

# Working with Children Check Policy



CATHOLIC DIOCESE OF  
WOLLONGONG

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## Source

The content for this policy has been developed from the following sources:

- Child Protection (Working With Children) Act 2012 No 51 (The Act)
- Child Protection (Working With Children) Regulations 2013 (The Regulations)
- Child Protection Legislation Amendment Act 2015
- Office of the Children’s Guardian: Working With Children Check website: <https://www.kidsguardian.nsw.gov.au/child-safe-organisations/working-with-children-check/resources>

## Purpose

This policy outlines the basic requirements of employers under the relevant legislation and provides direction as to how the basic requirements are implemented at a local level.

The purpose of this policy is to provide guidance to individuals who are involved in the implementation and management of any aspect of the Working With Children Check in the Diocese of Wollongong.

This policy is supplemented by the Working with Children Check Policy Practice Note.

## Scope

This policy applies to parishes, ministries and the Office of the Bishop in the Diocese of Wollongong.

It is noted that Catholic Education Diocese of Wollongong and CatholicCare (Diocese of Wollongong) have separate policies and guidelines for the administration of the Working With Children Check in these agencies.

## Review

This policy is to be reviewed every 2 years or as required due to legislative changes. The next scheduled review is August 2022.

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## 1. BACKGROUND

The revised version of the NSW Working With Children Check was established in 2013. It is a prerequisite for anyone in paid or voluntary child-related work in NSW. It involves a national criminal history check and a review of findings of relevant workplace misconduct.

The Office of the Children's Guardian is the statutory body that oversees the administration of the Working With Children Check.

The Regulatory Framework is comprised of the following legislation:

- *Child Protection (Working With Children) Act 2012 No 51 (The Act)*
- *Child Protection (Working With Children) Regulations 2013 (The Regulations)*
- *Child Protection Legislation Amendment Act 2015*

The Working With Children Check is one of the tools available to keep children safe. It is one of many tools that should be employed to ensure that organisations are child-safe.

## 2. WHAT IS CHILD-RELATED WORK?

Under Section 6(1) of the Act, a worker is engaged in child-related work for the purposes of this Act if:

- a) The worker is engaged in work as defined by the regulations to be child-related work that has direct contact with children, or
- b) The worker is engaged in work in a specifically defined child-related role.

Direct contact is defined in Section 6(4) of the Act as:

- a) Physical contact, or
- b) Face-to-face contact.

In accordance with the Act, 'children' are considered to be persons under the age of 18 years.<sup>1</sup>

In the Regulations, Religious Services is classed as a service that is considered to be child-related work. Section 13 of the Regulations stipulates that work for a religious organisation where children form part of the congregation or organisation is child-related work, if the work is carried out:

- a) As a minister, priest, rabbi, mufti, or other like religious leader or spiritual officer of the organisation, or
- b) In any other role in the organisation involving activities primarily, related to children, including youth groups, youth camps, teaching children and child care.

<sup>1</sup> Due to the scope of the Act, this document only covers employment relations regarding the WWCC and its role in the broader Child Safe Standards framework. Whilst falling outside the scope of this document, the Diocese of Wollongong is also committed to ensuring the safety of vulnerable adults.

When considering 13(b), not all roles in religious organisation are classed as child-related roles. It is important that the definition is applied carefully, as those who are not in a child-related role should not be required to obtain a Working With Children Check, as the Diocese has no right to receive information about a person's Working With Children Check if they are not in a child-related role. The definition to be applied is as follows:

- Where there is physical or face-to-face contact with a child, and
- The person's role in the religious organisation involves activities primarily related to children. (i.e., the contact should not be of an incidental nature).

A person under the age of 18 is not eligible for a Working With Children Check.

In the Diocese of Wollongong, roles that may meet this definition include **(please note, this is not an exhaustive list and if you need guidance on whether a role meets the definition please contact DOW OPSS for advice):**

- Acolytes,
- Adult Altar Servers,
- Band Leaders (where there are children musicians in the band),
- Catechists,
- Children' Liturgy Leaders,
- Choir Director (where there are children in the choir),
- Clergy,
- Ensemble Leaders (where there are children in the ensemble),
- Music Coordinators and Directors (where there are children in the music group),
- Playgroup Coordinators and Supervisors,
- Religious Persons delivering services to children,
- Sacramental Programme Coordinators,
- Sacramental Programme Team Members,
- Voice Trainers (where children are receiving a direct service from the voice trainers),
- Youth Group Leaders, and
- Youth Ministry Coordinator and Team Members,
- Rite of Christian Initiation of Adult Coordinator (where the person receiving the Rite of Christian Initiation is a child).

**There may be other roles in DOW that are considered child-related and these need to be assessed on a case-by-case basis. Please contact the DOW OPSS by phone (4222 2428) or by email (safeguarding@dow.org.au) advice regarding the case-by-case assessments.**

Section 20 of The Regulations outlines a number of exemptions from the Act for specified workers and employers. These exemptions are to be applied cautiously. The onus is on the worker to demonstrate that they satisfy the requirements of an exemption. If there is doubt as to whether an exemption applies, appropriate advice should be sought from the Director of Professional Standards and Safeguarding.

### 3. EMPLOYER RESPONSIBILITIES

Section 5 of the Act defines an employer as:

- a) A person who, in the course of business, arranges for the placement of a person in employment with others, or
- b) A person who engages a person under a contract to perform work, or
- c) A person who engages a worker to perform work as a volunteer for the person under an agreement (whether written or unwritten)

Under Section 9 of the Act, an employer must not commence employing, or continue to employ a worker in child-related work if the employer knows or has reasonable cause to believe that the worker does not hold a Working With Children Check clearance or the worker is subject to an interim bar.

#### 3.1 Registration

The Diocese of Wollongong has 3 “employers” registered with the Office of the Children’s Guardian (OCG):

- Diocese of Wollongong – this is the employer in relation to all employees and volunteers in parishes, ministries, and relevant Office of the Bishop staff.
- Catholic Education Diocese of Wollongong (CEDoW) – this is the employer in relation to all employees and volunteers in schools, relevant CEDoW office staff, and school-related activities.
- CatholicCare – this is the employer in relation to all employees and volunteers employed by CatholicCare.

This Policy applies to the employer known as the Diocese of Wollongong.

Each employer must have two persons registered with the OCG as authorised persons. The authorised persons for the Diocese of Wollongong (Office of the Bishop) are the Director of Professional Standards and Safeguarding (responsible for the Diocesan compliance with the Act and The Regulations) and the Executive Assistant to the Vicar General & Chief Operations Manager (responsible for verification of workers on behalf of the Diocese).

#### 3.2 Verifications

Under Section 9A(1) of the Act, employers are required to verify the WWCC Clearance numbers of the workers prior to the commencement of the worker in a child-related role. In the Diocese of Wollongong, verifications are centralised at the Office of the Bishop. Employers must verify the status of a worker’s Working With Children Check online to ensure that they have a clearance to work with children.

There are five possible statuses that may appear during verification:

- Application in Progress –the worker’s application is still being processed.
- Cleared – the worker has a Working With Children Check clearance.
- Barred – the worker has been refused a Working With Children Check clearance. It is an offence for a worker with a ‘barred’ status to engage in child-related employment, and it is an offence for an employer to engage a worker with a ‘barred’ status.
- Interim Barred – the worker has been barred from working with children while a risk assessment is being undertaken. It is an offence for a worker with an ‘interim barred’ status to engage in child-related employment, and it is an offence for an employer to engage a worker with a ‘interim barred’ status.
- Not Found – the worker’s application is not found in the database. This could mean that the worker’s application has been withdrawn or terminated without an outcome, or that the person has not completed an application for a Working With Children Check.

It is a requirement of the Diocese of Wollongong that only workers with a status of ‘Cleared’ are allowed to commence a child-related role in the Diocese. Whilst the Act allows for workers with a status of ‘Application in Progress’ to work in child-related employment, the unknown risks that accompany this status (including the risk that the worker might be undergoing a risk assessment and might subsequently be refused a Working With Children Check clearance) cannot be adequately managed, in general, to ensure a child-safe environment.

Under the new legislative changes that came into effect on 1 March 2020 under the *Children’s Guardian Act 2019* (NSW), the Diocese has reportable conduct obligations associated with any person who’s WWCC number has been verified. Please see section 3.9 for further information.

#### 3.3 Removing Barred Workers

During the 5 year life of a Working With Children Check, cleared applicants will be subject to ongoing monitoring by the Office of the Children’s Guardian. Under Section 23 of the Act, The Children’s Guardian must cancel the Working With Children Check clearance of a person if the Children’s Guardian becomes aware that the person is a disqualified person or the Children’s Guardian is satisfied that the person poses a risk to the safety of children. Under s23(4) of the Act, the Children’s Guardian must advise the notifiable persons of any known employers of the affected individual that the individual’s clearance has been cancelled.

Each employer can have a maximum of 2 notifiable persons who are authorised to receive information from the Office of the Children’s Guardian in relation to an

employee's Working With Children Check status. The notifiable persons in the Diocese of Wollongong are currently:

1. Director of Professional Standards and Safeguarding (or their delegate), and
2. Executive Assistant to Vicar General and Chief Operations Manager.

If the Children's Guardian advises a notifiable person that a Working With Children Check clearance has been cancelled for an individual that is currently still employed (in paid or unpaid work), the individual must be removed immediately from child-related work. If a notifiable person in the Diocese of Wollongong receives such a notification from the Office of the Children's Guardian, the Director of Professional Standards and Safeguarding (or their delegate) will contact the parish priest or head of the ministry and advise what action needs to be undertaken in line with the Act. All information relating to the cancellation of the clearance is to be managed in accordance with confidentiality and privacy considerations.

### 3.4 Renewals

The Working With Children Check is valid for 5 years. Individuals will receive a notification from the Office of the Children's Guardian when it is time for their check to be renewed. Once renewed, the Working With Children Check clearance number will remain the same, however the expiry date will have been extended. Once renewed, individuals are required to notify their employers. Once employers have been notified of this, they are required to verify the renewed Working With Children Check number of these workers and update their records with the new expiry date.

In the Diocese of Wollongong, renewal verifications are centralised at the Office of the Bishop and verification process should follow the same process as outlined above.

The Office of the Bishop maintains a database with information about the Working With Children Check status and expiry date for all paid employees and volunteers in child-related work. When an individual's status is due to expire, the Office of the Bishop will check the individual's employment/volunteer status with the parish/ministry. If the individual is still engaged in child-related work in the parish/ministry, the Office of the Bishop will need to undertake a verification of the individual's Working With Children Check number to ensure that the number has been renewed.

Under Section 9A(4), an employer must ensure that the record for workers in child related work are updated no later than 5 working days after the expiry date for each clearance of the worker.

### 3.5 Record Keeping

Also under Section 9A of the Act, employers are required to maintain a record containing the relevant details of employees in child-related work. The relevant details include:

- a) full name and date of birth,
- b) Working With Children Check clearance number
- c) expiry date of the clearance number.

In addition to these details, the Office of the Children's Guardian also requires the following information to be retained:

- d) verification date
- e) verification outcome
- f) status of the worker (paid or volunteer).

For the purpose of Diocesan information collection, the individuals' ministry position is also required to be provided at the time that the WWCC is submitted to the Diocese for verification.

In accordance with Section 9A(5), employers are required to retain records:

- a) during the period in which the worker carries out child-related work for the employer, and
- b) for a period of at least 7 years after the worker ceases to carry out child-related work for the employer.

### 3.6 Reporting Responsibilities

Under s25(d), the Catholic Church in NSW, including organisations of dioceses, are designated reporting bodies. Reporting bodies are required to report to the Office of the Children's Guardian when they become aware that there has been:

1. Sexual misconduct committed against, with or in the presence of a child, including grooming of a child, and/or
2. Any serious physical assault of a child.

Reporting bodies must investigate allegations of such conduct to make an informed finding as to whether or not the conduct occurred (OCG Fact Sheet: Information for reporting bodies). If the investigation results in a finding that sexual misconduct or serious physical assault occurred, the reporting body must report this finding to the Office of the Children's Guardian.

The Office of the Children's Guardian will provide notice in writing of the receipt of the finding. This documentation should be retained with the individual's records in accordance with the record keeping requirements as outlined above.

### 3.7 The role of the Office of the Children’s Guardian (OCG)

The OCG may request information from an employer for the purposes of assessing an individual’s suitability to work with children. The Diocese is required to respond to all lawful requests for information from the OCG. The Office of Professional Standards and Safeguarding will manage and respond to all information requests on behalf of all parishes, ministries and Office of the Bishop matters.

The OCG will also notify employers if an individual is found to pose a particular risk to children and young

people after a Clearance has been issued. As outlined in section 3.3, employers are under an obligation to remove barred workers from child-related employment. Failure to do so is considered an offence and in breach of the OCG legislation.

It is noted that the Diocese has no right to information provided by the OCG in relation to an individual’s WWCC risk status where the individual is not (and never was) working with children.

### 3.8 Reportable Conduct

Reportable Conduct relates to allegations against employees/volunteers/contractors/clergy/ religious who are employed or engaged by the Diocese to deliver services.

THE LEGISLATION	CHILDREN’S GUARDIAN ACT 2019 (NSW)
<b>Government body responsible for implementing the legislation</b>	NSW Office of the Children’s Guardian (OCG). The OCG will be responsible for oversight of reportable conduct investigations. The OCG will audit organisations to ensure compliance with the reportable conduct requirements.
<b>Persons to whom the Act applies</b>	Anyone who is required to hold a WWCC for the purposes of carrying out their work/ministry is subject to the Reportable Conduct requirements.
<b>Definition of reportable conduct as defined in the Act</b>	The definition of reportable conducts includes the categories of: <ul style="list-style-type: none"> <li>• Sexual offence</li> <li>• Sexual misconduct</li> <li>• Ill-treatment of a child</li> <li>• Neglect of a child</li> <li>• An assault against a child</li> <li>• An offence under s43B (failure to protect) or s316A (failure to report) of the Crimes Act 1900</li> <li>• Behaviour that causes significant emotional or psychological harm to a child</li> </ul> Further detail about these definitions can be found in Fact Sheet 1: <i>Identifying Reportable Allegations</i> on the OCG website: <a href="https://www.kidsguardian.nsw.gov.au/child-safe-organisations/reportable-conduct-scheme/fact-sheets">https://www.kidsguardian.nsw.gov.au/child-safe-organisations/reportable-conduct-scheme/fact-sheets</a>
<b>Obligations on diocesan workers (including paid employees, volunteers, contractors, clergy and religious)</b>	Diocesan workers are under an obligation to report on reportable conduct as soon as practicable in relation to: <ul style="list-style-type: none"> <li>• a minister, priest, rabbi, mufti or other like religious leader or spiritual officer of the organisation, or</li> <li>• a person in any other role in the organisation involving activities primarily related to children including youth groups,</li> </ul>