

Working with Children Check Procedures

Implementation date: 15 June 2013

1. Applicability

- 1.1 These procedures apply to people who are employed or engaged (or who are seeking to be employed or engaged) in child-related work in the NSW Department Education and Communities, including the TAFE Commission who are 18 years of age or over.
- 1.2 These procedures take effect from 15 June 2013 following the implementation of the [Child Protection \(Working with Children\) Act 2012](#) and the [Child Protection \(Working with Children\) Regulation 2013](#).
- 1.3 These procedures must be applied in conjunction with the [Working with Children Check Policy](#).
- 1.4 These procedures outline new processes for conducting the **Working with Children Check (WWCC)** for child related-work, and the **National Criminal Records Check (NCRC)** for all paid employees of the Department and contractors in the Assisted School Travel Program.*

**Note:* Employment or engagement may also be subject to other requirements as prescribed in relevant legislation, industrial instrument or policy. This includes but is not limited to the conduct and service check; health assessment requirements; and verification of professional and/or academic qualifications.

2 Reference documents

The following documents have been developed to assist areas in applying the new WWCC process and the Department's new consent and declaration process for the NCRC:

- [Appendix 1: Determining which checks are required](#) – this identifies the WWCC requirements, and the NCRC requirements (where applicable), for key categories of child-related work in the Department.
- [Appendix 2: WWCC - Checklists for School Principals](#)
- [Appendix 3: WWCC - Checklists for Corporate areas, TAFE NSW Institutes and the Office of Communities*](#)

**Note:* Within the framework of the WWCC policy and procedures, relevant human resources areas across the Department may tailor the checklist to meet local requirements.

- [Appendix 4: Information sheet for applicants – how to apply for a Working with Children Check Clearance](#)

3 Child-related work

3.1 Subject to conditions under the [Child Protection \(Working with Children\) Act 2012](#) and the [Child Protection \(Working with Children\) Regulation 2013](#), a worker is considered to be employed or engaged in child-related work in the Department, where the work involves **direct contact with children**. In relation to this:

- (i) **“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;
 - as a self-employed person or as a contractor or subcontractor;
 - as a volunteer;
 - as a person undertaking practical training as part of an educational or vocational course (other than as a student undertaking work experience); or
 - as a minister, priest, rabbi, mufti or other religious leader or spiritual officer of a religion or other member of a religious organisation.
- (ii) **“Children”** means persons under the age of 18 years.
- (iii) **“Direct contact”** means physical contact or face to face contact.
- (iv) **“Child-related work”** means any work in an area prescribed as child-related work in the [Child Protection \(Working with Children\) Act 2012](#) and the [Child Protection \(Working with Children\) Regulation 2013](#). This includes but is not limited to work in the following areas:
- **education** – work in schools or other educational institutions (for example, TAFE NSW Institutes), including the private coaching or tuition of children;
 - **child development and family welfare services** – work in mentoring and counselling services for children;
 - **early education and child care** – work in education and care services, child care centres, nanny services and other child minding services; and work as an approved provider or manager of an education and care service, a certified supervisor of an education and care service, an authorised carer, assessment officer, or principal officer of a designated agency within the meaning of the [Children and Young Persons \(Care and Protection\) Act 1998](#);
 - **clubs or other bodies providing services for children** – work in clubs, associations, movements, societies or other bodies (including bodies of a cultural, recreational or sporting nature) that involve providing programs or services primarily for children;
 - **entertainment for children** – work at sporting, cultural or other entertainment venues used primarily by children and entertainment services for children;
 - **residential services** – work at refuges used by children, long term home stays for children, boarding houses or other residential services for children and overnight camps for children;

- **transport services for children** – work in providing transport services especially for children, including school bus services and taxi services for children with a disability and supervision of school road crossings activities;
- **religious services** – work for a religious organisation where the work is carried out as a minister, priest, rabbi, mufti or other religious leader or spiritual officer of the organisation, or in any other role involving youth groups, youth camps, teaching children or child care;
- **school cleaners** – work as a cleaner providing cleaning services at a school.

*Note: Certain roles are deemed child-related work regardless of whether they have direct contact with children as prescribed in [section 6\(3\) of the *Child Protection \(Working with Children\) Act 2012*](#). This includes but not limited to an “assessment officer” within the meaning of section 27a of the [Children and Young Persons \(Care and Protection\) Act 1998](#).

Officers in the Department’s Child Wellbeing Unit who meet the definition of “assessment officer” are engaged in child-related work.

3.2 Subject to the transitional provisions for existing child-related workers (refer to section 7 and [Appendix 9](#) of these procedures), from **15 June 2013**, people who are seeking to be employed or engaged in child-related work in the Department are required to meet one of the WWCC requirements below:

- (i) **WWCC Clearance** – the person is required to apply to the NSW Children’s Guardian for a WWCC Clearance number. [Appendix 1](#) outlines the key categories of child-related workers in the Department who are required to have a WWCC Clearance as a condition of employment or engagement. Refer also to section 4 for related provisions; or
- (ii) **WWCC Declaration for volunteers and contractors (other than contractors in the Assisted School Travel Program)** – this applies to certain categories of volunteers and contractors who are identified in [Appendix 1](#) as being required to only provide a declaration that they are not a “disqualified person” within the meaning of [section 18](#) of the [Child Protection \(Working with Children\) Act 2012](#).

A disqualified person includes a person who has been convicted of an offence specified in [Schedule 2](#) of the Act.

The WWCC Declaration is to be made using the form in [Appendix 5](#). In addition, the applicant is required to provide Proof of Identity that meets the 100-point check ([Appendix 6](#)).

Refer to [Appendix 1](#) for additional guidelines, including advice on the relevant WWCC requirement that applies to key categories of child-related work in the Department.

Where a person is **moving from non-child related to child-related work** in the Department on or after 15 June 2013, they will be required to meet the relevant WWCC requirement, as outlined above, prior to commencing the employment or engagement. This will apply, for example, when a person currently in a non-child related position in the Department is temporarily appointed to a child-related position under an acting arrangement or secondment.

- 3.3 In addition to WWCC requirements, a person cannot be employed or engaged in child-related work if they are currently placed on a “**not to be employed list**” (or other similar list). This should be checked with the relevant human resources area as early as possible in the recruitment or engagement process (for example, as part of the shortlisting process for merit selection).

The above condition applies whether the person is to be engaged as a paid employee, a volunteer, or a self-employed person or contractor (including employment agency staff).

National Criminal Records Check requirements also apply to all paid employees in the Department and contractors in the Assisted School Travel Program. Refer to section 6 in these procedures for relevant provisions.

4 Child-related work requiring a WWCC Clearance from the Children’s Guardian

- 4.1 Where a person in child-related work is required to obtain a **WWCC Clearance** as a condition of employment or engagement in child-related work (as prescribed in [Appendix 1](#)), it is that person’s responsibility to apply for the WWCC Clearance with the NSW Children’s Guardian.

The application process is prescribed by the NSW Children’s Guardian. For further information, visit website <http://www.kids.nsw.gov.au/>.

- 4.2 The person seeking a WWCC Clearance must apply to the NSW Children’s Guardian for the appropriate clearance as outlined below:

- (i) **non-volunteer clearance** – a person with a non-volunteer clearance can be engaged in either paid or unpaid child-related work.

An application fee applies (\$80 as at 15 June 2013) which is paid for by the person applying for the clearance. Under section 17(3) of the [Child Protection \(Working with Children\) Regulation 2013](#), certain people are exempted from paying this fee including those undertaking practical training as part of an educational or vocational course; or

- (ii) **volunteer clearance** – a person with a volunteer clearance can be engaged in unpaid child-related work. An application fee does not apply.

Once granted by the NSW Children’s Guardian, a person’s WWCC Clearance is effective for 5 years (from the date it is granted), unless it is cancelled sooner by the NSW Children’s Guardian or surrendered sooner by the worker.

- 4.3 Once a person provides their WWCC Clearance number as part of their application for child-related work, the WWCC Clearance number must be **verified** with the NSW Children’s Guardian to ensure that it is still valid and current.

The verification and screening process is to be initiated by the relevant recruiting area via the relevant HR system (for example, iSeries, Lattice, STMS, or eCPC); or in the case of the Office of Communities, by forwarding a request (using the approved template) to the Department’s Staffing Services Probity Unit.

- 4.4 As part of verifying a person’s WWCC Clearance, the NSW Children’s Guardian will also flag probity matters where the person’s WWCC Clearance is confirmed.*

*Note: Provided that a person’s WWCC Clearance is verified as cleared, probity matters (where flagged) do not affect a person’s WWCC Clearance to be engaged in child-related work, however they are relevant to the Department’s **National Criminal Records Check** for paid employment and contractors in the Assisted School Travel Program (as outlined in section 6).

- 4.5 When a WWCC Clearance is verified with the NSW Children’s Guardian, the possible results are outlined below:

- (i) the person’s WWCC Clearance is verified as **“cleared” and no probity matters are flagged**.

Subject to section 5 (Structured Referee Check for paid employment) and section 6 (the National Criminal Records Check for paid employment and contractors in the Assisted School Travel Program), the person can commence employment or engagement in child-related work; OR

- (ii) the person’s WWCC Clearance is verified as **“cleared” however probity matters are flagged** (or the person has not given consent to the NSW Children’s Guardian to share probity matters with the employer). The implications are as follows:

- (a) for those applying to become a paid employee of the Department, or be engaged as a contractor in the Assisted School Travel Program – a **National Police History Check with CrimTrac** will be conducted (as outlined in section 6).

Subject to section 5 (Structured Referee Check for paid employment) and the outcomes of the **National Police History Check with CrimTrac**, the person can commence employment or engagement in child-related work; or

- (b) in all other cases (for example, volunteers or contactors other than in the Assisted School Travel Program) – the person may commence employment or engagement in child-related work.*

*Note: A **National Police History Check with CrimTrac** will not be conducted since the Department’s National Criminal Records Check requirement only applies to paid employees and contractors in the Assisted School Travel Program; OR

- (iii) the person is now **“barred” or is subject to an “interim bar”** – in such cases, the person cannot be employed or engaged in child-related work, or placed on any employment or engagement list for child-related work.

Where a **“not to be employed list”** or similar is maintained for the particular position, the relevant human resources area will take appropriate action to include the person’s name on the list; OR

- (iv) the person **cannot be found on the NSW Children’s Guardian database** – this will occur, for example, if the details forwarded to the NSW Children’s Guardian (such as name, date of birth and WWCC Clearance number) were incorrect – in such cases, the relevant recruiting area is to investigate and resolve the issue as appropriate.

Unless a person’s WWCC Clearance has been verified as cleared and the person has met all other requirements (for example, the National Criminal Records Check for paid employment and contractors in the Assisted School Travel Program), a person cannot be:

- employed or engaged in child-related work; or
- given Approval to Teach as a school teacher or be placed on the employment list for school teachers; or
- be placed on any other employment or engagement list for child-related work (for example, suitability list for part time casual teachers in TAFE NSW, list of persons suitable to be engaged as School Administrative and Support Staff, or list of drivers for the Assisted School Travel Program).

4.6 The NSW Children’s Guardian will cancel a person’s WWCC clearance if they become aware that the person is a **disqualified person** or they are satisfied that the person poses a risk to the safety of children.

4.7 The NSW Children’s Guardian will notify the employer in writing if, at any time following the initial verification by the employer:

- (i) the person’s WWCC clearance is cancelled (i.e. the person is now “barred”); or
- (ii) the person becomes subject to an “interim bar”.

Should either of the above occur, the person is to be removed from child-related work immediately. In addition, the matter is to be referred to the **Director, Employee Performance and Conduct** as soon as possible.*

***Notes:**

- If the person has since moved to non-child related work, a decision will be made on the person's suitability for continued employment.
- Section 4.7 does not limit the employee's legal obligation to inform the Department if they are charged with or convicted of a serious offence (i.e. an offence punishable by 12 months or more in gaol), nor does it limit the Department's ability to dismiss or terminate a person's employment if they have been charged with or convicted of a serious criminal offence.

4.8 Where a person moves from one type of child-related work to another type of child related work in the Department, it is not necessary to **re-verify** the person's WWCC Clearance with the NSW Children's Guardian (as per sections 4.4 and 4.5) provided that there is no break in child-related work with the Department. The only exceptions are:

- (i) where a person is changing status for example:
- from a contractor or volunteer, to an employee (whether permanent or temporary or casual employee), or where the contractor or volunteer will be placed on an employment list; or
 - from a temporary or casual employee (or a person placed on an employment list) to a permanent employee; or

- (ii) where a person is moving from a non-teacher or teachers aide role, to a teacher or teachers aide role.

*Note: "Teachers aide" means and includes all positions that have an in-classroom support role in schools or TAFE NSW (for example, School Learning Support Officers and Educational Paraprofessionals); or

- (iii) where a person holds a **volunteer clearance** and they are moving from unpaid child-related work to paid child-related work – should this occur, the person must apply for a non-volunteer clearance with the NSW Children's Guardian (per sections 4.1 and 4.2).

In all cases above, the person will also be subject to the Department's National Criminal Records Check requirement (section 6) in their new role, and will need to complete the forms specified in section 6.2.

5 Structured Referee Checks

5.1 Structured referee checks are to be undertaken for all recommended applicants for paid child-related employment, and those placed on an eligibility list (or other employment lists).*

*Note: The structured referee check is in addition to other referee checks that may need to be conducted under the relevant staffing procedures (for example, as part of a merit selection process).

- 5.2 As a minimum, two referees must be contacted (as provided by the applicant) for structured referee checks.

One referee will be the applicant's current supervisor, unless acceptable reasons are provided for not nominating that person.

If the applicant is not working, the applicant's most recent supervisor should be nominated as the referee. If the applicant has never been employed, the applicant may provide contact details of persons who are able to provide reliable character references.

- 5.3 Referees should be asked information on the applicant's good character and suitability for working with, or in the presence of, children. A suggested question to be asked is:

"To your knowledge is there any aspect of the applicant's behaviour, actions or activities that would make them unsuitable for working with children?"

The answer provided by the referees to the above question must be noted on the Selection Panel Report, along with a brief description of each referee's relationship with the applicant, and the length of time that each referee has known the applicant.

- 5.4 If an applicant is not recommended as a result of structured referee checks, a separate written report must be submitted and signed by the selection panel and attached to the Selection Panel Report.

6 National Criminal Records Check

NOTE: Section 6 is to be applied in addition to the WWCC requirements outlined in sections 3, 4 and 5, it does not replace the WWCC.

- 6.1 In addition to relevant WWCC requirements (as outlined in sections 3, 4 and 5), all applicants for paid employment, and contractors engaged in the Assisted School Travel Program, must meet the Department's **National Criminal Records Check (NCRC)**.
- 6.2 From **15 June 2013**, the Department's NCRC requirement will be conducted under a declaration and consent process which will involve the applicant:
- (i) completing the *Declaration–National Criminal Records* form ([Appendix 7](#));
and

(ii) completing the *National Police Checking Service (NPCS) Application/Consent* form ([Appendix 8](#)); and

(iii) providing *Proof of Identity* that meets the 100-point check ([Appendix 6](#)).

6.3 Subject to section 6.4, where a person provides a declaration that they do not have relevant criminal records ([Appendix 7, Section A or B](#)), the person's declaration will be considered as meeting the Department's NCRC requirement (therefore it is not necessary to conduct a National Police History Check with CrimTrac), except where:

(i) on a case by case basis, the relevant principal or manager, in consultation with the relevant human resources manager, determines to conduct a **National Police History Check with CrimTrac** for the recommended applicant having regard to the circumstances of the case; or

(ii) the person is proposed to be engaged in child-related work and the NSW Children's Guardian has flagged probity matters in relation to that person as part of the **WWCC Clearance verification process** (or the NSW Children's Guardian has indicated that the person has not given consent to the NSW Children's Guardian to share probity matters with the employer), as described in section 4.5(ii) in these procedures.

Should (i) or (ii) above apply, a **National Police History Check with CrimTrac** will be conducted using the person's consent ([Appendix 8](#)).

6.4 Where a person is not able to make a declaration that they do not have relevant criminal records ([Appendix 7, section C](#)), a National Police History Check with CrimTrac will be conducted using the person's consent ([Appendix 8](#)).

6.5 Where a National Police History Check with CrimTrac is conducted in the circumstances outlined in sections 6.3 and 6.4, and relevant records are received from CrimTrac, the person's suitability for employment or engagement will be assessed by the Staffing Services Probity Unit (for staff in schools) or the relevant human resources area (for all other staff) in accordance with the Department's *Guidelines for Undertaking the Public Sector Suitability Assessment*.

7 Transitional arrangements for existing child-related workers

7.1 Existing workers in child-related work (i.e. those employed or engaged by the Department in child-related work immediately prior to 15 June 2013) are not required to apply for a WWCC Clearance (as issued by the NSW Children's Guardian) until the compliance date applicable to that worker as specified in Schedule 1 of the [Child Protection \(Working with Children\) Regulation 2013](#).

Refer to [Appendix 9](#) for relevant conditions.

8 Further Information

Enquiries in relation to [Working with Children Check Policy](#) and the *Working with Children Check Procedures* should be referred to the relevant human

resources area in the first instance.

Any further enquiries may be referred to the Human Resources Directorate on telephone (02) 9561 8220.