

Working with Children (Criminal Record Checking) Act 2004

IN PROCESS

- SUMMARY OF KEY FEATURES -

**Working with Children Screening Unit -
Department for Community Development
July 2005**

TABLE OF CONTENTS

BACKGROUND.....	3
PURPOSE.....	4
SCOPE	4
KEY ELEMENTS OF THE LEGISLATION.....	4
Persons to be screened.....	4
Records assessed.....	5
Framework for assessment	5
Assessment process.....	6
Outcome of a WWC Check.....	6
Natural justice	6
Obligations of people in child-related work and employers	7
IMPLEMENTATION.....	8
Who will conduct the WWC Check?.....	8
Phasing- in of WWC Checks.....	9
Cost of a WWC Check.....	9

BACKGROUND

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

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

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

There has been well-publicised concern about the abuse of children by the clergy and others, and churches have strongly advocated for a systematic approach to screening people working with children. This concern has been heightened by the recent exposure of child pornography networks in Australia.

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

Although employee screening policies exist within key public sector departments and among other service providers in Western Australia, the introduction of a universal, high standard of criminal record checking across sectors will significantly strengthen the protection of children.

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

The WWC Act will be proclaimed on 1 January 2006. A Working With Children Screening Unit (WWCSU) is currently being established by the Department for Community Development to implement the new scheme (see Implementation, page 8, for further details).

PURPOSE

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

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

SCOPE

A Working With Children Check (WWC Check) will be required by volunteers, employed and self-employed persons working in certain categories of “child-related work”.

Child-related work is defined in section 6 of the WWC Act, and includes work where the usual duties involve, or are likely to involve, contact with a child in connection with activities such as: child care services, commercial babysitting, educational institutions for children, accommodation, relevant wards of hospitals, cultural or sporting activities, counselling and support services and children’s entertainment. Ministers of Religion are also identified.

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

KEY ELEMENTS OF THE LEGISLATION

Persons to be screened

- People who wish to commence or continue in “child-related work” must apply for a WWC Check. “Child-related work” is defined in Section 6(1) of the WWC Act. It includes “child-related work” undertaken by employees and self-employed persons in the commercial, not-for-profit and public sectors on a paid, unpaid or voluntary basis.
- Exemptions from the requirements of the WWC Act will apply for certain groups. This includes certain informal, domestic arrangements; where children do volunteer work; and employers of young people.

- Another exemption to be added in Regulations is a provision similar to the Queensland legislation, which provides an exemption for parents who carry-out volunteer work where their children are also involved in certain circumstances. Details will be available when the regulations are finalized.

Records assessed

- An application for a WWC check will initiate a national criminal record check of convictions by CrimTrac and, until there is a CrimTrac capacity to do so on a national basis, a check by the Western Australia Police for any pending or “non-conviction charges” in WA (those that did not result in a conviction).
- The WWC check will access juvenile and adult criminal records including all spent and unspent convictions, and charges in relation to a number of serious offences (those in Schedules 1 and 2 of the Act, which are primarily those of a sexual or violent nature).
- Assessment of charges enables consideration of scheduled offences that, for example, have been dismissed on a technicality or have not proceeded because of the impact on the victim. This is particularly relevant where children are required to give evidence in sexual assault cases.
- Where non-conviction charges are assessed as relevant, the WWCSU will need to demonstrate that an Assessment Notice should not be issued because particular circumstances exist which indicate the person should be prohibited from child-related work.

Framework for assessment

- Convictions for certain serious sexual offences against a child (“**Class 1 offences**” - Schedule 1 of the Act), committed as an adult, will result in an ‘automatic-bar’ on child-related work.
- Another set of serious convictions of a sexual or violent nature (“**Class 2 offences**” - Schedule 2 of the Act) will also result in a prohibition on child-related work, **unless** assessment of an applicant’s criminal record indicates that there are exceptional circumstances demonstrating that the applicant does not pose an ongoing and unacceptable risk of harm to children.
- Convictions outside of Class 1 or Class 2 will usually result in an Assessment Notice, **unless** the assessment undertaken indicates that there are particular circumstances which demonstrate that the person should be prohibited from child-related work.
- Charges for a Class 1 or Class 2 offence only can be considered as part of a WWC Check.

Assessment process

- A WWC assessment will examine the seriousness of an applicant's record, giving consideration to the following:
 - » The nature, circumstances and pattern of charges or convictions
 - » the age at which the offences were committed
 - » their relevance to child-related work
 - » and anything else relevant to the decision.

The paramount consideration is the best interest of the child.

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

Outcome of a WWC Check

- A 'successful' WWC Check will result in the issue of an Assessment Notice which will be portable across child-related work for a three-year period, subject to notification of relevant charges during that time. Portability over three years is a user-friendly and cost-effective approach as, without it, criminal record checks would need to be repeated upon a change of employment.
- An 'unsuccessful' WWC Check will result in the issue of a Negative Notice which will have currency until its cancellation under the Act.
- An Interim Negative Notice may be issued to persons during the period of assessment.
- A card with a photograph will be issued as proof of a WWC Check. Measures to ensure cards are issued in a secure manner and cannot be counterfeited are being developed.
- A WWC Card **IS NOT** an endorsement of a person's suitability for work with children. Obtaining WWC Checks are only one of the practices that responsible employers put in place to achieve safe environments for children. Your assistance in providing this important message is welcomed.

Natural justice

- Where it is proposed that a Negative Notice be issued to an applicant, the applicant will be given the opportunity to make a submission to the WWCSU to argue against the issue of the Notice. The applicant will also have a right to have the final decision reviewed by the State Administrative Tribunal.

- Submissions and appeals in relation to Negative Notices issued under the 'automatic bar' provisions (ie. convictions for a Class 1 offence committed while an adult) can only be on grounds that the person's criminal record is inaccurate or that the offence does not constitute a "Class 1 offence".
- Applicants receiving a Negative Notice in circumstances other than the 'automatic bar', may apply for cancellation of the Notice after three years.

Obligations of people in child-related work and employers

Paid employees, volunteers and self-employed people will be required:

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

Employers will be required:

- not to employ or continue employing a person in child-related work unless the person has applied for or already has current WWC Check (note – this requirement will not apply for employers until their employees have been phased-in – see p 9);
- not to employ or continue to employ in child-related work any person who has a current Interim Negative Notice or Negative Notice, or whose WWC application has been withdrawn, and
- to advise the WWCSU as soon as practicable after being notified of a relevant change in an employee's criminal history.

Reasonable flexibility is needed to enable employers to deliver services in unforeseen circumstances such as the illness of a worker. The legislation provides a defence for people who undertake child-related work on no more than 5 days in a calendar year without having applied for a WWC Check.

Protection from liability is provided for:

- the State in administering the legislation
- persons undertaking WWC Check assessments
- employers (including the State) who act in compliance with their obligations under the WWC Act. This will not limit procedural fairness requirements or access to employee entitlements.

IMPLEMENTATION

Who will conduct the WWC Check?

- A Working With Children Screening Unit (WWCSU) is currently being established by the Department for Community Development. However, it will be administered by the Commission for Children and Young People, once established.
- The role of the WWCSU will be to:
 - » set standards and policies for conducting WWC Checks
 - » assess and determine whether persons with relevant criminal histories should be issued with an Assessment Notice to work with children, or a Negative Notice or Interim Negative Notice which will prohibit them from child-related work.
- Generally, the WWCSU will be responsible for assessing the criminal records of those working with children who are Ministers of Religion, self employed, the licensees or employees in the child care sector, employees in the not-for profit and commercial sectors and most volunteers.
- The majority of WWC Checks for those employed in state government services will be undertaken by Approved Screening Agencies (ASAs) – those public sector agencies that currently screen large numbers of employees and some people in particular occupations who work with children. This is a cost effective implementation model which builds on existing criminal record screening capacities.
- These ASAs will be carrying out screening under delegated authority. It is expected that the Department of Education and Training, Department of Justice, Department of Health and Department for Community Development will be established as ASAs in 2007, the second year of the scheme's operation.

Phasing- in of WWC Checks

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

- Phasing-in of the WWC Checks for different sectors will be detailed in regulations currently being drafted. Phasing-in will occur over five years from January 2006.
- Development of phasing-in arrangements has required consideration of a range of issues including:
 - » the relative risk of harm to children in particular sectors
 - » screening practices already in place; and
 - » the establishment of Approved Screening Agencies (ASA).

Cost of a WWC Check

- There will be a reasonable charge for the assessment and registration process, which will recoup some of the costs; \$10 for volunteers and \$50 for paid workers and self-employed persons for the 3 year period. This equates to less than \$3.50 per year for volunteers and less than \$17 per year for paid persons. These fees are subsidised and do not reflect the full cost of a WWC Check.
- The fees are comparable with the over-the-counter police check which does not include assessment of, or access to, the broad range of records considered as part of a WWC check and is not portable over 3 years.
- Those in paid employment and those incurring business-related expenses may choose to seek professional advice about possible tax deductions.