

# INFORMATION SHEET

## How to apply for a review of prohibited status to the Commission for Children and Young People under section 33H of the *Commission for Children and Young People Act 1998*

### What is a prohibited person?

Under the Commission for Children and Young People Act 1998 a prohibited person is a person who:

- has been convicted or found guilty of a serious sex offence, the murder of a child or a child related personal violence offence, or
- a person who is a “registrable person” within the meaning of the Child Protection (Offenders Registration) Act 2000;

A prohibited person is not allowed to apply for or otherwise attempt to obtain, undertake or remain in child-employment.

### What is “child related employment”?

Child-related employment is employment of certain kinds which involves direct contact with children where that contact is not directly supervised by a person having the capacity to direct the person in the course of employment.

Child-related employment includes both paid and unpaid work. Volunteers, students on placement and self-employed people as well as paid employees and contractors can be in child-related employment.

### Can my status as a Prohibited Person be reviewed?

Certain prohibited persons can seek a review of their prohibited status under the *Commission for Children and Young People Act 1998*. A review can result in an Order that allows you to apply for and work in child-related employment.

### Who cannot seek a review?

You can not apply for a review of your status if you have been convicted of any of the following offences as an adult:

- murder of a child;
- sexual intercourse with a child under 16 years;
- sexual intercourse with a child 16-18 years if the offender was a guardian, school teacher, coach, health professional or in similar position of providing special care at the time of the offence;
- the production of child pornography; or
- attempt, conspiracy or incitement to commit the above offences.

### **Seeking leave to apply for a review?**

If you have been convicted of any of the above offences you may be “granted leave” to make a review application if you meet the following criteria:

- the offence involved sexual intercourse with a child under 18 (including a law other than a law of New South Wales) or the offence was one of conspiring or incitement to commit such an offence, and
- you were no more than three years older than the victim and;
- there were no circumstances of aggravation.

Circumstances of aggravation are defined in section 66C of the Crimes Act to include

- malicious intent by the offender,
- the offender’s threatening to use an offensive weapon,
- the offender being in a position of authority over the victim,
- the victim having a serious physical or intellectual disability; and
- the offender taking advantage of the victim’s being under the influence of drugs or alcohol to commit the offence.

The Commission will review your application and determine if you are eligible to seek leave. You will be advised of this decision in writing.

If you are granted leave to apply for a review you will need to complete an application for a review of prohibited status under section 33H of the *Commission for Children and Young People Act 1998*

### **Who can conduct a review of my prohibited status?**

The following organisations can review your prohibited status, and/or determine if you are eligible to seek leave to make a review application:

- Commission for Children and Young People (the Commission).
- Industrial Relations Commission (IRC); or
- Administrative Decisions Tribunal (ADT)

The Commission and ADT may consider your application regardless of your employment situation. The IRC can only consider your application if:

- You are already in employment and liable to be dismissed; or
- You have been dismissed by an employer because you are a prohibited person.

### **What if my application is urgent?**

For an urgent case (for example so you can remain in employment) you can apply for an Interim Order. An Interim Order is also known as a “Stay”. It temporarily allows you to apply for or otherwise obtain, undertake or remain in child-related employment until a final decision has been made. If you wish to apply for an interim order you must provide the same information as for a final Order. You must advise why you need an Interim Order. Interim Orders can be granted only if you can demonstrate that you will be disadvantaged or suffer financial hardship without such an Order.

If you are seeking an Interim Order from the Commission, you must still complete the **Application for a review of prohibited status under section 33H of the Commission for Children and Young People Act 1998** and fill in your reasons for seeking an Interim Order.

### **What forms do I fill in?**

If you are applying for a review of your prohibited status you must complete the following form:

**Application for a review of prohibited employment status under section 33H of the Commission for Children and Young People Act 1998**

If you are seeking leave to apply for a review you must complete the following form:  
**Application to seek leave to apply for a review of prohibited status under section 33G(2) of the Commission for Children and Young People Act 1998**

The Commission processes applications by correspondence. You are not required to appear before the Commission for Children and Young People to have your application considered. Applications can be lodged with the Commission either in person, by mail or facsimile. You must address your application to:

Manager Working With Children  
Commission for Children and Young People  
Level 2, 407 Elizabeth Street  
SURRY HILLS NSW 2010      Fax: 9286 7201

Application forms are available on the Commission's website at <http://www.kids.nsw.gov.au/director/check/prohibitedemployment/exemption> or by contacting the Commission (02) 9286 7229.

### **Application for review of prohibited status under section 33H of the Commission for Children and Young People Act 1998**

When completing this application form you **must** provide the following information:

- your reason for seeking a review
- whether you are applying for a review or seeking leave to apply for a review
- whether you require an interim order, and why
- the name of offence of which you were convicted
- the date of the conviction
- your age at the time you were convicted
- the location of the court where you were convicted
- any other criminal offences
- any Apprehended Violence Orders that have had taken out against you
- your employment history over the last 10 years
- any complaint made against you at work or any work disciplinary proceeding that may be relevant
- details of any community organisations you have, or have been involved in, which involved contact with children and young people

- names and dates of birth of any children, grandchildren, foster children, children of defacto relationships, or any other children that you have regular care of.

### **Application to seek leave to apply for a prohibited status under section 33G(2) of the *Commission for Children and Young People Act 1998***

When completing this application form you **must** provide the following information:

- the name of offence of which you were convicted
- the date of the conviction
- your age at the time you were convicted
- the location of the court where you were convicted

*It is important that you answer all the questions completely and accurately. The Commission cannot process applications where information is missing or unclear.*

### **Providing relevant information**

You must provide a photocopy of one of the following forms of identification with your application:

- current driver photo licence issued within Australia; or
- current Australian passport or Document of Identity issued by the Australian Passport Office or one that has expired within the last two years; or
- current overseas passport; or
- current consular photo identity card issued by the Department of Foreign Affairs and Trade.

A Justice of the Peace must certify this form of identification. This must be included with your application.

### **Signing the application**

The application form includes a Statutory Declaration that the information you have provided is true and correct. This Statutory Declaration must be signed and witnessed by a Justice of the Peace, or a lawyer, before the application is lodged with the Commission.

### **Application Checklist**

If you are considering lodging an application with the Commission for an Order under section 33H of the *Commission for Children and Young People Act 1998* please take the time to check you have:

- completed the correct application form;
- answered all the questions in the application form;
- read and completed the *Consent to Access Personal Information Form* had a Justice of the Peace or a lawyer witness your Statutory Declaration
- enclosed a photocopy of your photographic identification that has been witnessed by a Justice of the Peace;
- enclosed any supporting documents or statements you wish to offer in support of your application.
- noted your preferred method of contact with Commission staff during the application process.

### **Contact with the Commission during the assessment of your application**

The Commission may contact you during the assessment of your application to clarify certain information. Due to the sensitive nature of the application it is important to advise Commission staff if you have a preferred method of contact, for example letter, telephone or fax contact. Should you want to enquire about the progress of your application you can telephone the Commission on 02 9286 7229.

### **Further information**

#### **Access to information and privacy**

Under section 14A of the *Commission for Children and Young People Act 1998* the Commission is empowered to obtain information or documents about you from officers of government agencies and other persons.

Further details regarding prohibited persons, definitions of terms and the requirements of the *Commission for Children and Young People Act 1998* are available on the Commission's website at [www.kids.nsw.gov.au/check](http://www.kids.nsw.gov.au/check)

For further information about the application process for the Commission, contact the Commission for Children and Young People on 9286 7229.

### **Other Useful Contacts**

Administrative Decisions Tribunal  
Level 15, St James Centre  
111 Elizabeth Street  
SYDNEY NSW 2000  
Telephone: (02) 9223 4677  
[www.lawlink.nsw.au/adt](http://www.lawlink.nsw.au/adt).

Industrial Relations Commission  
Level 1, 47 Bridge Street  
Sydney NSW 2000  
Telephone (02) 92287766  
[www.lawlink.nsw.au/irc](http://www.lawlink.nsw.au/irc)