

Child Protection - Working with Children Checks

Source of Obligation

The Child Protection (Working with Children) Act 2012 (NSW) (the Act) and the Child Protection (Working with Children) Regulation 2013 (NSW) (the Regulation) aim to protect children from harm by providing a high standard of compulsory national criminal record checking for people wishing to do paid, unpaid or volunteer child-related work in NSW. These background checks are referred to as Working with Children Checks (WWC Checks).

It is an offence for a worker to engage in child-related work without a valid WWC Check.

It is an offence for the School to commence employing or continue to employ a worker in child-related work if the School knows or has reasonable cause to believe that:

- the worker is not the holder of a WWC Check Clearance that authorises that work and that there is no current application by the worker to the Children's Guardian for a clearance of a class applicable to that work, or
- the worker is subject to an interim bar.

It is also an offence for the School to commence employing or continue to employ a worker in child-related work unless the School has obtained and verified the worker's relevant details and made a record of those relevant details.

Kambala, our staff, volunteers and others have a number of responsibilities and obligations under the Act and the Regulation which are outlined in this policy.

Who Needs a WWC Check?

Subject to the exemptions referred to below, any worker who engages in child-related work that involves:

- direct contact (physical or face to face) with a child or children (aged under 18),
- contact that is a usual part of and more than incidental to the work,

must have a WWC Check in order to work at the School.

Although members of the Council are not included in the definitions of workers who engage in child-related work, the NSW Registration Manual (5.9.1) requires that each person defined as a 'responsible person' under the Education Act 1990 (NSW) be a 'fit and proper person'. It is the School's policy that each responsible person at the School must hold a WWC Check clearance to demonstrate that they are a 'fit and proper person'. Refer to our [Responsible Persons Policy](#).

Definition of Worker

A worker means any person who is engaged in work, as:

- an employee
- a self-employed person
- a contractor or subcontractor
- a person undertaking practical training as part of an educational or vocational course (other than as a school student undertaking work experience), or
- a minister, priest, rabbi, mufti or other like religious leader, or spiritual officer of a religion, or other member of a religious organisation.

What is Child-Related Work?

Under the Act and Regulation, work for, or in connection with, any of the following is **child-related work** if the work involves **direct contact** by the worker with a child or children and that contact is a usual part of and more than incidental to the work:

- mentoring and counselling services for children
- direct provision of child health services
- clubs, associations, movements, societies or other bodies (including bodies of a cultural, recreational or sporting nature) providing programs or services for children
- education and care services, child care centres, nanny services and other child care
- schools or other educational institutions
- sporting, cultural or other entertainment venues used primarily by children and entertainment services for children
- justice services such as detention centres
- any religious organisation where children form part of the congregation
- private coaching or tuition to children
- boarding houses or other residential services for children and overnight camps for children
- transport services especially for children, including School bus services and taxi services for children with a disability and supervision of School road crossings.

Child-related work also includes:

- a cleaner providing cleaning services at the School, even though they might not have direct contact with children
- a worker providing ongoing, counselling, mentoring or distance education using any form of communication that does not primarily involve direct contact (physical or face-to-face contact).

What is Not Child-Related Work?

Under the Regulation, the following types of work are not considered to be child-related, even though they involve direct contact with children:

- work as a referee, umpire, linesperson, other sporting official or grounds person is not child-related work, provided that the work does not ordinarily involve contact with children for extended periods without other adults being present; and
- providing food or equipment at or for a sporting, cultural or other entertainment venue or providing a venue.

What is 'Direct Contact'?

Under the Act, direct contact with children means:

- physical contact, or
- face-to-face contact.

The Regulation may provide for circumstances in which direct contact by a worker with a child or children is 'taken to be a usual part of and more than incidental to' a worker's work. However, it does not currently do so.

Key Exemptions

People engaged in the following types of work are not required, by law, to have a WWC Check:

- administrative, clerical or maintenance work, or other ancillary work, that does not ordinarily involve contact with children for extended periods, other than School cleaners
- work with minimal direct contact or unsupervised contact with children, done for no more than five days in a calendar year
- volunteering by a parent or close relative in the following areas, except where the work involves providing mentoring services as part of a formal mentoring program, providing personal care services to children with disabilities, or attending an overnight camp for children:
 - of a child in activities for the child's school, early education service or other educational institution
 - with a team, program or other activity in which their child usually participates or is a team member
- a visiting speaker, adjudicator, performer, assessor or other similar visitor at a school or other place where child-related work is carried out if the work of the person at that place is for a one-off occasion and is carried out in the presence of one or more other adults
- work by an interstate visitor:
 - in a one-off event such as a jamboree, sporting or religious event or tour, if the event is the only child-related work carried out by the worker in NSW in that calendar year and the period of work does not exceed 30 days
 - who holds an interstate working with children check, or is exempt from the requirement to have such a check in his or her home jurisdiction, whose child related work in NSW is for no more than 30 days in any calendar year
- people under the age of 18.

How to Apply for a WWC Check?

A worker who engages in child related work is responsible for applying for his or her own WWC Check. An employer cannot apply on behalf of a worker.

To apply for a WWC Check, or to renew your clearance, visit the **NSW Office of the Children's Guardian website** and follow the prompts to either apply, renew or update your details.

Kambala does not reimburse this fee for staff.

What is Checked?

The WWC Check first involves identity verification in person at a NSW Service Centre.

The Office of the NSW Children's Guardian then obtains applicants' national criminal histories and other information, including:

- convictions (including convictions that have been spent, quashed or set aside or for which a pardon has been granted)
- charges (whether or not heard, proven, dismissed, withdrawn or discharged)
- juvenile records
- findings of misconduct (e.g. sexual misconduct or serious physical assault of a child) by a government agency or other reporting body



- notifications relating to Reportable Conduct made to the NSW Children's Guardian.

Reporting bodies that must report findings of misconduct to the NSW Children's Guardian, to enable it to consider the findings as part of the WWC Check, include:

- registration or other licensing authorities constituted under an Act
- employer or professional or other bodies that supervise the conduct of an employee and that are prescribed by the regulations
- religious organisations, such as the Catholic Church and its associated organisations
- members of the Association of Independent Schools.

Depending on the outcome of these searches, there may need to be further assessment.

If a Police record or workplace misconduct record is found, then every record will be reviewed. This process can take up to a few months.

Notice of Intent to Bar and Risk Assessments

The Children's Guardian may issue a Notice of Intent to Bar (if certain offences are found that automatically disqualify someone from a WWC Check) or it may conduct a risk assessment if the check reveals any offences that are listed in Schedule 1 of the Act. A risk assessment will also occur if the NSW Children's Guardian considers there are other circumstances relevant to the safety of children.

Where a **bar** is being considered, either as a result of automatically disqualifying offences or as a result of the risk assessment, the NSW Office of the Children's Guardian will call and write to the applicant to inform them of the proposed decision. Applicants will be invited to submit information to support their application and the Office of the Children's Guardian will take this information into account when making their final decision.

Interim Bar

A Notice of Intent to Bar will usually include an Interim Bar, which prevents the person from working with children unless and until he or she has been cleared.

Interim Bars may also be issued when an applicant for a WWC Check is subject to a risk assessment.

Applicants subject to an Interim Bar must not engage in any child-related work while awaiting the results of their risk assessment.

Outcome of the WWC Check

There are two key results for a WWC Check – a clearance to work with children or a bar against working with children. However, other results may be displayed when the School conducts the online verification process.

Clearance

Where the outcome is a **clearance**, the applicant will be provided with a WWC Check number that must be provided to the School. The WWC Check is valid for five years and may be used for any child-related work (paid or voluntary) in NSW. Cleared applicants will be subjected to ongoing monitoring for relevant new records which could lead to a bar and the clearance being revoked before the five year expiry date.

Bar Against Working with Children

If the outcome is a bar, applicants must not engage in any child-related work. The barred applicant will receive a



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letter from the Office of the Children's Guardian notifying them of the decision and an explanation of the appeals process, should they wish to appeal through the NSW Administrative Decisions Tribunal.

Other Results that May Occur for an Online Verification of a WWC Check

The online verification process may produce the following other results:

- **Application in progress**
The worker has completed the application process and may begin working with children. If he or she becomes barred, the School will receive notification.
- **Interim barred**
Applicants subject to an Interim Bar must not engage in any child-related work while awaiting the results of their risk assessment. It is an offence to hire this person for child-related work, paid or unpaid.
- **Not found**
This result will display if the WWC Check number or application number that is sought to be verified cannot be found by the online system. It is an offence to hire this person for child-related work, paid or unpaid.

Refer to the guidance available on the **NSW Office of the Children's Guardian website** for more information about these results.

Worker Obligations

Prior to commencing work at School, workers who are required to hold a WWC Check clearance but who have not previously applied for or held a WWC Check must present their WWC Check Application Number and proof of full name and date of birth to Kambala for online verification that a WWC Check application has been made.

Upon receiving clearance, or when renewing an existing WWC Check, it is compulsory that the worker provides their WWC Check number to Kambala, and proof of their full name and date of birth for online verification.

Workers are responsible for applying for and renewing their own WWC Checks and notifying the Office of the Children's Guardian of changes to their personal details as necessary. They will receive a reminder to renew their WWC Check three months before it expires.

Kambala's Obligations

The School must:

- register and maintain registration online as a child-related employer by going to the **NSW Office Of the Children's Guardian website** and completing the form
- before engaging a new worker, obtain and verify the worker's relevant details. The only way to verify these details is by using the **online verification system**
- not accept paper evidence of a WWC Check application or clearance from the worker, because they may have since been barred
- verify a worker's WWC Check within five working days after the worker's WWC Check clearance expires at the end of every five-year period
- ensure current paid workers and all volunteers apply for the new Check
- not employ, in either paid or non-paid child-related work, a person if the outcome of their online verification is:



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- barred
- interim barred
- not found
- remove, immediately upon being notified, any barred, interim barred or not found persons from child-related work
- maintain all records of verifications and other WWC documentation in accordance with this policy (see the **Record Keeping** section of this policy)
- notify the Office of the Children’s Guardian if a staff member, volunteer or contractor is subject to an adverse finding in relation to an allegation of misconduct that is the subject of a Mandatory Reporting and/or a Reportable Conduct notification. This notification will trigger a risk assessment by the Children’s Guardian and a review of the individual’s WWC Check.

Record Keeping

Kambala is required to obtain, verify and record the relevant details of all workers engaged in child-related work. Relevant details will only be correctly verified if they accord with the information relating to the worker recorded in the NSW Office of the Children’s Guardian’s working with children register, accessed via the online verification system, as at the date the record is made by the School.

There are two methods of keeping records of WWC Checks at Kambala, one for paid staff (including contractors) and one for volunteers. These methods apply to all staff and volunteers, regardless of when they commence child-related work at the School.

Staff and Contractors

Prior to the commencement of any appointment, staff, including relevant contractors, must provide their WWC Check Number to the School and have a WWC Check Clearance.

Using the NSW Government Office of Children’s Guardian Working with Children Check employer log in, the HR Manager is responsible for the initial verification of all staff WWC Checks.

Once verified, status reports are printed and scanned, or otherwise electronically stored, and secured in individual staff members’ files in the HR Office.

In addition, the following information for each staff member is recorded electronically in a consolidated register:

- full name
- date of birth
- verification date
- WWC Check number
- result status
- time until expiry
- expiry date of the WWC Check
- result of the verification (full text).

The HR Manager is responsible for monitoring the WWC Check status of all staff members and keeping details up-to-date.

Each month the HR Manager checks the status of all staff members’ WWC Checks and provides notifications to staff



prior to their expiry date.

The records must be updated no later than five working days after the expiry date of a staff member's WWC Check.

The consolidated register and the process for maintaining and monitoring it are evidence of the School's maintenance of WWC Checks.

These records are:

- located in the school's payroll system
- retained by the School for the duration of the staff member's employment and for a period of seven years after the staff member ceases to work for the School.

Privacy and Confidentiality

The Office of the Children's Guardian maintains a register for Working with Children Checks.

Disclosure of Worker Information

The following information about a worker in the register may be made available by the NSW Office of the Children's Guardian to an employer or proposed employer, upon request in the approved format:

- particulars of applications for WWC Check clearances
- WWC Check application number of any worker
- current clearance status of a child-related worker
- number, class (volunteer or non-volunteer) and expiry date of a WWC Check clearance held by a child-related worker
- whether the clearance holder is subject to an interim bar or has had a clearance cancelled.

Disclosure of Employer Information

Similarly, the following information about an employer in the register may be made publicly available by the NSW Office of the Children's Guardian:

- trading name or registered business name of the employer
- child-related work for which the employer engages a child-related worker
- postcode or name of the place in which the employer's business is located
- whether any requests for information regarding a Check status were made to the NSW Office of the Children's Guardian by the employer within a specified period.

Implementation

This policy is implemented through a combination of:

- staff training
- effective communication and incident notification procedures
- effective record keeping procedures
- initiation of corrective actions where necessary.

Discipline for Breach of Policy

Where a staff member breaches this policy, Kambala may take disciplinary action, including in the case of serious



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breaches, summary dismissal.

Version details

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Owner: Risk and Compliance Officer