

Screening Checks (WA)

A guide to screening checks for WA
community organisations

Dec 2020

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Introduction

Introduction

This part:

- ▶ introduces the reasons for conducting some level of screening for volunteers and employees
- ▶ refers to child safety law reforms relevant to screening

It's important that your organisation conducts screening and induction of volunteers and staff in a thorough and systematic way. Certain background screening checks are required by law (under legislation or contract) and others are discretionary.

Even where there is no legislative or contractual requirement that checks be performed, organisations ought to conduct some level of screening of employees and volunteers. This is because all organisations have a responsibility to ensure they maintain a safe environment for their employees, volunteers and clients. Due to this overarching duty of care, organisations should always try to be informed about the people they select as their representatives.

Consider whether the employee or volunteer will have unsupervised access to money or property, contact with vulnerable clients or children, access to sensitive information or whether they will be driving. This may influence the types of checks your organisation requires in order to minimise risks associated with your employees and volunteers.



Example

A volunteer is sent to an elderly client's home to assist with general household duties and provide companionship. As the volunteer is not engaged in 'child-related' work you don't ask them to obtain a Working with Children Check. The volunteer seems trustworthy and the organisation decides not to go ahead with any other screening checks, including a Police Check. The volunteer steals from the client and it turns out that they have a string of theft and burglary offences.

You send another volunteer to your client's home as soon as you find out. The client has a health incident and needs urgent medical attention. The volunteer freezes as they have not been trained in what to do in this situation. The volunteer is traumatised by this incident. Your organisation could be in breach of its duties to both the volunteer and client.



Tip

It may be challenging for some organisations to appropriately screen spontaneous volunteers, especially where organisations are already managing significant workloads due to an emergency or other incident. Your organisation may consider having a database of registered volunteers to call on that have been appropriately screened, inducted and trained.



Note

Currently, WWC Checks operate at a state or territory level. This means that a WWC Check is only valid for work in the state or territory in which it is issued. There are certain allowances for interstate volunteers. [The Royal Commission into Institutional Responses to Child Sexual Abuse's report on Working with Children Checks \(WWCC Report\)](#) contains recommendations for the implementation of a nationally-consistent scheme.

Visit the [Royal Commission's website](#) for updates and reports.



Part 1

Legal obligations under Working with Children Checks

Legal obligations under Working with Children Checks

This part covers:

- ▶ when are WWC Checks required by law?
- ▶ exemptions from the requirement to get a WWC Check
- ▶ an organisation's Working with Children obligations

Whenever your not-for-profit organisation is recruiting employees or volunteers or assigning new responsibilities, it is important to conduct appropriate screening procedures.

This section deals with Working with Children Checks (**WWC Checks**). The *Working with Children (Criminal Record Checking) Act 2004 (WA)* (**WWC Act**) requires that a WWC Check be undertaken before a person undertakes certain 'child-related work' in WA and the Christmas and Cocos (Keeling) Islands. Failure to comply with these requirements can result in serious penalties for both the organisation and the employee or volunteer who has failed to undertake the check.



Note

Your organisation may be required by law to undertake WWC Checks. It may also consider undertaking other checks such as Police Checks and reference checks. You should ensure that only checks relevant to the position on offer are required. Decisions made on the results of checks not relevant to a role could be challenged by an applicant.

In specific circumstances, a WWC Check must be undertaken according to law. Even when not required by law, there may be circumstances where an organisation decides that WWC Checks are required to work or volunteer in particular roles.

When are WWC Checks required by law?

In WA, most people who perform 'child-related work' are required to undergo a WWC Check. If your organisation undertakes 'child-related work' then you should carefully consider whether employees and volunteers must apply for (or already have) a WWC Check before starting to work with your organisation.

What is 'child-related work'?

A 'child' is defined in the WWC Act as any person under 18 years old.

Activities will be considered to be 'child-related work' for the purposes of a WWC Check where the **usual duties** (paid or unpaid) of the work, involve or are likely to involve, **contact** with a child in connection with

one of 18 categories of work or activities (listed below), regardless of whether there is supervision from any other adult, person or guardian.

Contact includes any form of physical contact, oral and written communication (whether face to face, by telephone or otherwise) and electronic communication (for example, email or internet).

The next step is to consider whether the child-related work falls within one of the specific activities identified in the WWC Act where a WWC Check is required.

In WA, there are currently 18 categories of work or activities that require a WWC Check:

- a child care service
- a community kindergarten
- an education institution for children
- a coaching or private tuition service of any kind (except for an informal arrangement entered into for private or domestic purposes)
- an arrangement for the accommodation or care of children (except for an informal arrangement made by a parent of the child, or accommodation or care provided by a relative of the child)
- a placement arrangement or secure care arrangement
- the performance of a function by an officer under the *Children and Community Services Act 2004*
- a detention centre
- a community child health service
- a counselling or other support service
- a religious organisation
- a club, association or movement with a significant membership or involvement of children (except for an informal arrangement entered into for private or domestic purposes)
- a ward of a public or private hospital in which children are ordinarily patients
- a baby sitting or child minding service (except for an informal arrangement entered into for private or domestic purposes)
- an overnight camp
- a transport service specifically for children
- a school crossing service, and
- a children's entertainment or party service



Related resource

If you have any doubt about whether your organisation's work or a specific role is covered, it is best to check the [comprehensive list published online by the WA Government on the Working with Children Check website](#) or call (08) 6217 8100.

What is not considered 'child-related work'?

Work or activities will not be considered 'child-related work' if the contact is between a person and a child who is employed by the person (ie. the person employs a child) or between a person and a child who are both employed by the same person (ie. the person and the child are co-workers). If a person's only contact with a child is as an employer of a child or fellow employee or volunteer, then that person is not considered to be in child-related work.

WWC Check exemptions

Where a volunteer or employee of a not-for-profit organisation falls into one of the exempt categories, they will not be required to undergo a WWC Check. This will be the case even where they are performing 'child-related work' and the work falls within one of the 18 categories outlined above.



There are exemptions which apply across all 18 categories of work or activities, while other exemptions are specific to a particular category.

The following exemptions apply to all categories:

- work carried out on a voluntary basis by a child
- unpaid students on placement under the age of 18, and
- short-term non-resident visitors to WA (for a maximum of two weeks after arrival in WA in any year and for no more than a total of two weeks in any period of 12 months)

The following exemptions apply to some categories:

- parents volunteering where their child is also involved
- one-off national events and tours (for a maximum non-cumulative period of 30 days in 12 months), and
- police officers performing functions as a member of the WA Police Force



Caution

While the legislation allows a short-term non-resident visitor to work with children for up to a maximum of two weeks without a check, organisations may want to consider requiring any such visitors to hold a WWC Check (or equivalent) from their home state.



Related resource

For a full list of the 18 categories and their specific exemptions see the [WA Government website](#) and read the WA Working with Children Check fact sheet on [Child-Related Work and Exemptions](#) (Factsheet 2).

For more information on when parent volunteers are exempt from applying for a WWC Check, read the WA Working with Children fact sheet on [The Parent Volunteer Exemption](#) (Factsheet 4).



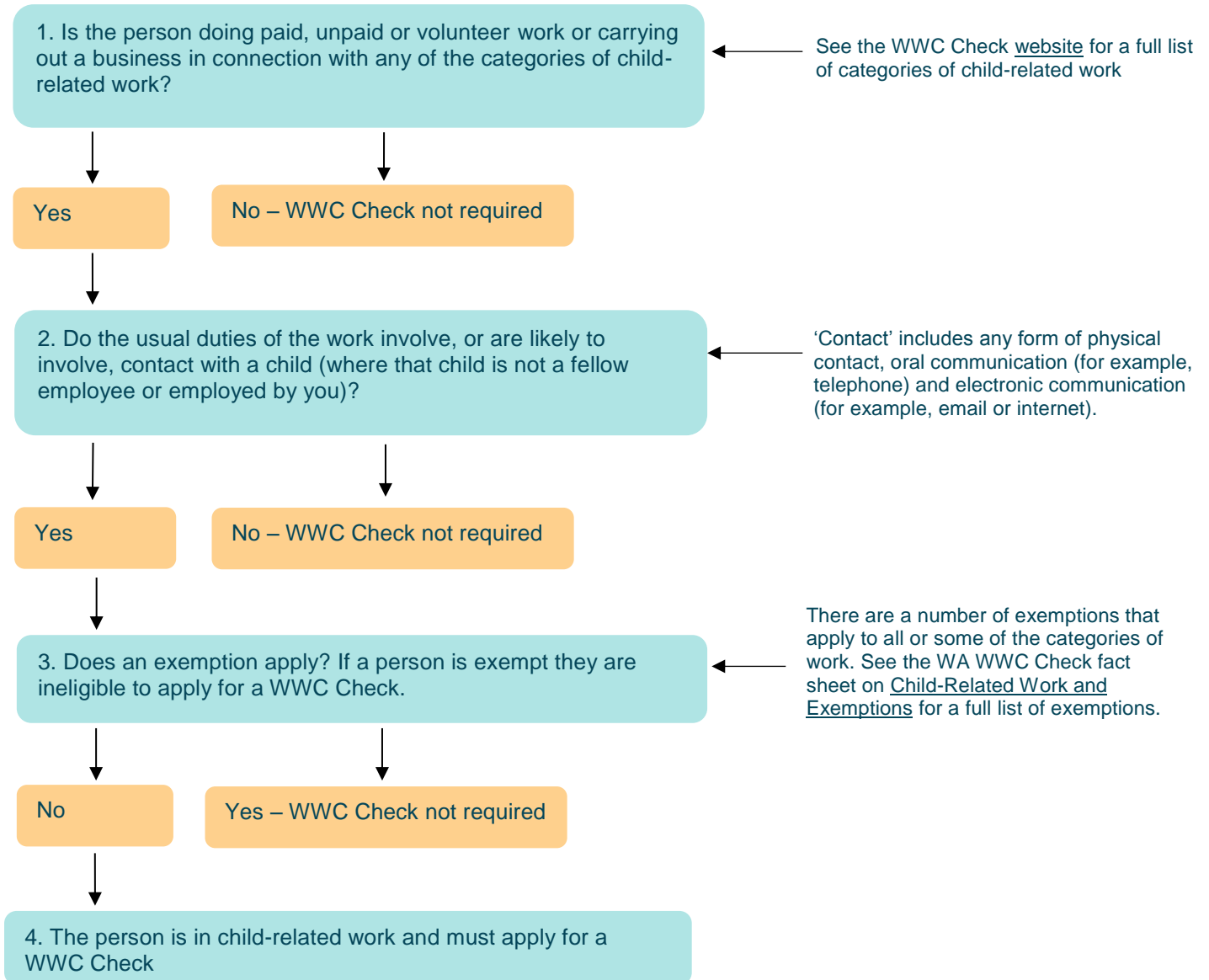
Caution

Just because a worker may fall within one of the WWC Check exemptions when starting out in a role, when circumstances change, they may not be able to continue to rely on the exemption. Similarly, if a person is involved in child-related work in more than one category, they will require a WWC Check if an exemption applies to one category, but not the other.



The diagram below summarises the rules on when a WWC Check will be required for employees and volunteers in WA.

When is a Working with Children Check necessary?



Summary of an organisation's Working with Children obligations

An organisation that undertakes or supervises 'child-related work' must ensure that employees and volunteers comply with the WWC Act.

In WA, employers, including community organisations, have statutory obligations under the WWC Act to ensure that:

- all employees, volunteers, students and self-employed people who engage in child-related work have applied for a WWC Check or hold a current WWC Card
- the validation of WWC Cards of any new employees, volunteers or students who already hold current WWC Cards from other child-related work they engage in
- all current WWC card holders renew their WWC Card before it expires if they are continuing to engage in child-related work
- records are kept to demonstrate compliance
- a person is not engaged in child-related work where the employer knows the person has been convicted of a Class 1 or Class 2 offence, or has a pending charge in respect of a Class 1 or Class 2 offence committed when an adult
- a person is not engaged in child-related work if the person has been issued with an Interim Negative Notice, Negative Notice or if they have withdrawn their application for a WWC Check, and
- the WWC Screening Unit is notified by an employer where the employer reasonably suspects an employee, volunteer or student has been charged with or convicted of an offence which makes it inappropriate for them to engage in child-related work

Below is a list of responsibilities and actions recommended by the WWC Screening Unit to help your community organisation comply with its obligations:

- identify which of the listed categories of child-related work you and your employees, volunteers or students engage in (see the WWC Screening Unit's [Factsheet 1: What is 'Child-Related Work'?](#))
- keep adequate records that demonstrate compliance with the WWC Act. You may be asked to provide records to demonstrate your compliance by the WWC Screening Unit
- check, record and validate (using the online service on the WWC Check website) the WWC Cards of all new employees, volunteers, students and self-employed contractors and periodically check and record that all current employees' and volunteers' WWC Cards are valid, current and have not been cancelled
- have a strategy to ensure employees, volunteers and students engaging in child-related work renew their WWC Cards every three years, before their WWC Cards expire
- complete the 'Register Card Holders' [online form](#) on the WWC Check website to advise the WWC Screening Unit when you have new employees, volunteers and students who already have a WWC Card from a previous employer. Keeping this information up to date will help the WWC Screening Unit notify your organisation if the card holder working for you is issued with an Interim Negative Notice or Negative Notice (or of other matters if necessary), and
- Have policies and practices to ensure that any employee, volunteer or student issued with an Interim Negative Notice or Negative Notice does not engage in child-related work



Tip

- Organisations can use WWC Checks as only one of several screening and monitoring tools. Reference checks, Police Checks and organisational supervision and training are all ways to ensure the safety of staff and clients, as well as assisting in finding the most suitable applicant when recruiting.
- Your organisation may choose to wait until the WWC Check is complete before the worker starts working with children.



Part 2

Working with Children Check applications

Working with Children Check applications

This part covers:

- ▶ how can employees or volunteers apply for a WWC Check?
- ▶ what if a new employee or volunteer already has a WWC Check?
- ▶ what happens once a WWC Check application has been lodged?
- ▶ what happens if an applicant does not pass a WWC Check?

Applying for and maintaining WWC Checks takes a few steps by both the applicant and the organisation.

How can employees or volunteers apply for a WWC Check?

Application forms for the WWC Check are available from authorised Australia Post outlets (see the Australia Post [website](#) for locations). They are not available to download online (although renewal of existing WWC Cards can be completed online through the WWC Check [website](#)). The form requires information from both the applicant and the employer or prospective employer.

The completed WWC Check form must be lodged in person at an authorised Australia Post outlet. When lodging, the applicant will need to produce:

- original identification documents to pass a 100-point identification check (for example, driver's licence, passport), and
- the relevant application fee (see below)

Your photograph will be taken at Australia Post as part of the application process.



Tip

Make sure that all unpaid staff select that they are 'volunteers' on their WWC Check form as this will reduce their application fee. If they move into paid work at a later date, they will need to reapply under the 'employee' category.



Once a person has applied for a WWC Check, when can they begin child-related work?

If your organisation carries out child-related work, its workers (paid and unpaid) must hold a current WWC Card, or have lodged an application, before they begin the child-related work. They don't have to have received their WWC Check card before starting work (unless they have committed a Class 1 offence as an adult or have been issued with an Interim Negative Notice or Negative Notice.).



Tip

Some organisations choose to require an employee or volunteer to have received their card before starting child-related work. As a matter of best practice, we suggest that your organisation take this approach, especially as it can take some weeks to process a WWC Check application

How much does a WWC Check Cost?

Applicants who undertake 'child-related work' as part of their employment need to pay \$87.00 (as at November 2020) for their WWC Check application.

A fee of \$11 applies for volunteers and students on unpaid placements.

Check the [WA Government website](#) for up-to-date fee information.

Should organisations pay the costs of WWC Checks for employees or volunteers?

There is no legal requirement for an organisation to cover the costs of an employee or volunteer undertaking a WWC Check. However, some organisations choose to reimburse WWC Check applicants who will be working with the organisation.



Tip

In most circumstances, if the WWC Check relates to employment, this expense may be claimed as a deduction from taxable income.

What if a new employee or volunteer already has a Working with Children Check card?

The WWC Card in WA has been designed as a 'portable' screening check. Employees or volunteers with an existing WWC Check card from previous work or volunteering need to notify the WWC Screening Unit of a change of employer or a change of address. Most details can be updated online. For more information about this obligation the holder of the WWC Card see the '[Update my details](#)' page on the WWC Check website.

It's essential that the WWC Screening Unit knows the employee or volunteer is working with you, so they can notify you of any changes to the person's WWC Check status. The new employee or volunteer must present their WWC check card and establish their identity to your organisation. Organisations can also call the WWC Screening Unit or use the [WWC Card Validation form](#) online to check that a WWC Check is current. You will need the WWC Check card number of the employee or volunteer. Organisations need to ensure that the existing WWC Check is the appropriate type (ie. for paid vs volunteer work).

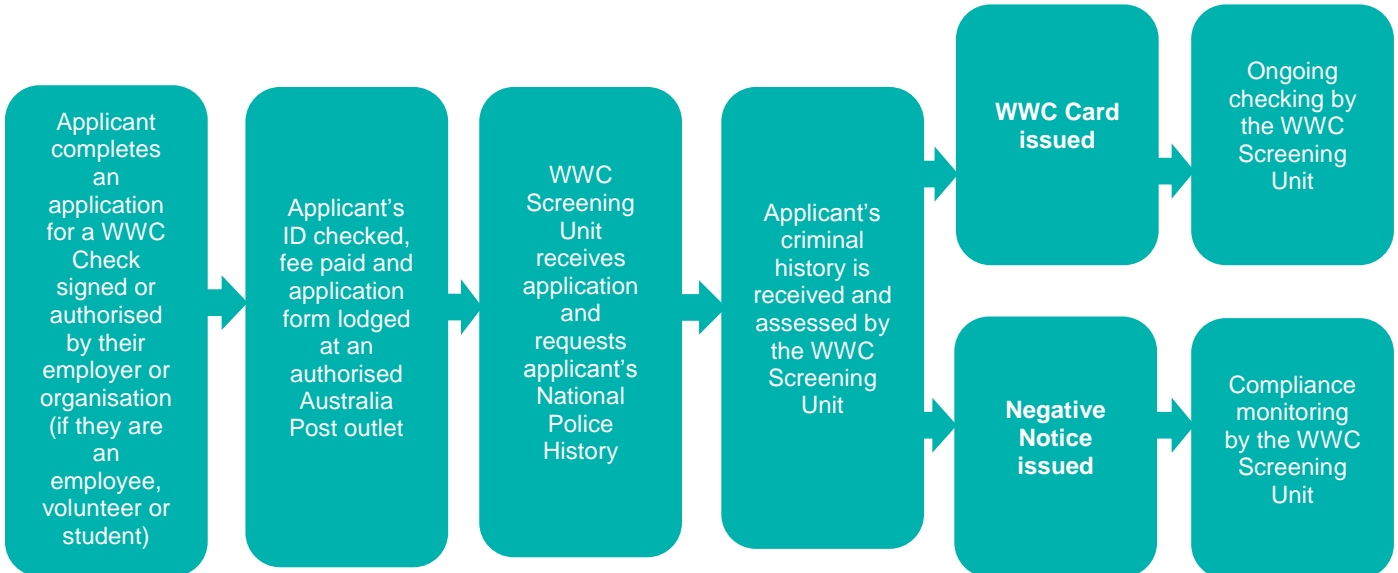
Organisations can also advise the WWC Screening Unit when they have new employees, volunteers and students who already have a WWC Card from a previous employer, via the online portal, [WWC Card](#)



Holder Registration. By using this online portal to keep information up to date, the WWC Screening Unit can notify organisations if the card holder working or volunteering for them has been issued with an Interim Negative Notice or a Negative Notice.

What happens once a Working with Children Check application has been lodged?

The Working with Children Check [website](#) has summarised the application process in a diagram similar to the one below:



Once a WWC Check application has been lodged, processing takes between three and 12 weeks.

Applicants who pass the WWC Check will receive an Assessment Notice in the form of a WWC Card in the mail. Employers and volunteer organisations receive an email notification of the outcome. The check is valid for three years. This means that, unless the organisation hears further information, the applicant has a valid WWC Check for three years.

The status of the WWC card holder is regularly updated by the WWC Screening Unit based on current law enforcement and other relevant information. To ensure your organisation receives potential updates about its employees and volunteers with WWC Cards, register your card holders [online](#).

What happens if an applicant doesn't pass a Working with Children Check?

In some cases, applicants who don't pass the WWC Check will be initially issued an Interim Negative Notice. The organisation responsible for that person will receive a copy of the Notice (however this will not include specific information about the person's criminal history). From the receipt of the Interim Negative Notice your organisation must ensure that no child-related work is undertaken by the person. You must remove the person from child-related work immediately.



Related resource

For more information about these Notices go to the following links on the WWC Screening Unit website:

- [Interim Negative Notice](#)
- [Negative Notice](#)

Once an Interim Negative Notice is provided, applicants will receive a letter from the WWC Screening Unit inviting them to make submissions as to why a Negative Notice should not be issued. If, after this process, a Negative Notice is issued, the applicant can apply to the [State Administrative Tribunal](#) to review the decision (within 28 days after the date of the Negative Notice). While holding a current Negative Notice it's



an offence for the holder to engage in paid, voluntary or unpaid child-related work in Western Australia or the Christmas and Cocos (Keeling) Islands. A Negative Notice remains in effect until it is cancelled under the WWC Act.



Part 3

**What does a Working with Children
Check do?**

What does a Working with Children Check do?

This part covers:

- ▶ what does a WWC Check take into account?
- ▶ ongoing monitoring of WWC Checks
- ▶ are there limits to what WWC Checks can achieve?

The WWC Check is a unique type of check, distinguished from Police Checks by the different registers it checks, and its ongoing nature.

Understanding how a WWC Check works will help your organisation decide what role they should play in your risk management strategy.

What does a WWC Check do?

When a WWC Check application is submitted to the WWC Screening Unit, these checks are completed:

- a national police records check is requested from the Australian Criminal Intelligence Commission, which may reveal criminal history information held by police in both WA or other jurisdictions, including convictions, spent convictions, charges and convictions when a person was under 18, non-conviction charges and pending charges
- a review of the findings of courts, including charges, guilty pleas, acquittals and convictions
- in some cases, an applicant's overseas criminal record may also be assessed by the WWC Screening Unit, and
- where the applicant's criminal record triggers an assessment, the WWC Screening Unit is empowered to consider all relevant information beyond the applicant's criminal record, including information from other Government departments and professional organisations

Only offences relevant to the safety of children, such as serious sexual, violent or drug crimes are included in the WWC Check.

There are two categories of offences relevant to the assessment of applicants under the WA WWC scheme:

Class 1 offences (the most serious offences)

Class 1 offences prevent the applicant from passing the WWC Check in any circumstance because they are the most serious offences.

For example, class 1 offences include the applicant being a registered sex offender or the applicant having committed other sex offences against children.

Class 2 offences

Class 2 offences will generally prevent the applicant from passing the WWC Check.

The WWC Screening Unit has **discretion** to pass the applicant depending on how much of a risk the applicant is to children's safety. There is a rigorous assessment process which takes into account the types of offences, number of offences, and when the offences occurred, to determine that the applicant does not pose an unjustifiable risk to the safety of children.

For example, Class 2 offences include offences against adults and children, such as indecent assault, manslaughter, murder, sex offences against children, kidnapping and drug offences.

The WWC Screening Unit looks doesn't only look at the types of offences and notifications revealed through the screening process. The Unit is also required by law, as part of the balance between protecting the best interests of the child and upholding the principles of natural justice, to consider the following factors:

- when the offence was committed or alleged to have been committed
- the age of the applicant when the offence was committed or alleged to have been committed
- the nature of the offence and any relevance it has to child-related work
- the effect of future conduct by the applicant in relation to a child
- any information given by the applicant in, or in relation to, the application, and
- anything else that is reasonably considered relevant to the decision

If someone currently holding a WWC Check Card is later charged with a relevant offence they will be issued with an Interim Negative Notice, and your organisation will be advised. That holder can then no longer undertake child-related work, effective immediately, until the Interim Negative Notice is revoked.



Related resource

For a complete list of Class 1 and Class 2 offences, see the WWC Screening Unit's [Fact sheet 3: Class 1 and Class 2 Offences](#).

Ongoing monitoring of WWC Checks

A WWC Check operates for three years unless revoked earlier.

For holders of a WWC Check Card

During the three-year validity period, WWC Check card holders must advise the WWC Screening Unit about any relevant change in circumstances, including:

- change of name
- change of address
- change or addition of employer or volunteer organisation, including changes to the organisation's contact details, or
- if the person is charged with or convicted of a Class 1 or Class 2 offence

For organisations

Throughout the three-year lifespan of a WWC Check, there is a 'rolling check' system. A WWC Check card holder's profile will be updated if there are any incidents that affect the person's ability to undertake 'child-related work' and your organisation will be notified. This is why it's important to ensure your organisation is nominated as a place of work for employees and volunteers with an existing WWC Check card.

Organisations must ensure that WWC Checks are renewed by employees and volunteers every three years (not earlier than three months and not later than one month before the expiry date on the WWC Check Card).

Taking the following steps may help your organisation keep a check on your workers' (paid and unpaid) WWC status:

- physically sight and record the WWC Check card (or their application receipt) when they join your organisation and record associated information such as expiry date or receipt number (i.e. keep a WWC register)
- keep WWC Checks, information and notices on file and keep a record of the employee and volunteer WWC status, including:
 - for new WWC applicants, the unique Application Receipt Number that is provided when an application for a WWC Check is lodged, or
 - for current holders of WWC Check cards, the WWC Check card number and the expiry date of their card
- ensure these records are filed in a safe, secure place and in accordance with the following principles:
 - ensure stored information is accurate, complete and up to date
 - protect the information from misuse, loss, unauthorised access, modification or disclosure (including by allocating file identification systems to prevent files being misplaced)
 - have a clearly expressed policy available upon request detailing the management of personal information by your organisation
 - allow people to access their own information and to correct inaccuracies
- assign responsibility for monitoring your WWC register to ensure that it is up-to-date, and
- set up systems to ensure your organisation keeps track of when current WWC Checks will expire

Remember your organisation is also able to check the status of a person's card or application using the 'Card Validation' function.



Tip

There are a number of volunteer management software systems that may assist your organisation with this process and ensuring thorough and systematic screening takes place (see [Volgistics](#), [eCoordinator](#) and [Volunteer Impact](#)).

Are there limits to what Working with Children Checks can achieve?

WWC Checks are only one way of reducing the risk of recruiting or associating with people who may be unsuitable for child-related work. No background check by itself can guarantee a person's suitability, and organisations should ensure that they have internal policies and procedures to ensure the safety of all who interact with the group – particularly those who may be vulnerable such as children.



Part 4

Police Checks

Police Checks

This part covers:

- ▶ an overview of Police Checks
 - ▶ the differences between WWC Checks and Police Checks
-

A WWC Check is an important check, but it's not the only check your organisation can undertake.

As part of your risk management strategy, even if you must undertake WWC Checks, consider whether any other checks would also be appropriate.

Is the Working with Children Check different from a Police Check?

Yes. If a volunteer or employee is required to undertake a WWC Check, it will not matter whether they have recently had a Police Check (sometimes called a National Police Check or Criminal Record Check) as these two screening procedures are established for different purposes.

The WWC Check focuses on specific offences (those that may impact on the safety of children). And, unlike police checks, the WWC Check is 'ongoing', which means the applicant's criminal record is monitored throughout the life of the WWC Check. The WWC Check may include checking with certain professional organisations beyond law enforcement agencies where an assessment is triggered by an applicant's criminal record.

Your organisation may wish to conduct both WWC Checks and Police Checks depending on the nature of the work being conducted by your staff or volunteers. For example, not all criminal offences will be relevant for the WWC Check, only those that the WWC Screening Unit considers to pose a risk to children. So, previous convictions such as traffic offences or thefts may not be considered through a WWC Check.

A Police Check allows an organisation to be aware of all (releasable) previous convictions – child-related or not – and this may be appropriate if you are seeking an employee or volunteer who, for example, may be handling money or driving clients between locations.

National Police Certificates

A National Police Certificate provides a list of a person's disclosable court outcomes and pending charges from all Australian police jurisdictions. Applications can be made [online](#) or at participating Australia Post outlets.

Volunteer National Police Certificates

In addition to a National Police Certificate, volunteer organisations in Western Australia can obtain a Volunteer National Police Certificate (**VNPC**) at a discounted rate. The VNPC provides a list of a person's disclosable court outcomes and pending charges from all Australian police jurisdictions.



To request a VNPC for a volunteer, the organisation must meet certain criteria and register with the [Department of Local Government and Communities](#).



Caution

If you decide that applicants are required to undergo a police check before recruitment, you can't refuse an applicant simply because they have a prior conviction for an offence that has no relevance to the available position. There are legal protections against discrimination on the basis of criminal record.

However, your organisation has obligations to create a safe environment, and you can refuse an applicant on the basis of a criminal record when you believe that the prior offence prevents the applicant from performing the 'inherent requirements' of the position. See the [Australian Human Rights Commission](#) website for more information.

How do WWC Checks and Police Checks differ?

	Working with Children Check (WA)	Police Checks
Who conducts the check?	The check is submitted to the WWC Screening Unit by the person.	The check is submitted to WA Police by the person or by an organisation on their behalf (with consent). Organisations may also engage a third party agency to manage the process. Applications can be made through Australia Post.
What is checked?	National criminal records (across all states and territories) and in some cases professional conduct reports and overseas criminal history.	National criminal history records.
What is revealed by the checks?	Serious criminal charges, offences, findings of guilt and professional conduct reports that may be relevant to the safety of children, such as serious sexual, violent or drug crimes (it will not reveal offences such as theft or property fraud). Spent convictions can be included in WWC Checks.	Police make an assessment that takes into account the category and purpose of the check and any relevant legislation and information release policies. Police then determine the details they will release to the individual or organisation requesting the check The details released may include court outcomes with a finding of guilt (including those 'without conviction'), good behaviour bonds or other court orders, outstanding charges and matters awaiting hearing certain (criminal) traffic offences, whether child-related or not. Spent convictions do not show on a Police check.
What is the outcome?	The person will either 'pass' or 'fail' depending on what the check reveals. The WWC Screening Unit will make the final assessment if relevant offences show up, after providing the applicant with an opportunity to make submissions.	There is no pass or fail – a list of court outcomes with a finding of guilt is produced from the national criminal record. It is up to the organisation to assess whether or not any of the listed outcomes may impact on the work of the volunteer.
How long is it valid for?	Three years.	It is current only at the time of the check.



	Working with Children Check (WA)	Police Checks
Is it an ongoing check?	Yes – over the three years there is a ‘rolling check’ system and the organisation is notified if it reveals anything related to child safety.	No – it is a ‘point in time’ check and will only list the offences at the time of the check.
Is the check transferable?	Yes – the WWC Card is ‘portable’ during the three-year validity period of the Card.	No – organisations should require a new check, even if someone had a check completed recently – as an organisation needs to be sure that all relevant matters have been disclosed by the police.



Part 5

NDIS Worker Screening Checks

NDIS Worker Screening Checks

This part covers:

- ▶ Worker Screening Checks for NDIS providers
- ▶ transition period for NDIS Worker Screening Checks
- ▶ what does the NDIS Worker Screening Check include?
- ▶ record keeping requirements for NDIS providers
- ▶ exemptions from NDIS Worker Screening Checks

The NDIS Worker Screening Check is an assessment of whether a person who works, or seeks to work, with people with a disability poses a risk to them. The assessment determines whether a person is cleared or excluded from working in certain roles with people with a disability.

The requirements relating to Worker Screening Checks for registered NDIS providers are set out in the *National Disability Insurance Scheme (Practice Standards – Worker Screening) Rules 2018* (**the Practice Standards**). Registered NDIS providers are responsible for ensuring that their workers have the necessary clearances so that the Practice Standards are met.

On 1 February 2021, states and territories will start implementing the new nationalised NDIS Worker Screening Checks as part of a uniform national approach to worker screening.

A NDIS Worker Screening Database will also be rolled out nationally, which will have a register of cleared and excluded workers from all states and territories.

Currently states and territories have transitional and special arrangements in place which specify the alternative checks and clearances that are acceptable before the national NDIS Worker Screening Check is rolled out.

Transition period for NDIS Worker Screening Checks

As the transitional and special arrangements differ between the states and territories, if a worker has an acceptable check in one state or territory, this is not portable to another state or territory. This means that workers of registered NDIS providers delivering services and supports to people with disability in a number of states or territories must have an acceptable check in each state or territory in which they work.

WA began a transition period on 1 December 2020.

From 1 December 2020, all registered NDIS providers delivering supports and services in WA must ensure that any person engaged in a risk assessed role:

- has gained a National Police Clearance (before 1 February 2021) which is:
 - less than three years old for workers who commenced their employment with the registered NDIS provider before 1 December 2020, and

- less than 12 months old for workers who began their employment with the registered NDIS provider between 1 December 2020 and 1 February 2021
- has no convictions on their last National Police Check (**NPC**) for a ‘relevant offence’ (defined in WA legislation) committed as an adult
- has no convictions subsequent to that NPC that their employer is aware of for a ‘relevant offence’ committed as an adult
- if the risk assessed role involves child-related work within the meaning of the *Working with Children (Criminal Record Checking) Act 2004* (WA) - has a Working with Children assessment notice or pending application

After the end of the transition period, a person engaged in a risk assessed role that met these requirements during the transition period may continue to work in the role for two years, or until an acceptable WA check (including the Working with Children assessment notice issued in response to the application which was pending on 1 February 2021) expires – whichever is sooner.

Risk assessed roles

Registered NDIS providers are responsible for identifying which roles are risk assessed roles, and making sure that all workers in these roles have an NDIS Worker Screening Clearance or an acceptable check under the transitional and special arrangements.

Under the Practice Standards, workers may only be engaged in a ‘risk assessed role’ if the worker has a clearance, subject to the exceptions discussed below.

A risk assessed role includes:

- a ‘key personnel role of a person or an entity’ as defined in s 11A of the *National Disability Insurance Scheme Act 2013* (for example, a CEO, board member or other key personnel)
- a role for which the normal duties include the direct delivery of specified supports or services to a person with a disability (see link for list of specified services and supports), and
- a role for which the normal duties are likely to require ‘more than incidental contact’ with people with disability, which includes:
 - physically touching a person with disability
 - building rapport with a person with disability as an integral and ordinary part of the performance of normal duties, or
 - having contact with multiple people with disability as part of the direct delivery of a specialist disability support or service, or in a specialist disability accommodation setting



Example

Lee works for a mobility equipment company that is a registered NDIS provider and delivers mobility equipment to the homes of people with a disability. Lee provides training, support and instructions to the customers as a standard part of his role. Lee’s registered NDIS provider will need to ensure Lee has a Worker Screening clearance (or an acceptable check under the transitional and special arrangements, explained below) as the nature of Lee’s contact with the customer is likely to lead to Lee building rapport with the customer.



What does the NDIS Worker Screening Check include?

The NDIS Worker Screening Check will be conducted by NDIS worker screening units. The NDIS worker screening unit makes the decision about whether a person is cleared, excluded or on an interim bar (in this case further information will be required to determine whether the person will be cleared or excluded).

Registered NDIS providers will need to ensure they only engage workers who have a cleared status. The NDIS Worker Screening Check will enable registered NDIS providers to engage a worker with a valid clearance from any state or territory to deliver NDIS support and services in a risk assessed role.

The new NDIS Worker Screening Check will take into account:

- any police or government information (including convictions, current and pending charges)
- apprehended violence orders
- child protection information (included child protection orders)
- workplace misconduct (complaints or incident reporting)
- international police check (for persons who have worked overseas)

The check will then be submitted to the NDIS Worker Screening Database run by the NDIS Commission. NDIS providers and individuals will need to apply to the NDIS Commission to access the information stored on the database.

NDIS provider record keeping requirements

For each **risk assessed role**, registered NDIS providers are required to document:

- the title or other organisational identifier for the role
- the paragraph or paragraphs of the definition of risk assessed role (as contained in the Practice Standards) that applies to the role
- a description of the role, and
- the date the role was assessed and the name and title of the person who made the assessment

When a new risk assessed role is identified, the written list of roles must be updated within 20 business days of the identification or review of the risk assessed role.

For each **risk assessed worker**, NDIS providers are required to document:

- the full name, date of birth and address of the person
- the risk assessed role or roles in which the person engages
- if the worker may engage in a risk assessed role without an NDIS Worker Screening Clearance:
 - the basis on which they may do so
 - the start and end date of the period in which the exemption that allows them to work in a risk engaged role applies
 - the name of the person who supervises the worker during this period
- the worker's NDIS Worker Screening Check application reference number
- the worker's NDIS Worker Screening Check outcome expiry date
- whether the worker's NDIS Worker Screening Clearance is subject to any decision which has the effect that the registered NDIS provider may not allow the worker to engage in a risk assessed role, and the nature of any such decision (for example, interim bar, suspension, exclusion)
- records relating to an interim bar, a suspension, an exclusion, or any action taken by the provider in relation to these kinds of decisions in relation to any worker and
- allegations of misconduct against a worker with a check and the action taken by the registered NDIS provider in response to that allegation

A record must be kept for seven years from the date the record was made.



Exceptions

A registered NDIS provider may engage a person in a risk assessed role who does not have an NDIS Worker Screening Clearance if:

- the registered NDIS provider is subject to the transitional and special arrangements and is complying with those arrangements
- the person is a school student on a formal work experience placement, provided the student is directly supervised by another worker who has an NDIS Worker Screening clearance or acceptable check under the transitional and special arrangements
- in some circumstances, the person has submitted an application for an NDIS Worker Screening Check, provided the worker is 'in the process of obtaining a clearance' as defined by the Practice Standards. In these circumstances, the registered NDIS provider must ensure that the worker is:
 - appropriately supervised by a person with an NDIS worker screening clearance, and
 - the NDIS provider implements a risk management plan in line with the requirements in the Practice Standards

Interstate workers

Until the NDIS Worker Screening Check takes effect on 1 February 2021, a registered NDIS provider needs to ensure that all workers who are required to work interstate have an acceptable check in each state or territory where the worker is engaged in a risk assessed role to provide NDIS support and services.



Tip

Visit the [NDIS Commission website](#) to ensure your organisation is compliant with the Worker screening transitional and special arrangements.



Part 6

Other checks



Other checks

This part covers:

- ▶ other discretionary background checks
 - ▶ managing volunteers and employees in or from other states and territories
 - ▶ child safety law reform relating to background checks
-

Discretionary background checks

Even where there is no legislative requirement that Police Checks and other discretionary background checks be performed, organisations ought to undertake some level of screening of volunteers and employees. This is because all organisations have a responsibility to ensure they maintain a safe environment for its employees, volunteers and clients. Due to this overarching duty of care, organisations should always try to be informed about the individuals they select as their representatives.



Caution

In WA it is an offence to require a person who is not engaged in child-related work to obtain a WWC Card. So, where a WWC Card can't be obtained, other forms of pre-employment screening have additional relevance and potential value to community organisations.

From a practical perspective, undertaking informal background checks, such as asking for referee details and performing licence and qualification checks (and possibly asking for details of any potential conflicts of interest) is certainly a good way for an organisation to assure itself that it is making the right choice when recruiting a new employee or volunteer.



Note

While finding the right person to fill a vacant role is important, an organisation has an overarching duty to provide a safe environment for staff, volunteers and clients. Good screening procedures when recruiting is a key way for organisations to try and address problems before they arise.

Screening for interstate employees and volunteers

WWC Checks

Currently, WWC Checks operate at a state or territory level. This means that a WWC Check is only valid for work in the state or territory in which it is issued.

If an employee or volunteer has a WWC Check from another state or territory and wants to work in WA, they may also need to obtain a WA WWC Check, depending on the circumstances.

Interstate visitors can engage in child-related work in WA without a WA WWC Card for a period of up to two weeks in the same calendar year, and only within a two-week period after their arrival from interstate. However, your organisation may want to consider requiring any such person to hold a valid WWC from their own state or territory.

There is a further (and separate) exemption for people entering WA for one-off national events and tours taking place in WA in connection with certain categories of child-related work. There are specific conditions in relation to this exemption for employees and volunteers. For more information, see the [WWC Screening Factsheet 2: Child-related work and exemptions](#).

If your staff or volunteers are travelling to another state or territory outside WA and will engage in child-related work, you need to ensure that you comply with the laws of the particular state or territory they visit – which may mean having a valid WWC Check for that state or territory.

Generally, most states will recognise the WWC Check of a worker from another state, if they are visiting and working on a short-term basis.

However, if your organisation's employees or volunteers work in multiple jurisdictions on a regular basis, it is likely that they will need a WWC check for each state or territory. It is also worth pointing out that the offences considered relevant for the purposes of a WWC Check differ across states and territories.



Note

It is important to check the applicable scheme in each state and territory and whether any exemptions for interstate visitors apply.

Relevantly, [The Royal Commission into Institutional Responses to Child Sexual Abuse's 2015 report on Working with Children Checks \(WWCC Report\)](#) contains recommendations around the implementation of a nationally-consistent scheme.

Police Checks

The Police Check will display all (releasable) court outcomes from all states and territories of Australia.

If your organisation engages an employee or volunteer that has been living overseas, your organisation may decide to ask for an international police check, which can be obtained from the law enforcement body for each relevant country.

Information on obtaining a police check from an overseas government or law enforcement authority can be found on the [Australian Government Department of Home Affairs](#).

National child safety reforms and screening

The Council of Australian Governments (**COAG**) has been working towards law reform to harmonise the laws between states and territories and published a '[National Framework for Protecting Australia's Children 2009-2020](#).' This is a broad, long-term initiative aimed at reforming the child protection system and creating uniform laws across states and territories. COAG aims to develop a nationally consistent approach to working with children checks and child safe organisations across jurisdictions. This is likely to include unifying the WWC Check system across our states and territories. Further reform and consolidation of legislation will help to establish an inter-jurisdictional exchange of information regarding people working with children.



If new legislation comes into force, your organisation may need to comply with different rules regarding its employees and volunteers. It is important to be aware of the changes as they take place, and to ensure that your organisation continues to meet the legislative requirements.



Further reading

For more information about creating a child-safe organisation see the '[National Framework for Protecting Australia's Children 2009-2020](#)', and the '[Guidelines for Building the Capacity of Child-Safe Organisations](#)' published by the [Department of Social Services](#).



Further reading

Moore's, together with Our Community, have also created a [Child Protection Toolkit](#) for not-for-profit organisations, to help them comply with these standards and other legislative requirements. The Toolkit discusses child safe recruitment processes, creating a child safe culture and various reporting obligations.

It also includes a sample Child Protection Policy and Child Safety Code of Conduct (that can be tailored to your organisation).

Resources

Related Not-for-profit Law resources

The [Not-for-profit Law website](#) has resources on the following related topics.

- ▶ [The People Involved](#)
This webpage contains legal information relating to everyone involved in a community group.
- ▶ [Risk and Insurance](#)
This webpage contains legal information relating to managing risk in your organisation.

Legislation

- ▶ [Working with Children \(Criminal Record Checking\) Act 2004 \(WA\)](#)
- ▶ [Working with Children \(Criminal Record Checking\) Regulations 2005 \(WA\)](#)
- ▶ [National Disability Insurance Scheme \(Practice Standards – Worker Screening\) Rules 2018 \(Cth\)](#)

Other related resources

- ▶ [WWC Screening Unit website](#)
- ▶ Department of Social Services, [National Framework for Protecting Australia's Children 2009–2020](#)
- ▶ [CrimCheck](#)
CrimCheck is a Not-for-profit organisation that assists other not-for-profit organisations with the processing and management of police checks for their employees and volunteers along with general support and education around the process.
- ▶ [Australian Criminal Intelligence Commission](#)
The Australian Criminal Intelligence Commission (formerly CrimTrac) is the national information-sharing service provider for Australia's police, wider law enforcement and national security agencies. It offers a National Police Checking Service and has further information about the National Police Check process.
- ▶ [NDIS Commission](#)
The NDIS Commission website provides up to date information and has a variety of useful resources for NDIS registered providers, workers and participants to access at any time.

