

Child Protection Policy

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Version 2

Human Resources Policy



Index

1 CITY OF CANADA BAY COUNCIL CHILD PROTECTION POLICY 4

 1.1 POLICY STATEMENT 4

 1.2 OBJECTIVE 4

 1.3 VARIATION 4

2 THE LEGISLATIVE FRAMEWORK FOR PROTECTING CHILDREN IN NSW 5

 2.1 CHILDREN AND YOUNG PERSONS (CARE AND PROTECTION) ACT 1998 5

 2.2 CHILD PROTECTION (PROHIBITED EMPLOYMENT) ACT 1998 5

 2.3 COMMISSION FOR CHILDREN AND YOUNG PEOPLE ACT 1998 5

 2.4 OMBUDSMAN ACT 1974 / CHILD PROTECTION LEGISLATION AMENDMENT ACT 2003 5

3 DEFINITIONS 6

 3.1 CHILD 6

 3.2 CHILD AT RISK OF HARM 6

 3.3 CHILD-RELATED EMPLOYMENT 6

 3.4 CONVICTION OF REPORTABLE CONDUCT 6

 3.5 EMPLOYEE 7

 3.6 HEAD OF AGENCY 7

 3.7 MANDATORY REPORTER 7

 3.8 PROHIBITED PERSON 7

 3.9 REPORTABLE ALLEGATION 8

 3.10 REPORTABLE CONDUCT 8

 3.11 WORKING WITH CHILDREN CHECK 8

4 CHILD PROTECTION PROCEDURES 8

 4.1 CITY OF CANADA BAY COUNCIL CHILD RELATED POSITIONS 8

 4.2 WORKING WITH CHILDREN CHECKS AND NEW EMPLOYEES 9

 4.3 INDUCTION OF NEW EMPLOYEES 10

 4.4 NOTIFICATION TO THE COMMISSION OF A REJECTED APPLICANT 10

 4.5 DISCLOSURE AND CURRENT EMPLOYEES 10

5 PROCEDURES FOR HANDLING ALLEGATIONS OF REPORTABLE CONDUCT 11

 5.1 RESPONSIBILITIES OF MANAGERS/ STAFF/ VOLUNTEERS 11

 5.2 SYSTEMS FOR REPORTING ALLEGATIONS OF REPORTABLE CONDUCT AGAINST EMPLOYEES/ CONTRACTORS/ VOLUNTEERS OF COUNCIL 11

 5.3 DOCUMENTATION & RECORD KEEPING 11

 5.4 INVESTIGATING ALLEGATIONS OF REPORTABLE CONDUCT 12

 5.5 RISK ASSESSMENT 12

 5.6 WHAT IF THE ALLEGATION IS TRIVIAL, MINOR OR OBVIOUSLY UNTRUE? 12

 5.7 WHAT HAPPENS AT THE END OF AN INVESTIGATION? 13

 5.8 WHAT ARE THE RIGHTS OF THE PERSON WHO IS THE SUBJECT OF THE INVESTIGATION? 13

 5.9 RESPONSIBILITY OF THE GENERAL MANAGER TO REPORT ALLEGATIONS OF REPORTABLE CONDUCT TO THE OMBUDSMAN 13

 5.10 RESPONSIBILITY OF EMPLOYERS TO PROVIDE DETAILS OF COMPLETED RELEVANT DISCIPLINARY PROCEEDINGS TO THE COMMISSION FOR CHILDREN AND YOUNG PEOPLE 13

 5.11 VEXATIOUS COMPLAINTS 14

 5.12 CONFIDENTIALITY 14

 5.13 PRINCIPLES OF PROCEDURAL FAIRNESS 14

6 ACKNOWLEDGEMENTS 15

7 REVISION DATES 15

8 FURTHER INFORMATION 15

9 ACKNOWLEDGEMENT FORM 15

10 APPENDICES..... 17

10.1 APPENDIX 1: PROHIBITED EMPLOYMENT DECLARATION FORM..... 17

10.2 APPENDIX 2: WORKING WITH CHILDREN CHECK EMPLOYMENT SCREENING CONSENT FORM..... 19

1 City of Canada Bay Council Child Protection Policy

1.1 Policy Statement

The City of Canada Bay Council (CCBC) has an overall commitment to the safety, welfare and well being of children and young people in our community and is committed to establishing effective systems for the delivery of services to the community that will ensure the protection of children and young people from all forms of reportable conduct.

1.2 Objective

- To ensure that child related positions at CCBC are identified and managed in accordance with child protection legislation.
- To ensure that staff employed in child related employment (including volunteers) have undergone the appropriate checks and are not 'Prohibited Persons' as described in the Child Protection (Prohibited Employment) Act 1998.
- To establish an internal system for allegations of reportable conduct or neglect by CCBC, its staff, contractors and volunteers in the course of their employment.
- To create a procedure where allegations of reportable conduct made against an employee are handled without undue delay in a professional, sensitive and confidential manner so as to meet legislative requirements and guarantee the privacy and safety of all individuals involved.
- To ensure that staff are provided with appropriate training on child protection issues and are made aware of their responsibilities and any mandatory reporting requirements.

1.3 Variation

Council reserves the right to vary or revoke this policy.

This policy was reviewed in December 2005, after advice from the NSW Ombudsman.

General Manager

Date

2 The Legislative Framework for Protecting Children in NSW

2.1 Children and Young Persons (Care and Protection) Act 1998

Under this Act, there is a mandatory reporting requirement for any CCBC employee who delivers health care, welfare, education, children's services, residential services, or law enforcement, wholly or in part to children and has reasonable grounds to suspect that a child is "at risk of harm", to report, as soon as practicable, a description of the child and the grounds for suspecting that the child is "at risk of harm" to the NSW Department of Community Services (DoCS).

For the purposes of this Act a child is a 'person who is under the age of 16 years' and a young person is a 'person who is aged 16 years or above but who is under the age of 18 years'.

2.2 Child Protection (Prohibited Employment) Act 1998

The Commission of Children and Young People (CCYP) is responsible for the implementation of the above Act.

This Act prohibits persons who have convictions for serious sexual offences from working in positions of child related employment of the kind listed in Section 3(a) of the Act that primarily involves direct unsupervised contact with children.

Under the Act CCBC must ensure that all staff whose positions involve direct unsupervised contact with children sign a "Prohibited Persons Declaration". Should an employee be identified as a "Prohibited Person" CCBC must take appropriate action to ensure that the employee is immediately removed from child related employment.

For the purpose of this Act a child means 'a person who is under 18 years of age'

2.3 Commission for Children and Young People Act 1998

Under this Act, CCBC must organise "Working With Children Checks" for all prospective staff who are looking to be employed in child related employment and have these checks screened by an approved screening agency, which in this case is the Commission for Children and Young People.

The Act also requires CCBC to notify the Commission of the details of any employee who has been the subject of completed relevant disciplinary proceedings. CCBC is also required to provide the Commission with information regarding any relevant completed disciplinary proceedings which occurred in the 5 years prior to July 2000.

For the purpose of this Act a child means 'a person who is under the age of 18'

2.4 Ombudsman Act 1974 / Child Protection Legislation Amendment Act 2003

This Act requires heads of agencies to report to the Ombudsman, within 30 days of becoming aware, any reportable allegations or convictions against employees. Heads of agencies are also required to conduct investigations into reportable allegations or convictions, including allegations which are exempted from notification and to take appropriate action as a result.

3 Definitions

3.1 Child

For the purpose of this policy the term 'child' is defined as both children and young people under the age of 18 years.

3.2 Child at Risk of Harm

Under the Children and Young Persons (Care and Protection) Act 1998, a child or young person is at risk of harm if there are current concerns for their safety, welfare or well-being because of the presence of any one or more of the following circumstances:

- the child's or young person's basic physical or psychological needs are not being met or are at risk of not being met.
- the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive necessary medical care.
- the child or young person has been or is at risk of being physically or sexually abused or ill-treated.
- the child or young person is living in a household where there have been incidents of domestic violence and as a consequence the child or young person is at risk of serious physical or psychological harm.
- a parent or other caregiver has behaved in such a way towards the child or young person that the child or young person has suffered or is at risk of suffering serious psychological harm.

Physical or sexual abuse may include an assault and can exist despite the fact that consent has been given by the child.

3.3 Child-Related Employment

Child-related employment is any work (paid or unpaid) of the following kinds that involves direct and unsupervised contact with children:

- 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 (excluding 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 those of a cultural, recreational or sporting nature) having a significant child membership or involvement
- in any religious organisation
- in 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 child health services
- involving the provision of counselling or other support services for children
- on school buses
- at overnight camps for children

3.4 Conviction of Reportable Conduct

This is defined as any conviction of a person, in NSW or elsewhere, of an offence involving reportable conduct, and includes a finding by a court that a charge for such an offence is proven even though the court does not proceed to a conviction.

3.5 Employee

As defined by the NSW Ombudsman, employee means any person who is employed by CCBC, whether or not they are employed to work directly with children, as well as anyone from outside CCBC who is engaged to provide services to children such as contractors, foster carers, volunteers, students on placement and instructors of religion.

3.6 Head of Agency

A head of agency is considered to be the chief executive or other principal officer of an agency.

For the purposes of the Ombudsman Act 1974, the CCBC head of agency is the General Manager.

3.7 Mandatory Reporter

As stated previously, the Children & Young Persons (Care & Protection) Act 1998 places a duty of mandatory reporting on:

- any person who in the course of their professional work or other paid employment, delivers health care, welfare, education, children's services, residential services, or law enforcement, wholly or partly to children or young people; and
- any person who holds a management position in an organisation where their duties include direct responsibility for, or direct supervision of the provision of health care, welfare, education, children's services, residential services, or law enforcement, wholly or partly to children or young people.

Under its reporting requirements the Act applies to a person if they have reasonable grounds to suspect that a child or young person is at risk of harm, and these grounds arise during the course of or from the person's work. If this occurs, the person must, as soon as practicable, make a report to the DoCS, which provides the name, or a description of the child or young person and the grounds for suspecting that the child or young person is at risk of harm.

Generally speaking, reasonable grounds take into consideration a number of factors such as:

- Personal knowledge of the child or young person.
- Age and whether the information is directly from the child or young person.
- The nature and seriousness of any allegations.
- The source of the allegations.
- Awareness of the family background taking into consideration any known factors that would cause a reasonable person to be concerned as to the suitability of the environment for a child or young person.
- Any previous matters of a similar nature with regard to the child or siblings.

In all instances, the guiding principle is "what would a reasonable person do". Failure of a mandatory reporter to make a report could result in substantial fines.

3.8 Prohibited Person

A prohibited person is someone who has been convicted of a serious sexual offence. The Child Protection (Prohibited Employment) Act 1998 states that prohibited persons are not permitted to work in positions of child-related employment of the kind listed in Section 3(a) of the Act.

3.9 Reportable Allegation

Is an allegation of reportable conduct against a person or an allegation of misconduct that may involve reportable conduct.

All allegations of reportable conduct must be reported to the Ombudsman.

3.10 Reportable Conduct

Reportable conduct is defined as:

- any sexual offence or sexual misconduct committed against, with or in the presence of a child (including a child pornography offence), or
- any assault, ill treatment or neglect of a child, or
- any behaviour that causes psychological harm to a child, with or without the consent of the child.

Behaviours that are exempt from notification to the Ombudsman are:

- conduct that is reasonable for the purposes of the discipline, management or care of children, having regard to age, maturity, health or other characteristics of the child and to any relevant codes of conduct or professional standards, or
- the use of physical force that, in all circumstances, is trivial or negligible, but only if the matter is to be investigated by the agency and the result of the investigation recorded under workplace employment procedures, or
- conduct of a class or kind exempted from being reportable conduct by the Guidelines under Section 25 of the Ombudsman Act 1974.

3.11 Working with Children Check

A Working with Children Check involves a background of the following:

- national criminal records for charges and convictions for reportable conduct, child pornography, sexual offences or acts of indecency and registrable offences;
- relevant Apprehended Violence Orders; and
- relevant completed employment proceedings.

4 Child Protection Procedures

4.1 City of Canada Bay Council Child Related Positions

Disclosures will be required for any contractors, self employed persons, student placements or volunteers engaged to work with or in conjunction within the following areas operated by council:

- Youth Development Services
- Community Services
- Family Day Care / Child Care Centres
- Swimming/Recreation Centres
- Early Childhood Centres
- Immunisation Clinics

4.2 Working with Children Checks and New Employees

When advertising for new staff the following process must be followed:

- Identify if the position requires a disclosure and is deemed to be child related employment.
- If the position has been deemed to be child related employment all advertisements for the position must include the following statement:
“Appointment to this position is subject to a Working with Children Check being conducted under the terms of the Child Protection (Prohibited Employment) Act 1998. Prohibited persons are not eligible to apply.”
- Request that applicants sign a declaration as part of their application (*Appendix 1*).
- Ensure that the disclosure (that the person is not a ‘prohibited’ person) as an essential criteria for the position.
- Ensure that a Working with Children Check consent form has been completed and a disclosure form signed by the preferred applicant.
- Before an offer of employment is made to the preferred applicant in relation to any child-related employment, a Working with Children Check must be carried out. This is to be done by an ‘Approved Screening Agency’, which for the City of Canada Bay Council is:

The Commission for Children and Young People

Phone: 02 9286 7219 Fax: 02 9286 7201

Email: check@kids.nsw.gov.au

To process a Working With Children Check both a consent (*Appendix 2*) and request form is to be completed and faxed to The Commission for Children and Young People. Failure to comply with screening or to make a false disclosure is an offence. It is also an offence to employ a prohibited person and for a prohibited person to remain in child related employment.

Preferred applicants must provide documentation which supports their true identity. To ensure that applicants identify themselves appropriately they should provide one document from each of the following two lists:

List 1

- Full birth certificate (showing parental details).
- An Australian passport or Document of Identity issued by the Australian Passport Office that expired within the last two years.
- A current overseas passport.
- An Australian naturalisation or citizenship document or immigration papers issued by the Commonwealth Department of Immigration and Multicultural Affairs.
- A current drivers photo licence issued within Australia.
- A current consular photo identity card issued by the Department of Foreign Affairs and Trade.

List 2

- A current Medicare card, Pensioner Concession card, Department of Veterans’ Affairs entitlement card or any other current entitlement card issued by the Commonwealth Government.
- A current credit card, or account card from a bank, building society or credit union, or a passbook or account statement up to one year old.
- A telephone, gas or electricity bill up to one year old.
- A water rates notice, council rates or land valuation notice up to two years old.
- An electoral enrolment card or other evidence of enrolment up to two years old.
- An armed services discharge document up to two years old.
- A current student identity card, or a certificate or statement of enrolment up to two years old from an educational institution.

- All documents should be originals. Photocopies are not considered acceptable. At least one of the documents should show the applicant's signature and preferably their current address.
- Where it is not possible for a person to provide a document from both lists, such as in the case of an adolescent, consideration may be given to alternative proof of identification methods such as a tax file number, reference from a person of appropriate standing in the community or other acceptable documentation.
- Preferred applicants are required to make a clear unambiguous written disclosure regarding their status. (i.e. that they are or are not a 'prohibited person')
- It is not lawful to employ a 'prohibited person' in child related employment and as such any offers of employment will be withdrawn should the preferred applicant disclose that they are a 'prohibited person'.
- Preferred applicants will not be offered a position until the disclosure has been received.
- Where the preferred applicant does not have a criminal record, Apprehended Violence Order or disciplinary proceedings against him or her, but a referee raises concern in relation to child-related employment, an assessment of suitability for employment should be undertaken by the employer.

4.3 Induction of New Employees

As part of the induction process, all new employees will be required to sign an acknowledgment form stating that they have read, understood and are prepared to abide by the 'City of Canada Bay Council Child Protection Policy' to avoid situations arising where it is later claimed that a person has not received or has not been notified about the policy. This form will be kept on the appropriate employment file.

4.4 Notification to the Commission of a Rejected Applicant

The City of Canada Bay Council is required to notify the Commission for Children and Young People of the name and other identifying particulars of any person whose application for child-related employment with the employer has been rejected primarily because of a risk assessment in employment screening. The Commission is not to use, or give access to any information notified to the Commission under this section of the Act

4.5 Disclosure and Current Employees

Current employees / volunteers / contractors whose positions have been identified as child related employment are required to complete a declaration form confirming that they have never had a conviction of reportable conduct made against them.

It is the responsibility of all employees currently engaged in child related employment to:

- Declare whether they are a prohibited person (i.e. a person convicted of a serious sex offence) when requested to do so by their employer.
- Cease employment in a child-related position if they become a prohibited person.

It is possible for a 'prohibited person' to seek a declaration from a relevant tribunal (IRC), that the Act is not to apply to the person in respect of a specified offence. In considering an application a tribunal must consider that the person subject to the proposed order does not pose a risk to the safety of children or young people.

5 Procedures for Handling Allegations of Reportable Conduct

5.1 Responsibilities of Managers/ Staff/ Volunteers

- All employees/volunteers/contractors are required to disclose if they have a conviction of reportable conduct.
- All employees/volunteers/contractors must disclose any alleged misconduct which constitutes or involves reportable conduct by another employee/volunteer/contractor of which they are aware to the General Manager.
- Any allegation of reportable conduct made by a child, or their parents or caregivers against any employee/volunteer/contractor must be reported immediately to the General Manager.
- If any advice is received from another council, agency or organisation that an employee/volunteer/contractor of Council is under investigation for alleged reportable conduct, that agency is to be informed that Council is obliged by law to advise the Ombudsman of such an allegation and this should be reported immediately to the General Manager.

*Any allegation, no matter how trivial it may seem, **MUST** be reported to the General Manager.*

5.2 Systems for Reporting Allegations of Reportable Conduct Against Employees/Contractors/Volunteers of Council

1. Notify the General Manager of any allegations of reportable conduct against an employee/contractor/volunteer of Council.
2. The General Manager will notify the employee/contractor/volunteer that an allegation of reportable conduct has been made against them.
3. The employee/contractor/volunteer should be given an opportunity to be heard in relation to any allegations made against them.
4. The General Manager will notify the NSW Ombudsman as soon as practicable and within 30 days any allegations of reportable conduct or convictions of reportable conduct he/she is made aware of.
5. The General Manager will seek the advice of the NSW Department of Community Services, the Police Service, the NSW Ombudsman or the Local Government Association and use his discretion as to whether the matter will be investigated internally, depending on whether it is a serious criminal matter.
6. The General Manager must, as soon as practicable after being satisfied that the investigation has been concluded send to the NSW Ombudsman a copy of any report prepared by or provided to the General Manager as to the progress or results of the investigation, and copies of all statements taken in the course of the investigation and of all other documents on which the report is based. He must also inform the Ombudsman of the action that has been taken or is proposed to be taken with respect to the allegation of reportable conduct.

5.3 Documentation & Record Keeping

All information regarding investigations (meetings, contacts, discussions etc) must be recorded and kept indefinitely and stored on the appropriate employment file in a sealed envelope, marked confidential. This includes copies of notifications to the Ombudsman. Only the employee, the General Manager and Human Resources representative will have access to the contents of the sealed envelope. The Human Resources representative will be responsible for ensuring that such documents are filed securely on the appropriate employment file.

5.4 Investigating Allegations of Reportable Conduct

All investigation into allegations of reportable conduct will be handled carefully and sensitively. There are a number of factors which will be taken into consideration when determining what course of action to take in investigating such an allegation:

- **Seek advice.** If Council is uncertain as to whether to commence or conduct an investigation against an employee, advice will be sought from the NSW Department of Community Services, the NSW Police Service, the NSW Ombudsman, or the Local Government and Shires Association of NSW.
- **Rely on expertise.** Council will ensure there is no risk of compromising allegations of reportable conduct by not undertaking the investigation of any serious criminal matters until any police investigation or prosecution is completed.
- **Children should be interviewed on as few occasions as possible.** The interview process can be very daunting and intimidating for children, especially at a time soon after they have apparently experienced abuse. To ensure that evidence obtained is as reliable as possible and so that a child is not subject to any unnecessary trauma a Joint Investigation Team consisting of DOCS and Police Officers will be required to video record statements to ensure that children need only be interviewed once.
- **Avoid contamination of evidence.** If staff or children are spoken to in relation to the allegations, Council will ensure that they understand they are not to discuss their statements with other staff or children.

5.5 Risk Assessment

During the investigation process, it is important to assess and monitor the risk of continued access of the staff member being investigated, to children in the care of the Council. Council will take appropriate action to minimise risks should they be identified as significant. Factors that should be considered include

- the nature of the allegation;
- the vulnerability of the children;
- the nature of the position occupied by the employee;
- the level of supervision of the employee;
- the disciplinary history of the employee;
- the safety of the employee; and
- the risk to the investigation may also be factors in considering whether to leave the employee in position while the investigation is conducted.
-

5.6 What if the Allegation is Trivial, Minor or Obviously Untrue?

Any allegation against an employee needs to be notified, regardless of your opinion of the seriousness or accuracy of the allegation. This is necessary for a number of reasons:

- a minor allegation may, upon investigation, reveal more serious misconduct;
- minor allegations may reveal a pattern of behaviour which warrants further scrutiny or a particular management response;
- where the allegation is false, a transparent investigation will provide reassurance that the finding was the correct one, and help avoid subsequent doubt or criticism of the finding;
- where the allegation is false and malicious, a transparent investigation will provide that same reassurance, while complete records will assist in dealing with similar subsequent allegations made by the complainant.

*Any allegation, no matter how trivial it may seem, **MUST** be reported to the General Manager immediately!*

5.7 What Happens at the End of an Investigation?

Section 25F of the Ombudsman Act applies to an investigation concerning an allegation of reportable conduct or conviction of reportable conduct against an employee and states that:

1. The head of the council must, as soon as practicable after being satisfied that the investigation has been concluded:
 - a) Send to the Ombudsman a copy of any report prepared by or provided to the General Manager as to the progress or results of the investigation, and copies of all statements taken in the course of the investigation and of all other documents on which the report is based.
 - b) Provide the Ombudsman with such comments on the report and statements as the General Manager thinks fit.
 - c) Inform the Ombudsman of the action that has been taken or is proposed to be taken with respect to the reportable conduct allegation or conviction the subject of the investigation.
2. After receiving that material and information, the Ombudsman may require the General Manager or any officer involved in the investigation, or both of them, to provide such additional information as the Ombudsman considers necessary to enable the Ombudsman to determine whether the reportable conduct allegation or conviction was properly investigated and whether appropriate action was taken as a result of the investigation.
3. In subsection (3), appropriate action includes (without limitation) any penalty for the making of a reportable conduct allegation that is shown to be false and malicious.

5.8 What are the Rights of the Person Who is the Subject of the Investigation?

- After the investigation has been completed the General Manager will advise the employee of the outcome of the investigation and any action to be taken.
- The employee will then be able to take any industrial or legal action that may be deemed appropriate.

5.9 Responsibility of the General Manager to Report Allegations of Reportable conduct to the Ombudsman

Under the Ombudsman Act Section 25C(1) the General Manager must as soon as practicable, notify the Ombudsman of the following:

- Any reportable conduct allegation or reportable conduct conviction against an employee of council of which the General Manager becomes aware of. **(Notification within 30 days of becoming aware of an allegation or conviction using the Workplace Child Protection Notification form located on the NSW Ombudsman's website).**
- Whether or not the council proposes to take any disciplinary or other action in relation to the employee and the reasons by it intends to take or not take any such action.
- Any written submissions made to the head of the council concerning any such allegation or conviction that the employee concerned wished to have considered in determining what (if any) disciplinary or other action should be taken in relation to the employee.

5.10 Responsibility of Employers to Provide Details of Completed Relevant Disciplinary Proceedings to the Commission for Children and Young People

- 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 of any employee (either paid or unpaid) who has been the subject of completed relevant disciplinary proceedings.

- The disciplinary proceedings that are considered relevant are all matters involving reportable conduct, sexual misconduct and acts of violence that 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, i.e. a decision by the employee to resign prior to finalisation of the disciplinary process.
- It is not a requirement for the Commission for Children and Young People 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 the Commission for Children and Young People, only identification details of the individual and the organisation where the proceedings were conducted.
- Employers are required to notify any current, or former **employee** if details of completed relevant disciplinary proceedings involving them are registered with the Commission for Children and Young People.

5.11 Vexatious Complaints

Staff should be made aware of the potential for personal and professional harm resulting from vexatious complaints and be given the opportunity to identify how to balance the demands of children and avoid placing themselves at risk.

5.12 Confidentiality

- Any allegation of reportable conduct will be investigated as discreetly as possible.
- A strong emphasis will be placed on maintaining the confidentiality as to the identity of the person subject to the allegation and the person who reports this allegation. However, the Ombudsman will need to be provided with this information.
- Allegations will be assessed and acted on impartially, reasonably and in line with the principles of procedural fairness.

5.13 Principles of Procedural Fairness

The principles of procedural fairness include:

- Taking necessary steps to protect the person who made the allegation at all times.
- Making reasonable inquiries or investigations before making a decision.
- Ensuring that no person decides a case in relation to which they have a conflict of interest.
- Acting fairly and without bias.
- Conducting the investigation without undue delay.
- Access to an appeals process through the industrial relations process or to the Ombudsman, where the employee has a complaint about the way the agency has handled the investigation into the allegation.

Council will maintain confidentiality, ensuring that once an allegation is received it is not discussed with anyone other than the Human Resources representative & the General Manager

6 Acknowledgements

The base documents used to develop this policy and guidelines were provided by:

- NSW Ombudsman Child Protection Fact Sheet Number 3 – Child Protection Legislation: What employers and employees need to know.
- NSW Ombudsman – Developing a Child Protection Policy: A Practical Guide for Agencies.
- Commission for Children and Young People - The Working With Children Check Guidelines.

7 Revision Dates

- 1 November, 2000
- 13 March 2001
- December 2005

8 Further Information

Further information can be obtained from:

- The Commission for Children and Young People
www.kids.nsw.gov.au/check
Telephone: (02) 9286 7220 Fax: (02) 9286 7201
- NSW Ombudsman – Level 3, 580 George Street, Sydney 2000
www.nswombudsman.nsw.gov.au
Telephone: (02) 9286 1000 or 1800 451 524

9 Acknowledgement Form

I acknowledge that I have read and understood the contents of the City Of Canada Bay Council Child Protection Policy and agree to abide to all the conditions contained herewithin.

Name

Date

Signed

10 Appendices

10.1 Appendix 1: Prohibited Employment Declaration Form

ATTACHMENT 4

PROHIBITED EMPLOYMENT DECLARATION



CHILD PROTECTION (PROHIBITED EMPLOYMENT) ACT 1998

The *Child Protection (Prohibited Employment) Act 1998* makes it an offence for a person convicted of a serious sex offence (a Prohibited Person) or a Registrable Person under the *Child Protection (Offenders Registration) Act 2000*, to apply for, undertake or remain in, child-related employment. It does not apply if an order, from the Industrial Relations Commission or the Administrative Decisions Tribunal or the Commission for Children and Young People, declares that the Act does not apply to a person in respect of a specific offence.

Section 5 of the *Child Protection (Prohibited Employment) Act 1998* defines a serious sex offence 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, even if the sentence was not served; or
- an offence involving sexual activity or acts of indecency that was committed elsewhere and that would have been 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 (other than if committed by a child prostitute) and 578B or 578C(2A) 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 prescribed by the regulations.

Note: A conviction for carnal knowledge is classified as a serious sex offence under this legislation.

Child-related employment means any employment, where at least one of the essential duties of the position involves direct contact with children where that contact is not directly supervised. Section 3 of the *Child Protection (Prohibited Employment) Act 1998* specifies that child-related employment is 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 including 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;

ATTACHMENT 4 (CONTINUED)

- at overnight camps for children;
- any other prescribed by regulation.

Under this Act:

- it is an offence for a Prohibited Person to **apply for, undertake or remain in** child-related employment;
- employers **must** ask existing employees, both **paid** and **unpaid**, and preferred applicants for employment to declare if they are a Prohibited Person or not;
- all child-related employees **must** inform their employers if they are a Prohibited Person or remove themselves from child-related employment. A Prohibited Person is someone who has been convicted of a serious sexual offence or, who has had a finding for a charge of a serious sexual offence proven in court, even if a conviction was not recorded;
- penalties are imposed for non compliance.



I am aware that I am ineligible to apply for, undertake 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* or if I am a Registrable Person under the *Child Protection (Offenders Registration) Act 2000*.

I have read and understood the above information in relation to the *Child Protection (Prohibited Employment) Act 1998*. I am aware that it is an offence to make a false statement on this form.

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

I understand that this information may be referred to the Commission for Children and Young People and/or to NSW Police for law enforcement purposes and for monitoring and auditing compliance with the procedures and standards for employment screening in accordance with Section 36 (1) (f) of the *Commission for Children and Young People Act 1998*.

Name: _____ Signature: _____

Date: _____ Contact telephone number: _____

Note: Seek legal advice if you are unsure of your status as a Prohibited Person.

THIS FORM IS TO BE RETURNED TO YOUR EMPLOYER

NSW Commission for Children and Young People
04/04

10.2 Appendix 2: Working With Children Check Employment Screening Consent Form

ATTACHMENT 3

**WORKING WITH CHILDREN CHECK
EMPLOYMENT SCREENING CONSENT FORM**



This form is to be completed by persons whose names are to be submitted for employment screening as part of the Working With Children Check.

No background checks can be completed on a person without this consent being provided.

Employers are required to sight applicant's original identifying documents.

All fields must be completed in block letters

Surname: _____ Given name(s): _____

Previous names/aliases: _____ Date of birth: _____

Place of birth (city, state, country) _____

Driver's Licence number: _____ Gender: (Please tick) Male Female

Address: _____

Suburb: _____ State: _____ Postcode: _____

Contact telephone number: _____

Type of position: (Please tick) Paid employee Volunteer Student placement

Title of position applied for: _____

I certify that the above information is accurate and understand that if I have provided false or misleading information it may result in a decision not to employ me, or, if already employed, may lead to my dismissal.

I am aware that if considered for employment in a child-related position, several checks will be undertaken to ascertain my suitability, including:

1. a national criminal record check for charges and/or convictions (including spent convictions) for:
 - any sexual offence (including but not limited to, sexual assault, acts of indecency, child pornography, child prostitution and carnal knowledge);
 - any assault, ill treatment or neglect of, or psychological harm to a child;
 - any registrable offence;
 - carrying a minimum penalty of 12 months or more imprisonment.

- I understand that this check includes convictions or charges that:
- may have not been heard or finalised by a court;
 - are proven but have not led to a conviction; or
 - have been dismissed, withdrawn, quashed or discharged by a court.

2. a check for relevant Apprehended Violence Orders taken out by a police officer or other public official for the protection of a children; and
3. a check for relevant employment proceedings involving reportable conduct or an act of violence committed by the employee in the course of employment and in the presence of children. Reportable conduct means any sexual offence, or sexual misconduct committed against, with or in the presence of a child (including a child pornography offence), or any assault, ill treatment or neglect of a child, or any behaviour that causes psychological harm to a child.

I understand that a conviction for a serious sex offence (including, but not limited to, sexual assault, acts of indecency, child pornography, child prostitution and carnal knowledge) will automatically prohibit my employment in a child-related position. This includes a charge that is proven in court but does not proceed to a conviction. I am aware that if I am a "registrable person" under the *Child Protection (Registrable Offenders) Act, 2000*, I am prohibited from employment in a child-related position.

I consent to these checks being conducted and am aware that if any relevant record is identified, additional information relating to that record may be sought by an Approved Screening Agency from sources such as courts, police, prosecutors and past employers to enable a full and informed assessment.

I acknowledge that:

- (i) any information obtained as part of this process may be used by Australian Police Services for law enforcement purposes, including the investigation of any outstanding criminal offences;
- (ii) the outcome of assessment of information obtained through the Working with Children Check by the approved screening agency may be provided to my current or prospective employers only for background checking purposes; and
- (iii) the information provided may be referred to the Commission for Children and Young People and/or to NSW Police for law enforcement purposes and for monitoring and auditing compliance with the procedures and standards for employment screening in accordance with Section 36 (1) (f) of the *Commission for Children and Young People Act, 1998*.
- (iv) the above information and any information obtained during employment screening may be collected and used by and/or disclosed to the Commission for Children and Young People or any Approved Screening Agency for employment screening purposes.

Name: _____

Signature: _____ Date: _____

NOTE: This form is to be retained by the employer.

NSW Commission for Children and Young People
04/04

For more information, please contact City of Canada Bay Council
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1a Marlborough Street, Drummoyne NSW 2047
Phone: (02) 9911 6555 Fax: (02) 9911 6550
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City of Canada Bay Council
