And for non-child related employment:

- Charges or convictions for other serious offences but only where directly relevant to the duties of the position (eg. Embezzlement/larceny for financial positions)

All prospective employees etc. must be advised of and give consent to the above-mentioned employment screening checks prior to commencement of employment or appointment. Advertisements for positions must incorporate a statement to the effect that employment checks will be undertaken.

CEO's are responsible for ensuring that employment screening checks are undertaken. The Department of Health will undertake the relevant criminal and disciplinary proceedings checks lodged with the Staff Records Management Unit (SRMU). CEO's or their delegated officers must report to the SRMU their reasons for rejecting an applicant primarily because of a risk assessment associated with employment screening. In the case of child-related employment, CEO's or their delegated officers

must report to the CCYP via the SRMU as per Annexure B, Rejected Applicants Notification form.

## **3.2 Reporting**

Health Services **must** have in place the following reporting systems in order to comply with the new legislation as well as the Health Services Act 1997.

### **3.2.1 The Department of Health**

#### ***Obligations under the Health Services Act***

Section 118 of the Health Services Act requires the Chief Executive Officer of a public health organisation to notify the Director-General of the Department of Health where the CEO becomes aware that an employee has been convicted of a serious sex and violence offence. The notification must be made within 30 days of the CEO becoming aware of the conviction, and must indicate the action the public health organisation proposes to take. Before notifying the Director-General, the employee must be given a reasonable opportunity to make written submissions, and any such written submissions must also be provided to the Director-General. Section 100 of the Act extends the same obligations to visiting practitioners.

#### ***Obligations under NSW Health Policy***

CEO's of all Health Services (including the Ambulance Service) must also ensure systems are in place to notify the Director-General of disciplinary action proposed to be taken in respect of an employee or visiting practitioner, where the CEO has become aware of that:

- C The person has been charged with a serious sex or violence offence; or
- C The person has been the subject of a 'misconduct finding' under a health professional registration Act (misconduct finding includes a finding of professional misconduct or unsatisfactory professional conduct); or
- C An allegation or complaint has been made that the person sexually assaulted, physically or emotionally abused a patient or client.

Notifications should be made to the Director-General in the same format and timeframe as those required under the aforementioned Health Services Act.

### **3.2.2 The Ombudsman's Office (Ombudsman Amendment [Child Protection and Community Services] Act 1998)**

See DoH Circular 99/65 for reporting procedure.

If it becomes known when dealing with a case of suspected child abuse that an employee of another designated agency is suspected of child abuse CEO's are to contact the Ombudsman's Office or the Department's Staff Records Management Unit for advice and assistance about notifying the employer of the employee involved.

### **3.2.3 The Commission for Children & Young People (CCYP)**

Under the provisions of Sections 39 & 40 of the Act, it is a requirement for a CEO to report to the CCYP the name and any other identifying particulars of any employee against whom any relevant disciplinary proceedings have been completed by the health service **or** any person whose application for child-related employment has been rejected primarily because of a risk assessment in employment screening. A copy of any report provided to the CCYP is also to be provided to the Department's Staff Records Management Unit.

With respect to legislation, the CCYP requires that all relevant completed disciplinary proceedings in respect to child abuse for the past 5 years be reported. CEO's or their delegated officers **must** report such information by way of the Relevant Disciplinary Proceedings notification form (See Annexure C) to the Department's Staff Records Management Unit (SRMU) who will notify the CCYP pursuant to this Act. This is to be provided by 31 October 2000.

Where the CCYP has been advised of a disciplinary proceeding against an employee (either paid or unpaid) then that employee is to be advised by the issue of a "Relevant Disciplinary Proceedings Employment Notification Advice" form - see Annexure D.

The information to be provided to the SRMU will encompass the undermentioned details:

- Name of the Health Service/Organisation which holds the full details of the record of disciplinary action;
- Full name of person who was the subject of the disciplinary action and their date of birth;
- Employees' position at the time of the allegation(s);
- The date of completion of the disciplinary action;
- Date on which alleged breach of discipline occurred;
- Result of disciplinary action;
- Allegation investigated, breach of discipline proven and penalty imposed (dismissal or other penalty to be specified);
- Allegation investigated, breach of discipline not proven, no further action;
- Allegation investigated, no breach of discipline found, no further action;

### **3.2.4 The Department of Community Services**

Under the provisions of the Children (Care & Protection) Act 1987 all health workers are to make a report to the Department of Community Services where there are reasonable

grounds to suspect that a child is at risk of harm due to likely or actual abuse. Circular 97/135 outlines how health workers are to make this determination.

### **3.2.5 The Police**

Any allegation of child abuse or a serious sex or violence offence by a health worker is to be notified to the Police.

## **4. CONFIDENTIALITY**

Health Services operate mainly in pursuant to statutory confidentiality provisions, as set out in Section 22 of the Health Administration Act. As well all Health Services involved in the Working with Children Check will be required to handle personal information in accordance with the information protection principles in Part 2 of the Privacy and Personal Information Protection Act, subject to applicable exemptions.

It is an offence under section 42 of the Commission for Children and Young People Act to:

- Disclose any information obtained by the person in connection with employment screening, except as allowed by section 42(1)(a-d) of the Act; and
- Dishonestly obtain confidential information relating to employment screening.

A person found guilty of an offence under this section of the Act may face imprisonment for 6 months. Where it is considered a breach of confidentiality has occurred, the Manager, SRMU and CCYP should be notified to discuss the available options.

All information collected and generated in complying with the requirements of this circular are to be held in secure storage and access must be limited to persons with appropriate authorisation. Persons with access to such information will have the delegation of their CEO and must sign a confidentiality agreement as provided by the SRMU.

### **Process**

In order to maintain the strictest confidentiality in the keeping of allegation, conviction and improper conduct records of employees, the following procedures are to be followed:

- (a) details of such information should, under no circumstances, be kept on the employee's personnel file. Details of such information including related documents should be kept separately from normal filing systems under secure arrangements with only limited access by officers authorised by the CEO. Health Services should record the Department of Health identification No (applicable to electronic data lodgments) and date that the check was performed on the staff member's personnel record/file as a reference.

- (b) under no circumstances should details of such information be given to a third party for transmission unless they are securely bound and sealed;
- (c) files should be kept secure at all times when not being actioned;
- (d) officers authorised by the CEO to have access to such information will sign a statement indicating they are aware of the penalties for unauthorised disclosure;
- (e) disciplinary action should be undertaken against any officer giving out unauthorised details of such information;
- (f) such information should not be used for a purpose other than for determining eligibility for appointment to a position or continuing employment;
- (g) in the event of a breach of confidentiality being discovered, the CEO must advise the Manager, SRMU in accordance with the terms and agreements between approved screening agencies, CCYP and CrimTrac.

## **Retention of Records**

Under the requirements of the CCYP legislation, it is the duty of the Health Service to retain records of information that the health service is required to notify in respect to disciplinary proceedings. This requirement applies despite any requirement for disposal of the record, for example, any regulation applying to records of information of disciplinary proceedings with respect to public sector employees. **Pending resolution, original records related to probity checks and disciplinary action etc are to be held permanently other than as indicated above.**

## **5. PROCEDURE FOR ADVERSE EMPLOYMENT SCREENING CHECKS – CHILD RELATED EMPLOYMENT**

### **5.1 Adverse Checks**

In the event that a relevant charge/conviction &/or disciplinary proceedings report is received, the SRMU will provide the relevant material to the appointed delegated officer within the requesting Health Service. The delegated officer is responsible for conducting a risk assessment with the applicant/employee based on the nature of the material provided and mitigating circumstances offered by the interviewee.

Guidelines for conducting risk assessments of persons who have relevant convictions/charges/disciplinary outcomes have been developed by the Commission for Children & Young People and will be disseminated to Health Service CEO's and delegated staff. Training in this area will be provided by the CCYP. Until training has been provided, staff are requested to seek advice from the Staff Records Management Unit.

Pursuant to the Prohibited Employment Legislation, any person who is convicted of a

serious sex offence will not be permitted to work or seek work in employment which primarily involves direct contact with children and where that contact is unsupervised (in either paid or unpaid role). These people are considered 'prohibited persons' under the legislation. See Annexure A for a list of child related employment positions.

Persons who are the subject of criminal charges and relevant disciplinary proceedings must also be assessed in terms of the potential risk they may pose to children during the course of their work.

Completed risk assessments must be submitted to the Manager, Staff Records Management Unit for review prior to action.

A final decision on the application (or to take any other adverse action against the person because of his/her record) should not be made until the person has been given adequate opportunity to discuss the record in order to:

- (a) verify that it relates to him/her;
- (b) check it for accuracy; and
- (c) provide details in writing within 5 working days of any relevant matters that they wish considered in relation to the matter.

Contact between a designated senior officer of the health service and the applicant should be personal. The following is to occur:

- Provide the person with a letter which details the nature of the adverse probity finding and give them five (5) working days from the date of the letter to respond;
- Provide the person with the opportunity to nominate another person to be present during any interviews which it is proposed to conduct;
- Provide for the letter to be either hand delivered by a designated senior officer and signed for by the recipient or sent by certified mail to the person's home address;
- Stipulate that no discussion or interview is to take place until the person has had the opportunity to respond to the conviction and have a third party of their choice present during any interviews, if so required.
- The applicant's record should be discussed in a personal interview unless the applicant specifically requests some other form of communication such as telephone discussion or is unable to attend for interview. At the interview, the full details of the record and/or relevant disciplinary outcome should be read to the applicant and shown to the applicant.

Disclosure of a candidate's adverse employment screening finding is to be strictly on a 'need to know' basis, ie. Chief Executive Officer or designated senior officer.

The Staff Records Management Unit is available to provide advice regarding the employment/appointment of any person with an adverse probity check. [Telephone: (02)

9219 7494; Fax: (02) 9211 8861].

## **5.2 Pending Charges**

Where there are pending charges in relation to child abuse, the person must not be employed in a position that provides access to children if appointment action cannot be deferred.

Where a charge is pending against a person, who, if convicted would be refused employment/appointment, then an assessment must be conducted in terms of relevance to the duties of the position. The Health Service is to be mindful that paramount consideration is towards the safety and well being of children and other vulnerable groups. If the position does not relate to the provision of child services or access to children, the following should occur:

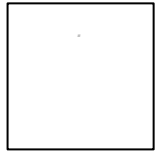
- (a) wherever possible, the offer should be deferred until the charge is heard; or
- (b) if appropriate safeguards for patients/clients are possible, temporary employment/appointment may be considered;

## **5.3 Review**

Applicants for Employment/Appointment - Request for Review (see Circular 97/80).

Michael Reid  
**Director-General**

**ANNEXURE A**  
**PROHIBITED EMPLOYMENT DECLARATION**  
**CHILD PROTECTION (PROHIBITED EMPLOYMENT) ACT 1998**



**With the exception of where an order, from the Industrial Relations Commission or the Administrative Decisions Tribunal, declares that the Act does not apply to a serious sex offence committed by an individual, the Child Protection (Prohibited Employment) Act 1998 makes it an offence for convicted of a serious sex offence (a prohibited person) to apply for, or remain in, child-related employment.**

A serious sex offence is defined in Section 5 of the Child Protection (Prohibited Employment) Act 1998 as an offence involving sexual activity or acts of indecency which is or was punishable by penal servitude or imprisonment for 12 months or more in New South Wales, or, an offence committed elsewhere, that would have been punishable by penal servitude or imprisonment for 12 months or more if it had been committed in New South Wales.

Child-related employment is any employment that involves direct contact with children where that contact is not directly supervised. Section 1 of the Child Protection (Prohibited Employment) Act 1998 specifies that child-related employment can include employment:

- involving the provision of child protection services
- in pre-schools, kindergartens and child care centres (including residential child care centres)
- in schools or other educational institutions (not being universities)
- in detention centres (within the meaning of the Children (Detention Centres) Act 1987)
- in refuges used by children
- in wards of public or private hospitals in which children are patients
- in clubs, associations or movements (including of a cultural, recreational or sporting nature) having a significant child membership
- in any religious organisation
- in any entertainment venues where the clientele is primarily children
- as a babysitter or childminder that is arranged by a commercial agency
- involving fostering or other child care
- involving regular provision of taxi services for the transport of children with a disability
- involving the private tuition of children
- involving the direct provision of health services
- involving the provision of counselling or other support services for children
- on school buses
- at overnight camps for children

**Under this Act:**

- it is an offence for a prohibited person to **apply for**, or **remain in** child related employment.
- all employees **must** inform their employers if they are a “prohibited person” (someone who has been convicted of a serious sex offence).
- employers **must** ask existing employees and preferred applicants for employment whether they are a prohibited person or not.
- penalties are imposed for non compliance.

I am aware that I am ineligible to apply for, or remain in, child related employment if I have been convicted of a “serious sex offence” as defined in the Child Protection (Prohibited Employment) Act

1998.

I have read and understood the above information in relation to the Child Protection (Prohibited Employment) Act 1998 and understand my responsibilities and obligations under this Act.

***I declare that I am not a person prohibited by the Act from seeking, or remaining in child related employment.***

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<b>Name</b>	<b>Signature</b>	<b>Date</b>
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**Note: This form should be returned to your employer / potential employer**



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Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Relevant contact person:

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Position of relevant contact person:

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I certify that the above details are correct and that I am providing this information in accordance with Section 40 of the Commission for Children and Young People Act 1998. I have the authority as the head of the organisation to submit these details to the Commission for Children and Young People for employment screening purposes.

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Name

Position

Signature

Date

**Note: This form should be forwarded directly to the Commission for Children and Young People by employers**

**ANNEXURE C**  
**RELEVANT DISCIPLINARY PROCEEDINGS**

Logo to be  
inserted  
here.

*Under Section 39 of the Commission for Children and Young People Act 1998 employers are required to provide details to the Commission for Children and Young People (CCYP) of any employee (either paid or unpaid) who has been the subject of completed relevant disciplinary proceedings, irrespective of the findings.*

The disciplinary proceedings which are considered relevant are all matters involving child abuse, sexual misconduct and acts of violence which involve children, are directed at children, or take place in the presence of children and are committed by the employee in the course of their employment.

Completed disciplinary proceedings also include processes that have resulted in completion at the instigation of the employee ie a decision by the employee to resign prior to finalisation of the disciplinary process.

It is not a requirement for the Commission to be informed of completed disciplinary proceedings through which it was proven that the allegations were false, vexatious or misconceived.

Full details of disciplinary matters are not required by CCYP, only identification details of the individual and the organisation where the proceedings were conducted.

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**EMPLOYEE DETAILS:**

**First Name:**

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**Middle Name:**

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**Surname:**

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**Previous names / aliases:**

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**Gender:**

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**Date of Birth:**

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**Place of Birth (city, state, country):**

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**EMPLOYER DETAILS:**

**Employer / Organisation name:**

\_\_\_\_\_

**Address:**

\_\_\_\_\_

**Phone:**

\_\_\_\_\_

**Fax:**

\_\_\_\_\_

**Name of Relevant contact person:**

\_\_\_\_\_

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**DISCIPLINARY DETAILS:**

**Nature of allegation investigated:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Was the allegation Proven:**

**Yes/No**

**Result of disciplinary action:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Position of relevant contact person:**

\_\_\_\_\_

**Date of completion of disciplinary proceedings:**

\_\_\_\_\_

**Is the above individual currently an employee of your organisation?**

Yes

**No**

\_\_\_\_\_

*I certify that the above mentioned individual has been the subject of disciplinary proceedings relating to child abuse, sexual misconduct or acts of violence in the course of employment and that I have the authority, as the head of the organisation, to submit these details to the Commission for Children and Young People for employment screening purposes.*

\_\_\_\_\_  
Name

\_\_\_\_\_  
Position

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Note: This form should be forwarded directly to the Commission for Children and Young People by employers.**

Logo to  
be  
inserted  
here.

**ANNEXURE D**  
**RELEVANT DISCIPLINARY PROCEEDINGS**  
**(EMPLOYEE NOTIFICATION ADVICE)**

Dear.....

Section 39 of the Commission for Children and Young People Act 1998 requires employers to provide details to the Commission for Children and Young People (CCYP) of any employee (either **paid** or **unpaid**) who has been the subject of completed disciplinary proceedings.

For the purposes of this legislation, a relevant disciplinary proceeding means *disciplinary proceedings against an employee that involve:*

- child abuse
- sexual misconduct or,
- acts of violence which involve children, are directed at children, or take place in the presence of children and are committed by the employee in the course of their employment.

Details of the allegation and outcome of the disciplinary proceedings are not required to be forwarded to the Commission for Children and Young People, but will remain with this organisation.

Consequently, your name has been registered with the Commission for Children and Young People in relation to the disciplinary proceeding involving \_\_\_\_\_

Under the Freedom of Information Act 1989 you are entitled to access information held by the organisation relating to disciplinary proceeding(s) reported to the Commission for Children and Young People.

Should you seek child-related employment in the future, with this or any other organisation, the nature of this disciplinary matter will be taken into consideration during the employment screening process to determine your suitability for such employment.

Yours sincerely,

Name:

Position:

## ANNEXURE E

### DEFINITIONS

**Apprehended violence orders, relevant:** an apprehended violence order (other than an interim order) made by a court under Part 15A of the NSW Crimes Act 1900, or an interstate restraint order (within Part 15A of the NSW Crimes Act), and made on the application of a police officer or other public official for the protection of a child (or a child and others).

**Approved screening agency:** an employer or employer related body approved by the Minister to carry out all or any of the relevant procedures of employment screening for itself or on behalf of another employer.

**AVO:** Apprehended violence order

**Child:** a person who is under the age of 18. (Prohibited Employment Act)

**Child Abuse:** assault (including sexual assault) of a child, or ill treatment or neglect of a child, or exposing or subjecting a child to behaviour that psychologically harms the child.

**Child-Related Employment:** the definition of child related employment differs slightly between the Child Protection (Prohibited Employment) Act and the Commission for Children & Young People Act.

Under the Child Protection (Prohibited Employment) Act child-related employment means any employment of a kind listed in the legislation that primarily involves direct contact with children where that contact is not directly supervised.

Under the Commission for Children & Young People Act child-related employment means any employment that involves direct contact with children where that contact is not directly supervised.

**CCYP:** Commission for Children & Young People.

**Conviction:** a charge proven in court and recorded as such and includes a finding that the charge for an offence is proven even though the court does not proceed to a conviction. (Prohibited Employment Act)

**Criminal record, relevant:** a criminal record of a person with respect to an offence involving sexual activity, acts of indecency, child abuse or child pornography that was:

- Committed in NSW and was punishable by penal servitude or imprisonment for 12 months or more; or
- Committed elsewhere and would have been an offence punishable by penal servitude or imprisonment for 12 months or more if it had been committed in NSW.

**Direct Supervision:** occurs when a person is present at all times during, and is observing and is capable of directing, if required, the contact by the person under supervision with any child. Such contact is part of the duties to be performed by the person under supervision or can reasonably be expected to occur during the performance of those duties.

**Disciplinary proceedings, relevant:** completed disciplinary proceedings against an employee by the employer or by a professional or other body that supervises the professional conduct of the employee. These proceedings include completed proceedings involving child abuse; sexual misconduct or acts of violence committed by the employee in the course of employment where these acts:

- Involve children;
- Are directed at children; or
- Take place in the presence of children.

Relevant disciplinary proceedings do not include those ~~where~~ when there is a finding that the allegations are false, vexatious or misconceived.

**Employee:** any person who is engaged in a child-related employment role in any of the following capacities in any of the following ways:

- Paid employment;
- Sub-contractors;
- Volunteers;
- ministers of religion;
- members of religious organisations; or
- undertaking training as part of an educational or vocational course.

**Employer:** for the purpose of the Child Protection (Prohibited Employment) Act includes:

- A person who, in the course of business, arranges for the placement of a person in employment with others,
- A person who engages a person under a contract to perform work; or
- A person who arranges placement of a student in an area which provides unsupervised access to children

For the purpose of the Commission for Children & Young People Act:

- Means any person who engages the person in employment and includes a person who, in the course of business, arranges for the placement of a person in employment with others.

**Employment:** performance of work under a contract of employment, or performance of work as a subcontractor, or performance of work as a volunteer for an organisation, or undertaking practical training as part of an educational or vocational course.

The definition of employment in relation to prohibited employment also covers performance of work as a self-employed person.

**Information package:** documents that are provided to potential applicants by the employing organisation. These documents provide advice regarding the organisation and any particular instruction regarding the method of applying for work with the organisation.

**Paid:** for the purpose of these procedures a reference to 'paid' includes any person who receives a salary or similar remuneration (such as cash, fee or stipend) for the performance of work, whether as an employee, contractor, consultant or under other like arrangements, but does not include reimbursement of 'out of pocket' expenses, receipt of 'in kind' or similar benefits.

**Professional body:** an entity, which has the power to supervise the professional conduct of a person or organisation, including conducting relevant disciplinary proceedings.

**Prohibited Person:** a person convicted of a serious sex offence, other than where there is an order in force declaring that the Child Protection (Prohibited Employment) Act 1998 does not apply to the person in respect of the offence.

**Screening:** the process of gathering relevant information about an applicant for employment by an organisation in order to enable an informed decision to be made on whether to employ the

applicant, or not. Screening includes structured referee checks, criminal history checks, checks of certain enforceable apprehended violence orders, and checks with past or current employers for any completed disciplinary records.

**Serious Sex offence:** this is defined in Section 5(3) of the Prohibited Employment Act, subject to subsections (4) and (5) as:

- An offence, involving sexual activity or acts of indecency, that was committed in NSW and that was punishable by penal servitude or imprisonment for 12 months or more; or
- An offence, involving sexual activity or acts of indecency, that was committed elsewhere and that would have been an offence punishable by penal servitude or imprisonment for 12 months or more, if it had been committed in NSW; or
- An offence under Sections 91D-91G of the Crimes Act 1900 (other than if committed by a child prostitute) or a similar offence under a law other than a law of NSW; or
- An offence under Section 578B or C of the Crimes Act 1900 or a similar offence under a law other than a law of NSW; or
- An offence of attempting, or of conspiracy or incitement, to commit an offence referred to in the preceding paragraphs;

or any other offence, whether under the law of NSW or elsewhere, prescribed by the regulations.

Subsection (4) excludes offences that have now ceased to be offences in NSW.

Subsection (5) excludes offences involving sexual activity or an act of indecency if the conduct constituting the offence occurred in a public place and would not have constituted an offence in NSW if the place were not a public place.

**Spent conviction:** those offences included on a person's criminal record which, because of the passage of time, are no longer to be considered in any administrative decision making.

**Unpaid:** where it is used in relation to nature of work undertaken refers to a person undertaking work for which payment is not made, eg: a volunteer.

## TABLE OF CONTENTS

<b>1.</b>	<b>Introduction</b>	<b>1</b>
1.1	Legislative Authority	2
1.2	Requirement under the new legislation	2
<b>2.</b>	<b>Summary of Legislation</b>	<b>3</b>
2.1	Child Protection (Prohibited Employment) Act 1998	3
2.2	Commission for Children & Young People Act 1998	4
2.3	Ombudsman Amendment (Child Protection & Community Services) Act 1998	5
<b>3.</b>	<b>Health Service Responsibilities and Reporting</b>	<b>5</b>
3.1	Responsibilities	5
3.2	Reporting	6
3.2.1	To the Director-General	6
3.2.2	NSW Ombudsman	7
3.2.3	Commission for Children & Young People	7
3.2.4	Department of Community Services	8
3.2.5	NSW Police Service	8
<b>4.</b>	<b>Confidentiality</b>	<b>8</b>
<b>5.</b>	<b>Procedure for adverse employment screening checks - child related employment</b>	<b>10</b>
5.1	Adverse checks	10
5.2	Pending charges	11
5.3	Review	12

## LIST OF ANNEXURES

'A'	Prohibited Employment Declaration	12
'B'	Rejected Applicants Notification Form	13
'C'	Relevant Disciplinary Proceedings	14
'D'	Relevant Disciplinary Proceedings (Employee Notification Advice)	16
'E'	Definitions	17-20