

# TEMORA SHIRE COUNCIL



TEMORA

*The Friendly Shire*

## CHILD PROTECTION

**ACTIVE**

<b>Review Details</b>
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**ABOUT THIS RELEASE**

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**REVIEW**

Revision Date	Revision Description		Date approved by Council	General Managers Endorsement
30 August 2017	Legislative Review	1	N/A	GCL
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**PLANNED REVIEW**

Planned Review Date	Revision Description		Review by
October 2021	General Review		General Manager

## 1.1 STATEMENT OF INTENT

Council is committed to maintaining the highest standards of integrity in its employee's dealings with children, and in its employee's behaviour in child related occupations. Council will at all times comply with the intent and directions contained in the following Acts and any other Acts concerned with the care and protection of children :-

- Child Protection (Working with Children) Act 2012,
- Children And Young Persons (Care and Protection) Act 1998,
- Ombudsman Act 1974

## 1.2 DEFINITIONS

The following definitions shall apply:-

- a "child" is any person under the age of 18 years, unless otherwise stated by an Act of Parliament,
- an "employee" of Council will be any person employed by Council and Councillors, and will include contractors, volunteers and members of Council Committees,
- a "child related activity (CRA)" will be held to be any activity where the employee is in direct unsupervised contact with children; either in the provision of care and support to the child; the provision of education to the child; the supervision of the child in the absence of parents and/or guardians; or in any activity in support of a child related activity where the employee caring out the activity might find themselves with children, and there is no other adult supervision immediately present.
- a "prohibited person" is a person legally required to declare their prohibition from employment in CRA's under the Child Protection (Working with Children) Act.

## 1.3 PROCEDURES - GENERAL

- 1.3.1 These procedures will apply particularly to employees of Council who are engaged in a CRA. However, all employees need to be mindful of the content and requirements of this policy.
- 1.3.2 All staff should behave towards children with due care and diligence and act in accordance with Council's Code of Conduct.
- 1.3.3 at all times, when carrying out these procedures, the utmost level of confidentiality is to be maintained.
- 1.3.4 Existing staff at the time this policy is adopted, will be requested to complete a statutory declaration that they are a not a prohibited person or would not be considered to be a prohibited person for the purposes of the Child Protection (Working with Children) Act (Annex 1).

## **1.4 PROCEDURES - RECRUITING**

- 1.4.1 The provisions contained in the Recruiting Section of the Human Resources Policy are to be complied with.
- 1.4.2 Positions requiring filling, which are child related should be identified as such and should be advertised as child related. Advertisements will include the requirement for a criminal record check and a statement requiring applicants to declare whether or not they are a prohibited person.
- 1.4.3 Persons applying for a position that has been nominated as a CRA should be subject to the following procedures, before any offer of employment is made:-
- a) persons should fully complete the required documentation to secure a criminal record check through the Department of Community Services, which is the Approved Screening Agency for Council,
  - b) a person applying for a CRA, who is selected for employment by the selection panel, will be asked to fill in an Employment Screening Questionnaire (Annex.2). Before filling in the Questionnaire, it should be made clear to the applicant that:-
    - all information will be treated confidentially,
    - Council will be conducting reference checks with previous employers and the prospective employee must agree to Council conducting these checks,
    - the answers and any background information will be used in determining whether to make an offer of employment.
  - c) background checks should be conducted with care in order to safeguard the individual's privacy and reputation,
  - d) on receipt of all documentation relating to checks on the person, a risk assessment will be undertaken by the selection panel, to determine whether the applicant is a fit and proper person to be employed,
  - e) should the applicant be denied employment on the grounds of this risk assessment. Council will notify the Commission for Children and Young People of their decision, supplying only the name, gender and date of the applicant.

## **1.5 PROCEDURES - REPORTING CHILD ABUSE**

- 1.5.1 As responsible members of the community, any member of staff who believes that a child is being abused is strongly encouraged to report their concerns to the Department of Community Services. If in doubt as to their legal obligations and/or responsibilities they are encouraged to seek the advice of a suitable member of staff, with the relevant experience. For instance, a Director or the General Manager.
- 1.5.2 For staff in CRA's, the reporting of child abuse is mandatory. This includes all staff in the pre school, library, family day care, mobile resource unit and vacation care. Reports should be made directly to the Department of Community Services. As licensee. Council will also be informed of such report. For the purpose of this policy, the licensee shall be held to be the General Manager, or in his absence, Council's Public Officer.
- 1.5.3 All such reporting should be done with the utmost standards of confidentiality being observed. To assist in any investigation of a complaint, the staff member making the complaint is to make thorough notes on the matter.

## **1.6 PROCEDURES – ALLEGATIONS AGAINST COUNCIL STAFF**

- 1.6.1 All allegations concerning children, directed against Council staff, are to be directed to the Department of Community Services and/or the police, in the first instance, as soon as practicable after the allegation is made. In all circumstances the utmost standards of confidentiality are to be observed to protect the rights of the child, the person making the allegation, the person against whom the allegation is made and the reputation of Council.
- 1.6.2 The provisions in the relevant Industrial Awards, applying to Council staff, that relate to complaints, discipline and dismissal, are to be observed. Except for those provisions relating to any written records of the incident, which will not be open to scrutiny by the accused party, at any time. For instance, those provisions under Clause 25A (i) of the Local Government (State) Award 1997.
- 1.6.3 Immediately on receipt of an allegation, the Council employee receiving the information should direct the complainant to their Director. The General Manager to be informed by the relevant Director.
- 1.6.4 The General Manager should then contact the Department of Community Services and discuss the matter with that Office with a view to deciding what action should be taken and by whom and to seek any other necessary advice. The involvement of police in an investigation will be decided by the Department of Community Services, unless the incident involved police being immediately involved due to a breach of the criminal law.
- 1.6.5 In consultation with the Department of Community Services and/or the police, the General Manager should conduct a risk assessment, in order to decide whether to:-
- (a) immediately suspend the employee from all employment,
  - (b) immediately suspend the employee from any work where they have contact with children, but not from employment generally,
  - (c) retain the employee at work under close supervision,
  - (d) not take any action against the employee.

The determination to suspend or not to suspend an employee, and whether such suspension should be on full pay or not, will depend on; the safety of the child; the seriousness of the accusation; whether the accusation is a direct accusation; whether there is any physical violence involved or likely to be involved; and any other evidence collected.

- 1.6.6 The person against whom the allegation is made will not be informed of the allegation by their employer, unless they are immediately suspended from employment or from their area of work. In such case, they should be told that there is an allegation but not given any details relating to the identity of the child or of the person making the allegation. This is to protect the interests of the child who is the subject of the allegation and of the person making the allegation.
- 1.6.7 If the Department of Community Services and/or the Police decide to accept responsibility for the investigation, Council staff are to afford them every cooperation in relation to the conduct of the investigation.

- 1.6.8 If both the Department of Community Services and the Police decline to accept responsibility for the investigation, Council should inform the Ombudsman of the allegation and of the actions of Community Services and police in declining to investigate the matter. Council should conduct its own risk assessment of the allegation, including seeking written advice from the Ombudsman and the Department of Community Services as to whether any type of inquiry is warranted in these circumstances. Should the risk assessment or the written advice indicate that an inquiry is required, then one should be arranged, but only be conducted to satisfy any Council concerns in relation to staff behaviour. An appropriately trained senior member will conduct the inquiry. Such an internal inquiry by Council will be undertaken only as a last resort and only for matters which appear to be of a minor nature.
- 1.6.9 If Council *has* to inquire into the matter independently, all possible parties will be interviewed and statements taken. Matters to note during an interview are:-
- a) all parties are to be informed of their right not to make a statement or to say anything in relation to the matter, before an interview commences,
  - b) all parties have the right to have an independent third party present during an interview, in the case of a child it must be the parent or guardian,
  - c) parties should be interviewed independently,
  - d) the party named in the allegation should be told as much as possible of the information contained in the allegation, except where this may be against the best interests of the child involved in the allegation, or of the person making the allegation,
  - e) procedures, practices. Award requirements and policies relating to staff disciplinary matters will be adhered to.
- 1.6.10 The fullest possible documentation will be maintained during the course of the investigation or inquiry. All such documentation is to be stored in a secured file with access limited to the General Manager, relevant Director and the Paymaster. Access to documentation by the person against whom the allegation is made will be limited to items they have seen (and signed). No documentation is to be stored on the person's staff file.
- 1.6.11 Council will inform the Commission for Children and Young People of the name and personal details only of an employee who is subject to disciplinary proceedings arising from an allegation of child abuse, sexual misconduct or an act of violence in the course of their employment, where such acts involve children, are directed at children or take place in the presence of children.
- 1.6.12 Irrespective of which agency conducts an investigation or inquiry. Council will inform the Office of the Ombudsman of the investigation, the procedures followed and the result. Such notification must occur within 30 days of the first complaint being made. The Ombudsman must also be notified at the conclusion of the investigation. In prolonged investigations, the Ombudsman is to be kept regularly informed of the progress of the inquiry.

## **7.7 PROCEDURES — DETERMINATION OF COMPLAINTS**

- 1.7.1 Where the matter is investigated by the Department of Community Services and/or the police. Council will await the outcome of such investigation before making a final decision in relation to employment.

1.7.2 Where the matter is not investigated by either the Department of Community Services or the police, Council will make a determination on the matter after conducting its own inquiry. Such decision will be based on:-

- a) the evidence collected,
- b) the veracity of such evidence,
- c) the interests and welfare of all parties concerned

The decision in this case, should be arrived at through consultation with parties, either separately or together depending on the circumstances of the case, to reach the best possible result for all parties.

1.7.3 A determination should be conveyed to all parties as soon as possible. In all cases, counseling should be offered to all parties both during and after an allegation.

## **1.8 CONFIDENTIALITY**

In order to ensure that the rights and privacy of all parties is maintained, the utmost confidentiality shall be maintained. Only persons delegated by the General Manager will be involved in investigations and the recording of information. Persons who breach confidentiality in regards to these matters will be dealt with by way of disciplinary action. Such breaches will be regarded as serious breaches of discipline.

## **1.9 VARIATION OF POLICY**

Council reserves the right to vary or revoke this policy at any time. This policy will be subject to regular review and review when there is a change in legislation or regulations relating to the protection of children.

Annex 1

CONFIDENTIAL

TEMORA SHIRE COUNCIL

DECLARATION BY EMPLOYEE IN CHILD RELATED ACTIVITY

I, .....

of, .....

Do hereby solemnly declare and affirm that:-

to the best of my knowledge, I am not a prohibited person within the meaning of the Child Protection (Working with Children) Act.

And I make this solemn declaration as to the matter aforesaid, according to the law in this behalf made and subject to the punishment by law provided for any willfully false statement in any such declaration.

Declared at .....

this ..... day of..... 20.....;

Before me, .....

Signature

Justice of the Peace



.....  
Signature of Declarant



Annex 2

TEMORA SHIRE COUNCIL

EMPLOYMENT SCREENING FOR PERSONS IN CHILD RELATED ACTIVITIES

Name of Prospective Employee .....

Address .....

Date of Birth .....

Position Applied For .....

I, .....

of .....

1. have had the reasons for this employment screening questionnaire explained to me,
2. understand that my answers must be true and correct to the best of my knowledge and this questionnaire must be fully completed,
3. understand that my answers will be used to assess my suitability for the position I have applied for,
4. understand and agree to the condition that this questionnaire and the results of any reference checks may be used by Council to deny me employment,
5. understand that my answers will be treated in the **strictest confidence**.

Date: .....

Witness: .....

Witness Signature: .....

.....(Signature)

**Question 1**

Please supply a list of your previous employment for at least the last ten years.

<i>Occupation</i>	<i>Nature of Industry</i>	<i>Employer</i>	<i>Years Employed</i>
			20.. ... to 20....
			20.. ... to 20....
			19.. ... to 19....
			19.. ... to 19....
			19.. ... to 19....

**Question 2**

Have you ever been employed in any children related occupations (schools, child care, pools, libraries etc) since you began working? Please list these below.

<i>Child Related Occupation</i>	<i>Employer (include telephone number where possible)</i>	<i>Years Employed</i>
		20.. ... to 20....
		20.. ... to 20....
		19.. ... to 19....
		19.. ... to 19....
		19.. ... to 19....

**Question 3**

Have you ever been subject to a complaint regarding children?

YES / NO

**Question 4**

If you answered YES to Question 4, please state the nature of the complaint?

*Thank you for your time in completing this questionnaire.*

Annex 3

TEMORA SHIRE COUNCIL

**PROHIBITED PERSONS DEFINITION**

**Section 5 of the Child Protection (Prohibited Persons) Act 1999.**

- (1) For purposes of this Act, a prohibited person means a person convicted of a serious sex offence, whether before or after the commencement of this subsection.
- (2) For the purposes of this Act, a person is not a prohibited person in respect of an offence if an order in force under section 9 declares that this Act is not to apply to the person in respect of the offence.
- (3) In this section:  
**serious sex offence** means (subject to subsections (4) and (5)):
  - (a) an offence involving sexual activity or acts of indecency that was committed in New South Wales and that was punishable by penal servitude or imprisonment for 12 months or more, or
  - (b) 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 New South Wales, or
  - (c) 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 New South Wales, or
  - (d) an offence under section 578B or 578C (2A) of the Crimes Act 1900 or a similar offence under a law other than a law of New South Wales, or
  - (e) an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in the preceding paragraphs, or
  - (e) any other offence, whether under the law of New South Wales or elsewhere, prescribed by the regulations.
- (4) An offence that was a serious sex offence at the time of its commission is not a serious sex offence for the purpose of this Act if the conduct constituting the offence has ceased to be an offence in New South Wales.
- (5) An offence involving sexual activity or an act of indecency is not a serious sex offence for the purposes of this Act if the conduct constituting the offence:
  - (a) occurred in a public place, and
  - (b) would not have constituted an offence in New South Wales if the place were not a public place.