



# **Working with Children Check Policy**

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## 1. Context

From 15 June 2013, people who are seeking to be employed or engaged in child-related work are subject to relevant requirements under the Child Protection (Working with Children) Act 2012 and the Child Protection (Working with Children) Regulation 2013. For further details, including the transitional provisions for existing workers (i.e. those employed or engaged in child-related work immediately prior to 15 June 2013), refer to the Working with Children Check Procedures further on in this document.

## 2. Legislative Provisions

Child Protection (Working with Children) Act 2012

[http://www6.austlii.edu.au/cgi-bin/viewdb/au/legis/nsw/consol\\_act/cpwca2012388/](http://www6.austlii.edu.au/cgi-bin/viewdb/au/legis/nsw/consol_act/cpwca2012388/)

Child Protection (Working with Children: Regulation 2013

<https://www.legislation.nsw.gov.au/#/view/regulation/2013/156>

## 3. Responsibilities and Delegations

3.1 As an employer, we have a responsibility to take reasonable steps to ensure that all persons to be employed or engaged in child-related work are suitable for child-related work.

3.2 The Principal/CEO is responsible for ensuring that recruitment processes within their area/s of responsibility are consistent with the Working with Children Check Policy and the Working with Children Check Procedures (**WWCC**). This includes ensuring that all persons who are required to either obtain a Working with Children Check Clearance or provide a Working with Children Check Declaration have met the relevant requirement, prior to commencing employment or engagement.

3.3 The Principal/CEO is responsible for records management, including keeping relevant Working with Children Check and National Criminal Records Check documents for five years after the employment or engagement has been completed, or longer if required (for example, if the recruitment or engagement action has been the subject of legal action); and for disposing these documents thereafter in a secure manner (for example, shredding).

# Working with Children Check Procedure

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## 1. Introduction

1.1 Workers in child-related roles must obtain a WWCC clearance prior to commencing in a child-related role. The Principal/CEO must verify the WWCC clearance to ensure the worker is cleared to work with children, before the worker commences in a child-related role. The Principal/CEO must only allow workers with a valid WWCC clearance to work in child-related roles.

1.2 A Working With Children Check (WWCC) clearance is a mandatory legislative requirement for specified volunteers and people who work in child-related work, including some contractors. The WWCC is one of the methods we use to protect children and young people and to manage risk. These procedures outline the processes for conducting the WWCC, the National Coordinated Criminal History Check, and other child protection pre-employment screening measures including the 'Not to be employed' database and structured referee checks.

**Workers in child-related roles** must obtain a WWCC clearance prior to commencing in a child-related role.

**The Principal/CEO** must verify the WWCC clearance, to ensure the worker is cleared to work with children, before the worker commences in a child-related role.

## 2. Audience and Application

2.1 These procedures apply to persons employed or engaged, or who are seeking to be employed or engaged, in child-related work with us.

2.2 All workers engaged in child-related work require a Working with Children Check clearance, unless they are an exempt volunteer or under 18 years of age. See section 3 for a full list of child-related workers, exempt workers and non-child-related workers.

## 3. Applying for and Verifying a WWCC

### ***Who needs to apply – is it a child-related role?***

3.1 **All staff** is automatically deemed to be child related. Staff categories include:

- Principal/CEO;
- Teachers;
- Administrative and support staff;
- Business managers;
- Teacher education students seeking to undertake paid internship (interns) or associate teacher program;
- Student support officers;
- Paraprofessional staff;

3.2 The following **specified volunteers** are child related. Specified volunteers are volunteers 18 years or older, who are:

- Parents/guardians or close relatives attending overnight excursions.
- volunteers providing personal care services to children with disabilities involving intimate contact with those children (such as assistance with toileting, bathing or dressing)
- volunteers providing mentoring services as part of a formal mentoring program

3.3 The following **contractors** are child related:

- Contractors who have been engaged by the Principal/CEO and will have direct contact with children.

3.4 **Other child-related groups**, refer to the WWCC Quick Guide for schools in relation to employees, volunteers, and contractors for details on the correct action to take.

- Teaching service staff not located in schools (for example, non-school-based teaching service positions)

#### ***Which roles are exempt or not considered child-related roles?***

3.5 The following category of staff are **exempt workers** and must complete a WWCC – Declaration for Volunteers and Non-Child-Related Contractors.

- people under the age of 18 years.

3.6 The following are not considered child-related roles, and do not need a WWCC or declaration:

- parents and relatives of students, who are visiting the school but are not working as a volunteer or contractor;
- local members of Parliament;
- local Council officials;
- unpaid speakers and guests invited by our community language school on special occasions, where the person's contact with children is minimal and supervised at all times;
- videographers.

#### **Applying for a WWCC Clearance**

3.7 Where a person in child-related work is required to obtain a WWCC clearance as a condition of employment or engagement, it is that person's responsibility to apply for the WWCC clearance with the Office of the Children's Guardian.

3.8 The application process is prescribed by the Office of the Children's Guardian on its website: [www.kidsguardian.nsw.gov.au](http://www.kidsguardian.nsw.gov.au).

#### **Application outcomes**

3.9 When an individual applies for a WWCC clearance with the Office of the Children's Guardian, the possible application outcomes are:

**Clearance**

The worker is cleared to hold the position applied for. We will be notified if the cleared worker later becomes a disqualified person, or has their WWCC cancelled or becomes subject to a bar, or interim bar (see below).

**Barred or subject to an interim bar**

The person cannot be employed or engaged in child-related work, or placed on any employment or engagement lists for child-related work.

**Closed**

Either the applicant did not continue with the WWCC application process or the applicant's WWCC clearance was terminated.

**We will verify the WWCC clearance**

3.10 Once a worker provides their WWCC clearance, we must verify the clearance with the Office of the Children's Guardian to ensure it is valid and current.

3.11 The Principal/CEO is responsible for all recruitment they coordinate, for checking the Not to be employed database, initiating the WWCC clearance verification (where this is required) and keeping relevant records for 7 years.

3.12 The possible verification outcomes are:

**Cleared**

The person can commence or continue employment or engagement in child-related work.

**Pending person**

Verification is underway. The person cannot commence or continue to work until a cleared result is received.

**Declined/closed/cancelled**

The person cannot be employed or engaged in child-related work, or placed on any employment or engagement list for child-related work.

## **How and when do workers need to renew their WWCC?**

3.13 Once granted, a person's WWCC clearance remains valid for 5 years from the date it is granted.

3.14 A person's WWCC clearance may be closed or cancelled sooner, or may become subject to an interim bar as determined by the Office of the Children's Guardian.

3.15 Declarations for volunteers and contractors are valid for the length of the volunteering/contracting period.

## **4. Bars. Interim Bars and Non-Compliance**

4.1 This clause applies to an existing child-related worker, who is deemed to be an 'unauthorised person', because the worker:

- has withdrawn their WWCC application;
- has surrendered their WWCC clearance;
- is a disqualified person as defined under section 18 of the Act;
- is subject to an interim bar under section 17 of the Act;
- is refused a WWCC clearance by the Office of the Children's Guardian;
- has had their WWCC cancelled by the Office of the Children's Guardian;
- has had their WWCC clearance or application closed by the Office of the Children's Guardian.

4.2 Where a child-related worker is required to hold a WWCC clearance, we will not accept a WWCC application number as meeting WWCC requirements.

4.3 The Office of the Children's Guardian will immediately notify us should the outcome of a WWCC application (or WWCC clearance) lead to an interim bar or bar.

4.4 Having a valid WWCC clearance is a pre-requisite for obtaining accreditation as a teacher.

4.5 In limited circumstances, a person refused a WWCC clearance or whose WWCC clearance is cancelled by the Office of the Children's Guardian may apply for review from the NSW Civil and Administrative Tribunal under Part 4 of the Act, within 28 days after notice of the decision being given to the person. Section 26(1) of the Act identifies the class of persons who are NOT entitled to apply for a review.

## **Consequences of not obtaining or renewing a WWCC clearance**

4.6 An existing child-related worker who fails to obtain or renew a WWCC clearance cannot continue to be employed or engaged in child-related work.

4.7 In the case of a contractor or volunteer, we may terminate the person's engagement in child-related work.

## **Duty to keep the information up to date**

4.8 Section 36B of the Child Protection (Working with Children) Amendment (Statutory Review) Act 2018 states that 'a person who holds a Working With Children Check clearance or who has made a current application to the Children's Guardian for a Working With Children Check clearance must notify the Children's Guardian of any changes to the person's personal details within 3 months of the change occurring'. Personal details include:

- the person's name;
- the person's address;
- the person's contact details;
- the person's employer or proposed employer;
- any other information of a kind prescribed by the regulations.

4.9 A person who, without reasonable excuse, fails to comply with this section is guilty of an offence.

## **5. Record Keeping**

5.1 We must keep records showing the person's WWCC clearance, and the date on which each clearance of the person ceases to have effect, for 7 years post-employment.

5.2 The documents collected to conduct the WWCC clearance verification and probity check contain sensitive personal information. They must be securely stored for seven years, in compliance with the State Records Act, General Authority 28 (GA28-15.4.4) and privacy legislation.

5.3 Personal information stored in electronic files must be password protected and manual information storage systems such as filing cabinets must be locked when unattended. Limit access to staff whose duties require them to have access. Make back-ups of personal information in electronic and store these securely. Where practicable, transmit the information in an encrypted form.

5.4 When using credit/debit cards for identification purposes, retain only the front of the card with the cardholder name and obscure the numeric details. To comply with the Payment Card Industry Data Security Standard, never write down or store customer credit/debit card data.



## 6. Terms and Definitions

Under the Child Protection (Working with Children) Act 2012:

**Worker** means any person aged 18 years or over who is employed or engaged in work in any of the following capacities:

- as a paid employee, including permanent, ongoing, temporary, term, full-time, part-time and casual employment;
- as an engaged contractor;
- as an engaged volunteer;
- as a person undertaking practical training as part of an educational or vocational course (other than as a school student undertaking work experience).

**Children** means persons under the age of 18 years.

**Direct contact** means physical contact or face-to-face contact.

**Child-related work** means any work in an area prescribed as child-related work in the Act or the Regulation. This includes but is not limited to work in the following areas:

- education – work in schools or other educational institutions, including private coaching or tuition of children;
- child development – work in mentoring and counselling services for children
- early education and child care – work in education and care services.

### Definitions of other terms in these procedures

**The Act** means the Child Protection (Working with Children) Act 2012.

**Barred** from child-related work means:

- where a person's application for WWCC clearance is refused by the Office of the Children's Guardian under section 18 of the Act;
- where a person's WWCC clearance is cancelled by the Office of the Children's Guardian under section 23 of the Act.

**Close relative** of a person means:

- a spouse or de facto partner of the person;
- a child, step-child, sibling, step-sibling, parent, carer, guardian, step-parent, grandparent, step-grandparent, aunt, uncle, niece or nephew of the person, and includes, in the case of an Aboriginal person or a Torres Strait Islander person, persons who are part of the extended family or kin of the person according to the indigenous kinship system of the person's culture.

**Contractors** engaged by us:

- contractors engaged directly by our community language school;
- subcontractors;
- employees of a contractor or a subcontractor;
- persons employed by a contingent labour supplier.

**Disqualified persons** has the same meaning as in section 18(1) of the Act, namely:

- a person convicted of a criminal offence specified in Schedule 2 of the Act, if the offence was committed as an adult;
- a person against whom proceedings for any such offence have been commenced, if the offence was committed as an adult, pending determination of the proceedings for the offence.

**Existing worker** refers to employees, contractors and volunteers who have been continuously employed or engaged to perform child-related work prior to 15 June 2013. Existing workers also include persons who were placed on an employment list for child-related employment opportunities before 15 June 2013.

**Formal mentoring program** includes, but is not limited to a mentoring program for children approved by us; a mentoring initiative approved by the Principal/CEO.

**Interim bar** means an interim bar imposed by the Office of the Children’s Guardian under section 17 of the Act where it is likely that there is a risk to the safety of children if the person engages in child-related work. A person who is subject to an interim bar cannot engage in child-related work. Not to be employed database is maintained by our community language school.

**Office of the Children’s Guardian** is an independent government agency and is responsible for administering the Working with Children Check in NSW.

**Parent/guardian** means a parent/guardian or close relative of the child.

**Refused a WWCC clearance** means a person whose application for a WWCC clearance has been refused wholly or partly on the grounds that the person has been charged with an offence (other than an offence specified in Schedule 2 of the Act).

**Regulation** means the Child Protection (Working with Children) Regulation 2013.

**Specified volunteer** means volunteers:

- providing personal care services to children with disabilities involving intimate contact with those children (such as assistance with toileting, bathing or dressing), parent volunteers;
- providing mentoring services as part of a formal mentoring program provided by a government or non-government agency (this includes parent volunteers);
- attending overnight excursions;

**Unauthorised person** means:

- (a) a person whose WWCC clearance is cancelled under section 23 of the Child Protection (Working with Children) Act 2012, other than a charged person
- (b) a charged person or the person being convicted (within the meaning of the Child Protection (Working with Children) Act 2012) of an offence specified in Schedule 2 to that Act

Note. A conviction includes a finding that the charge for an offence is proven, or that a person is guilty of an offence, even though the court does not proceed to conviction (see the definition of conviction in the Child Protection (Working with Children) Act 2012).