

Volunteer screening

Legal information for New South Wales community organisations

This fact sheet covers:

- Working with Children Checks
- Police Checks, and
- other checks.

It is important that your organisation undertakes screening and induction of volunteers in a thorough and systematic way.

In the recruitment and ongoing management of volunteers, your organisation owes a duty of care to take reasonable steps to prevent reasonably foreseeable harm to volunteers, employees, clients and members of the public.

EXAMPLES OF DUTY OF CARE IN PRACTICE



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 do not ask them to obtain a Working with Children Check. The volunteer seems trustworthy and so 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 she has a long history 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 he has not been trained in what to do in this situation. He is traumatised by this incident. In this second example, your organisation could be in breach of its duties to both the volunteer and client by failing to provide adequate training.

Screening volunteers

Before engaging a volunteer, it is important to undertake the background checks required by law, as well as to consider other appropriate background screening checks to manage risk for your organisation. This is in addition to other volunteer induction processes such as training that you can also undertake to manage risk. This section of the fact sheet covers:

- Working with Children Checks (**WWC Check**)
- Police Checks (sometimes called National Police Checks or Criminal Record Checks), and
- other qualification, reference and ID checks.

In New South Wales, it is mandatory for all of your organisation's workers who undertake 'child-related' work, including volunteers, to have a WWC Check (unless an 'exemption' applies, for example, where they are a parent or close relative of a child and volunteering with the child's school, early education centre or other educational institution).

These requirements are set out under the *Child Protection (Working with Children) Act 2012* (NSW) (**NSW WWC Act**). In summary, an individual will require a WWC Check if:

- the role includes 'direct contact' (physical or face-to-face contact) with children (under 18 years old) in a 'child-related sector' covered by the NSW WWC Act, or
- the role is considered a 'child-related role' under the NSW WWC Act, and
- no 'exemption' applies.

NOTE

What is child-related work?

Under Part 2, section 6 of the NSW WWC Act, child-related work is defined as work in a specific, child-related role or face-to-face contact with children in a *child-related sector*.

What are some examples of child-related sectors?

Child-related sectors include:

- Education and childcare
- Disability services
- Youth workers
- Residential services
- Bodies providing services to children
- Child protection
- Child development and family welfare services

Additional roles and sectors are listed under Part 2 of the NSW WWC Act.

EXAMPLE

A Lightning Ridge community organisation assists women with entry into the workforce – providing training, mentorship and general support. The organisation operates out of a community centre, where children's activities are regularly held (ie. dancing classes, creative art). Women also often bring their children into the centre while they are accessing the services offered by the organisation.

Is it child-related work?

Work in providing family welfare services is considered 'child-related work' if clients to whom the services are provided ordinarily include children. In this case, children are not the intended or ordinary recipients of the service (even in part) and therefore it is unlikely the work would be considered 'child-related'.

Is a WWC check required?

Even though volunteers (and employees) of the organisation are not legally required to obtain a WWC Check, given the physical proximity of the service to children and the likelihood of direct contact with them (either those participating in other programs or the children belonging to the clients of the program), in accordance with best practice, the organisation asks all workers to obtain a WWC Check.

It adopts a policy around screening requirements in the recruitment of new workers and makes it clear that child safety is important to the organisation and its clients.

Failure to obtain a WWC Check when required by law may result in penalties against both your organisation and the volunteer. To meet its obligations, your organisation:

- must verify through the [Working with Children Check Employer Register](#) that each volunteer who carries out, or is to carry out, child-related work has a WWC Check clearance or has made a current application for clearance (sighting the number is not enough), and

- must not commence engaging, or continue to engage, a volunteer in child-related work if you know (or you have reasonable cause to believe) that the volunteer is not the holder of WWC Check clearance and there is no current application for clearance, or the worker is subject to an interim bar (see discussion below).

More detailed information about when a WWC Check is required in NSW, your organisation's obligations and the process of applying, is available in Not-for-profit Law's Screening Checks Guide on the Information Hub at www.nfplaw.org.au/recruitment.

NOTE

In NSW, if a volunteer has a WWC Check (and it is categorised as a 'volunteer' WWC Check), it cannot be transferred to paid child-related work. If the volunteer changes to a paid role, a new 'employee' WWC Check will be required.



Generally, it is not mandatory for your organisation to undertake police checks and other checks for volunteers (such as license, qualification and reference checks). However, you may be required under legislation applying to specific sectors or a contractual obligation (eg. under a funding or auspicing agreement) to undertake certain screening checks before engaging a volunteer. You may also have internal policies that deem these checks appropriate as part of your organisation's risk management strategy, depending on the nature of the volunteer role.

EXAMPLES

- ✓ Under the *Disability Inclusion Act 2014* (NSW) and *Disability Inclusion Regulation 2014* (NSW), Family and Community Services (**FACS**) and FACS-funded disability service providers must not engage a person, including a volunteer, in providing supports and services directly to people with a disability (in a way that involves face-to-face or physical contact) without them undertaking the following checks:
 - at least one referee check
 - a police check (referred to as criminal record check), and
 - a police check at least once every four years.
- ✓ All aged care workers, including volunteers must have a police check every 3 years under the *Aged Care Act 1997* (Cth).
- ✓ NSW Health has issued a Policy Directive requiring police checks as a part of the recruitment process for preferred applicants for positions in the NSW Health Service, including for volunteers.



TIP

It is important to be aware of the legal framework that governs your particular organisation and whether workers require certain checks, regardless of whether or not the work would require a WWC Check under the WWC Check Act (ie. FACS disability services, aged care and NSW health services).

As a matter of best practice, even if the law and contractual agreements do not require it, your organisation should conduct relevant background checks on all potential volunteers to make sure they are engaging a suitable person for the role and providing a safe work place for other volunteers, employees and clients.

Consider whether the 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 volunteers.



Interstate and overseas screening

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 a volunteer has a WWC Check from another state or territory and wants to volunteer in New South Wales, they may also need to obtain a WWC Check in New South Wales, depending on the circumstances.

Interstate visitors can engage in child-related work in New South Wales, without a New South Wales WWC Check, for a period of up to 30 days in the same calendar year if one of the following applies:

- if they will volunteer at several events or occasions – they may do so if they have a WWC Check from their state or territory (or are exempt in that jurisdiction), and
- if they will volunteer at only one event or occasion – without a WWC Check from their state or territory.

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

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. It is also worth pointing out that the offences considered relevant for the purposes of a WWC Check differ across states and territories. For more information about the schemes in other states and territories, see the NSW Office of the Children's Guardian [website](#). See Resources, below.

Again, even if not required under legislation or a contract, if volunteers will likely have contact with children, we strongly recommend that your organisation undertake thorough screening checks.

NOTE

In 2012, all states and territories agreed on the above exemption for Checks for interstate visitors. However, this has not been fully or consistently implemented. Therefore, it is important to check the applicable scheme in each state and territory. Relevantly, The Royal Commission into Institutional Responses to Child Sexual Abuse released its report on [Working with Children Checks](#) on 17 August 2015, which 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's Department of Immigration and Border Protection website at www.border.gov.au/Trav/Visa/Char.

How do Working with Children Checks and Police Checks differ?

WWC Checks and Police Checks satisfy different purposes and some of the key differences include:

	Working with Children Checks (NSW)	Police Checks
Who conducts the check?	The check is submitted to the Office of the Children’s Guardian (OCG) by the individual. Those who have a WWC Check under the old system, will need to re-apply to the OCG once their industry sector has been phased in (see OCG ‘Fact Sheet 2 - Phase-in schedule for existing workers’).	The check is submitted to New South Wales Police by the individual or by an organisation on their behalf (with consent). Organisations may also engage a third party agency to manage the process.
What is checked?	<ul style="list-style-type: none"> • National criminal records (across all states and territories) including: <ul style="list-style-type: none"> ○ convictions (spent or unspent) ○ charges (whether heard, unheard or dismissed) ○ juvenile records • Findings of misconduct by a reporting body and notifications made by the NSW Ombudsman • Ongoing monitoring of the relevant individual for the next 5 years, with some records triggering an automatic risk assessment by the OCG which may lead to the clearance being revoked, and • Depending on the records returned – the OCG may obtain information from any other relevant source, including government and non-government agencies, courts and the Director of Public Prosecutions. 	National criminal records.
What is revealed by the checks?	Convictions, findings of guilt without conviction, charges (heard, unheard or dismissed), juvenile records and intention to commit any of these offences (attempting, conspiring, inciting to commit). In other jurisdictions, the check only reveals (and an assessment made of) specific offences relevant to the safety of children. NSW is arguably the strictest scheme in Australia, as it also reveals other violent offences.	The police make an assessment that takes into account the category and purpose of the check and any relevant legislation and information release policies. The 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 and other court orders, outstanding charges, matters awaiting hearing and certain criminal traffic matters, whether child-related or not.
What is the outcome?	The applicant will either be cleared to engage in child-related work and issued a WWC Check or barred from engaging in	There is no ‘pass’ or ‘fail’ – a list of court outcomes with a finding of guilt is produced from the national criminal record.

	such work and a notification issued. The OCG will undertake a risk assessment of the applicant's eligibility to engage in child-related work if relevant offences show up. Certain convictions (or where there is a trial pending for these), will result in an automatic bar from engaging in child-related work. The applicant is provided with an opportunity to submit information affecting the final decision if a bar is being contemplated.	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?	5 years. A bar also remains in place for 5 years.	It is current only at the time of the check.
Is it an ongoing check?	Yes – over the 5 years there is a 'rolling check' system and the organisation is notified if the person's status changes (ie. becomes barred), so long as the organisation has verified the volunteer online at http://www.kidsguardian.nsw.gov.au/check	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 – to other New South Wales volunteer roles. Your organisation must verify the WWC Check online.	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.

TIP

For WWC Checks:

- once your industry sector has been phased into the new WWC Check system discussed in this fact sheet, your organisation will need to register under the new system, and your existing volunteers who hold a WWC Check under the old scheme (from the NSW Commission for Children and Young People) will need to apply online for a new WWC Check
- make sure your organisation verifies the volunteer's WWC Check status online and ensure that a 'clearance' has been issued or is in 'progress' before they start with your organisation – this a legal requirement under the NSW WWC Act
- make a note of the WWC Check's expiry date and schedule a reminder for your volunteer to renew – your organisation must verify the new WWC Check application or clearance online within five working days of the expiry date of the old WWC Check clearance, and
- have a process for determining when your youth volunteers turn 18, as they may then require a WWC Check at this time.

For Police Checks:

- schedule regular checks (eg. every 1 to 3 years) so that any delay in the processing of outcomes are accounted for as well as any new records, and
- be careful not to refuse a volunteer applicant simply because he or she has a prior conviction revealed for an offence that has no relevance to the available position – there are legal protections against discrimination on the basis of criminal record.

RELATED RESOURCES



For more information about discrimination in the recruitment process, go to Not-for-profit Law's Volunteer recruitment: discrimination, induction and spontaneous volunteers fact sheet on the Information Hub at www.nfplaw.org/volunteers.

For more detailed information about Working with Children Checks and Police Checks, go to our Screening Checks Guide at www.nfplaw.org.au/recruitment.

TIP



The screening and induction process ought to be just one part of your organisation's risk management processes. There is a need for ongoing supervision and training, a chance for the volunteer to provide feedback and raise queries and for regular reminders of key policies.

Resources

Related Not-for-profit Law Resources

- ✔ Recruitment of employees www.nfplaw.org.au/recruitment

For more detail about Working with Children Checks and Police Checks, go to our Not-for-profit Law guide on Screening Checks.

- ✔ Volunteers www.nfplaw.org.au/volunteers

The Volunteers page on the Information Hub features further information on specific issues covered in this fact sheet and the laws as they relate to volunteers, including resources on:

- Volunteer recruitment: discrimination, induction and spontaneous volunteers – for more information on recruitment, induction and training of volunteers generally.
- Engaging and working with youth volunteers – for more information about child safe organisations, work conditions and reporting requirements (due to be published in November 2016)
- Volunteers and unlawful workplace behaviour – for more information on particular workplace behaviours that volunteers should receive training on during the induction process (due to be published in November 2016).
- Safety, risk management and volunteers – for further information about your organisation’s duty to provide a safe work environment and risk management strategies (due to be published in November 2016).

- ✔ Risk and Insurance www.nfplaw.org.au/riskinsurance

This Information Hub page contains legal information relating to managing risk in your organisation.

Legislation

- ✔ [*Child Protection \(Working with Children\) Act 2012 \(NSW\)*](#)

- ✔ [*Child Protection \(Working with Children\) Regulation 2013 \(NSW\)*](#)

Other Related Resources

- ✔ NSW Commission for Children & Young People, Office of the Children’s Guardian – Working with Children Checks, www.kidsguardian.nsw.gov.au/working-with-children/working-with-children-check

The Office of the Children’s Guardian has published a number of fact sheets and other resources about the NSW WWC Check scheme, including an ‘Employer’s Guide.’

- ✔ Volunteering Australia www.volunteeringaustralia.org

Volunteering Australia has a resource which provides an overview of background check requirements and the associated costs across the various states and territories.

- ✔ The Centre for Volunteering www.volunteering.com.au

The state peak body for volunteering provides information on volunteering and volunteer management.

- ✔ NSW Volunteering www.volunteering.nsw.gov.au

➤ NSW Volunteering is part of the NSW Government's Family and Community Services. The website features resources for volunteers, organisations and businesses and information on the NSW Volunteering Strategy.

➤ Department of Families, Housing, Community Services and Indigenous Affairs www.dss.gov.au

Visit this website for the [National Framework for Protecting Australia's Children 2009–2020](#).

➤ New South Wales Police www.police.nsw.gov.au

NSW Police has published a [step-by-step guide](#) on how to apply for a Police Check and an Information Sheet addressing Frequently Asked Questions in relation to the Police Check process [here](#).

➤ CrimCheck www.crimcheck.org.au

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.

➤ CrimTrac www.crimtrac.gov.au

CrimTrac is the national information-sharing service provider for Australia's police, wider law enforcement and national security agencies, offers a National Police Checking Service and has further information about the National Police Check process.

A NFP Law Information Hub resource. Access more resources at www.nfplaw.org.au

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