



Protocol: Screening of Workers

This protocol sets out the requirements of the Child Protection (Working with Children) Act 2012 (NSW) and the Child Protection (Working with Children) Regulation 2013 (NSW) in relation to the screening of Workers. It also outlines the Archdiocese's expectations of Employees, Volunteers, contractors, Clergy and other Religious Appointees.

Key obligation

Under the *Child Protection (Working with Children) Act 2012 (NSW)*, any person that is or intends to be, engaged in Child-Related Work, must have a Working with Children Check.

1 Who is a Worker?

1.1 'Worker' is broadly defined in the *Child Protection (Working with Children) Act 2012 (NSW)* to mean a person engaged in work in any of the following capacities:

- a) Employee;
- b) Volunteer;
- c) contractor;
- d) person undertaking practical training as part of an educational or vocational course; or
- e) minister, priest or other like religious leader or spiritual officer of a religion, or other member of a religious organisation.

2 What is Child-Related Work?

2.1 A Worker is engaged in 'Child-Related Work' if they have physical or face-to-face contact with Children that is a usual part of (and not incidental to) their work (paid or unpaid) performed for, or in connection with:

- a) child development (mentoring and counselling services) and family welfare services;
- b) child protection;
- c) Children's health services;
- d) clubs, associations, movements, societies or other bodies of a cultural, recreational, sporting or community service nature that provide programs or services primarily for Children;
- e) disability services;
- f) early education and child care (including child minding services);
- g) education;
- h) entertainment services primarily for Children, provided on a commercial basis;
- i) justice services;

- j) religious services;
- k) residential services (including overnight camps for Children);
- l) transport services provided especially for Children on a government funded or commercial basis;
- m) youth work;
- n) school cleaning;
- o) membership of governing body of certain agencies;
- p) Principal Officer of registered agency;
- q) counselling, mentoring or distance education not involving direct contact;
- r) declaration of relevant licence.

2.2 Not all of these will arise in a Parish or Agency context. Further details of what is considered to be Child-Related Work are contained in **Guidance Document: What is Child-Related Work?**

3 Exemptions

- 3.1 Some workers who are engaged in Child-Related Work may be exempt from obtaining a Working with Children Check because they have minimal contact with Children, they are too young, or they are parents/guardians or close relatives acting as Volunteers at their Children's activities.
- 3.2 In the Parish and Agency context, the following workers engaged in Child-Related Work are exempt from applying for a Working with Children Check:
 - a) a worker (other than a school cleaner) who only provides administrative, clerical or maintenance services, if the work does not ordinarily involve contact with Children for extended periods;
 - b) a worker who works for a period of not more than a total of 5 working days in a calendar year, if that work involves minimal direct contact with Children or the person is supervised while Children are present;
 - c) a worker who carries out the work in the course of an informal domestic arrangement that is not carried out on a professional or commercial basis;
 - d) a worker whose work involves direct contact only with Children who are close relatives of the worker (except in circumstances where the worker is acting as an authorised carer);
 - e) a parent or close relative of a Child, when Volunteering in connection with a team, program or other activity of which the Child is a member or in which the Child usually participates (unless providing personal care services to Children with disabilities);
 - f) a worker who is under the age of 18;
 - g) a worker who is a co-worker of a Child, or a work supervisor or work placement supervisor of a Child;

- h) a health practitioner who is working in and visiting New South Wales from outside the State, if the period of work does not exceed a total of 5 days in any period of 3 months;
- i) a worker who is working in and visiting NSW from outside the state for the purposes of 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 the work does not exceed 30 days;
- j) a worker who is working in and visiting NSW from outside the state for the purposes of Child-Related Work (other than a one-off event of the kind described above), if the worker is the holder of an interstate working with Children check in the state or territory in which the person ordinarily resides, or is exempt from the requirement to have such a check in that state or territory, and the period of the Child-Related Work in NSW does not exceed a total of 30 days in any calendar year; and
- k) a visiting speaker, adjudicator, performer, assessor or other similar visitor at a 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.

4 Role of the Worker

- 4.1 An individual worker (whether paid or unpaid) must apply for a Working with Children Check through the NSW Office of the Children's Guardian.
- 4.2 An individual who engages in Child-Related Work without a Working with Children Check or a current application for a Working with Children Check will face a fine of up to \$11,000 (i.e. 100 penalty units), 2 years imprisonment, or both.

5 Application process

- 5.1 Once a Worker has applied for a Working with Children Check, the NSW Office of the Children's Guardian reviews each applicant's full criminal history and employer disciplinary findings (as defined in the *Child Protection (Working with Children) Act 2012 (NSW)*).
- 5.2 Following that review:
 - a) if there is no relevant criminal history or any employer findings, the applicant will be cleared to work with Children;
 - b) if 'trigger records' are found, the applicant will be placed under an interim bar, and will not be cleared to engage in Child-Related Work until the NSW Office of the Children's Guardian completes a risk assessment to determine whether the applicant should be issued a clearance or bar; and
 - c) if there is a conviction or a pending charge for certain offences, the applicant will be automatically barred, without an assessment, unless the offence was committed as a Child.

- 5.3 There are different classes of Working with Children Checks for Volunteer and non-Volunteer Workers.

6 Role of the employer

- 6.1 While an individual must apply for and obtain a Working with Children Check, their employer faces a substantial fine of up to \$5,500 for an individual (i.e. 50 penalty units) or \$11,000 for a corporation (i.e. 100 penalty units) if they employ a person who is required to obtain a Working with Children Check but know or have reasonable cause to believe, that the person does not hold one.
- 6.2 The definition of 'employer' in the *Child Protection (Working with Children) Act 2012* (NSW) is very broad. 'Employer' is defined to include a person who:
- in the course of business, arranges for the placement of a person in employment with others;
 - engages a person under a contract to perform work; or
 - engages a worker to perform work as a Volunteer for the person under an agreement (whether written or unwritten).
- 6.3 Accordingly, for the purposes of the *Child Protection (Working with Children) Act 2012* (NSW), the Parish Priest or Agency Head will be considered the employer of any of the following persons engaged in Child-Related Work at the relevant Parish or Agency:
- Employees;
 - Volunteers;
 - contractors;
 - person undertaking practical training as part of an educational or vocational course;
 - priest, deacon, bishop or religious brother or sister; or
 - persons whom the Archdiocese has determined would be considered 'trusted persons' as a result of their role in, or representation of Parishes or Agencies. These persons are listed in the **Fact Sheet for Parishes: Who needs a Working with Children Check?**

7 Archdiocese's policy and procedure

7.1 Before engaging or employing a worker to engage in Child-Related Work

- Each Parish Priest and Agency Head must verify the Working with Children Check of each prospective Worker who is to carry out Child-Related Work (as those terms are defined in the *Child Protection (Working with Children) Act 2012* (NSW)) **before** engaging or employing them. A record must be kept to demonstrate compliance with the verification process (see section 7.5 below).
- Parish Priests and Agency Heads do not have to verify the Working with Children Check of any worker who is exempt (see section 3 above).

- c) **Note: Contractors (other than self-employed contractors) are responsible for screening their own Workers.** The Archdiocese's standard contracts require these contractors to undertake that they have complied with their screening obligations.
- d) If the Parish Priest or Agency Head has questions about whether a particular person needs to be screened, they should contact:
 - i) the Safeguarding Office; or
 - ii) the Parish Advisory Service.
- e) If a prospective Worker does not have an existing Working with Children Check, they are able to be engaged or employed in a supervised capacity if they can provide an application number that shows they have a pending application with the NSW Office of the Children's Guardian. They cannot work unsupervised until they provide a valid application number and that number has been verified.

7.2 Verifying a Worker's Working with Children Check

- a) The process of verifying a Worker is as follows:
 - i) register as an employer on the NSW Office of the Children's Guardian's website at <http://www.kidsguardian.nsw.gov.au/Working-with-Children/working-with-Children-check>;
 - ii) ask each prospective worker for their:
 - A) family name;
 - B) date of birth; and
 - C) Working with Children Check number or application number;
 - iii) verify the Worker's Working with Children Check through the NSW Office of the Children's Guardian's website above, which will display one of the following 5 results:
 - A) application in progress: the Worker has a pending application for a Working with Children Check and can be engaged or employed in the interim;
 - B) cleared: the Worker is cleared to work with Children until their Working with Children Check expires;
 - C) barred: the Worker has been barred and cannot work with Children;
 - D) interim bar: the Worker has been barred and cannot work with Children in any capacity pending the outcome of the NSW Office of the Children's Guardian's risk assessment; or
 - E) not found: the database cannot find a matching result.
- b) If the result is:
 - i) barred;

- ii) interim bar; or
- iii) not found,

it is an offence for the Parish Priest or Agency Head to employ or engage that person. If the result is barred or interim bar, please contact the Safeguarding Office.

7.3 Notification by the NSW Office of the Children's Guardian

- a) The NSW Office of the Children's Guardian will immediately notify the relevant Parish Priest or Agency Head:
 - i) of the results of a Worker's pending application;
 - ii) of the results of a Worker's risk assessment; and
 - iii) if a previously cleared Worker becomes barred.
- b) The NSW Office of the Children's Guardian will also notify each Worker 3 months prior to the expiration of their Working with Children Check, to enable them to renew it.
- c) The Parish Priest or Agency Head should keep a record of each Worker's Working with Children Check expiry date for the Parish or Agency's own records and seek confirmation the Worker has renewed their Working with Children Check following that date.
- d) The Parish Priest or Agency Head must update each Worker's records no later than 5 days after the expiry date of their Working with Children Check.

7.4 Delegation

- a) The mechanics of verifying Working with Children Checks can be undertaken by another person within the relevant Parish or Agency, as delegated by the Parish Priest or Agency Head.
- b) Delegations should be recorded in writing (see section 7.5 below).

7.5 Record-keeping and audits

- a) Under the *Child Protection (Working with Children) Act 2012* (NSW), each Parish Priest or Agency Head must keep up to date records of each Worker's:
 - i) full name;
 - ii) Working with Children Check number;
 - iii) date of verification; and
 - iv) Working with Children Check expiry date.
- b) The NSW Office of the Children's Guardian may request to see this information at any time as part of an audit.
- c) Any delegations made by Parish Priests or Agency Heads to other person's to undertake the process of verifying Working with Children Checks should be recorded in writing (see section 7.4 above).

- d) A Parish Priest or Agency Head who fails to maintain records of the details set out above, will be subject to a fine of up to \$5,500 (i.e. 50 penalty units).
- e) Any Worker (paid or unpaid) who holds a Working with Children Check Clearance or has made an application for a Working with Children Check, must notify the NSW Office of the Children's Guardian of any change in their personal details within 3 months of the change occurring. A Worker's personal details include their full name, address and contact details.
- f) A Worker who fails to notify the NSW Office of the Children's Guardian of any change in their personal details will be subject to a fine of up to \$550 (i.e. 5 penalty units).