



Department for Community Development  
Government of Western Australia



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

### **SUMMARY OF KEY FEATURES -**

**Working with Children Screening Unit -  
Department for Community Development**

**updated February 2007**

**This information is a summary only.  
For further information and factsheets see the website  
[www.checkwwc.wa.gov.au](http://www.checkwwc.wa.gov.au)**

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## **BACKGROUND**

Ensuring, as far as is possible, that people who work with children are safe to do so requires a range of strategies including sound staff selection and supervision practices, checking of referees and qualifications. Criminal record checking is a cornerstone component of these strategies.

The *Working with Children (Criminal Record Checking) Act 2004* (WWC Act) was passed by Parliament on 26 November 2004, assented to on 8 December 2004 and proclaimed on 1 January 2006. It is a key element of the Government's *Children First Strategy* and contributes towards the safety and wellbeing of children in the community.

The WWC Act aims to address concerns of the community that there is consistent and thorough screening of the criminal records of people who work in positions of trust with children. It is an unfortunate reality that some people who wish to sexually molest or otherwise harm children do seek out areas of work which provide opportunity for sustained contact with children.

In recent years governments have been working to improve systems for criminal record checking of people working with children. Screening legislation has also been adopted in Queensland, New South Wales and Victoria and is currently under consideration in South Australia and Tasmania.

Prior to the WWC legalisation, employee criminal record checking was undertaken by some service providers including public sector departments and in Western Australia. There was concern that the range of criminal history received was not sufficient or consistent and that assessment processes varied. There were also many persons who were not screened including many volunteers and those without an employer – self employed persons in child-related businesses. The introduction of a universal, high standard of criminal record checking across sectors strengthens the protection of children.

Public, not-for-profit and commercial agencies, persons from many professions, religious groups and the community as a whole have roles to play in the successful implementation of the legislation.

Protecting children is everyone's business.

## **PURPOSE**

This legislation aims to contribute to the protection of children from harm by:

- deterring people from applying to work with children where they have criminal records that indicate they may harm children
- preventing those with such criminal records who do apply, from gaining positions of trust in certain paid and unpaid employment, and volunteer work
- establishing consistent standards for criminal record screening for working with children and the ethical use of such information
- contributing to awareness that keeping children safe is a whole of community responsibility.

## **SCOPE**

Volunteers, employed and self-employed persons working in certain categories of “child-related work” require Working with Children Checks (WWC Checks).

- Child-related work is defined in section 6 of the WWC Act, and includes work where the usual duties involve, or are likely to involve, contact with a child in connection with activities such as: child care services, commercial babysitting, fostering, educational institutions for children, accommodation, relevant wards of hospitals, cultural or sporting activities, counselling and support services and children’s entertainment. Ministers of Religion in child-related work are also identified. (This is not an exhaustive list of all the categories of child-related work contained in section 6 and reference should be made to *Factsheet 1: what is child-related work?* for the complete list.)
- A child is a person under 18 years of age.

There are many work situations where there is occasional contact with children or where the customers may be children, including the general retail industry, the local deli or the cinema. However, it is not reasonable, nor is it the intention of this legislation, to require screening of persons working in general work situations.

## **WHO CONDUCTS THE WWC CHECK?**

The Working With Children Screening Unit (WWCSU) is established as part of the Department for Community Development. It will be administered by the Commission for Children and Young People, once established. The WWCSU:

- assesses and determines whether persons with relevant criminal histories should be issued with an Assessment Notice to work with children, or a Negative Notice or Interim Negative Notice which will prohibit them from child-related work.
- sets standards and policies for conducting WWC Checks

Approved Screening Agencies (ASAs), to be established within the Department of Health and the Department of Education and Training, will undertake WWC Checks for their employees and others providing health or education and training services.

Until the ASAs are established, appropriate personnel from DET and DOH undertake the screening for those sectors under the auspice of the WWCSU from January 2007

## **KEY ELEMENTS OF THE LEGISLATION**

### **Persons to be screened**

People who wish to commence or continue in “child-related work” must apply for a WWC Check. “Child-related work” is defined in Section 6(1) of the WWC Act. It includes “child-related work” undertaken by employees and self-employed persons in the commercial, not-for-profit and public sectors on a paid, unpaid or voluntary basis.

*See Fact Sheet 1: What is ‘child-related’ work’?*

Exclusions and exemptions from the requirements of the WWC Act apply in some circumstances. This includes:

- certain informal, domestic arrangements;
- volunteers under 18 years;
- employers and fellow employees of young people (not otherwise in child-related work);
- short term visitors to WA for 2 weeks after their arrival in any period of 12 months;
- parents volunteering in many activities where their child is also involved.

*See Fact Sheet 5: Child-related work and exemptions.*

## Records assessed

An application for a WWC check initiates a national criminal record check of convictions by CrimTrac and a check by the Western Australia Police for any pending or non-conviction charges in WA. Capacity to check for charges across Australia is the subject of national negotiations.

- The WWC check assesses juvenile and adult criminal records including all spent and unspent convictions as well as pending charges and non-conviction charges (those where the outcome was other than a conviction).
- Assessment of non-conviction charges enables consideration of scheduled offences that, for example, have been dismissed on a technicality or have not proceeded because of the impact on the victim. This is particularly relevant where children are required to give evidence in sexual assault cases.
- Assessment can include access to information about the context of the offences including from police, DPP, court records, medical and treatment reports.

See *Fact Sheet 4: Class 1 and Class 2 Offences*.

## Framework for assessment

- Convictions for certain serious sexual offences against a young child (Class 1 offences), committed as an adult, will result in an 'automatic-bar' on child-related work through the issue of Negative Notices. .
- Another set of serious convictions of a sexual or violent nature (Class 2 offences) will also result in a prohibition on child-related work through the issue of Negative Notices, unless assessment of an applicant's criminal record indicates that there are *exceptional circumstances* demonstrating that it would not be contrary to the best interests of children to issue an Assessment Notice.
- Convictions outside of Class 1 or Class 2 will result in Assessment Notices, unless the assessment undertaken indicates that there are *particular circumstances* which demonstrate that the person should be prohibited from child-related work.
- Pending charges for Class 1 or Class 2 offences result in Negative Notices unless *exceptional circumstances* are identified enabling issue of an Assessment Notice.
- Non-conviction charges for Class 1 or Class 2 result in Assessment Notices unless particular circumstances are identified which indicate the person should be prohibited from child-related work through issue of a Negative Notice.

## Assessment process

Where there is a criminal record, this is considered including:

- when the offence was committed or is alleged to have been committed
- the age at time of the (alleged) offence
- the nature, circumstances and pattern of charges or convictions
- their relevance to child-related work
- any information given by the applicant, and
- anything else relevant to the decision.

The paramount consideration is the best interest of the child.

The WA Commissioner for Police, Director of Public Prosecutions and the Department of Corrective Services, Department of the Attorney General as well as Police Commissioners in other jurisdictions and criminal record agencies such as CrimTrac, are enabled to provide information about a person's criminal record to the WWCSU.

Currently only Australian records are available through the national criminal record check facilitated by CrimTrac. Future developments are anticipated whereby other than Australian records are accessible. When employing a person from another country, employers are encouraged to ask the prospective employee to arrange for a criminal record check through the appropriate embassy or official source. It is recognised that for some countries criminal record checks will not be available or may not be reliable.

### **Outcomes of a WWC Check**

A 'successful' WWC Check results in the issue of an Assessment Notice which confirms that the person has successfully 'passed' the WWC Check and may undertake or continue to undertake child-related work.

- The Assessment Notice is a WWC Card with a photograph and signature. The employer receives a copy and validity of the Card can be checked on the website.
- A WWC Card IS NOT an endorsement of a person's general suitability for work with children. Obtaining WWC Checks are only one of the practices that responsible employers put in place to achieve safe environments for children.
- The WWC Card is portable across all types of child-related work for a three-year period, subject to notification of relevant changes in criminal record during that time. The cardholder must report relevant changes in criminal record (see p7) but the WWCSU also receives information directly from the WA Police if any person with a WWC Card is charged with or convicted on an offence so that reassessment can occur.
- Portability over three years is a user-friendly and cost-effective approach as, without it, criminal record checks would need to be repeated upon a change of employment.

An 'unsuccessful' WWC Check results in the issue of a Negative Notice which prohibits child-related work, and is valid until its cancellation under the Act.

- An Interim Negative Notice may be issued to persons during the period of assessment. This is issued when it is assessed that the person poses a serious and immediate risk to children and effectively prohibits the person from doing child-related work whilst the assessment process is finalised.
- The employer is notified about the issue of a Negative or Interim Negative Notice.

### **Natural justice**

- Where it is proposed that a Negative Notice be issued to an applicant, the applicant has opportunity, before its issue, to make a submission to the Director of the WWCSU as to why he/she should be able to work with children. If a Negative Notice is issued after consideration of such a submission, the applicant then has a right to have this decision independently reviewed by the State Administrative Tribunal.
- Submissions and reviews in relation to Negative Notices issued under the 'automatic bar' provisions (i.e. convictions for a Class 1 offence committed while an adult) can only be on grounds that the person's criminal record is inaccurate or that the offence does not constitute a "Class 1 offence".
- Applicants receiving a Negative Notice cannot apply for cancellation of the Notice sooner than 3 years after the notice was issued or their most recent application for the cancellation of an existing notice.
- Cancellation of Negative Notice applications can be made sooner in certain circumstances such as where a pending charge did not result in a conviction, a conviction is later quashed or the decision was based on incomplete information.

## **Obligations of people in child-related work and their employers**

*See Factsheet 3: Checklist for Employers & Volunteer Organisations and Factsheet 6: Information for Volunteers on Working with Children Checks.*

### ***Paid employees, volunteers and self-employed people are required to:***

- apply for a WWC Check if they wish to commence or continue in child-related work and renew the Check three yearly
- notify their employer (for self-employed people, the WWCSU) as soon as practicable after any 'relevant change' in their criminal record occurs (ie. a charge or conviction for a Class 1 or 2 offence). Details of the change need not be given to the employer
- cease child-related work immediately if they are convicted of a Class 1 offence which was committed when an adult, and
- not start or continue in child-related work if they hold an Interim Negative Notice or a Negative Notice.

### ***Employers are required to:***

- not employ or continue employing a person in child-related work unless the person has applied for or already has current WWC Check (this requirement does not apply for employers until their employees have been phased-in – see p 7/8);
- not employ or continue to employ in child-related work any person who has a current Interim Negative Notice or Negative Notice, or whose WWC application has been withdrawn, and
- advise the WWCSU or appropriate ASA as soon as practicable after being notified of a relevant change in an employee's criminal history.

Reasonable flexibility is needed to enable employers to deliver services in unforeseen circumstances such as the illness of a worker. The legislation provides a defence for people who undertake child-related work on no more than 5 days in a calendar year without having applied for a WWC Check. This is not an exemption from the WWC Act.

### **Protection from liability:**

Protection from liability is provided for: the State in administering the legislation; persons undertaking WWC Check assessments; and employers (including the State) who act in compliance with their obligations under the WWC Act not to employ or continue to employ a person in child-related work. This does not limit procedural fairness requirements or access to employee entitlements.

### **Phasing- in of WWC Checks**

It is not possible to check everybody in the first year of operation. Experience from other States and the United Kingdom has shown that the effectiveness of the system will depend on it not being overloaded and that the various sectors are engaged and provided with clear information.

Phasing-in of the WWC Checks for different sectors is detailed in regulations to occur over five years from January 2006. (*See Factsheet 2: When to apply for a WWC Check; and Factsheet 7: When to apply for a WWC Check - Information for the Child Care Sector; Factsheet 9: WWC Checks in the Health Sector and Factsheet 10: WWC Checks in the Education and Training Sector*)

These phasing-in arrangements were based primarily on consideration of the relative risk of harm to children in particular sectors and of different ages including the extent to which some screening practices were already in place

### **Application process and cost of a WWC Check**

Application forms are available from authorised Australia Post outlets throughout Western Australia and in Alice Springs. Persons need to apply in person to enable their identities to be verified and to have their photographs taken. When lodging the application form, applicants must bring sufficient documents to establish 100 points of identity.

Volunteers and paid employees must also have their employer or agency representative fill out the application form to certify that they are in child-related work and to provide the address for receipt of the copy of the WWC Card or Negative Notice.

If people do not have sufficient identity documents or are unable to make the application in person at a postal outlet, they need to contact the WWCSU which will make special arrangements. A few interstate postal outlets can also accept applications after contact with the WWCSU is made by the applicant or by the employer.

The fee for the WWC Check (including card and photograph) is \$10 for volunteers and \$50 for paid workers and self-employed persons. This equates to less than \$3.50 per year for volunteers and other unpaid people and less than \$17 per year for paid persons. The fee is payable when first applying for and when renewing a Check every three years.

If a card is lost or stolen the fee for replacement is \$10.

These fees may be paid either by the workplace or the employee or volunteer. Those in paid employment and those incurring business-related expenses may choose to seek professional advice about possible tax deductions.

These fees are heavily subsidised by Government and do not reflect the full cost of the rigorous WWC Check.

This Check assesses a broader range of criminal history information than the standard National Police Certificate and is also a 'live' and 'portable' for 3 years.

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