

Frequently Asked Questions

In this section are answers to frequently asked questions about the Working With Children Check. If you want more detailed information, go to the [Working With Children Check Guidelines](#).

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1. What types of work are covered by the Working With Children Check?

The Working With Children Check applies to all people in child-related employment.

Child-related employment is any work (paid or unpaid) of the following kinds that involves direct and unsupervised contact with children:

- involving the provision of child protection services
- in pre-schools, kindergartens and child care centres (including residential child care centres)
- in schools or other educational institutions (excluding universities)
- in detention centres (within the meaning of the *Children (Detention Centres) Act 1987*)

- in refuges used by children
- in wards of public or private hospitals in which children are patients
- in clubs, associations or movements (including those of a cultural, recreational or sporting nature) having a significant child membership or involvement
- in any religious organisation
- in entertainment venues where the clientele is primarily children
- as a babysitter or childminder that is arranged by a commercial agency
- involving fostering or other child care
- involving regular provision of taxi services for the transport of children with a disability
- involving the private tuition of children
- involving the direct provision of child health services
- involving the provision of counselling or other support services for children
- on school buses
- at overnight camps for children

In the Working With Children Check, '*employment*' means:

- work under a contract of employment
- work as a subcontractor
- work as a volunteer for an organisation, or
- undertaking practical training as part of an educational or vocational course
- work as a minister of religion or other member of a religious organisation. (Section 33, *Commission for Children and Young People Act 1998*)

The definition of employment in prohibited employment also covers work as a self-employed person (Section 3, *Child Protection (Prohibited Employment) Act 1998*).

All people in, or commencing, child-related employment must be asked by their employer if they are a prohibited person.

Preferred applicants for paid positions, foster carers and ministers of religion and members of religious organisations seeking child-related employment must also have a background check.

2. What must employers do?

If you employ people in child-related positions in NSW, you must:

1. Register with the relevant Approved Screening Agency;
2. Identify positions in your organisation (paid and voluntary) which are child-related positions;
3. Obtain a Prohibited Employment Declaration from all existing employees in child-related positions. If they are a prohibited person you must remove them from child-related employment;
4. Keep the Prohibited Employment Declaration in a secure place for as long as the person is employed;
5. Ask preferred applicants for child-related positions to sign a Consent Form for a background check;
6. Include advice about the Working With Children Check in information being provided about child-related positions;
7. Request a background check for the following applicants before they start work: -preferred applicants for paid child-related employment - foster carers -ministers of religion or other members of religious organisations seeking child-related employment
8. Decide whether to offer the applicant the position, taking into account the result of the Working With Children Check and any other information you have available;
9. Where it is not practical to complete the background check prior to employment commencing, you must still complete the check as soon

as possible. You must advise employees that their ongoing employment is conditional upon the satisfactory outcome of the check;

10. Notify the NSW Commission for Children and Young People of any person whose application for child-related employment has been rejected primarily because of a risk assessment in the Working With Children Check. You must do this even if you offer the person an alternative position;
11. Advise the person if their application was rejected primarily because of an adverse risk assessment in the Working With Children Check;
12. Notify the NSW Commission for Children and Young People of any [relevant employment proceedings](#) ;and
13. Protect the privacy of any person who is checked and the confidentiality of any information obtained through the checking process.

All employers, not just child-related employers, must:

- notify the NSW Commission for Children and Young People of any person against whom [relevant employment proceedings](#) have been completed since 3 July 1995, and
- provide information to Approved Screening Agencies about any person who has been subject to relevant employment proceedings to enable them to complete the Working With Children Check.

3. Who must have a background check?

Background checks are mandatory for:

- preferred applicants for employment in paid child-related employment;
- anyone seeking to provide foster care ("authorised care") to children; and
- ministers of religion or other members of a religious organisation seeking child-related employment.

Background checks are currently only available to employers where checking is mandatory. Employers may conduct other criminal record checks as part of their employment screening process at their own discretion. Employees, volunteers and students on placement may obtain a criminal history check in NSW for a fee by making a Freedom of Information application at www.police.nsw.gov.au/how_to../how_to../general/freedom_of_information

4. How does background checking work?

The employer chooses the best applicant, then before offering them employment gets that person to complete a Prohibited Employment Declaration and consent form.

The employer keeps the Prohibited Employment Declaration Form in a secure place. If the Prohibited Employment Declaration is not signed, the employer can't offer that person the job.

The employer then sends a Working With Children Check Request to their Approved Screening Agency.

That Agency will notify the employer of the results of the background check.

If a relevant record is found in the check, the Approved Screening Agency will conduct a risk assessment and advise the employer of the level of risk that employee presents.

The decision to employ that person is ultimately the employer's.

If the employer chooses not to employ a person primarily because of the risk assessment, they must notify the NSW Commission for Children and Young People.

Employment should not be confirmed until the checking process is complete.

5. What information is collected about the applicant?

Background checks as part of the Working With Children Check involve a check of:

- national criminal records for charges and convictions for child abuse, child pornography, sexual offences or acts of indecency and registrable offences;

- relevant Apprehended Violence Orders; and
- relevant completed employment proceedings.

To find out more about what records are relevant, follow the link to the [Guidelines, Section 4](#).

If a relevant record is found, The Approved Screening Agency will seek more information so a risk assessment can be made.

6. What does a risk assessment involve?

If any relevant records are found during a background check, the Approved Screening Agency will assess the risk of employing the person in the particular job they've applied for.

The Approved Screening Agency will contact applicants to verify their identity and confirm that the information obtained in the background check is consistent with the applicant's own understanding of their history. The applicant may provide more information that explains that record or what has happened since.

The NSW Commission for Children and Young People and Approved Screening Agencies use a standard model to assess risk. This model takes into account the nature of the position applied for and the circumstances of the relevant record. Factors we consider are:

- the type of contact the position has with children;
- the supervision which will be available;
- the nature of the event leading to the relevant record;
- the period of time since the relevant incidents; and
- any additional information the Approved Screening Agency considers relevant.

When the risk assessment is complete, the approved Screening Agency sends the employer a risk assessment outcome.

The risk assessment outcome indicates the level of risk from the following scale

- No greater than average

- Low
- Low - Medium
- Medium
- Medium - High
- High

An assessment of "no greater than average" means that the person poses no greater risk to children in the workplace than any other employee. With this level of assessment the person's records do not indicate any reasons not to employ them in the job they've applied for.

The assessment helps the employer decide whether or not to employ that person. The decision remains the employers.

7. How is privacy protected?

It is important that all people involved in the checking process treat the information obtained with the utmost confidentiality. Information is not to be provided to any person not authorised to access it. There are strict provisions to protect the privacy of the people being checked.

All public sector organisations (including local government) involved in the Working With Children Check are required to handle information in accordance with the information protection principles in Part 2 of the *Privacy and Personal Information Protection Act 1998*.

Non-government organisations involved in the Working With Children Check should collect and hold information relating to the process in accordance with the Data Protection Principles endorsed by the NSW Privacy Commissioner. Details regarding the principles are available from Privacy NSW on (02) 9268 5588.

It is an offence for any person to inappropriately obtain, or tell another person about, the information gathered during the checking process.

If you believe a breach of confidentiality has occurred, please contact the NSW Commission for Children and Young People to discuss what can be done.

8. What about self-employed people?

It is an offence for a prohibited person to work in child-related employment. This includes people who are self-employed.

However, self-employed people are not required to get a background check as part of the Working With Children Check.

9. Who Pays?

There is no charge for employers or applicants requesting a background check as part of the Working With Children Check.

10. What about volunteers and students?

Volunteers and students must complete a Prohibited Employment Declaration when working in child-related employment, but they do not get a background check as part of the Working With Children Check.