



Factsheet 13: Information for Self Employed People

Background

The *Working with Children (Criminal Record Checking) Act 2004* (the Act) aims to protect children from harm by providing a high standard of compulsory national criminal record checking for people wishing to do paid, unpaid or volunteer child-related work in Western Australia. The Working with Children Check (WWC Check) considers criminal records to see if people have charges or convictions that indicate they may harm a child.

Self employed people have a number of responsibilities and obligations under the Act which are outlined in this factsheet.

Safer Environments for Children - Minimising Risk

It is important that self employed people who carry out child-related work and businesses which engage people in child-related work have policies and appropriate codes of conduct that safeguard children. Obtaining a WWC Check is **only one** of the practices that responsible self employed people put in place to promote safer environments for children. Suitability to work with children covers a wide range of factors other than just offence history, such as character, skills and experience. Other necessary procedures include:



- policies that promote safer and supportive environments for children
- a work culture which ensures that children's concerns are heard.

Self employed people and employers must make sure that they and their employees, students and volunteers who are in child-related work have current WWC Checks.

Who Needs a WWC Check?

Under the WWC Act, people whose usual duties of work involve (or are likely to involve) contact with a child (under 18) in connection with one or more categories of child-related work are required to have a WWC Check. There are 19 categories of child-related work in the Act.

For more information on these, see **Factsheet 1: What is Child Related Work?** www.checkwwc.wa.gov.au.

There are also some exemptions which are outlined on page 2.

Who Needs a WWC Check?

The following steps will help you to identify if a person (paid/unpaid/volunteer/student/self employed person) is in child-related work and requires a WWC Check:

<p>Question 1: Are you or any employees/ volunteers/ students within your organisation doing paid, unpaid or volunteer work in connection with any of the categories of child-related work listed in Section 6(1)(a) of the <i>Working with Children (Criminal Record Checking) Act 2004</i>?</p> <p>See <u>Factsheet 1: What is “child-related work”?</u></p>	<p>YES</p> <p>Go to question 2</p>	<p>NO</p> <p>A WWC Check is not required</p>
<p>Question 2: Do the usual duties of the work involve, or are they likely to involve, contact with a child?</p> <p>Contact includes any form of:</p> <ul style="list-style-type: none"> • physical contact • oral communication, whether face to face, by telephone or otherwise • electronic communication <p>but does not include contact in the normal course of duties between an employer and an employee (including employees under 18 yrs) or between employees of the same employer.</p>	<p>YES</p> <p>Go to question 3</p>	<p>NO</p> <p>A WWC Check is not required</p>
<p>Question 3: Does an exemption apply?</p> <p>To see if an exemption applies see <u>Factsheet 5: Child-related work and exemptions.</u></p>	<p>YES</p> <p>If an exemption applies a WWC Check is not required.</p>	<p>NO</p> <p>If no exemption applies a WWC Check is required.</p>

Exemptions

Certain people are not eligible for a WWC Check and must not apply for one.

Following are some examples of exemptions. For full details, check the information in **Factsheet 5 “Child-related work and Exemptions”** www.checkwwc.wa.gov.au:

- Short term visitors to Western Australia carrying out child-related work during the period of two weeks after their arrival in Western Australia, and for no more than two weeks in any period of 12 months.
- Volunteers and students on unpaid placement who are under 18 years of age.
- Parents volunteering in many activities where their child is also involved. This exemption **does not** apply to parents volunteering at overnight camps attended by their children.

How to Apply for the WWC Check

The WWC Check application form is available at authorised [Australia Post outlets](#) throughout the state. A list of these can be found at www.auspost.com.au/workingwithchildren. An application must be lodged in person. When applying, applicants need to present sufficient documents to meet the 100 points identification criteria. Accurate identifying information is essential to make sure the criminal history check is carried out for the correct person, which includes the applicant's current address details and photographic identification. See the guidelines on the application form for full information about what identification is acceptable.

As a self employed person you are responsible for your own application. Your application form should not be co-signed. When signing the application form you are declaring that the information provided is true and correct and that you are in child-related work; penalties apply for providing false or misleading information to the WWC Screening Unit.

The WWC Check is heavily subsidised. The current fee for self employed people is available on our website www.checkwwc.wa.gov.au.

If you do not have sufficient identification *or* live in a remote community and are unable to access an authorised Australia Post outlet, please contact the WWC Screening Unit on (08) 6217 8100 or 1800 883 979 (Country callers) to find out how to apply.

Outcome of the WWC Check

- A 'successful' WWC Check results in a WWC Card which is portable for three years across all types of child-related work, unless cancelled.
- A card with a photograph will be issued as proof of a WWC Check. However, a WWC Card **IS NOT** an endorsement of a person's general suitability to work with children.
- An 'unsuccessful' WWC Check results in a Negative Notice, which prohibits the holder from carrying out child-related work (including voluntary work) under any category with any employer or as a self employed person.
- The WWC Card is 'live' which means that it is monitored and updated information is received, including from the WA Police. If a person is charged with, or convicted of, an offence of concern, their WWC Card can be re-assessed. If the re-assessment is unsuccessful a Negative Notice is issued. The Negative Notice cancels the WWC Card and current employers, known to the WWC Screening Unit will be notified of this.



Five Day Threshold and Defence

It is an offence to carry out child-related work without a WWC Card. However, the Act allows reasonable flexibility to enable employers to deliver services in unforeseen circumstances such as the illness of a worker. The 'threshold' is different for self employed/ volunteers/ employees/ students and employers/ volunteer organisations/ education providers.

For self employed people, volunteers, students and employees, the five day threshold is a 'defence'. It allows most people to be engaged in child-related work on no more than five days during a calendar year without a WWC Check.

It also gives self employed people, employees, students and volunteers flexibility as they are not committing a breach of the Act if they suddenly find that they are required to engage in child-related work, for example if their role changes to include child-related work or if they are required to fill in for a sick colleague or volunteer.

However, this defence does not apply to everyone and is not available to:

- people convicted of a Class 1 offence as an adult
- people in child-related work with a licensed child care service
- people who have been issued with a notice from the WWC Screening Unit confirming that their WWC Card has been cancelled because they have:
 - had a change in their criminal record; and
 - advised they are no longer in child-related work
- people who have withdrawn their application for a WWC Check after being required to apply by a “S16 Notice” or “S17 Notice”. These are notices issued by the WWC Screening Unit after it is notified by an employer or by the Police that a person has been charged with or convicted of an offence that may make it inappropriate for them to carry out child-related work
- people who have withdrawn their application for a WWC Check after giving notice to the WWC Screening Unit of a relevant change in their criminal record. When advised of a relevant change the WWC Screening Unit is required to treat it as an application for a further WWC Check. The five day defence does not apply to people who are re-assessed under this provision or withdraw from this automatic application process
- people who have withdrawn their application after receiving a “Proposal to issue a Negative Notice” letter inviting them to make a submission
- people whose WWC Card is being re-assessed after Police have notified the WWC Screening Unit of a new charge or conviction which makes it inappropriate for them to continue to be in child-related work.
- people who are no longer in child-related work and who have been charged or convicted of a Class 1 or Class 2 offence since their current WWC Card was issued.
- people who have a current Negative Notice or Interim Negative Notice.

If a person does not apply for a WWC Check because they do not work on more than five days in a calendar year, they still have requirements under the Act which include to:

- report in writing any relevant change in their criminal record to the WWC Screening Unit and to their employer (for volunteers, students and paid employees) or if self employed to the WWC Screening Unit
- cease child-related work immediately if convicted of a Class 1 offence as an adult.

The five day threshold is not an exemption from the WWC Act: Self employed people, employees, students and volunteers may still apply, and employers, volunteer organisations and education providers can require that they apply for a WWC Check.

Obligations and Responsibilities for Self Employed People

Self employed people have responsibilities under the WWC legislation which are listed below. It is your responsibility to know your obligations, as not complying can result in a **fine of up to \$60,000 and five years imprisonment**.

If you are **self employed**:

- Identify which of the listed categories of child-related work you carry out.
See **Factsheet 1: What is Child-Related Work?**
- You must not carry out child-related work unless you have a current WWC Card or have applied for one within the required time.
- In some cases you will not commit an offence if you don't have a WWC Card or pending application for one as long as your child-related work is for no more than five days within any calendar year.
See page 3 for more details.
- You must renew your WWC Card every three years if you are still in child-related work.
- Update your address and employment details on the WWC website if they change.
- You must not give false or misleading information to the WWC Screening Unit.
- Keep adequate records that demonstrate compliance with the WWC Check legislation. You can be asked to provide records to demonstrate your compliance with the Act by the WWC Screening Unit.
- You must apply for a WWC Check within the time stated if asked to do so by the WWC Screening Unit.
- You must not carry out child-related work if you have been convicted of a Class 1 offence committed as an adult.
- You must return your WWC Card to the WWC Screening Unit as soon as practicable after being convicted of a Class 1 offence committed as an adult or if your WWC Card is cancelled by the WWC Screening Unit
- If you are issued with a Negative Notice or Interim Negative Notice you must:
 - not carry out child-related work
 - if you have a WWC Card, you must return it to the WWC Screening Unit as soon as practicable after being issued with a Negative Notice or Interim Negative Notice
- If issued with an Interim Negative Notice you cannot withdraw your application for a WWC Card.
- If you have a relevant change (this is when a person is charged with or convicted of a Class 1 or Class 2 offence) in your criminal record you must as soon as is practicable:
 - give written notice to the WWC Screening Unit. You are not required to give any details of the change in your record, except that a change has occurred.
- If you have a current WWC Card and have a relevant change in your criminal record and are no longer in child-related work, you are still required to give written notice to the WWC Screening Unit of the relevant change. Your WWC Card will be cancelled and you must not start in child-related work until you have been issued with a further WWC Card or have made an application for one.

General information and summary only - please visit the WWC website at www.checkwwc.wa.gov.au for further details.

More Information

For more information about the responsibilities and obligations for employers, volunteer organisations, employees, volunteers, students on placement, education providers, child safe practices and the parent volunteer exemption visit the website www.checkwwc.wa.gov.au and specifically:

Factsheet 3: Information for Employers and Volunteer Organisations

Factsheet 6: Information for Employees and Volunteers

Factsheet 16: The Parent Volunteer Exemption

Child Safe and Friendly Organisations Factsheet

Disclaimer

The Working with Children Screening Unit is committed to providing clear information to help you understand your rights and meet your obligations. Every reasonable effort has been made to ensure information is accurate and up to date. However, errors can occur and changes after the time of publication may impact on the accuracy of the information in a factsheet.

The latest publication of a factsheet and further information about the Working with Children law is available on our website at www.checkwwc.wa.gov.au. If you require additional assistance you may also contact us on (08) 6217 8100, for country callers 1800 883 979 (toll free).

The information in this factsheet is provided on the understanding that it is not to be relied on for legal or professional advice.

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Working with Children Screening Unit

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