

**Handling Compliance with the *Child Protection (Prohibited Employment) Act 1998 NSW* and the *Commission for Children and Young People Act 1998 NSW*.**

The *Child Protection (Prohibited Employment) Act 1998 NSW* and the *Commission for Children and Young People Act 1998 NSW* create a host of duties that an employer, whose business involves situations where their employees have unsupervised contact with children, must comply with. These Acts specify that a 'prohibited person' must not be employed in a position that involves direct contact with children where the contact is not directly supervised. A prohibited person is a person who has been convicted of a serious sexual offence. For the purposes of this legislation a serious sex offence is 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.

Religious ministers and volunteers in a religious organization are specifically deemed as employees who are affected by the obligations imposed by these Acts.

These Acts impose on employers the following duties:

- A duty to ensure that all employees under your control, both paid workers and volunteers, make a declaration that they are not a 'prohibited person' in relation to their employment.
- A duty to activate an official Police check on all prospective employees.
- A duty to notify the Commission for Children and Young People about any 'relevant disciplinary proceedings' in the last five years and in the future.

**The 'prohibited person' declaration**

All employers must obtain a prohibited person declaration from any person 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 they are a prohibited person, cease child-related employment within one month. A copy of this declaration has been attached along with the other key forms needed for compliance.

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

There is no access to statutory systems covering unfair dismissal for employees who are required under these Acts to terminate their employment.

Prior to employment, 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. 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.

It is an offence for an employee not to disclose his or her prohibited person status.

It is also an offence for a prohibited person to apply for employment that primarily involves direct contact with children where that contact is not directly supervised. It is therefore the responsibility of a prohibited person not to apply for any such position.

### The 'Working with Children' Check

The Working with Children Check is a formal process of checks to help determine someone's suitability to work with children or have unsupervised access to children in their work.

Employers will not, however, be required to actually undertake the checking process, this will be undertaken on their behalf by an Approved Screening Agency.

The NSW child-related employment legislation provides for screening to be a structured process including:

- a criminal record check;
- a check of relevant Apprehended Violence Orders;
- a check relating to previous relevant completed disciplinary proceedings;
- and any other probity check relating to previous employment or other activities.

Under the *Commission for Children and Young People Act* employment screening checks **must** be undertaken for any person taking up paid employment that primarily involves direct contact with children where that contact is not directly supervised, including the fostering of children and ministers of religion.

Employers **may** conduct employment screening checks on people already working in the category of **paid** or **unpaid** child-related employment. Employers should also ensure that existing staff who are transferring to

employment that primarily involves direct contact with children where that contact is not directly supervised are checked prior to them taking up their new role.

Official Police Checks are conducted by one of the six 'Approved Screening Agencies' designated by the Minister. They include the Commissioner for Children and Young People and the Department of Community Service. An employer simply registers with an Approved Screening Agency who will conduct searches on the employer's behalf. The Approved Screening Agency undertakes a 'risk assessment' to determine whether the employee/prospective employee is suitable to be considered for child-related employment and provides the employer with a summary of its findings. I have attached the registration and application forms for your convenience.

Where it is not practical to complete the check prior to employment commencing, ensure the checking process is completed as soon as possible after the person is employed. In these cases employers must advise employees that their ongoing employment is conditional on the satisfactory completion of the checking process.

#### **Summary of duties imposed by these Acts**

A child-related employer, is required to:

- Register with the relevant Approved Screening Agency to enable checks to be undertaken.
- Identify positions in your organisation (paid and voluntary) which are child-related employment positions.
- Ensure that all current employees are informed about the child-related employment requirements regarding prohibited persons.
- Obtain a declaration from all existing employees, employed in positions that primarily involve direct contact with children where that contact is not directly supervised, as to whether they are a prohibited person, and if so take appropriate action to ensure that any such employee does not remain in child-related employment.
- Request all applicants for employment that primarily involves direct contact with children where that contact is not directly supervised, to declare whether they are a prohibited person prior to any offer of employment being considered.
- Ensure the full Working with Children Check has been completed for all preferred applicants for paid employment that primarily involves direct contact with children where that contact is not directly supervised before employment is offered.

- Notify the Commission for Children and Young People of any person whose application for child-related employment has been rejected because of a risk assessment in employment screening.
- Ensure the protection of the privacy of any person who is checked and the confidentiality of any information obtained through the checking process.
- Notify the Commission for Children and Young People of any employee against whom relevant disciplinary proceedings have been completed, including those completed within the period of 5 years immediately before the effect of the employment screening legislation, are able to provide appropriate information to Approved Screening Agencies relating to employees who have been subject to completed relevant disciplinary proceedings upon request.

As an employer you must not employ or continue to employ a prohibited person in child-related employment.

It is the responsibility of all employees, currently engaged in employment that primarily involves direct contact with children where that contact is not directly supervised, to declare whether they are a prohibited person when requested to do so by their employer and to cease employment in a child-related position if they become a prohibited person.

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