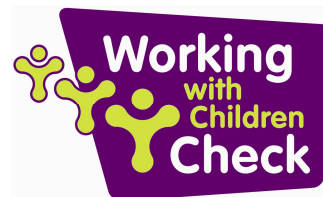


# Factsheet 3a: Employers, Volunteer Organisations & the Self Employed - Checklist & Obligations



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** is being phased-in over five years, commencing from 1 January 2006.

**Employers: Please note an employee/volunteer who does not already hold a Working with Children Card can only make an application for a Working with Children Check once they are employed or proposed to be employed in child-related work.**

Criminal record checks are only one of the measures that responsible employers put in place to ensure their employees and volunteers are suitable to work with children. Other necessary procedures include:

- » rigorous recruitment and selection practices, including thorough referee checks;
- » good supervision and training;
- » policies that create a safe and supportive environment for children; and
- » a work culture which ensures that children's concerns are heard.

It is recognised that many employers have set in place good risk management policies that include child-safe policies and codes of conduct. While there will be requirements for internal systems to manage the relevant Working with Children Check records, this legislation will strengthen human resources management and support employers to build child-safe organisations.

Some benefits of the Working with Children Check for employers include transferring responsibility for the assessment of criminal records to a specialist agency, and introducing a system for updating an existing criminal record check if there are relevant changes in an employee or volunteer's criminal record.

Employers, employees, self-employed people and volunteers in child-related work have a number of obligations under the new legislation, with penalties for non-compliance.

The focus of the Government is, however, on introducing the scheme in a way which supports employers, employees, self-employed people and volunteers to understand their responsibilities under the Act. It recognises that the majority of people appreciate the importance of criminal records checks and want to ensure that children are safe.

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

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

# Checklist – for Employers, Organisations & the Self Employed

## CHECKLIST

<p><b>Question 1: Are you or any employees/volunteers 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>?</b></p> <p>See Factsheet 1: What is “child-related work”? for 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> <ul style="list-style-type: none"> <li>a) physical contact;</li> <li>b) oral communication, whether face to face, by telephone or otherwise; and</li> <li>c) electronic communication;</li> </ul> <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><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: Child-related work and exemptions 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 an application should <b>not</b> be made.</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 5 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 <a href="#">Factsheet 2: When to Apply</a></p>

People who are **not in child-related work** are **not eligible** for a Working with Children Check.

## What Should You Do Now?

- Become familiar with your obligations under the *Working with Children (Criminal Record Checking) Act 2004*, and ensure that the relevant employees or volunteers in your organisation or business are aware of the Working with Children Check.
- Using the **Checklist for Employers, Organisations and the Self Employed** identify which of the listed categories of **child-related work**, that you and/or your employees/volunteers carry out. See **Factsheet 1: What is “child-related work”** for a list of categories.
- If you or any employees or volunteers within your organisation are required to have a Working with Children Check, make sure you/they have applied for, or already hold, a Working with Children Card **by the date required** under the phasing-in arrangements. See **Factsheet 2: When to apply**.
- Develop systems for managing the Working with Children Check process, including ways of keeping records to show you are complying with your obligations under the Act. Employers can be asked to provide records to demonstrate their compliance with the Act.
- Consider whether your organisation or business has policies and practices that create safe and supportive environments for children.

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)

# EMPLOYER OBLIGATIONS

## The following obligations apply from 1 January 2006

### Working with Children Check required

- » You must not employ a person in child-related work on more than five days in a calendar year (the “5 day threshold” applies to all categories of child-related work except work in connection with a licensed child care service) unless he or she holds a **current** Working with Children Card, or has a pending application for a Working with Children Card, **by the date required** under the relevant phasing-in arrangements

(Section 22(6) and 22 (4)).

**Please note the current or proposed employer must sign the application form for a Working with Children Card.**

### If aware of Class 1 or Class 2 offences\*

- » You must not employ a person in child-related work **if you are aware** that he or she has a **conviction** or **pending charge** for a Class 1 or Class 2 offence, **and** the person does not have a current Working with Children Card and has not made an application for a Working with Children Card that is pending (Section 22(2)).

### Negative Notices

- » You must not employ a person in child-related work if you are aware that he or she holds a current **Negative Notice** or **Interim Negative Notice** (Section 22(3)).

### Withdrawn application

- » You must not employ a person in child-related work if you are aware that the person has withdrawn his or her application for a Working with Children Check (Section 22(5)).

### Relevant changes in criminal record

- » You must notify the Working with Children Screening Unit (or an Approved Screening Agency once established) in writing **as soon as practicable**, once you are notified of a **relevant change of criminal record** by an employee or volunteer in child-related work (Section 29(2)). **This applies from 1 January 2006 even if the person is not yet required to have a Working with Children Check under the phasing-in arrangements.**

A “**relevant change of criminal record**” occurs when a person is charged with or convicted of a Class 1 or Class 2 offence. The employee or volunteer is not required to give you any details of the change in their record, except that the change has occurred.

### Audits

- » You must be able to demonstrate that you are complying with the law, if you receive a written request from the Working with Children Screening Unit (or an Approved Screening Agency once established) to provide supporting information or documents for compliance purposes (Section 42).

### 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).

### To comply with the Act despite other laws

- » If it would be a contravention of a provision of the Working with Children legislation for an employer to employ another person in child-related work, the employer is to comply with the provision despite another Act or law or any industrial award, order or agreement (Section 41(1)).

# SELF-EMPLOYED OBLIGATIONS

## The following obligations apply from 1 January 2006

### Working with Children Check required

- » A self-employed 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 Card, **by the date required** under the phasing-in arrangements (*Section 24(b)*). A defence is available if a person has been carrying out child-related work on no more than five days in a calendar year without applying for a Check (unless they are working in connection with a childcare service). 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.
- » A self-employed person 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 a certain time if asked to do so. Such requests will be in writing. (*Sections 17(3)*).

### Negative Notices

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

### Relevant changes in criminal record

- » **All self-employed persons** in child-related work must give the Working with Children Screening Unit (or an Approved Screening Agency once established) written notice of a **relevant change of criminal record** as soon as practicable after it occurs (*Section 30*). **This applies even if they are not yet required to have a Working with Children Check under the phasing-in arrangements.**

A “**relevant change of criminal record**” occurs when a person is charged with, or convicted of a Class 1 or Class 2 offence.

- » Any self-employed 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 the self-employed 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, **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 (*Section 31(2)*).

# SELF-EMPLOYED OBLIGATIONS CONTINUED

## Audits

- » You must be able to demonstrate that you are complying with the law, if you receive a written request from the Working with Children Screening Unit (or an Approved Screening Agency once established) to provide supporting information or documents for compliance purposes (*Section 42(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 self-employed person must return a 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*).

If employing people in child-related work, refer to the Employer Obligations.

If you require any further information  
please visit our website at  
[www.checkwwc.wa.gov.au](http://www.checkwwc.wa.gov.au)

Or

Call the Working with Children  
Screening Unit  
Phone (08) 6217 8100, or 1800 883 979  
(Country Callers)

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