



WORKING WITH CHILDREN CHECKS

1. INTRODUCTION

The purpose of this document is to provide guidance to P&C Associations as regards their statutory obligations to employees and volunteers when working with children within a school environment. In New South Wales there is legislation governing the prerequisites for those working in child-related work. P&C Associations need to be aware that they operate within two frameworks when it comes to working with children:

State legislation: Child Protection (Working with Children) Act 2012 (the **Child Protection Act**) and Child Protection (Working with Children) Regulation 2013 (the **Child Protection Regulation**) (see references 1 and 2).

The aim of the Act is to protect children by not permitting certain persons to engage in child-related work and requiring those that can to have Working With Children Check (WWCC) clearances. The Act has exemptions for certain volunteer functions and a phase-in period depending on whether a school is a primary or secondary school. The phase-in period for secondary schools is 1 April 2016 to 31 March 2017 and for primary schools the phase-in period is 1 April 2017 to 31 March 2018. The Federation understands the phase-in period for OOSHs (Out of School services) has now expired, which means such services must now be fully compliant.

NOTE: The Office of Children's Guardian is responsible for administering WWCC clearances in New South Wales (see references 3 and 4).

Department of Education policy: Working with Children Check Policy PD/2005/0264/VO7 (see reference 5)

The Department of Education (DoE) policy for those working with children within the public school system is based on the Child Protection Act and includes essentially the same requirements. In some cases, a school Principal may impose further or additional requirements on volunteers (see section 5 below for further details).

2. WHAT IS A WORKING WITH CHILDREN CHECK

A WWCC clearance involves a national police check and a review of findings of any workplace misconduct. As part of the clearance process an applicant's criminal history is checked, including any convictions (spent or unspent), charges (heard, unheard or dismissed) and juvenile records. Further, if a person is found to have intended to commit, attempted or conspired or incited any of a long list of offences which largely but not exclusively relate to children, is found by a reporting body to have engaged in sexual misconduct with or in the presence of a child (including grooming) or the serious physical assault of a child, or if convictions or pending charges indicate a pattern of behaviour that warrants an investigation because of child safety concerns, that person will be subject to a risk assessment. A risk assessment in these circumstances can take up to 12 months.

Applicants are either given a clearance to work with children for five years, or are barred from working with children. Cleared applicants are subject to ongoing monitoring. WWCC clearances may be revoked if the applicant is found to have breached the Child Protection Act.

The employee WWCC clearance is fully transferable across any paid to voluntary child-related work in New South Wales provided the holder of the clearance remains cleared.

3. WHO NEEDS A CHILDREN'S CHECK CLEARANCE

If your P&C Association employs staff, then under the Child Protection Act you have specific responsibilities in relation to ensuring your employees have a WWCC clearance. All P&C Association employees and volunteers who have face-to-face contact with children require a WWCC clearance, unless exempt under the legislation for the role being undertaken.

Specific examples of those who need a WWCC include:

- P&C Association employees working in a school canteen, OOSH service, or uniform shop must all have WWCC clearances as they are employees who have face to face contact with children.
- A music tutor who is paid by a P&C Association to conduct one on one music lessons with students is required to have a WWCC.

In most circumstances, it is fairly clear if a WWCC clearance is or is not required for an employee or volunteer. In cases where it is uncertain, given the specific circumstances of the employee or volunteer and his or her specific duties, your P&C Association should contact the Office of the Children's Guardian and verify what is required. You should clearly document on your P&C Association WWCC Clearance documentation any information that has been advised by the Office of Children's Guardian and request it in writing. **NOTE:** *When in doubt, it is always best practice to err on the side of caution and obtain a WWCC clearance.*

The general process for determining if a person needs a WWCC is shown in the flow chart below. Details regarding what constitutes a child-related role and specific exemptions can be found at kidsguardian.nsw.gov.au.

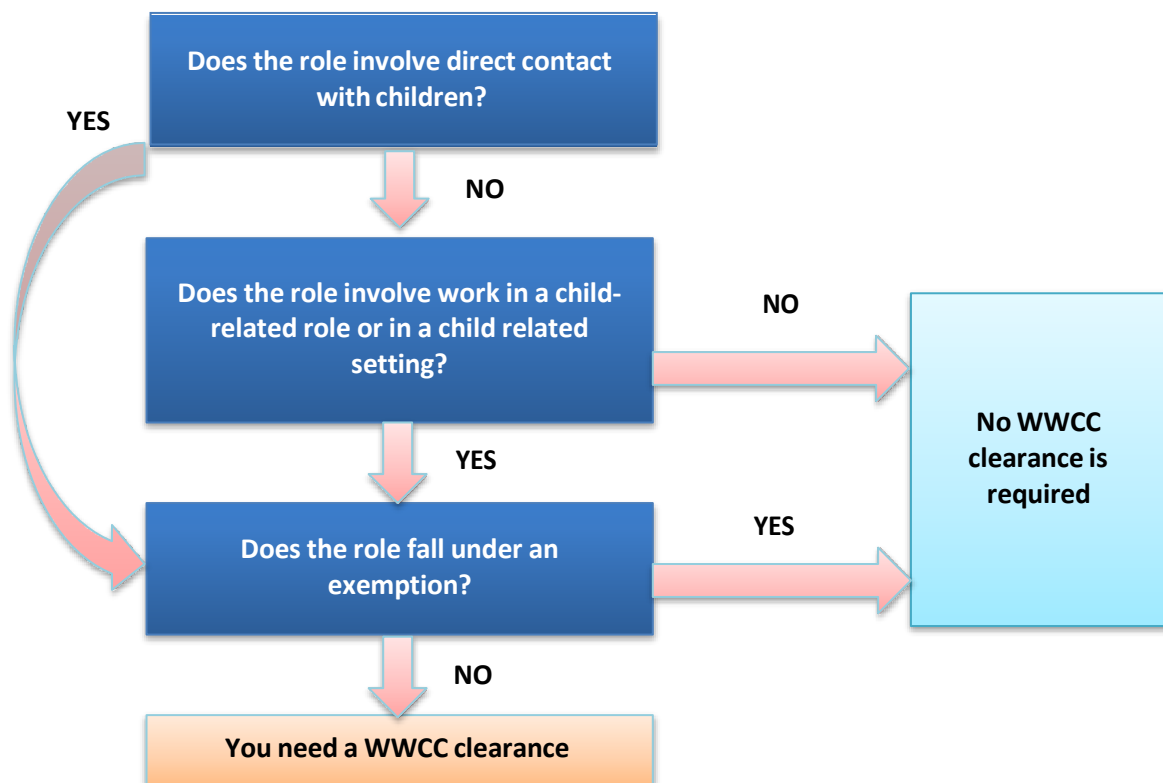


Figure 1 – Flow chart for determining who needs a WWCC clearance

4. EXEMPTIONS

In general, P&C Association volunteers who are parents or close relatives of a child at the school DO NOT require a WWCC clearance unless they work as part of a formal mentoring program or are involved in the intimate, personal care of children with a disability.

Further exemptions include:

- Employees who work for a period of no more than five days in a calendar year, if the work involves minimal direct contact with children or is supervised when children are present.
- Volunteers in a P&C run canteen, uniform shop or band committee who are parents or close relatives of a student in that school.

- A bookkeeper employed by the P&C Association, who works from home and does not have face to face contact with the students as part of the role (e.g., the bookkeeper doesn't attend the school as part of their role).

There are other limited exemptions which can be checked on the website above.

5. P&C ASSOCIATION WWCC RESPONSIBILITIES?

A P&C Association is responsible for ensuring all its employees and volunteers have a WWCC clearance if required under the Child Protection Act. In addition, a P&C Association is responsible for:

- Verifying the clearances of all employees or volunteers required to have a WWCC clearance
- Keeping records of all employees and volunteers with a WWCC clearance
- Removing or barring any employee or volunteer that fails to gain a WWCC clearance from child-related work
- Ensuring all employees and volunteers that are required to have a WWCC maintain their clearances for as long as they are required to do so.

A P&C Association is only responsible for ensuring WWCC clearance of employees and volunteers as required under the Child Protection Act. Additional requirements may be placed on a volunteer by the Principal that are beyond the requirements specified in the Child Protection Act are therefore the responsibility of the school to administer. For example, such a situation may occur if a Principal insists on all volunteers in a school having WWCC clearances no matter whether they are exempt or not under the Child Protection Act.

IMPORTANT: *P&C Associations must not employ any person or engage any volunteer that the association knows or has reasonable cause to believe does not hold a WWCC clearance or has been barred (even on an interim basis) from working with children. Doing so carries penalties up to \$11,000 under Section 9 of the Child Protection Act.*

6. WHAT DOES A P&C ASSOCIATION HAVE TO DO?

P&C Association must take the following actions to ensure they are compliant with the Child Protection Act:

1. Appoint a P&C Officer that will be responsible for administering the P&C's WWCC. You will need two officers as official contacts;
2. If you employ staff or have volunteers that require WWCC clearances then your P&C Association will need to register online with the Office of Children's Guardian as an employer (this only needs to be done once): Note that if the P&C Association was registered under the previous legislation it must still register again under the new legislation;
3. Determine which of your existing employees and volunteers need a WWCC clearance and the relevant phase-in period (if still applicable);
4. Instruct these individuals to apply for a WWCC clearance if they do not have one already;
5. Verify every **new** employee online before employing them;
6. Verify current paid employees and volunteers online as they are phased in (see the Phase in Section). Some parents will already have clearance from other roles they perform;
7. Remove any barred or unauthorised person from child-related work; and
8. Ensure that when an employee or volunteer's WWCC clearance expires, that he or she obtains a new WWCC clearance and that the clearance is rechecked. (Note: at present, employees and volunteers will receive a notification prior to their clearances expiring, but employers (including P&C Associations) will not.).

The phase-in period for secondary schools will expire on 31 March 2017 and for primary schools on 31 March 2018. Good practice would be to adopt an updated policy and WWCC procedure now.

Although compliance with the Child Protection Act is the responsibility of the P&C Association and its Office Bearers collectively, it is good practice for a P&C Association to designate one of the P&C Office Bearers to have specific responsibility for ensuring that all necessary WWCC clearance are obtained and verified online, to maintain the register of WWCC clearances, and to ensure that no one is working whose WWCC clearance has expired. This Office Bearer should also be required to report regularly to the P&C Association.

IMPORTANT: P&C Associations must undertake an Online Verification for their employees or volunteers that are not exempt.

When employees or volunteers receive their individual clearances, they must provide the Office Bearer or other person under his or her control within the P&C Association who is responsible for the online verification with their full name, date of birth, and WWCC number. That responsible person should then undertake verification at www.check.kids.nsw.gov.au. The P&C Association **MUST** verify the employee/volunteer's clearance online.

IMPORTANT: Paper copies of an employee or volunteer's WWCC clearance should not be accepted as proof of WWCC clearance under any circumstances.

Please refer to 'Information for Employers: The Working with Children Check' issued by the Office of Children's Guardian (*see reference 6*) for more detailed information.

7. WHAT DO EMPLOYEES AND VOLUNTEERS NEED TO DO?

Employees and volunteers who are required to have a WWCC clearance must apply for their own WWCC clearance. P&C Associations should provide relevant employees and volunteers with a copy of the Fact Sheet 'How do I apply?' which can be found on the Office of Children's Guardian website. There is also an online tutorial to assist with this process.

IMPORTANT: A P&C Association cannot apply for a WWCC clearance on behalf of any employee or volunteer.

The WWCC is free for volunteers but has a nominal fee for employees (paid workers). The fee is not refundable if the employee terminates or withdraws his or her application, does not receive a clearance or if a volunteer accidentally chooses 'paid worker' instead of 'volunteer' on the application form. If someone with a volunteer clearance becomes an employee, he or she has 30 days to upgrade their WWCC clearance. They do not need to reapply for a WWCC clearance but will need to pay the fee.

Employees and volunteers required to have a WWCC should undertake the following:

STEP 1: Complete an online form at www.kidsguardian.nsw.gov.au/check. Once they have submitted the form, they will receive an application number.

STEP 2: Take their application number and proof of their identity **IN PERSON** to a NSW Motor Registry, Government Access Centre, or Service NSW office. The proof of identity required is the same as for a NSW photo driver licence. If they are in paid work, they must also pay the fee.

STEP 3: If cleared, the applicant will receive a WWCC number which they must then provide to the person in the P&C Association responsible for online verification along with his or her full name and date of birth.

8. RECORD KEEPING

If a P&C Association has or has had employees and volunteers who required a WWCC clearance, there is a requirement to keep specific records including their:

- full name
- date of birth
- WWCC clearance number and expiry date
- date and outcome of online verification

IMPORTANT: All records of WWCC clearance information are confidential, must be stored securely and only accessed by the two approved Officer Bearers of the P&C Association.

P&C Associations can use the P&C Association WWCC Clearance Verification Register can be located at <https://www.pandc.org.au/pcmembersguidance/> for this purpose. These records may be electronic or in hard copy format, but must be made available if required for inspection.

If there is a notification by a reporting body, the P&C Association must keep all records of allegations, investigations, and findings about the notification for at least 30 years (check with the Office of Children's Guardian for any changes to this requirement), unless the records are given to the Office of the Children's

Guardian. If a reporting body or any successor to a reporting body ceases to exist all records must be lodged with the Office of the Children's Guardian before the body or successor ceases to exist.

REFERENCES

The following publications or URLs are referenced in this document

1. www.legislation.nsw.gov.au/#/view/act/2012/51
Child Protection (Working with Children) Act 2012.
2. <http://www.legislation.nsw.gov.au/maintop/view/inforce/subordleg+156+2013+cd+0+N>
Child Protection (Working with Children) Regulation 2013.
3. <http://www.kidsguardian.nsw.gov.au>
Office of Children's Guardian website
4. <http://www.kidsguardian.nsw.gov.au/child-safe-organisations/working-with-children-check/resources>
Working With Children Check fact sheets
5. <https://education.nsw.gov.au/policy-library/policies/working-with-children-check-policy?refid=285776>
Department of Education, Working with Children Check Policy
6. http://www.kidsguardian.nsw.gov.au/ArticleDocuments/183/Information_for_employers_Jan2015.pdf.aspx?Embed=Y
Employers Resources

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