

## Suitability for Employment



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## Overview

The Department of Education and Training (the Department) and School Councils have a responsibility to ensure the safety of all children and employees, and to maintain the security of assets by requiring and maintaining high standards of professional conduct from employees and volunteers.

In meeting these responsibilities the Department and School Councils must be satisfied that only those employees and volunteers who meet the highest standards of probity and suitability are employed. Such assessments may include reference or referee checks, medical assessments, qualification verification, a criminal record check and/or a Working With Children Check.

Verification of suitability for employment is assisted by ensuring the employment of new school based employees proceeds in accordance with legislative obligations pursuant to the *Working with Children Act 2005* (for non-teaching employees and volunteers) and *Education and Training Reform Act 2006* Part 2.6 Victorian Institute of Teaching (for principals and teachers).

The authority for the policy and procedures is [Ministerial Order 1038](#) which applies to the principal class, teacher class and education support class employed by the Department, and [Ministerial Order 1039](#) for all non-teaching staff and casual relief teachers employed by school councils.

Allied Health staff (employed as Victorian Public Servants) and Nurses employed by the Department are also covered by this policy.

**These guidelines set out the policy and procedures to be followed in relation to suitability and probity checks that are required.**

# Working with Children

The Working with Children Check (WWC Check) scheme is established under the *Working with Children Act 2005* (the Act) and creates a minimum checking standard across Victoria for people who work or volunteer with children in certain capacities. The WWC Check assists in ensuring that people who are unsuitable to engage in 'child-related work' do not do so.

A WWC Check is valid for up to five years after which it will need to be renewed if the holder wishes to continue in child-related paid or voluntary work.

A WWC Check is transferable between jobs or volunteer organisations. Should a person engage in 'child-related work' with another organisation, they do not need to apply for a second WWC Check, however a WWC Check obtained for the purpose of voluntary work, as indicated by the letter 'V' on the WWC Check card, may not be used for the purposes of paid work. It is an offence to use a volunteer WWC Check for the purpose of engaging in paid 'child-related work'. Principals and managers should verify that WWC Check cards presented to them by paid employees are stamped with the letter 'E'.

The WWC Check consists of a national criminal history check and consideration of any relevant findings from professional disciplinary bodies such as the Victorian Institute of Teaching. Criminal offences and pending charges or non-conviction charges against a person which will be taken into account are those involving serious sexual, violent or drug offences. The WWC Check does not include offences such as fraud or theft which may be relevant to assessing the suitability for employment of non-teaching staff in schools. Further information on the offences relevant to a WWC Check can be found at the Department of Justice and Community Safety's web site at: [WWC Check \(www.workingwithchildren.vic.gov.au\)](http://www.workingwithchildren.vic.gov.au).

The WWC Check is monitored on an ongoing basis. This means that holders of a WWC Check will continue to be checked for any new relevant offences or findings from professional disciplinary bodies. New charges, convictions, findings of guilt or findings from professional disciplinary bodies which are relevant to the WWC Check will result in a re-assessment of the holder's eligibility for a WWC Check.

## WHAT IS 'CHILD-RELATED WORK'?

The Act defines 'child-related work' as work which usually involves (or is likely to involve) direct contact with a child, irrespective of whether that contact is supervised or not, and in any of the child-related occupational fields listed in the Act. The definition of direct contact includes oral, written or electronic communication as well as face-to-face and physical contact. 'Child-related work' may be either paid or unpaid (voluntary).

'Educational Institution' is an occupational field listed in the Act and includes any State school established under section 2.2.1 of the *Education and Training Reform Act 2006*. Accordingly all Victorian Government primary, secondary, and special schools fall within the Act.

Any person whose duties usually involve or is likely to involve work in a school (other than teachers and principals) is considered to be engaged in 'child-related work' as defined in the Act and will need to ensure they are compliant with the legislative obligations contained in the Act.

There are exemptions from the Act including: people under 18 years of age, parent volunteers whose child ordinarily participates in the activity, sworn police officers, teachers currently registered with the Victorian Institute of Teaching, and visiting workers who do not ordinarily reside and perform child-related work in Victoria, among others.

## APPLYING FOR THE WWC CHECK

The WWC Check is conducted by the Department of Justice and Community Safety. Applications must be lodged at one of the participating Australia Post outlets in Victoria. For a list of Australia Post outlets where a WWC Check application may be made see: [Australia Post Outlets \(www.auspost.com.au\)](http://www.auspost.com.au).

WWC Check applicants need to complete an online 'Application for WWC Check' form at: [WWC Check \(www.workingwithchildren.vic.gov.au\)](http://www.workingwithchildren.vic.gov.au) before going to a participating Australia Post outlet with proof of identity documents to lodge the application.

The 'Application for WWC Check' form asks the applicant to list the names of organisations where they intend to work in 'child-related work'. Principals are to request that Department and school council employees name the Department of Education and Training, 2 Treasury Place, East Melbourne, 3002, telephone 7022 0005 in response to this question and to also name the school at which they are employed.

It is important that volunteers name the school at which they intend to perform the 'child-related work' in their application as the Department has no means to identify in which school a volunteer may be engaged.

## WWC CHECK OUTCOMES

If the employee passes the WWC Check they will be issued a WWC Card which also acts as an 'Assessment Notice'. An Assessment Notice means the employee has passed the WWC Check and may work in 'child-related work'.

Principals and managers may enquire on the status of a WWC card at any time by visiting: [WWC Check \(www.workingwithchildren.vic.gov.au\)](http://www.workingwithchildren.vic.gov.au) and entering a WWC Check unique number, alternatively telephone 1300 652 879. It is recommended that principals and managers periodically verify the status of WWC Checks held by people engaged in 'child-related work' at their workplace as WWC Checks are subject to ongoing monitoring and it is possible that if an individual has a relevant change in circumstances, their WWC Check may cease to be valid.

If an employee has criminal offences or a professional disciplinary outcome that may result in them failing a WWC Check, the employee may be issued with an Interim Negative Notice or a Negative Notice. An Interim Negative Notice means the Department of Justice and Community Safety is intending to issue a Negative Notice and will provide the employee with an opportunity to explain why they should not be given a Negative Notice.

An employee or volunteer who receives an Interim Negative Notice or a Negative Notice is required by law to inform their employer within seven days.

If a principal or manager becomes aware that an employee has been issued an Interim Negative Notice or a Negative Notice, they must contact the Employee Conduct Branch immediately.

## Conducting a Department Criminal Record Check

Where it is determined that a new employee or volunteer is required, or has elected, to undergo a criminal record check the principal or manager, or their authorised delegate, should arrange for the applicant to complete a [Consent to Check and Release National Police Record form](#).

The information provided by the applicant is to be entered online at: [PROCS \(www.eduweb.vic.gov.au/PROCS/\)](http://www.eduweb.vic.gov.au/PROCS/). The procedures for processing such criminal record checks and a User Guide may be found on HRWeb at: [Suitability for Employment checks \(http://www.education.vic.gov.au/hrweb/employcond/Pages/crimcheck.aspx\)](http://www.education.vic.gov.au/hrweb/employcond/Pages/crimcheck.aspx).

Where an employee or volunteer is not registered with the Victorian Institute of Teaching, and they do not require a WWC Check under the Act, only a criminal record check conducted by the Department can be accepted as an alternative to determine suitability for employment. A criminal record check obtained from another source cannot be accepted as the Department cannot be assured that all relevant offences were considered and/or that identity validation was performed consistent with requirements of the Australian Criminal Intelligence Commission.

A criminal record check conducted by the Department is for 'child-related work' purposes and permit the release to the Department of both spent and non-spent criminal records and disclose findings of guilt where no conviction was recorded.

Principals or managers must consider if a criminal record check conducted by the Department should be required in addition to a WWC Check. Such circumstances include the need to consider whether any offences exist that may be relevant to the duties to be performed, such as dishonesty offences or driving offences, that are not considered by the WWC Check. In particular all employees with a financial delegation should undergo a criminal record check conducted by the Department.

Principals or managers should consult the Employee Conduct Branch on 7022 0005 in such circumstances prior to proceeding.

Criminal history information is received by authorised personnel in the Employee Conduct Branch and is not released outside of that Branch. All employees involved in the handling of criminal records are to ensure that confidentiality of records is maintained at all times, and that records are stored in a secure area. The records may only be used for assessing a person's suitability for employment with the Department.

The principal/manager is not provided with details of criminal history information, if any. The principal/manager is provided with a copy of the clearance or rejection letter only.

Criminal history information is not retained and is securely destroyed no later than three months after the criminal record check process has been completed.

# School Locations

## EMPLOYEES IN THE PRINCIPAL, TEACHER AND PARAPROFESSIONAL CLASSES

Employees in the principal class, teacher class and paraprofessional class are employed pursuant to the *Education and Training Reform Act 2006* and are required to have valid and current registration with the Victorian Institute of Teaching as a condition of employment.

A prospective employee who is registered with the Victorian Institute of Teaching is exempt from the Act and does not require a WWC Check.

Principals are required to sight a prospective employee's Victorian Institute of Teaching registration card to determine whether a criminal record check has been conducted by the Victorian Institute of Teaching. The letters CRC will appear on their registration card. They will not be required to undergo a criminal record check conducted by the Department.

## EMPLOYEES IN THE EDUCATION SUPPORT CLASS

Education support class employees must demonstrate their suitability for employment by providing evidence of a WWC Check and Assessment Notice.

Principals and managers are requested to sight and retain a record of the employee's WWC Check unique number. This number is recorded on eduPay.

It is an offence under the Act to engage in 'child-related work' without a current WWC Check. Penalties will apply to both the employer and employee.

Clause 3.2.3 of Ministerial Order 1038 provides that any position that usually involves, or is likely to involve work in a school, other than if the position requires the incumbent to undertake the duties of a teacher, is subject to the person providing evidence that the person has had a WWC Check and holds a valid Assessment Notice under the Act.

The delegate is responsible for determining disputes as to whether a position requires the incumbent to undertake the duties of a teacher or whether the position involves work in a school. Advice should be obtained from the Employee Conduct Branch in determining whether an Assessment Notice is required, including instances where the employee has current registration with the Victorian Institute of Teaching, but is not undertaking the duties of a teacher.

Employment may be terminated if an employee fails to provide the delegate with an Assessment Notice when required. Termination must not occur fewer than 14 days after the delegate has notified the employee, to provide the Assessment Notice.

Clause 3.2.9 provides that if an employee surrenders an Assessment Notice or is issued with a Negative Notice under the Act their employment ceases. The delegate must notify the employee of this in writing.

If the employee appeals the issuing of the Negative Notice to the Victorian Civil and Administrative Tribunal and is issued with an Assessment Notice the cessation of their employment is deemed to have no effect. The person must then be reinstated. This involves entitlements regarding back-pay, recognition of continuous service and has implications for the filling of the position prior to the outcome of the appeal being known.

The Employee Conduct Branch should be contacted for advice and assistance in relation to the procedures to be undertaken when Assessment Notices are not provided when required or when employees are issued with an Interim Negative Notice or Negative Notice under the Act.

## CASUAL RELIEF TEACHERS

Casual relief teachers are required to be registered with the Victorian Institute of Teaching. Accordingly they qualify for an exemption from the Act and do not require a WWC Check.

## OTHER CASUAL EMPLOYEES

Casual employees in schools, other than casual relief teachers, are required to demonstrate their suitability for employment by undergoing a WWC Check and/or a criminal record check conducted by the Department.

Not all casual employees in schools will be required by the Act to undergo a WWC Check; it will depend on whether their duties meet the definition of 'child-related work' as defined in the Act.

Principals and managers should contact the Employee Conduct Branch on 7022 0005 for advice on whether the duties to be performed by a casual employee meet the definition of 'child-related work'. Additional advice can be obtained from the Working with Children Check Victoria within the Department of Justice and Community Safety, telephone 1300 652 879.

As the Executive Officer of a School Council, a principal retains the authority to require a casual employee to undergo a criminal record check conducted by the Department and should do so if it is considered relevant to the duties being undertaken.

## **REGISTERED TRAINING ORGANISATIONS**

Schools that enter into an agreement with a Registered Training Organisation in which the Organisation provides a teacher or instructor to the school must be satisfied that the teacher or instructor is suitable for employment.

Principals must sight either a criminal record check conducted by the Department, a WWC Check or provisional registration as evidence that a teacher or instructor is suitable for employment.

Where the Registered Training Organisation's teacher or instructor is not registered with Victorian Institute of Teaching, they will be required to have a current WWC Check.

## **VOLUNTEERS**

Each School Council is responsible for establishing their own policy concerning which volunteers they require to undergo a criminal record check. Schools must establish and implement policies to assess and verify the suitability of volunteers who will work with children including requiring all volunteers to provide evidence of their suitability. This evidence is generally a WWC Check however, in addition to a WWC Check a school may also consider it necessary that a criminal record check is conducted through the Department. This may occur when possible offences are relevant to the duties of the volunteer, for example dishonesty offences, which are not part of the WWC Check. The school covers the cost of the criminal record check.

As the Executive Officer of a School Council, a principal retains the authority to require a potential volunteer to undergo a criminal record check irrespective if the volunteer is exempt from the Act. For instance a parent attending an overnight camp with their child may be exempt from requiring a WWC Check, however a School Council may determine that any person attending an excursion or camp must have either a WWC Check or have undergone a criminal record check conducted by the Department. School Councils should ensure their criminal record check policy reflects this authority.

Although the Act exempts a parent whose child ordinarily participates in the activity this does not preclude schools from adopting a blanket policy requiring all volunteers to have a WWC check.

School Councils need to ensure their policies regarding suitability checks account for the legislative obligations created by the Act. Advice on developing or amending School Council WWC Check and criminal record check policies can be obtained from the Employee Conduct Branch, telephone 7022 0005.

## **HOME-STAY FAMILIES**

The Act requires home-stay providers, including each adult member resident in the home to have a current WWC Check prior to hosting a visiting student unless an exemption under the Act applies.

Further information on the WWC Check in relation to home-stay providers can be obtained from the Working With Children Check Victoria within the Department of Justice and Community Safety, telephone 1300 652 879 or visit their website at: [WWC Check \(www.workingwithchildren.vic.gov.au\)](http://www.workingwithchildren.vic.gov.au).

## **STUDENT TEACHERS AND STUDENT INTERNSHIPS**

Student teachers/interns must have a WWC Check prior to commencing a practicum in a Victorian government school. As student teachers/interns do not receive payment for undertaking a practicum, a volunteer WWC Check may be accepted.

## **CONTRACTORS**

Principals and managers should assess the duties to be performed by contractors to determine whether they constitute 'child-related work' and will therefore require a WWC Check based on the requirements of the Act.

However they also need to be satisfied that people present in Department workplaces are not a risk to the safety of children irrespective of whether the Act requires them to have a WWC Check or not.

Even though they may not be performing 'child related work' contractors such as IT Technicians, gardeners, maintenance staff and cleaners should have a current WWC Check as they are frequently in schools during normal school hours.

A school council is not precluded from adopting a policy that all persons working on the school premises are required to have a WWC Check irrespective of the duties they perform and the frequency and extent of their contact with children.

Principals and managers should contact the Employee Conduct Branch on 7022 0005 for advice in relation to the requirements on contractors both generally and on a case by case basis where any uncertainty exists.

## Non School Locations

Employment as a Victorian Public Service (VPS) employee is conditional on undergoing a criminal record check conducted by the Department. However, VPS employees may undertake a wide range of duties and it is possible an employee's duties may constitute 'child-related work' and a WWC Check will be required. Managers should carefully assess the duties to be performed by the VPS employee to determine whether a criminal record check conducted by the Department will be sufficient, or whether the appointee will also require a WWC Check.

Managers should contact the Employee Conduct Branch on 7022 0005 for advice on whether the duties to be performed meet the definition of 'child-related work' as contained in the Act.

Where the prospective employee's duties will involve 'child-related work' as determined by the hiring manager, they will be required to undergo a WWC Check.

It is an offence for a VPS employee who requires a WWC Check to engage in 'child-related work' if they do not hold a current WWC Check.

## Right of Appeal

A WWC Check applicant (paid or volunteer) who is issued with an Interim Negative Notice or a Negative Notice should contact the Working with Children Check Victoria within the Department of Justice and Community Safety, telephone 1300 652 879 to discuss any right of appeal that may exist or visit their website for further information at: [WWC Check \(www.workingwithchildren.vic.gov.au\)](http://www.workingwithchildren.vic.gov.au).

An employee or prospective employee who undergoes a criminal record check conducted by the Department and is found to have an unsatisfactory criminal record may, within fourteen days of being notified, apply in writing to the Senior Chairperson of the [Merit Protection Boards](#) for a review of that notification.

Information in relation to such appeals may be found in Ministerial Order 1038 and Ministerial Order 1039 for school based employees and on the [Grievances](#) page on HRWeb for public service employees.

A volunteer who undergoes a criminal record check conducted by the Department and is found to have an unsatisfactory criminal record may request that the Victorian Ombudsman investigate. The Victorian Ombudsman is an independent officer of the Victorian Parliament who investigates complaints about administrative actions taken by Victorian government departments. The Victorian Ombudsman may be contacted on telephone 9613-6222 or 1800 806 314, or visit their website at: [Victorian Ombudsman \(www.ombudsman.vic.gov.au\)](http://www.ombudsman.vic.gov.au).

## Further Information and Assistance

Further information and assistance on the policies and procedures for determining suitability for employment (paid or voluntary) within the Department of Education and Training can be obtained from the Employee Conduct Branch, telephone 7022 0005, email: [employee.conduct@edumail.vic.gov.au](mailto:employee.conduct@edumail.vic.gov.au).

Further information on the WWC Check can be obtained from the Working with Children Check Victoria within the Department of Justice and Community Safety, telephone 1300 652 879 or visit their website at: [WWC Check \(www.workingwithchildren.vic.gov.au\)](http://www.workingwithchildren.vic.gov.au).