

# Factsheet 3b: Employees & Volunteers - Checklist & Obligations



Department for Community Development  
Government of Western Australia



## **Working with Children (Criminal Record Checking) Act 2004**

The *Working with Children (Criminal Record Checking) Act 2004* aims to protect children from harm by introducing a high standard of compulsory national criminal record checking for people wishing to do paid, unpaid or volunteer work with children in Western Australia. The Working with Children Check commenced on 1 January 2006 and is being phased in over a five year period.

- A person who is carrying out child-related work as an employee, volunteer or in an unpaid capacity has a number of obligations under the new legislation. See page 2 of this Factsheet for details of employee/volunteer obligations.
- There is a range of penalties for non-compliance with these obligations.

### **The Working with Children Check applies only to child-related work carried out:**

- by an individual under a contract of employment or apprenticeship whether written or unwritten;
- on a voluntary basis by an individual under an agreement with another person whether written or unwritten;
- by an individual as a minister of religion or in any other capacity for the religious purposes of a religious organisation; and
- by an individual carrying out child-related work for gain or reward, otherwise than in the course of child-related employment.

**Only people carrying out “child-related work” should apply for a Working with Children Check.**

## CHECKLIST FOR EMPLOYEES AND VOLUNTEERS

<p><b>Questions 1: Are you doing paid, unpaid or volunteer work under an agreement with another person in connection with any of the categories of child-related work listed in Section 6(1)(a) of the Working with Children (Criminal Record Checking) Act 2004?</b></p> <p>See Factsheet 1: <i>What is child-related work?</i> for details of categories of child-related work. Available on <a href="http://www.checkwwc.wa.gov.au">www.checkwwc.wa.gov.au</a></p>	<p><input checked="" type="checkbox"/> YES Go to question 2</p>	<p><input checked="" type="checkbox"/> NO A Check is not required</p>
<p><b>Question 2: Do the usual duties of the work involve, or are they likely to involve, contact with a child?</b></p> <p><b>Contact</b> includes any form of:</p> <p>(a) physical contact;</p> <p>(b) oral communication, whether face to face, by telephone or otherwise; and</p> <p>(c) electronic communication;</p> <p>but does not include contact in the normal course of duties between an employer and an employee (including employees under 18 years) or between employees of the same employer.</p>	<p><input checked="" type="checkbox"/> YES Go to question 3</p>	<p><input checked="" type="checkbox"/> NO A Check is not required</p>
<p><b>Question 3: Does an exemption apply?</b></p> <p>To see if an exemption applies see Factsheet 5: <i>Child-related work and exemptions</i>. Available on <a href="http://www.checkwwc.wa.gov.au">www.checkwwc.wa.gov.au</a></p>	<p><input checked="" type="checkbox"/> YES If an exemption applies you should <b>not</b> apply for a Check</p>	<p><input checked="" type="checkbox"/> NO If no exemption applies go to question 4.</p>
<p><b>Question 4: Does the “5 day threshold” apply?</b></p> <p>It is a defence under the Act to have worked with children on no more than five days in a calendar year, without making an application for a Check. The “5-day threshold” applies to <b>all categories</b> of work, <b>except</b> work in licensed child care services.</p> <p><i>Please note: The “5 day threshold” has a limited application and people carrying out child related work in these circumstances are still subject to the other requirements of the Act, such as reporting a relevant change in their criminal record or ceasing work immediately if convicted of a Class 1 offence as an adult.</i></p>	<p><input checked="" type="checkbox"/> YES If the 5-day threshold applies, people do not need to apply for a Check. However, if unsure whether child-related work will be carried out on more than 5 days it is recommended to apply for a Check.</p>	<p><input checked="" type="checkbox"/> NO If no exemption applies a Check is required by the date set out in the phasing in arrangements. See Factsheet 2: <i>When to Apply</i></p>

For comprehensive information on the Working with Children Check, including details of the legislation and when to apply, go to the Working with Children website at [www.checkwwc.wa.gov.au](http://www.checkwwc.wa.gov.au). Phone: 08 6217 8100

# Employee & Volunteer Obligations

The following obligations apply from 1 January 2006

## Working with Children Check required

- » A person must not carry out child-related work unless they hold a current Working with Children Card, or have a pending application for a Working with Children Check, **by the date required** under the phasing-in arrangements (*Section 24(a)*). However, people who have been convicted of a Class 1 offence committed when they were an adult are not permitted to be in child-related work regardless of whether they have a pending application or the work is for less than 5 days in a calendar year.
- » An employee or volunteer in child-related work **who has not yet been required to have a Working with Children Check** under the phasing-in arrangements, must apply for one within the time stated if asked to do so. Such requests will be in writing by the Working with Children Screening Unit (or an Approved Screening Agency once established) (*Sections 16(3) and (5) and 17(3) and (5)*).

## Negative Notices

- » A person must not carry out child-related work if issued with a current **Negative Notice** or **Interim Negative Notice** (*Section 23*).

## Relevant changes in criminal record

- » **All employees or volunteers** in child-related work must give their employer written notice of a **relevant change of criminal record** as soon as practicable after it occurs (*Section 29(1)*). **This applies from 1 January 2006 even if they are not yet required to have a Working with Children Check under the phasing-in arrangements.**
- » Any person who has made an application for a Working with Children Check, but who has not yet received a Working with Children Card, must notify the Working with Children Screening Unit (or an Approved Screening Agency once established) of a **relevant change of criminal record** as soon as practicable after it occurs (*Section 28(2)*).
- » If a person's relevant change in criminal record is a conviction for a **Class 1 offence** that was committed as an adult, then he or she must cease child-related work immediately (*Section 33*).
- » People with a current Working with Children Card who are not carrying out child-related work, **and** who have had a **relevant change in criminal record** since last doing child-related work, must not start in child-related work until they have been issued with a further Working with Children Card or have applied for another Working with Children Check and the application is pending. Before starting child-related work, they must notify their proposed employer that there has been a change in their criminal record **and** that they have applied for a new Working with Children Check (*Sections 31(2) and 31(3)*).

## False or misleading information

- » You must not give information to the Working with Children Screening Unit (or an approved Screening Agency once established) that you know to be false or misleading (*Section 35*).

## Return of Working with Children Card

- » A person must return an Working with Children Card to the Working with Children Screening Unit (or an Approved Screening Agency once established) as soon as practicable after being issued with a Negative Notice or Interim Negative Notice, or being convicted of a Class 1 offence committed when the person was an adult (*Section 36*).

**Penalties of up to \$60,000 and 5 years imprisonment apply in relation to offences under the Act.**