

Submission of the

State Library of New South Wales
on behalf of public libraries in New South Wales

to the

Statutory Review of the
Commission for Children and Young People Act 1998

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Public Libraries in New South Wales

The public library is at the heart of a community. Libraries are more than simply places to borrow books, read and learn. They are 'community spaces': places to meet, learn and experience for people of all ages and walks of life. Public libraries are a critical element in community development supporting lifelong learning, literacy and education.

- **368** locations across NSW - 99 central library services, 269 branch libraries (and 23 mobile libraries)
- **3.2 million** members (47% of population)
- **open** 14,636 hours per week
- **37 million visits** to public libraries in NSW in 2008/09
- **2,344 staff** work in NSW public libraries and hundreds of volunteers
- **624,607** children and young people are members of NSW public libraries, with many more non-members also using library spaces.¹

Public libraries offer a large range of programs and services for children and young people and their families.

The Legislative Context

The *Library Act 1939* guarantees everyone in the NSW community access to public libraries:

Section 10

- (a) Residents and ratepayers entitled to free membership
Any person who is a resident of the area of the local authority or a ratepayer of the local authority is entitled to membership of the library free of charge.
- (b) Free access to certain materials on library premises
Any person (whether or not a member of the library) is entitled free of charge to access any library material of the library and any information forming part of the information service of the library (other than information excepted from free access by guidelines issued by the Council) for use on the library premises.

The *Library Regulation 2005* provides library staff with the authority to direct a member of the public to leave in certain circumstances:

Part 3 Clause 17 Library users may be directed to leave

- (1) A library staff member may direct any person to leave the library, and not to re-enter the library for such period as the staff member directs, if the staff member is of the opinion that:

¹ NSW Public Library Statistics 2008/09

- (a) the person has contravened any provision of this Part, or
- (b) the person's condition, conduct, dress or manner is likely to give offence to any person in the library or to interfere with any other person's use of the library.

The Library Council of NSW develops guidelines to provide additional support to public libraries, including the *Children's Policy Guidelines for NSW Public Libraries (2008)*.²

Within this context, local authorities manage NSW public libraries.

Child safe, child friendly NSW public libraries

The *Commission for Children and Young People Act 1998* determines what is classified as *child-related employment*. The legal definition of *child-related employment* covers specified work settings where staff have a direct accountability for children placed in their care: settings like schools, child care centres, sports centres, school buses and so on. The *Working With Children Check* covers those staff who are required to have direct and unsupervised contact with children in these work settings.

In contrast, public libraries provide for general community access and staff are not required to be formally accountable for the care of children. Although NSW public libraries are not classified as child related employment, library staff and local authorities are conscious of the need to minimise risks to children and young people using public libraries and have worked closely with the Commission for Children and Young People to provide information and training to public library staff to foster child safe, child friendly environments in NSW public libraries.

Part 1. Issues associated with the Commission's policy, advocacy, research and education functions, for example:

- The Commission was established in 1999 as an independent voice in government to promote respect and understanding for the interests, participation and needs of children and young people; and to work cooperatively with government and non-government organisations that provide services to children and young people. Do these objectives remain valid?
- In light of the emphasis on greater multi-agency responsibility for children and vulnerable families that has occurred over the last few years, what is the appropriate policy role for the Commission?
- Has this changed policy context altered the nature of the Commission's advocacy, education and research roles?
- Are the consultation and advisory mechanisms established in the Act to assist the Commission to fulfil its functions appropriate?

² Library Council of NSW (2008) Children's Policy Guidelines for NSW Public Libraries
http://www.sl.nsw.gov.au/services/public%5Flibraries/library_mgt/lib_management_docs/childrens_%20policy_%20guidelines.pdf

Public libraries:

The Commission has provided expert advice, education and input to policy development in some key areas for NSW public libraries:

- a representative from the Commission participated in the NSW public libraries Child safe, child friendly working group providing expert advice on identifying risks in the public library environment and highlighting ways that libraries can become more child friendly in their service provision
- child-safe, child friendly training was provided to public library staff and specific sessions were provided for country based library managers addressing the risk management aspects of their roles
- a representative from the Commission was consulted in the revision of the Library Council of NSW Children's Policy Guidelines³ which provide guidance for all NSW public libraries

This aspect of the Commission's role is unique and highly valued by local government, specifically the public library sector. Similar expert advice, training and input to policy development would be appropriate in other cultural areas such as the galleries and museum sector.

1. In public library environments the expert advice, training and input to policy development provided by the Commission are very valuable in reducing the risks to children and young people from members of the public, staff and volunteers.

Part 2. Issues associated with the Commission's child-related employment screening (the Working with Children Check), for example:

- Do the definitions that apply to the administration of the Working with Children Check remain valid (for example what constitutes child-related employment, reportable conduct, prohibited persons etc)?
- Do the procedures for the review of applications for an exemption to the prohibition of employment remain valid?
- What are the limitations of the current approach to screening, including background checking, and what improvements should be made to address these limitations?
- What are the advantages and/or disadvantages of adopting an accreditation model similar to that in place in jurisdictions such as Queensland and Victoria? (For more information see www.ccydpcg.qld.gov.au/employment/index.html and www.justice.vic.gov.au/workingwithchildren respectively.)
- Should a different approach be maintained for certain employment categories (for example, volunteers and self employed people)?

³ Library Council of NSW (2008) Children's Policy Guidelines for NSW Public Libraries
http://www.sl.nsw.gov.au/services/public%5Flibraries/library_mgt/lib_management_docs/childrens_%20policy_%20guidelines.pdf.

- Does the Act contain sufficient auditing functions and compliance measures to support the operation of the Working with Children Check?

Public libraries:

Work in NSW public libraries is not currently classified as child-related employment. The *Working With Children Check* does not cover work in a public library, whether as a staff member, volunteer or a contractor.

A *Working With Children Check* is available for a public library worker (eg. children's librarian, toy library coordinator, youth officer) if it is an essential part of that job to have direct, unsupervised contact with children without any other person being present who can direct the librarian. The need for a check is dependant upon this direct unsupervised contact. It is uncommon for this type of unsupervised contact to occur in public libraries.

The Commission has provided expert advice in the development of a series of *Frequently Asked Questions*⁴ which address the most common questions local authorities have when employing staff to work in NSW public libraries. (see Attachment One)

As working in a public library is not classified as *child-related employment*, public library staff are not mandatory reporters, as defined by the legislation. Where staff are concerned that a child or young person may be at risk of significant harm the Commission advises reports can be made to the Child Protection Helpline or to the Police if the incident is of a criminal nature.

Adopting an accreditation model for staff and volunteers, similar to that in place in Queensland and Victoria, would not be applicable unless the definition of *child-related employment* were expanded to include public libraries. In the event that accreditation were introduced, it is unlikely to provide any additional protection to children and young people in NSW public libraries from the risks involved in the millions of members of the public visiting public libraries to whom the checks do not apply.

Public libraries engage a large number of volunteers across the state. Guidance in screening volunteering applications and providing appropriate training and supervision of volunteers is a priority for library staff.

2. Public library staff do not provide formal supervision to children and young people in the public library environment. At all times this responsibility remains with the parents and guardians of children and young people. Therefore, it is appropriate that the work is not classified as "child-related".

⁴ Working With children Check - Frequently Asked Questions

http://www.sl.nsw.gov.au/services/public%5Flibraries/library_mgt/lib_management_docs/working_with_children_check_FAQ_2010.pdf

3. Where a specific public library role has direct, unsupervised contact with children without any other person being present who can direct the staff member, Working With Children Checks apply.
4. Adopting an accreditation model similar to that in place in Queensland and Victoria would not provide any additional protection to children and young people in NSW public libraries.
5. There are many volunteers engaged in public library environments. Guidance in screening volunteering applications and providing appropriate training and supervision of volunteers is a priority for library staff.

Conclusion

Public libraries in NSW are a popular venue for children, young people and families. Their doors are open to every member of the community. As a sector that is not classified *child-related employment*, public libraries in NSW have utilised the Commission's policy, advocacy, research and education functions in key areas, specifically expert advice, training and input to policy development.

This assistance and expertise provides essential on-going support to local government as employers who have a responsibility to manage risks to children within their workplaces. Similar expert advice, training and input to policy development would be appropriate in other cultural areas such as the galleries and museum sector.

In summary:

- In public library environments the expert advice, training and input to policy development provided by the Commission are very valuable in reducing the risks to children and young people from members of the public, staff and volunteers.
- Public library staff do not provide formal supervision to children and young people in the public library environment. At all times this responsibility remains with the parents and guardians of children and young people. Therefore, it is appropriate that the work is not classified as "child-related".
- Where a specific public library role has direct, unsupervised contact with children without any other person being present who can direct the staff member, Working With Children Checks apply.
- Adopting an accreditation model similar to that in place in Queensland and Victoria would not provide any additional protection to children and young people in NSW public libraries.
- There are many volunteers engaged in public library environments. Additional guidance in screening volunteering applications and providing appropriate training and supervision of volunteers is a priority for public library staff.

Attachment one:

Working With children Check - Frequently Asked Questions

Developed by the *NSW Commission for Children and Young People* in consultation with the *Child Safe, Child Friendly NSW Public Libraries Working Group* and the *State Library of NSW*. If any further information is required about the Working with Children Check see <https://check.kids.nsw.gov.au/> or email check@kids.nsw.gov.au

1. Do staff working in public libraries in NSW need to have a Working With Children Check?

Only people who are entering *child-related employment* as defined by the *Commission for Children and Young People Act 1998* need this Check. Work in public libraries does not fit this definition, so the Working With Children Check is not available for staff in public libraries.

People who are not in *child-related employment* can apply for a National Criminal History Record Check through NSW Police on a fee-for-service basis. You should advise the person to go to their local Police Station if they wish to make an application.

There are many other ways to find out about a preferred applicant's background and previous work experience. You should conduct thorough reference checks with people who have worked with them before, or who know them well.

Research shows that in protecting children within workplaces, organisational practices are as important as who is employed. All employers have a responsibility to manage risks to children within their workplaces. The Commission for Children and Young People helps employers do this by providing our *Child-safe Child-friendly resources* which are available at www.kids.nsw.gov.au.

There are also resources specifically for public library staff available at www.sl.nsw.gov.au/services/public_libraries/library_mgt/childrens_services.html

2. Why is working in a public library not covered by the Working With Children Check?

The Working With Children Check is a government program to support employers in *child-related employment*. The *Commission for Children and Young People Act 1998* determines what is *child-related employment*.

The legal definition of *child-related employment* covers specified work settings where staff have a direct accountability for children placed in their care: settings like schools, child care centres, sports centres, school buses and so on. The Working With Children

Check covers those staff who are required to have direct and unsupervised contact with children in these work settings.

By contrast, public libraries provide for general community access and staff are not required to be formally accountable for the care of children.

3. Could a children's librarian be defined as child-related employment?

A *Working With Children Check* is available for a children's librarian if it is an essential part of that job to have direct, unsupervised contact with children without any other person being present who can direct the librarian. The need for a check is dependant upon this direct unsupervised contact.

4. Do public library volunteers need to complete Volunteer / student declaration forms?

No. Work in public libraries is not *child-related employment*, so it is not an offence for a prohibited person to be employed in a public library. Volunteers should not be asked to declare whether they are prohibited persons unless they are entering *child-related employment*.

5. Is there a standard statement that public libraries could use when advertising for paid and volunteer public library positions?

Work in public libraries is not classified as *child-related employment*. Therefore when advertising a position it is appropriate to include a statement that your library is a child-safe and child-friendly organisation and all staff are required to comply with the organisation's child-safe child-friendly policy and code of conduct. You could also include copies of these documents in the applicant's information pack.

Further information on recruiting and selecting staff is available in the Commission for Children and Young People's *Child-safe Child-friendly resources* at www.kids.nsw.gov.au.

There are also resources specifically for public library staff available at www.sl.nsw.gov.au/services/public_libraries/library_mgt/childrens_services.html

6. What are the requirements for contractors coming into public libraries?

The Working With Children Check does not cover work in a public library, whether as a staff member, volunteer or a contractor.

Employers are responsible for managing possible risks to children within their workplaces. If a tradesperson is working in an area where clients are present, good risk management practice suggests that you should have a staff member present.

As of May 2011, some contractors who also work in other positions / places where their work is classified as *child-related* may have a *Certificate for Self Employed People*. As work in public libraries is not classified as *child-related employment* the certificate is not required.

7. Are there any guidelines about appropriate touching of children?

Physical contact with adults is important to and valued by children. It is an essential part of many child-related roles.

Some general principles to consider when deciding whether touching a child is appropriate include:

- Don't do something that a child can do for themselves - contact should be determined by the age and developmental stage of the child
- Touching should be open and non-secretive
- Never engage in inappropriate touching such as touching of groin, genital areas, buttocks, breasts or any other part of the body that might cause a child distress or embarrassment
- Seek permission from the child before performing a particular demonstration or lesson that involves touching
 - Give children verbal instructions first
 - Let children know why there is a need to demonstrate using a hands-on method
 - Explain what the touching will be and ask for volunteers
 - Be explicit about where you will be touching

It is recommended that organisations discuss and develop agreed guidelines about what is appropriate touching for their particular work context.

All stakeholders of the organisation, including children, should be consulted when developing the guidelines. The guidelines should be advertised widely and the consequences of breaching them be made clear.

8. How do I decide when physical contact is reportable conduct under the Working With Children Check?

As working in a public library is not classified as *child-related employment*, library staff cannot make reports under the *Working With Children Check*. The *Working With Children Check* is only concerned with inappropriate or harmful physical contact that warrants a formal disciplinary proceeding in *child-related employment*. The *Working With Children Check Employer Guidelines* at www.kids.nsw.gov.au provide detailed information about relevant employment proceedings and reportable conduct including physical contact.

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Public library staff are not mandatory reporters, as defined by the legislation. Where staff are concerned that a child or young person may be at risk of significant harm reports can be made to the Child Protection Helpline on 132 111 or to the Police if the incident is of a criminal nature. More information is available at www.keepthemseafe.nsw.gov.au