

# **COMMITTEE ON CHILDREN AND YOUNG PEOPLE**

## **AMENDMENTS TO THE *COMMISSION FOR CHILDREN AND YOUNG PEOPLE ACT 1998* AND THE *COMMISSION FOR CHILDREN AND YOUNG PEOPLE REGULATION 2000* REGARDING EMPLOYMENT SCREENING**

**Report 4/52  
ISBN 0 7313 5169 X  
ISSN 1445-808X**

**October 2001**

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## Chair's foreword

### David Campbell MP, Member for Keira Chair, Committee on Children and Young People

Employment screening for child-related employment is perhaps the most critical function of the Commission for Children and Young People.

During the course of the Committee's examination of Ms Gillian Calvert, Commissioner for Children and Young People, regarding the annual report of the Commission for Children and Young People for the 1999-2000 financial year, it was noted that there may be a need to consider statutory and regulatory amendments to the employment screening of people who work with children and young people. The Committee on Children and Young People considered that it would be appropriate that where there are proposed legislative amendments to the role and functions of the Commission for Children and Young People, such proposals should be referred to the Committee for examination.

This report of the Committee documents the consideration of several possible amendments to the employment screening provisions of the *Commission for Children and Young People Act 1998* and the *Commission for Children and Young People Regulation 2000*.

The Committee considered the issue of employment re-screening in the context of the *Commission for Children and Young People Act 1998* s.32:

**32 Welfare of children to be paramount consideration**

The welfare of children, and in particular, protecting them from child abuse, is the paramount consideration in employment screening.

The Committee recommends two amendments to the *Commission for Children and Young People Act 1998* regarding employment screening, and one amendment to the the *Commission for Children and Young People Regulation 2000* in relation to apprehended violence orders and employment screening.

The Committee has concluded that it is appropriate that the *Commission for Children and Young People Act 1998* Part 7 (Employment screening) be amended to specify that employment screening processes are held to be completed when an employer has been notified of the outcome of the checking process by an employer-related body or an approved screening agency, and to provide that in the situation where persons were not subject to the full range of screening due to the development and implementation of the employment screening process no further checks of relevant criminal records, relevant apprehended violence orders, or relevant disciplinary proceedings should be required to be carried out by the employer.

The Committee recommends that the *Commission for Children and Young People Act 1998* Part 7 (Employment screening) be amended to give the Police

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Commissioner the power to disclose information regarding relevant apprehended violence orders to the Commission for Children and Young People or employer-related body or an approved screening agency for employment screening purposes.

The Committee has noted that the provisions under the *Commission for Children and Young People Act 1998* relating to the consideration of relevant disciplinary proceedings for employment screening purposes differs from the provisions relating to relevant apprehended violence orders for employment screening purposes. The Committee considers that a more consistent approach should be adopted with regard to the provisions for relevant disciplinary proceedings and relevant apprehended violence orders for employment screening purposes. To that end, the Committee has concluded that the *Commission for Children and Young People Regulation 2000* Part 3 (Employment screening) should be amended to limit the consideration of relevant apprehended violence orders for employment screening purposes to orders taken out in New South Wales only (including relevant interstate orders registered in New South Wales); and apprehended violence orders issued within the five years prior to 3 July 2000 (the date of proclamation of the relevant sections of the *Commission for Children and Young People Act 1998*).

While the Committee considers that there is a need for legislative amendments to the processes for employment screening for child-related employment, it is satisfied that the approach taken in the introduction of the employment screening program was appropriate. The staged implementation, which saw screening first for relevant criminal records, then introduced screening for relevant disciplinary proceedings, and then screening relevant apprehended violence orders, ensured that first, the protection of children remained the focus of the employment screening process from the earliest stage, and second, the screening process focussed on the most reliable information – relevant criminal records.

### **Acknowledgments**

The Committee on Children and Young People is grateful for the opportunity to consult, both formally and informally, with the Commissioner for Children and Young People, Ms Gillian Calvert, on the matters considered in this report.

I am particularly grateful for the co-operative approach to the work of my colleagues, the other ten Members of the Committee, in seeking to ensure that the welfare of children and young people is the paramount consideration in all matters involving the children and youth of New South Wales.

I am also grateful for the assistance of the Committee Secretariat: the Manager, Mr Ian Faulks, Ms Violeta Brdaroska, Committee Officer, and Ms Susan Tanzer, Assistant Committee Officer.

I commend this report to Parliament.

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## Recommendations

### RECOMMENDATION 1:

The *Commission for Children and Young People Act 1998* Part 7 (Employment screening) be amended to specify that employment screening processes are held to be completed when an employer has been notified of the outcome of the checking process by an employer-related body or an approved screening agency, and to provide that in the situation where persons were not subject to the full range of screening due to the development and implementation of the employment screening process no further checks of relevant criminal records, relevant apprehended violence orders, or relevant disciplinary proceedings should be required to be carried out by the employer.

### RECOMMENDATION 2:

The *Commission for Children and Young People Act 1998* Part 7 (Employment screening) be amended to give the Police Commissioner the power to disclose information regarding relevant apprehended violence orders to the Commission for Children and Young People or employer-related body or an approved screening agency for employment screening purposes.

### RECOMMENDATION 3:

The *Commission for Children and Young People Regulation 2000* Part 3 (Employment screening) be amended to limit the consideration of relevant apprehended violence orders for employment screening to those:

- (a) orders taken out in New South Wales only (including relevant interstate orders registered in New South Wales); and
  - (b) apprehended violence orders issued within the five years prior to 3 July 2000 (the date of proclamation of the relevant sections of the *Commission for Children and Young People Act 1998*).
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# **Amendments to the Commission for Children and Young People Act 1998 and the Commission for Children and Young People Regulation 2000 regarding employment screening**

## **INTRODUCTION**

1.1 The Committee on Children and Young People has previously indicated that it would be appropriate that where there are proposed legislative amendments to the role and functions of the Commission for Children and Young People, such proposals should be referred to the Committee for examination.

1.2 During the course of the examination of Ms Gillian Calvert, Commissioner for Children and Young People, regarding the annual report of the Commission for Children and Young People for the 1999-2000 financial year, it was noted that there may be a need to consider statutory and regulatory amendments that relate to the employment screening of people who work with children and young people.

1.3 This report of the Committee on Children and Young People documents the Committee's consideration of the desirability of amendments to the employment screening provisions of the Commission for Children and Young People Act 1998 and the Commission for Children and Young People Regulation 2000, as brought to the Committee's attention by the Commissioner for Children and Young People in her testimony before the Committee regarding matters arising from the 1999-2000 annual report of the Commission for Children and Young People.

1.4 In testimony before the Committee on Children and Young People in January 2001, it was indicated that the Commission for Children and Young People would be seeking some minor amendments to legislation concerning the Commission, primarily in the area of employment screening. It was indicated that legal advice had been received which indicated that all people who had been subject only to State-based criminal record checks should be re-screened against the national criminal record database. Similar re-screening requirements are also required in relation to completed disciplinary proceedings and apprehended violence orders. The Commission indicated that it would be recommending a minor amendment to the legislation to remove the requirement to re-screen all people who have only been subject to State-based criminal record checks. The reason for this proposed amendment was that there was a need to strike a balance between taking appropriate action to ensure children's safety and what were identified as "the extensive administrative requirement and costs to undertake the re-screening process".

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1.5 The Commissioner for Children and Young People stated in response to a question about the development and implementation of the employment screening program that:

"We did have some challenges I would like to put on the record for the Committee. Shortly before we commenced the employment screening we were unable to access the national database for criminal records. That was because of the Commonwealth taking over the responsibility for that database at the same time as we commenced the introduction of our employment screening system. There were also a number of related issues arising out of the Commonwealth assuming responsibility to do with the transfer of confidential files. The way we responded to that problem was to switch to a State-based system, so for the first three months we did State-based police checks rather than national criminal record checks. So, again acknowledging the responsiveness of the New South Wales Police Service in giving us access to their records and setting up the technology in a very short time. These matters have now been resolved between the various police jurisdictions and we started doing national criminal record checks from the beginning of November, using the information technology system that had been designed and which is working fairly well, I think.

Legislation was drafted to require all components of employment screening to be commenced at the beginning. We have recently received legal advice that that will therefore mean we have to go back and rescreen those people who only had a State-based check. We are currently considering the request in Parliament to modify the legislation or do a minor amendment to the legislation to relieve us of that responsibility, partly because I think there is a cost issue involved and I am not sure it will necessarily increase protection to children sufficient to warrant that. So, I will be probably putting forward a proposal to government that we do a minor amendment to alleviate us of that responsibility just to get over that particular period of time." (Committee on Children and Young People (2001), "The first steps ... Review of the first annual report of the Commission for Children and young People, for the 1999-2000 financial year". Report 1/52. Sydney, NSW: Parliament of New South Wales, p.21).

1.6 The Committee on Children and Young People has considered possible changes to the employment screening provisions in the Commission for Children and Young People Act 1998 and the Commission for Children and Young People Regulation 2000. The Committee has consulted the Commissioner for Children and Young People regarding possible amendments through correspondence and formal and informal discussions.

## **AMENDMENTS REGARDING EMPLOYMENT SCREENING**

1.7 The employment screening provisions are contained in Part 7 of the Commission for Children and Young People Act 1998 and Part 3 of the Commission for Children and Young People Regulation 2000 (the relevant Parts are reprinted as supplementary papers to this report).

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1.8 The Committee on Children and Young People recommends two amendments to the Commission for Children and Young People Act 1998 regarding employment screening, and one amendment to the the Commission for Children and Young People Regulation 2000 in relation to apprehended violence orders and employment screening. These amendments will be considered in the following paragraphs.

## **A DUTY TO COMPLETE EMPLOYMENT SCREENING FOR CHILD-RELATED EMPLOYMENT**

1.9 The commencement of employment screening for child-related employment under the *Commission for Children and Young People Act 1998* was undertaken through a staged process. The Committee on Children and Young People understands that implementation on a staged basis was appropriate for a number of reasons, including changes associated with the development and operation of the national crime records and investigation system – the CrimTrac system, and developmental issues associated with the creation of appropriate database capacities (e.g., the obtaining of relevant information about persons of interest, and issues relating to access and information exchange).

1.10 As a consequence of the processes and logistics of developing and implementing employment screening checks, reviews for individual persons have been conducted differentially across the categories of criminal convictions for certain offences, proven disciplinary matters, and apprehended violence orders, both in New South Wales and interstate. The Committee on Children and Young People understands that about 68,000 persons have been screened for a relevant criminal record within New South Wales, but not for a relevant criminal record nationally.

1.11 The *Commission for Children and Young People Act 1998* s.45 allowed for the gazettal of regulations to provide for the staged implementation of employment screening – as foreshadowed by the Attorney General during the passage of the Commission for Children and Young People Bill 1998. In particular, s.45(2) allowed for the regulations to specify "different dates, without limitation, for different duties, for different kinds of employers, and for different kinds of child-related employment". However, no such provision was included within the *Commission for Children and Young People Regulation 2000*. It is probable that it may not be possible to distinguish between the different forms of employment screening in terms of a 'staged implementation process' (relevant criminal records, relevant disciplinary proceedings, and relevant apprehended violence orders; see the *Commission for Children and Young People Act 1998* s.33 and the *Commission for Children and Young People Regulation 2000* cl. 8 for the definitions of these categories).

1.12 The Committee on Children and Young People considers that there may be a question as to whether there is a statutory obligation for a process of reviewing or re-examining persons who may not have been subject to the complete series of screening checks.

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1.13 The Committee on Children and Young People also recognises that the *Commission for Children and Young People Act 1998* does not specify any time limits for the conduct and conclusion of employment screening for child-related employment. This is problematic as, for example, situations may arise where for administrative or other reasons it may not be possible to obtain information about relevant records from another Australian jurisdiction, and it is unclear in such a circumstance if an employer (or the person) can be satisfied that they have discharged their respective statutory obligations under the Act.

1.15 The the Committee on Children and Young People considers that the central issue is whether persons subjected to differential levels of screening should be subject to a mandatory full re-screening process -- which the current legislation appears to require -- or whether it may be more appropriate to amend the legislation to the extent that employers and persons subject to employment screening are considered to have completed their obligations once an approved screening agency has given notice that the checking process has been completed. The latter course of action would, in effect, provide that once an employer has been notified of the outcome of the checking process, no further checks of relevant criminal records, relevant apprehended violence orders, or relevant disciplinary proceedings are required to be carried out by the employer, while allowing for the voluntary performance of further employment screening if thought necessary or appropriate (e.g., if information about an employee becomes available that is of concern to an employer).

1.16 The Committee on Children and Young People specifically considered the issue of re-screening in the context of the *Commission for Children and Young People Act 1998* s.32:

**32 Welfare of children to be paramount consideration**

The welfare of children, and in particular, protecting them from child abuse, is the paramount consideration in employment screening.

1.17 The Committee on Children and Young People recognised that those persons subject to employment screening in the early phases of the implementation of screening for child-related employment have been checked against relevant criminal records and relevant disciplinary proceedings in New South Wales, and have been required to complete a Prohibited Employment Form (Working With Children Check). When the employment screening program is viewed in its entirety, about 0.6% of the persons screened have a relevant record regarding their history, and these records are mainly (although not exclusively) based in New South Wales, that is, they were detected through New South Wales records and they do not have relevant interstate records. Moreover, it seems unlikely that certain types of relevant records which might be found, for example, information about criminal charges, whether heard or not heard, dismissed, withdrawn or discharged, from other jurisdiction, would be held by a New South Wales tribunal to be sufficient grounds for termination or refusal of child-related employment. Finally, the Committee noted that the introduction of the offender registration scheme will require registrable persons

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(primarily convicted sex offenders) to register with police, and thus allow the tracking of sex offenders in a way which has not hitherto been available. In the broad view, the Committee considers that the combination of employment screening, the Prohibited Employment For (Working With Children Check), and the availability of voluntary re-screening is sufficient protection to reduce any risk to the smallest extent.

1.18 After deliberation on the information available, the Committee on Children and Young People has concluded that it is appropriate that the *Commission for Children and Young People Act 1998* Part 7 (Employment screening) be amended to specify when employment screening processes are held to be completed when an employer has been notified of the outcome of the checking process by an employer-related body or an approved screening agency, and to provide that in the situation where persons were not subject to the full range of screening due to the development and implementation of the employment screening process no further checks of relevant criminal records, relevant apprehended violence orders, or relevant disciplinary proceedings should be required to be carried out by the employer.

**RECOMMENDATION 1:**

**The *Commission for Children and Young People Act 1998* Part 7 (Employment screening) be amended to specify that employment screening processes are held to be completed when an employer has been notified of the outcome of the checking process by an employer-related body or an approved screening agency, and to provide that in the situation where persons were not subject to the full range of screening due to the development and implementation of the employment screening process no further checks of relevant criminal records, relevant apprehended violence orders, or relevant disciplinary proceedings should be required to be carried out by the employer.**

1.19 The Committee on Children and Young People notes that this recommendation has budgetary implications, in that if the recommendation is accepted and the amendment made to the *Commission for Children and Young People Act 1998*, there will be significant savings in costs that would have been associated with accessing CrimTrac for the screening of interstate records (estimated at \$12-25 per individual, or about \$2 million for full re-screening of all persons in child-related employment in New South Wales).

**THE POLICE COMMISSIONER'S POWER TO DISCLOSE INFORMATION REGARDING APPREHENDED VIOLENCE ORDERS FOR EMPLOYMENT SCREENING PURPOSES**

1.20 The Committee on Children and Young People has noted that the *Commission for Children and Young People Act 1998* s.36(1)(a) provides for a general power to collect and maintain a database containing information about relevant apprehended violence orders against a person:

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**36 Functions of Commission in respect of employment screening**

(1) The Commission may exercise the following functions with respect to employment screening:

- (a) collecting and maintaining a database of relevant apprehended violence orders against any person and relevant disciplinary proceedings that have been completed against any person,

1.21 However, there is no accompanying power given to the Police Commissioner to disclose information about relevant apprehended violence orders against a person for the purposes of employment screening.

1.22 This situation stands in contrast with the statutory provision for the Police Commissioner to disclose information relating to any relevant criminal record of persons for the purposes of employment screening, under the *Commission for Children and Young People Act 1998* s.38(1)

**38 Notification of information relating to relevant criminal record**

(1) The Commissioner of Police may, in accordance with this Part and the regulations, disclose (or arrange for a member of the Police Service to disclose) to the Commission, and to any employer (or employer-related body) approved by the Minister, information relating to any relevant criminal record of persons for the purposes of employment screening.

1.23 The Committee on Children and Young People considers that it has been a legislative drafting oversight that has led to the omission of a power for the Police Commissioner to disclose information about relevant apprehended violence orders against a person for the purposes of employment screening.

1.24 The Committee on Children and Young People recommends that the *Commission for Children and Young People Act 1998* Part 7 (Employment screening) be amended to give the Police Commissioner the power to disclose information regarding relevant apprehended violence orders to the Commission for Children and Young People or employer-related body or an approved screening agency for employment screening purposes.

**RECOMMENDATION 2:**

**The *Commission for Children and Young People Act 1998* Part 7 (Employment screening) be amended to give the Police Commissioner the power to disclose information regarding relevant apprehended violence orders to the Commission for Children and Young People or employer-related body or an approved screening agency for employment screening purposes.**

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## **A CONSISTENCY OF APPROACH TO RELEVANT DISCIPLINARY PROCEEDINGS AND RELEVANT APPREHENDED VIOLENCE ORDERS FOR EMPLOYMENT SCREENING PURPOSES**

1.25 The Committee on Children and Young People has noted that the provisions under the *Commission for Children and Young People Act 1998* relating to the consideration of relevant disciplinary proceedings for employment screening purposes differs from the provisions relating to relevant apprehended violence orders for employment screening purposes.

1.26 The Committee for Children and Young People considers that a more consistent approach should be adopted with regard to the provisions relating to relevant disciplinary proceedings and relevant apprehended violence orders for employment screening purposes.

### **Relevant disciplinary proceedings**

1.27 The provisions relating to relevant disciplinary proceedings for employment screening purposes are contained within the *Commission for Children and Young People Act 1998* s.31(1) and s.39 and the *Commission for Children and Young People Regulation 2000* cl.8.

1.28 The *Commission for Children and Young People Act 1998* s.31(1) defines relevant disciplinary proceedings:

**relevant disciplinary proceedings** means (subject to subsection (2)) disciplinary proceedings (in this State or elsewhere) against an employee by the employer or by a professional or other body that supervises the professional conduct of the employee, being completed proceedings involving:

- (a) child abuse, sexual misconduct by the employee, or
- (b) acts of violence committed by the employee in the course of employment.

Child abuse includes: assault, including the sexual assault, of a child; ill-treatment or neglect of a child; and exposing or subjecting a child to behaviour that psychologically harms a child, whether or not, in any case, with the consent of the child.

1.29 While the *Commission for Children and Young People Act 1998* s.31(1) defines relevant disciplinary proceedings to include completed proceedings in both New South Wales and other Australian jurisdictions (the Commonwealth, and the States and Territories), in practical terms, relevant disciplinary proceedings are restricted to New South Wales alone. The Commission for Children and Young People does not have any jurisdiction in other Australian States and Territories, and thus has no authority to require employers in other States and Territories to disclose completed disciplinary matters. (This is in

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contrasted with the arrangements under for the national crime records and investigation system, CrimTrac, which includes criminal records and apprehended violence orders under the *Crimes Act 1900*.)

1.30 The Committee on Children and Young People notes that some completed disciplinary matters are shared by agreement between the different Australian jurisdictions (e.g., disciplinary matters related to school employment).

1.31 The *Commission for Children and Young People Act 1998* s.39(3) provides that the disciplinary proceedings must have been completed within the five years prior to 3 July 2000 (the date of proclamation of the relevant sections of the Act).

### **Relevant apprehended violence orders**

1.32 The *Commission for Children and Young People Act 1998* s.33(1) states with regard to relevant apprehended violence orders:

**relevant apprehended violence order** means (subject to subsection (2)):

- (a) an apprehended violence order (other than an interim order) made by a court under Part 15A of the *Crimes Act 1900*, or
- (b) an interstate restraint order (within the meaning of Part 15A of the *Crimes Act 1900*), whether or not it is registered under that Part, being an order made on the application of a police officer or other public official for the protection of a child (or a child and others).

1.34 The Committee on Children and Young People is aware that access to information about apprehended violence orders taken out interstate which are not registered in New South Wales as an interstate restraint order is both costly and inefficient. The CrimTrac system does not have a current capacity to filter apprehended violence orders to detect only those of interest for the purposes of employment screening, and thus a wide variety of matters irrelevant to the protection of children are obtained.

### **A more consistent approach**

1.35 A more consistent approach regarding relevant disciplinary proceedings and apprehended violence orders for employment screening purposes can be achieved through amendments to the the *Commission for Children and Young People Regulation 2000*.

1.36 The *Commission for Children and Young People Act 1998* s.33(2) provides for the regulations to:

- (2) ... declare that, for the purposes of this Part:
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- (a) orders of a particular kind are or are not relevant apprehended violence orders, or
- (b) offences of a particular kind are or are not part of the relevant criminal record of a person, or
- (c) disciplinary proceedings of a particular kind are or are not relevant disciplinary proceedings.

1.37 To date, the *Commission for Children and Young People Regulation 2000* Part 3 (Employment screening) has been used to define and modify the definition of relevant disciplinary proceedings for the purposes of employment screening. However, there has been no such clarification of relevant apprehended violence orders.

1.38 The Committee on Children and Young People has concluded that the *Commission for Children and Young People Regulation 2000* Part 3 (Employment screening) should be amended to limit the consideration of relevant apprehended violence orders for employment screening to orders taken out in New South Wales only (including relevant interstate orders registered in New South Wales); and apprehended violence orders issued within the five years prior to 3 July 2000 (the date of proclamation of the relevant sections of the *Commission for Children and Young People Act 1998*).

**RECOMMENDATION 3:**

**The *Commission for Children and Young People Regulation 2000* Part 3 (Employment screening) be amended to limit the consideration of relevant apprehended violence orders for employment screening to those:**

- (a) orders taken out in New South Wales only (including relevant interstate orders registered in New South Wales); and**
- (b) apprehended violence orders issued within the five years prior to 3 July 2000 (the date of proclamation of the relevant sections of the *Commission for Children and Young People Act 1998*).**

1.39 The Committee on Children and Young People notes that may also be appropriate to consider a further amendment to the *Commission for Children and Young People Regulation 2000* to explicitly provide that relevant disciplinary proceedings only relate to completed proceedings in New South Wales and to completed proceedings interstate where there is a formal agreement for the transfer of information about those proceedings.

1.40 The Committee for Children and Young People emphasises that the definition of relevant disciplinary proceedings and relevant apprehended violence orders may be subject to further modification – particularly in terms of consideration of proceedings and orders interstate – as improvements in the capacity of databases to hold and retrieve such information occurs. The Committee considers that the use of a regulatory mechanism -- the *Commission for Children and Young People Regulation 2000* -- will facilitate this process, if and when it occurs.

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## **CONCLUDING REMARKS**

1.41 While the Committee on Children and Young People considers that there is a need for legislative amendments to the processes for employment screening for child-related employment, it is satisfied that the approach taken in the introduction of the employment screening program was appropriate. The three stages of the employment screening program, screening first for relevant criminal records, then relevant disciplinary proceedings, and then relevant apprehended violence orders ensured that the protection of children remained the focus of the employment screening process from the outset, and that the screening process was based on the most reliable information – relevant criminal records.

1.42 The Committee for Children and Young People would like to see a regular reporting mechanism for employment screening in the longer term, which provides such information as:

- number of persons identified as having relevant criminal records, for New South Wales, New South Wales and nationally, and interstate only
- number of persons identified as having relevant disciplinary proceedings
- number of persons identified as having relevant apprehended violence orders
- number of persons lodging applications for exemption with the Administrative Decision Tribunal or the Industrial Relations Commission, and the outcome of these applications
- number of prosecutions for false declarations on the Prohibited Employment Form (Working With Children Check)

This matter will be further considered by the Committee as part of the examination of the annual reports of the Commission for Children and Young People.

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## The Commission for Children and Young People Act 1998, Part 7 - (Employment screening)

### Part 7 Employment screening

#### 31 Object of Part

The object of this Part is to protect children by means of employment screening for child-related employment administered by the Commission and other agencies.

#### 32 Welfare of children to be paramount consideration

The welfare of children and, in particular, protecting them from child abuse, is the paramount consideration in employment screening.

#### 33 Definitions

(1) In this Part:

**( )child abuse** means:

- (a) assault (including sexual assault) of a child, or
- (b) ill-treatment or neglect of a child, or
- (c) exposing or subjecting a child to behaviour that psychologically harms the child, whether or not, in any case, with the consent of the child.

**( )child-related employment** means any employment that involves direct contact with children where the contact is not directly supervised, and includes any employment of a kind prescribed by the regulations but does not include any employment of a kind excluded by the regulations.

**( )employee** means any person who is engaged in employment within the meaning of this Part.

**( )employer** means any person who engages the person in employment within the meaning of this Part, and includes a person who, in the course of a business, arranges for the placement of a person in employment with others.

**( )employer-related body** means any body that supervises, represents or has other functions with respect to an employer.

**( )employment** means (subject to the regulations):

- (a) performance of work under a contract of employment, or
  - (b) performance of work as a subcontractor, or
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- (c) performance of work as a volunteer for an organisation, or
- (d) undertaking practical training as part of an educational or vocational course, or
- (e) performance of work as a minister of religion or other member of a religious organisation.

**( )relevant apprehended violence order** means (subject to subsection (2)):

- (a) an apprehended violence order (other than an interim order) made by a court under Part 15A of the *Crimes Act 1900*, or
- (b) an interstate restraint order (within the meaning of Part 15A of the *Crimes Act 1900*), whether or not it is registered under that Part, being an order made on the application of a police officer or other public official for the protection of a child (or a child and others).

**( )relevant criminal record** means (subject to subsection (2)) the criminal record of a person with respect to an offence involving sexual activity, acts of indecency, child abuse or child pornography:

- (a) that was committed in New South Wales and that was punishable by penal servitude or imprisonment for 12 months or more, or
- (b) 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.

**( )relevant disciplinary proceedings** means (subject to subsection (2)) disciplinary proceedings (in this State or elsewhere) against an employee by the employer or by a professional or other body that supervises the professional conduct of the employee, being completed proceedings involving:

- (a) child abuse, sexual misconduct by the employee, or
- (b) acts of violence committed by the employee in the course of employment.

- (2) The regulations may declare that, for the purposes of this Part:
  - (a) orders of a particular kind are or are not relevant apprehended violence orders, or
  - (b) offences of a particular kind are or are not part of the relevant criminal record of a person, or
  - (c) disciplinary proceedings of a particular kind are or are not relevant disciplinary proceedings.

- (3) For the avoidance of doubt, the performance of the duties of a foster carer engaged by the Department of Community Services or by any foster care agency constitutes employment for the purposes of this Part.

### **34 Nature of employment screening**

For the purposes of this Part, **employment screening** is any or all of the following procedures with respect to a person who is employed or who has applied to be employed in child-related employment:

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- (a) a check for any relevant criminal record of the person, for any relevant apprehended violence orders made against the person or for any relevant disciplinary proceedings completed against the person,
- (b) any other relevant probity check relating to the previous employment or other activities of the person,
- (c) an assessment of the risk to children involved in that child-related employment arising from anything disclosed by such a check, having regard to all the circumstances of the case,
- (d) the disclosure of the results of any such check or risk assessment to any person who determines whether the person is to be employed or continue to be employed in that child-related employment (or to a person who advises or makes recommendations on the matter).

### **35 Guidelines relating to procedures and standards for employment screening**

- (1) The Minister must publish guidelines from time to time relating to the procedures and standards for employment screening.
  - (2) Without limiting subsection (1), the guidelines must contain procedures and standards relating to:
    - (a) the confidentiality of information obtained for or as a result of employment screening,
    - (b) the information to be provided to persons subject to employment screening (including procedures enabling those persons to correct any such information),
    - (c) the information to be provided to (or withheld from) employers by agencies carrying out employment screening on their behalf.
  - (3) The guidelines must contain provision for notifying applicants for child-related employment of information obtained about them during employment screening that may adversely affect their application. The guidelines must also deal with access by employees or prospective employees to information that is or may be used in employment screening.
  - (4) The Minister must ensure that guidelines are published with effect on the commencement of this Part.
  - (5) The Minister is to review the guidelines to determine whether they remain effective and appropriate having regard to the policy objectives of this Part (including relevant industrial and privacy issues). The review is to be undertaken within 2 years after the commencement of this Part.
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### **36 Functions of Commission in respect of employment screening**

- (1) The Commission may exercise the following functions with respect to employment screening:
- (a) collecting and maintaining a database of relevant apprehended violence orders against any person and relevant disciplinary proceedings that have been completed against any person,
  - (b) giving access to information on that database for the purposes of employment screening by employers (or employer-related bodies) who have entered into a memorandum of understanding with the Commission on such access and the use of the information obtained,
  - (c) conducting employment screening on behalf of employers for whom the Commission has agreed to conduct any such screening,
  - (d) making recommendations to the Minister on appropriate procedures and standards for employment screening,
  - (e) promoting public awareness and providing training and advice on appropriate procedures and standards for employment screening,
  - (f) monitoring and auditing compliance with the procedures and standards for employment screening.
- (2) The Minister may give the Commission a written direction on the exercise of its functions under this section, and the Commission is to comply with the direction. The Commission is to include any such direction in the Commission's annual report.

### **37 Employment screening mandatory for preferred applicants for certain child-related employment**

- (1) This section applies to any decision by an employer to employ a person in primary child-related employment, being a person not already employed by the employer in child-related employment of that kind.
- (2) It is the duty of an employer to carry out all the relevant procedures of employment screening of the preferred applicant before employing the preferred applicant in that child-related employment.
- (3) Some or all of the procedures of employment screening may be deferred in a particular case if the employer can establish that it was not reasonably practicable to carry out those procedures in the circumstances. In that case, those procedures are to be carried out as soon as reasonably practicable after the person is employed.
- (4) An employer may engage:
- (a) the Commission, or
  - (b) an employer (or employer-related body) approved by the Minister,
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to carry out all or any of the relevant procedures of employment screening on its behalf.

(5) Nothing in this section gives rise to, or can be taken into account in, any civil cause of action, other than an action to require future compliance of the employer with the duty under this section.

(6) In this section:

**( )primary child-related employment** means:

- (a) paid child-related employment to which the *Child Protection (Prohibited Employment) Act 1998* applies, or
- (b) child-related employment to which that Act applies by a minister of religion or other member of a religious organisation, or
- (c) child-related employment involving the fostering of children, or
- (d) if the regulations so require - child-related employment of the kind prescribed by the regulations.

### **38 Notification of information relating to relevant criminal record**

(1) The Commissioner of Police may, in accordance with this Part and the regulations, disclose (or arrange for a member of the Police Service to disclose) to the Commission, and to any employer (or employer-related body) approved by the Minister, information relating to any relevant criminal record of persons for the purposes of employment screening.

(2) The Commission and any such approved employer (or employer-related body) may, in accordance with this Part and the regulations, disclose that information to other employers for the purposes of employment screening undertaken on their behalf by the Commission or approved employer (or employer-related body).

(3) Information that may be disclosed under this section includes:

- (a) information relating to spent convictions, despite anything to the contrary in the *Criminal Records Act 1991*, and
- (b) information relating to criminal charges, whether or not heard, proven, dismissed, withdrawn or discharged.

(4) This section does not limit the persons to whom, or the circumstances in which, the criminal record of persons may be disclosed apart from this Act.

### **39 Duties of employers with respect to disciplinary proceedings**

(1) It is the duty of an employer to notify the Commission of the name and other identifying particulars of any employee against whom relevant disciplinary proceedings have been completed by the employer (irrespective of the finding in those proceedings).

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(2) The employer who notified the Commission of any such information may notify, on request, sufficient details of the proceedings concerned to another employer (or employer-related body), or to the Commission, for the purposes of employment screening by the other employer (or body) or the Commission. The employer is under a duty to notify those details if the regulations so provide.

(3) Notification under this section extends to disciplinary proceedings completed within the period of 5 years immediately before the commencement of this section.

(4) Notification under this section is to be in such form as the regulations provide or, subject to the regulations, as the Commission directs and consistent with the guidelines published under this Part.

(5) It is the duty of an employer to retain records of information that the employer is required to notify under this section. That duty 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).

#### **40 Duties of employers to notify Commission of rejected applicant in connection with employment screening**

(1) It is the duty of an employer to notify the Commission 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.

(2) Notification under this section is to be in such form as the Commission directs.

(3) The Commission is not to use, or give access to, any information notified to the Commission under this section, other than for the purpose of its monitoring or auditing compliance functions under this Part.

#### **41 Protection of persons involved in employment screening**

(1) Anything done by a person in good faith and with reasonable care:  
(a) for the purposes of employment screening, or  
(b) for the purposes of exercising any function under this Part,  
does not subject the person to any action, liability, claim or demand.

(2) Without limiting subsection (1):  
(a) a person has qualified privilege in proceedings for defamation in respect of anything done by the person for the purposes of employment screening or exercising a function under this Part,  
and

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- (b) damages or compensation (whether for breach of contract or otherwise) are not payable in respect of a decision not to employ a person as a result of a risk assessment carried out in good faith and with reasonable care for the purposes of employment screening.
- (3) This section does not limit or affect any other right, privilege or immunity that a person has as a defendant in any proceedings.

#### **42 Unauthorised disclosure or dishonest collection of information**

- (1) A person who discloses any information obtained by the person in connection with employment screening or the exercise of functions under this Part is guilty of an offence unless the disclosure:
  - (a) is made in good faith for the purposes of employment screening or the exercise of a function under this Part, or
  - (b) is made with the consent of the person from whom the information was obtained, or
  - (c) is ordered by a court, or any other body or person exercising judicial functions, for the purposes of the hearing or determination by the court, body or person of any matter, or
  - (d) is made with other lawful excuse.
- (2) A person who dishonestly obtains confidential information relating to employment screening or the exercise of functions under this Part is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.

#### **43 Obtaining and correcting information on relevant disciplinary proceedings under FOI Act**

- (1) A person against whom any relevant disciplinary proceedings have been taken is, subject to this section, entitled to apply for access under the *Freedom of Information Act 1989* to any documents of an agency containing information about those proceedings. That Act applies to the determination of any such application for access.
  - (2) Any provision of that Act relating to fees or charges payable by applicants does not apply to such an application for access.
  - (3) Part 4 of that Act applies to the amendment of an agency's records relating to information about relevant disciplinary proceedings.
  - (4) That Act applies for the purposes of this section whether or not the agency is an agency to which that Act applies.
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(5) The regulations under this Act may modify that Act in its application under this section.

#### **44 Effect of Part on other rights and procedures**

(1) Employment screening may be conducted, and information disclosed or obtained, in accordance with this Part despite any other Act or law to the contrary.

(2) Nothing in this Part affects any statutory right that an employee may have in relation to employment or termination of employment. However, any court or tribunal exercising jurisdiction with respect to any such right must have regard to the results of any employment screening carried out under this Part in connection with the employment concerned and the welfare of children as the paramount consideration in that employment screening.

(3) Nothing in this Part affects the operation of the *Criminal Records Act 1991* in relation to spent convictions within the meaning of that Act.

(4) Nothing in this Part affects the operation of Part 2 of Chapter 9 of the *Health Services Act 1997*.

#### **45 Staged implementation of duties under Part**

(1) The regulations may provide for the staged implementation of the duties imposed by this Part.

(2) Any such duty does not arise until the date fixed by or in accordance with the regulations. Different dates may be fixed (without limitation) for different duties, for different kinds of employers or for different kinds of child-related employment.

(3) However, this section does not prevent the voluntary performance of any such duty before that date, and this Part applies accordingly.

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## **The Commission for Children and Young People Regulation 2000, Part 3 - (Employment screening)**

### **Part 3 Employment screening**

#### **8 Meaning of "relevant disciplinary proceedings" not to include certain disciplinary proceedings**

##### **(1) Disciplinary proceedings based on false, vexatious or misconceived allegations**

For the purposes of Part 7 of the Act, disciplinary proceedings are not relevant disciplinary proceedings if there has been a finding in the proceedings that the allegations in respect of which they were brought were false, vexatious or misconceived.

##### **(2) Disciplinary proceedings relating to sexual misconduct not involving children**

For the purposes of Part 7 of the Act, disciplinary proceedings involving the sexual misconduct of the person against whom the proceedings were brought are not relevant disciplinary proceedings if:

- (a) a child was not the victim of that misconduct, and
- (b) that misconduct was not directed at children, and
- (c) that misconduct did not occur in the presence of children.

##### **(3) Disciplinary proceedings relating to acts of violence not involving children**

For the purposes of Part 7 of the Act, disciplinary proceedings involving acts of violence of the person against whom the proceedings were brought are not relevant disciplinary proceedings if:

- (a) a child was not the victim of those acts, and
  - (b) those acts were not directed at children, and
  - (c) those acts did not occur in the presence of children.
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## **Extract from the Committee's report of the examination of the annual report for the Commission for Children and Young People for the 1999-2000 financial year, dealing with employment screening**

*(Extract from: Committee on Children and Young People (2001). "The first steps ... review of the first annual report of the Commission for Children and Young People, for the 1999-2000 financial year." Report 1/52. Sydney, NSW: Parliament of New South Wales, pp.21-27)*

### **EMPLOYMENT SCREENING**

**The Hon. JAN BURNSWOODS:** Well, question 10, I guess, goes to the heart of whether the Commission has encountered particular problems or difficulties in exercising the function of employment screening. I would be surprised if the answer is no. The basis of your role is that it is a very difficult area and one you have had to grapple with. I think it would be useful for us to talk about that today. First, the Committee needs to know about it and, second, the Committee may be able to assist, or whatever, as necessary. So, I think that is an important area for us to discuss today. So, if I could formally ask question 10 and take it from there.

**Ms CALVERT:** You are quite right. There have been a number of challenges in establishing the employment screening system, which is not surprising given that it is certainly an Australian first and the way we have set ours up is a world first. Therefore, we have had limited precedent on which to draw in sorting out or responding to some of the challenges. I think the other challenge has been balancing the diversity of views that exist, often views that are irreconcilable or one feels as though they are irreconcilable and which various stakeholders find very difficult to negotiate on, and in the process try to assist people to focus on the primary goal, that being the protection of children.

Given those challenges, I think we have been very successful to date in implementing employment screening, and I think that can be attributed to a couple of things. One is the general support for employment screening that exists or the ideal or goal of employment screening. That was certainly aided by the process that Parliament undertook in developing legislation and in the bipartisan support for the ideal of employment screening. I also think it has been successful because of the commitment of all of the parties to try to find sensible solutions to the challenges we face. I want to put on the record my appreciation and acknowledgment of the commitment of various stakeholders to try to find ways through what are very challenging issues.

I do not want to overshadow the successes by talking only about the difficulties. We have had a number of successes: the guidelines, and the community education campaign was very successful. The fact that we could get agreement on the guidelines was a success. The development of a very detailed information technology

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solution was a success. The volume with which it has been taken up was a success as well.

We did have some challenges I would like to put on the record for the Committee. Shortly before we commenced the employment screening we were unable to access the national database for criminal records. That was because of the Commonwealth taking over the responsibility for that database at the same time as we commenced the introduction of our employment screening system. There were also a number of related issues arising out of the Commonwealth assuming responsibility to do with the transfer of confidential files. The way we responded to that problem was to switch to a State-based system, so for the first three months we did State-based police checks rather than national criminal record checks. So, again acknowledging the responsiveness of the New South Wales Police Service in giving us access to their records and setting up the technology in a very short time. These matters have now been resolved between the various police jurisdictions and we started doing national criminal record checks from the beginning of November, using the information technology system that had been designed and which is working fairly well, I think.

Legislation was drafted to require all components of employment screening to be commenced at the beginning. We have recently received legal advice that that will therefore mean we have to go back and rescreen those people who only had a State-based check. We are currently considering the request in Parliament to modify the legislation or do a minor amendment to the legislation to relieve us of that responsibility, partly because I think there is a cost issue involved and I am not sure it will necessarily increase protection to children sufficient to warrant that. So, I will be probably putting forward a proposal to government that we do a minor amendment to alleviate us of that responsibility just to get over that particular period of time.

**The Hon. JAN BURNSWOODS:** What number of cases would that involve, do you know?

**Ms CALVERT:** From the period July 3 to the end of December, we had 101,000 checks conducted. So, that would be the magnitude of it. Each check, when we go through the CrimTrac system, does attract a cost of anywhere between \$12 and \$25. So, it is a sliding scale. It is not an insignificant amount.

**The Hon. JAN BURNSWOODS:** It is certainly a million dollars plus.

**Ms CALVERT:** Yes, and given that the bulk of all the records, criminal records, are New South Wales-based anyway, most of the people who live in New South Wales, if they have a record, are on the New South Wales database. So, we have actually checked the biggest chunk of the database already. The question is what is to be gained through rechecking those 101,000 people on the smaller part of the database.

The other thing is that at the same time the prohibited employment form came in and it required everybody who was in a child-related employment position to declare whether or not they have a conviction for a serious sex offence. So there has also been that as a back-up check as well. They had to declare whether that was in another State or another country, not just New South Wales. So, on balance, we think it is reasonable and children are still protected by requesting that minor amendment.

**Mr WEBB:** Just a supplementary on that. Commissioner, when we met at the commission you spoke about the security and confidence in the record computing part of that. Are you still of the same view?

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**Ms CALVERT:** Yes, I am. I am confident. I have had nothing occur that would make me be concerned about the security. I think the thing we also need to keep in mind is that the records are also always held somewhere else. It is not as if we have a secret record that is not held in other places. What is unique about our record-holding is that it is in one place. So, all of that data is in one place, for example, with completed disciplinary matters. The data we hold in terms of completed disciplinary matters is very minor-it is the name and address and date of birth. The actual content is held somewhere else, so again I have had nothing happen that would make me concerned about the security.

**The Hon. D. T. HARWIN:** I was just going to go back to the last point you were addressing, the problems that had arisen because you could not access CrimTrac until November. You mentioned most of the 101,000 people you mention were New South Wales. Do you have any sort of feel for what the non-bulk element was? Are you able to quantify that?

**Ms CALVERT:** No, I cannot quantify that, except to say that New South Wales is 30 per cent or 40 per cent of Australia's population, so we have at least checked against 40 per cent of records. I do not know what the rate of movement between States is, so I cannot. I would also assume that most people who get their records checked are from New South Wales as well.

**The Hon. D. T. HARWIN:** When we look at that issue we will not be able to say that we are probably dealing with only 10,000 or 20,000 people. It is just not possible to quantify.

**Ms CALVERT:** No, it is not possible to quantify that at all. The other thing to keep in mind is that all these people should have completed a prohibited employment declaration form as well. We have approached the issue from two different ways. One is through the checking process; the other is through the filling out and completion of the prohibited employment form declaration.

**Mr CAMPBELL (CHAIRMAN):** Out of the 100,000 in round figures, how many people have failed the test?

**Ms CALVERT:** Under the legislation employers are required to inform us when they do not employ someone as a result of the employment screening process. We are unable to give that information to anybody else. It is for auditing and monitoring purposes. To date, we have been notified by 25 employers that they have not proceeded with employment following the completion of the employment screening check. Let me also say that anecdotally-but I cannot quantify this-we know that people have dropped out in the process. The checking process commences and as part of the checking process the approved screening agency contacts a person to verify that is the person against whom the records are held that we are looking at. Following that, the agency has been discussions with some applicants and it is pointed out to them that they are now prohibited people or they are informed of the holdings that we have against them and they nominate to withdraw from their application. One of the things that I hope will be developed with the employment screening is that it acts as a deterrent for inappropriate or unsuitable people according to the standards set by the legislation to even apply because they know that the system is working. The system picks up on anyone who decides not to be deterred. We have been informed of 25 people and, as I said, anecdotally we know of others.

**The Hon. JAN BURNSWOODS:** Presumably those people will not apply for similar jobs in the future because they now know that the system works. In a sense you

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would expect fewer and fewer cases because you are progressively screening them out. We will not get to hear of them.

**Ms CALVERT:** Yes. It will be interesting to see what happens over time. The challenge facing us is that we have not had historical data or precedents on which to base any of this new system.

**The Hon. JAN BURNSWOODS:** Have any of the employers anecdotally made any comment about a marked change or whether the awareness of the screening system has filtered through to applicants?

**Ms CALVERT:** I have not had any comments made to me about a change in the sort of applicants. Although people who work in the area have talked about how they are now much more aware of children safety issues in the work context. I think there is an increased awareness, but again I cannot quantify that. It is anecdotal. We have certainly had very positive responses to the community education campaign. A total of 45,000 kits have been distributed, we have received a significant number of hits on our website, our call centre took a number of calls and so on. A total of 45,000 information kits have been distributed over the 1999-2000 and 2000-01 reporting period. Also, we have had a total number of 15,840 web site visitors and 2,897 calls to the call centre. It has been quite a positive response and awareness raising activity.

**Mr CAMPBELL (CHAIRMAN):** How do you plan for that to continue? Obviously you do not keep it at the same level.

**Ms CALVERT:** There are a number of ways in which the awareness raising continues. One way is that most advertisements now for child-related employment positions carry a statement something along the lines: "A working with children check will be conducted on this position." That is continued awareness raising. The other way in which it continues is that all the applicants for those positions now receive as part of their kit information about the working with children check. Again, that is a continual thing. We are continuing to run information and educational sessions, for example, with human resources people, on the working with children check. In terms of our distribution of Exchange, we generally carry an article about employment screening every issue. It is and will be on the website. We are using a number of mechanisms, but the beauty of it is that they are actually built in. For example, every time you look at the advertisement page some ads will talk about the working with children check. It is great ongoing awareness raising.

In addition to this testimony obtained during the public hearing, the Committee also obtained detailed replies to several Questions on Notice dealing with the employment screening functions of the Commission for Children and Young People. These replies are included below.

**QUESTION:** Did the Commission for Children and Young People encounter any particular problems and difficulties in exercising its functions under Part 7—Employment Screening of the Commission for Children and Young People Act 1998? How did the Commission overcome these difficulties ?

**RESPONSE:** There were a number of challenges as employment screening was implemented, which is not surprising given that the New South Wales Government's employment screening scheme is a world first and therefore limited precedents existed. It is also difficult to balance the varying views on the scheme and the extent of both employers and employees affected, whilst ensuring that the protection of children remained paramount.

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The successful implementation of employment screening can, in part, be attributed to the general support employment screening received throughout the community and the commitment by all parties to work through these issues.

The Commission for Children and Young People has been able to develop procedures that would ensure employment screening's effectiveness in all employment circumstances.

A detailed information technology solution to deal with the large volume of screening requests and confidential information was required to complete the screening process. The establishment of the Employment Screening System has enabled the large volume of requests made for screening to be processed expediently thus meeting employer requirements for rapid responses

From July to October 2000 preferred applicants for child-related employment were initially screened for criminal records in New South Wales only. In November 2000, national criminal record checks and relevant disciplinary proceeding checks were introduced into the screening process.

This delay was caused by the Federal CrimTrac agency's assumption of responsibility for the national criminal record database on 1 July 2000 and a number of related issues regarding transfer of confidential records between the Commonwealth and States.

These matters have now been resolved with all police jurisdictions across the country providing information for screening of preferred applicants for child-related employment New South Wales.

Legislation was drafted to require all components of employment screening to be undertaken as soon as practicable. Legal advice has recently been received that all people who have been subject to State based criminal record checks only should be re-screened against the national criminal record database. Similar re-screening requirements are also required in relation to completed disciplinary proceedings and apprehended violence orders.

The Commission for Children and Young People will be recommending a minor amendment to the legislation to remove the requirement to re-screen this group of applicants only. This strikes a reasonable balance between children's safety and the extensive administrative requirement and costs to undertake the re-screening process.

**QUESTION:** How many employment screening cases has the Commission for Children and Young People conducted on behalf of employers ?

**RESPONSE:** Between 3 July 2000 and 31 December 2000, in excess of 101,000 Working With Children Checks had been completed on people being considered for paid child-related employment throughout New South Wales by all Approved Screening Agencies.

During this period the Commission for Children and Young People completed 5,100 employment screening checks on behalf of its clients.

**QUESTION:** What procedures for employment screening have been established by the Commission for Children and Young People?

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**RESPONSE:** In accordance with s.35(1) of the Commission for Children and Young People Act 1998, the Premier approved "Guidelines for Employers" to support the implementation of the Working With Children Check.

In excess of 45,000 copies of the Guidelines have been distributed to employers and other relevant stakeholders throughout New South Wales. In addition, the Guidelines and a range of other supporting documentation have been made available on the Internet.

The Guidelines were subject of extensive consultation with a broad range of stakeholders including unions, employer representatives, community groups and government agencies.

The Guidelines establish the procedures for the conduct of employment screening and outline the responsibilities of employers, employees and Approved Screening Agencies in ensuring that employment screening is conducted in the most timely and effective manner while ensuring the utmost level of privacy and confidentiality.

**QUESTION:** How does the Commission for Children and Young People monitor and audit compliance with the procedures and standards for employment screening?

**RESPONSE:** The Commission for Children and Young People Act 1998 establishes monitoring and auditing compliance with the procedures and standards for employment screening as a function of the Commission for Children and Young People.

A detailed audit program is currently being developed by the Commission for Children and Young People in consultation with the Office of the New South Wales Ombudsman.

I anticipate the program will complement the existing audit responsibilities of Ombudsman under s.25B of the Ombudsman Amendment (Child Protection and Community Services) Act 1998. Under this Act the Ombudsman is to keep systems for preventing child abuse by employees of designated government or non-government agencies or other public authorities under scrutiny.

The implementation of the Commission's audit program shall be subject to detailed consultation with a wide range of stakeholders.

**QUESTION:** What action is taken in cases of failure of employers to comply with the procedures and standards for employment screening? What are the responsibilities and functions of the Commission for Children and Young People when it detects failure to comply with procedures and standards for employment screening?

**RESPONSE:** The Commission for Children and Young People Act 1998 establishes monitoring and auditing compliance with the procedures and standards for employment screening as a function of the Commission.

The legislation does not specifically establish a responsibility for the Commission in cases where an employer has failed to comply with their responsibilities under the legislation.

Section 42 of the Commission for Children and Young People Act 1998 makes it an offence to inappropriately disclose information obtained in connection with

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employment screening and/or dishonestly obtain confidential information relating to employment screening.

In the first instance the Commission for Children and Young People would make every effort to assist the employer in complying with the legislation. Should the employer continue not to comply, the matter would be referred to the New South Wales Police Service if the provisions of s.42 of the Commission for Children and Young People Act 1998 apply.

As a large number of child-related employers are either funded or licensed by a relevant government agency, the granting of funding or issuing of licences require employers to satisfy a range of criteria. Compliance with the employment screening requirements may form an additional criterion that employers are required to meet to obtain funding or a licence.

In addition, as Commissioner, I may consider naming the employer in Parliament as a person who failed to meet the minimum standards in ensuring the most appropriate people are employed in child-related employment with that employer.

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## **EXTRACTS OF THE MINUTES OF THE COMMITTEE ON CHILDREN AND YOUNG PEOPLE**

The relevant Minutes of the Committee on Children and Young People are included:

Meeting No. 10      Monday 10 September 2001

Meeting No. 12      Thursday 20 September 2001

Meeting No. 13      Thursday 27 September 2001

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# COMMITTEE ON CHILDREN AND YOUNG PEOPLE

## *PROCEEDINGS*

**10:00 A.M., MONDAY 10 SEPTEMBER 2001  
AT PARLIAMENT HOUSE, SYDNEY**

### MEMBERS PRESENT

#### *Legislative Council*

#### *Assembly*

Mr Primrose

Mr Tsang

Mr Harwin

#### *Legislative*

Mr Campbell

Ms Andrews

Ms Beamer

Mr Smith

Mr Webb

Mr O'Doherty

The Chair, Mr Campbell, presiding.

Also in attendance: Mr Faulks, Committee Manager, Ms Brdaroska, Committee Officer, and Ms Allen, Assistant Committee Officer.

### **1. Apologies**

Apologies were received from Ms Burnswoods and Mr Corbett.

### **2. Previous Minutes**

On the motion of Ms Beamer, seconded by Mr Harwin, the minutes of meeting No. 9, having been distributed previously, were accepted unanimously as being a true and accurate record.

### **3. Meeting with the Commissioner for Children and Young People**

The Chair indicated that he had received a request from the Commissioner for Children and Young People asking for an opportunity to discuss possible legislative changes to the Commission for Children and Young People Act. It was agreed that the Committee will meet with the Commissioner on Thursday 20 September 2001.

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#### **4. General business**

There being no further business, the Chair closed the meeting at 3:30 p.m.

**Chair**

**Manager**

# COMMITTEE ON CHILDREN AND YOUNG PEOPLE

## *PROCEEDINGS*

**9:30 A.M., THURSDAY 20 SEPTEMBER 2001  
AT PARLIAMENT HOUSE, SYDNEY**

### MEMBERS PRESENT

*Legislative Council  
Assembly*

Mr Primrose  
Mr Tsang  
Mr Harwin  
Ms Burnswoods

*Legislative*

Mr Campbell  
Ms Andrews  
Mr Webb  
Mr Smith

The Chair, Mr Campbell, presiding.

Also in attendance: Mr Faulks, Committee Manager, Ms Brdaroska, Committee Officer, and Ms Allen, Assistant Committee Officer.

### **1. Apologies**

Apologies were received from Ms Beamer, Mr O'Doherty and Mr Corbett.

### **2. Previous Minutes**

On the motion of Mr Smith, seconded by Ms Burnswoods, the minutes of meeting No. 11, having been distributed previously, were accepted unanimously as being a true and accurate record.

### **3. Chair's report**

*Meeting with the Commissioner for Children and Young People*

The Chair tabled copies of a letter from the Commissioner for Children and Young People asking for an opportunity to discuss possible legislative changes to the Commission for Children and Young People Act, and the Committee's reply agreeing to a meeting for this purpose.

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#### **4. Private hearing into possible legislative changes to the Commission for Children and Young People Act 1998**

##### **Ms Gillian Elizabeth Calvert, Commissioner for Children and Young People**

was called and sworn.

The witness acknowledged receipt of a summons issued by the Chairman under the Parliamentary Evidence Act 1901.

The witness requested that her evidence be heard in private.

On the motion of Ms Andrews, seconded Mr Primrose:

‘That the Committee take private evidence into possible amendments to the Commission for Children and Young People Act 1998 and the associated Regulation, pursuant to the Commission for Children and Young People Act 1998 s.30, relating to clause 6 of Schedule 1 concerning confidentiality of evidence.’

Passed unanimously.

The Chairman and Members of the Committee examined the witness in private.

Evidence completed, the witness withdrew.

#### **5. Report on proposed amendments to the Commission for Children and Young People Act 1998 and the Commission for Children and Young People Regulation 2000**

The Committee agreed that it would be appropriate for a report be prepared on the proposed amendments to the Commission for Children and Young People Act 1998 and the Commission for Children and Young People Regulation 2000, subject to Commission for Children and Young People Act 1998 Schedule 1 Clauses 6(3) and 6(4).

On the motion of Mr Tsang, seconded Mr Harwin:

That:

- (a) the Committee expresses its support for the proposed amendments to the Commission for Children and Young People Act 1998 and the Commission for Children and Young People Regulation 2000; and
  - (b) the Chair prepare a report on the proposed amendments to the Commission for Children and Young People Act 1998 and the Commission for Children and Young People
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Regulation 2000 for the consideration of Members at a future date.

Passed unanimously.

## **6. General business**

There being no further business, the Chair closed the meeting at 10:05 a.m.

**Chair**

**Manager**

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# COMMITTEE ON CHILDREN AND YOUNG PEOPLE

## *PROCEEDINGS*

**10:30 A.M., THURSDAY 27 SEPTEMBER 2001  
AT PARLIAMENT HOUSE, SYDNEY**

### MEMBERS PRESENT

#### *Legislative Council*

Mr Primrose  
Mr Tsang  
Mr Harwin  
Ms Burnswoods

#### *Legislative Assembly*

Mr Campbell  
Ms Beamer

The Chair, Mr Campbell, presiding.

Also in attendance: Ms Brdaroska, Committee Officer.

### **1. Quorum**

The meeting commenced with Mr Campbell, Ms Beamer, Mr Primrose, Mr Hsang, and Ms Burnswoods in attendance.

The Chair noted advice from Mr Corbett that he would continue to be absent from Parliament during the Spring Session.

The Chair indicated that, given Mr Corbett's long-term absence, the quorum for the Committee would comprise five members.

### **2. Apologies**

Apologies were received from Mr Webb, Mr Smith, Ms Andrews, Mr O'Doherty and Mr Corbett.

### **3. Previous Minutes**

On the motion of Ms Burnswoods, seconded by Mr Primrose, the minutes of meeting No. 12, having been distributed previously, were accepted unanimously as being a true and accurate record.

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#### **4. Consideration of the Chair's report: "Amendments to the Commission for Children and Young People Act 1998 and the Commission for Children and Young People Regulation 2000 concerning employment screening"**

The Chair presented the draft report: "Amendments to the Commission for Children and Young People Act 1998 and the Commission for Children and Young People Regulation 2000 concerning employment screening" (Report 4/52).

The draft report, have previously been distributed to Members, was accepted as being read.

The Committee proceeded to deliberate on the draft report in globo:

Recommendation 1: read and agreed to

Recommendation 2: read and agreed to

Recommendation 3: read and agreed to

Chapter 1 - Amendments to the Commission for Children and Young People Act 1998 and the Commission for Children and Young People Regulation 2000 concerning employment screening: read and agreed to.

Supplementary papers: read and agreed to.

On the motion of Ms Beamer, seconded Mr Tsang:

That the draft report: "Amendments to the Commission for Children and Young People Act 1998 and the Commission for Children and Young People Regulation 2000 concerning employment screening", be read and agreed to.

Passed unanimously.

On the motion of Ms Beamer, seconded Mr Tsang:

That the draft report: "Amendments to the Commission for Children and Young People Act 1998 and the Commission for Children and Young People Regulation 2000 concerning employment screening" be accepted as a report of the Committee on Children and Young People, and that it be signed by the Chair and presented to the House.

Passed unanimously.

On the motion of Ms Beamer, seconded Mr Tsang:

That the Chair and Manager be permitted to correct any stylistic, typographical and grammatical errors in the report.

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Passed unanimously.

The Chair indicated that he intended to table the report in the Legislative Assembly on Tuesday 16 October 2001. The Chair further indicated that it would be appropriate to provide a summary of the report to the Commissioner for Children and Young People, in order to facilitate the process of legislative amendment.

On the motion of Ms Beamer, seconded Mr Tsang:

That the Chair provide a summary of the report to the Commissioner for Children and Young People to assist the preparation of amending legislation.

Passed unanimously.

## **5. General business**

Mr Harwin attended the meeting.

There being no further business, the Chair closed the meeting at 11:00 a.m.

**Chair**

**Committee Officer**

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