

know risk

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Working with children check – New South Wales

Prohibited employment declaration

The Children and Young Persons (Care and Protection) Act 1998 mandates the Department of Community Services with the responsibility for the care and protection of children and young people in NSW where there are concerns about their safety, welfare and wellbeing.

Who is a prohibited person?

All people working in, or seeking to work in, child-related employment must declare whether they are a prohibited person. This includes volunteers and students on placement.

It is an offence for prohibited persons to apply for, undertake or remain in child-related employment.

A prohibited person is a person convicted of committing a serious sex offence, or a 'registrable person'. A 'registrable person' is someone who has been found guilty of the following offences:

- murder of a child
- child related personal violence offence
- serious sexual offences
- indecency offences (punishable by imprisonment of 12 months or more)
- kidnapping
- child prostitution
- child pornography (possession, distribution or publication)
- attempt, conspiracy or incitement to commit the above offences

What is child related employment?

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

- pre-schools, kindergartens, child care centres (including residential child care centres)
- refuges used by children.
- clubs, associations etc (including those of a cultural, recreational or sporting nature) which have a significant child membership
- religious organisation
- entertainment venues where the clientele is primarily children
- taxi services for the transport of children
- private tuition of children
- child health services
- counselling or other support services for children
- overnight camps for children
- babysitter or child minder arranged by a commercial agency
- schools or other educational institutions (not being universities)
- school bus drivers
- fostering or other child care
- child protection services

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

Employers should clearly state in all information for child related positions that Prohibited Persons are not eligible to apply. As an employer, the Working With Children Check requires that you:

- don't employ prohibited persons in child-related employment;
- conduct Working With Children background checks;
- report relevant employment proceedings; and
- keep records and protect confidentiality

Background checks

Background checks are conducted by the NSW Commission for Children and Young People and other Approved Screening Agencies Background checks are only mandatory for:

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- preferred applicants for paid child-related employment
- a minister, priest, rabbi, mufti, or other like religious leader or spiritual official of a religion
- anyone seeking to provide foster care ('authorised care' to children)

Three specific checks are made for:

- relevant criminal records;
- relevant Apprehended Violence Orders; and
- relevant employment proceedings.

Any relevant records arising out of the background check will be assessed in terms of risk of employing the person in a child-related position. An assessment report is then forwarded on to the employer. The decision whether to employ a person always remains the employers.

Employers may conduct other criminal record checks as part of their employment screening process at their own discretion.

Cost of the check

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

Mandatory reporting

A "mandatory reporter" is any person who delivers health care, welfare, education, children's services, residential services or law enforcement wholly or partly to children (aged under 16) as part of their paid work and includes any person who directly manages or supervises such work.

Mandatory reporters are defined in NSW legislation. They are those who deliver the following services to children as part of their paid or professional work:

- health care - doctors, nurses, dentists and other health workers
- welfare - psychologists, social workers and youth workers
- education - teachers
- children's services - child care workers, family day carers and home based carers
- residential services - refuge workers, community housing providers
- law enforcement – police

Any person with direct responsibility to provide the above mentioned services must report risk of significant harm to children.

Managers, including both paid employees and volunteers, who supervise direct services are also mandated to report.

If you are a mandatory reporter with current concerns that a child aged under 16 is at risk of harm, you are required to make a report to the Department of Community Services. This is a legal obligation, which carries a penalty if you fail to comply.

Reports should be made to:

Department of Community Services
 4 – 6 Cavill Avenue
 Ashfield, NSW 2131
 Phone Number 9716 2222
 24 hours: 132 111
 URL: www.community.nsw.gov.au

Sources

NSW Commission for Children & Young People <http://www.kids.nsw.gov.au/check/>
 Child Protection (Prohibited Employment) Act 1998
 Commission for Children and Young People Act 1998
 Children (Care & Protection) Act 1987
 Children (Care & Protection) Regulations 1996
 Children & Young Persons (Care & Protection) Act 1998 s27
 Ombudsman Act 1974
<https://check.kids.nsw.gov.au>
<http://www.kids.nsw.gov.au/kids/check/employerguidelines>.

Summary

While the Working with Children Check must be complied with, it cannot solely be relied upon to determine the suitability of a worker or volunteer. The check is only ONE of the strategies that organisations must establish to ensure that people who work with children are suitable to do so. Organisations must ensure that other measures are in place to assess a person's suitability to work with children, including interviews, thorough reference checks, a code of conduct, vigilant supervision and regular training.

This material is for information purposes only. It is not intended to give specific legal or risk management advice nor are any suggestions, checklists or action plans intended to include or address all possible risk management exposures or solutions.

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