



# Duty of Care Policy

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*GMAS acknowledges the Department for Child Protection Working with Children Screening Unit for the information on the Working with Children Checks.*

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## **1. INTRODUCTION**

Schools and teachers owe a duty to take reasonable care for the safety and welfare of all students in the school. The duty of care exists when the teacher/student relationship is established.

The duty requires schools and teachers to take all reasonable steps to ensure the safety and welfare of the students from both known and reasonably foreseeable risks of harm and/or injury. In particular instances, non-teaching staff, volunteers and external providers will also owe a duty of care to students.

When organising activities for the students to participate in, the teacher needs to balance the risk involved in the activity with what the students will learn from undertaking the activity in order to fulfil their duty of care obligations.

## **2. LEGISLATION**

- Working with Children (Criminal Record Checking) Act 2004
- Volunteers (Protection from Liability) Act 2002 (WA)
- Occupational Safety and Health Act 1984 (WA) for providing a safe environment
- Civil Liability Act 2002
- Occupiers Liability Act 1985
- School Education Act (WA) s63 (1) and 64(1)
- School Education Regulations 2000 (WA), regulations 38 and 39

These sections of the School Education Act and Regulations apply only to government schools, however, the issues contained are also relevant to non-government schools e.g. functions of Principals and teachers, care and welfare of children.

## **3. DUTY OF CARE**

The term 'duty of care' is a legal concept that defines the duty a person has to use reasonable care towards others in order to protect them from known or reasonably foreseeable risk of harm and/or injury. The notion of duty of care is one that is contained in most school policies and procedures.

The school is under a duty to take reasonable care to ensure that it employs competent teachers and provides safe premises. The school will be vicariously liable for the actions of

the teachers whilst they are acting in the course and scope of their duties as an employee of the school.

A teacher owes a duty to students to take reasonable care to protect them, from a known or a reasonably foreseeable risk of harm and/or injury. Discharge of this duty requires a teacher to take such proactive measures as are reasonable to prevent harm and/or injury to a student.

#### **4. REASONABLE CARE**

The concept of 'duty of care' is based on reasonable care. What is considered reasonable care will vary depending on all the circumstances.

Listed below are some factors to consider when assessing the 'reasonableness' of the level of care required to a particular student. This list is only a sample of the factors to consider and should not be thought of as a finite list. Each school will need to develop their own list of factors to consider when assessing what is reasonable.

- Student's age, experience and capabilities
  - the level of care will generally be greater the younger the student.
- Physical and intellectual impairment
  - a student with a disability is generally at greater risk of injury than a student without a disability. This could be due to a physical inability to complete the activity without difficulty or an intellectual inability to appreciate the risks involved.
- Medical condition
  - particular medical conditions including conditions such as asthma and epilepsy require special attention to ensure that they are not exposed to a greater risk of injury.
- Behavioural characteristics
  - if a student is known to behave inappropriately then the level of care increases.
- Nature of the activity and the environment in which the activity is held
  - School activities with a higher level of risk and held in hazardous environments require a higher level of care.
- School policy and procedures
  - following the school's normal practices within the various policies and procedures will ensure that the teacher is adhering to all the steps required.
- Assessing the level of risk involved in any individual activity
  - probability of the risk occurring

- magnitude of the risk
- expense, difficulty and inconvenience involved in alleviating the risk.
- Carer's level of experience, attributes and skills and nature of the relationship between the carer and students.

While duty of care responsibilities may impose onerous obligations on schools and teachers, these obligations should not discourage the school from instigating extracurricular activities. What is required is an approach that assesses the risks by reference to all relevant factors and, assuming the risks are not so great as to rule out the activity, to impose appropriate controls and safeguards.

It is important to understand that what is 'reasonable' will vary from circumstance to circumstance. For example, taking a primary school class on a beach excursion is completely different to taking members of a high school swimming team on a beach excursion. What will be reasonable supervision for one will be wholly inadequate for the other.

In dealing with the duty of care owed by a school, the Courts have recognised that children have different attributes. *The Trustees of the Roman Catholic Church for the Archdiocese of Sydney v Kondrajian [2001] NSWCA 308*.

*'Children, and particularly young children, need protection from their environment, from others and from themselves. Generally, reasonable steps should be taken to guard against foreseeable conduct on the part of children that may result in harm to themselves or others. Some children tend to be mischievous. They may do mischievous things deliberately, and may also be unable to comprehend fully the consequences of what they do. Children of a particularly young age may also be prone to unpredictability of behaviour. These tendencies are likely to manifest themselves when high-spirited children participate in games, and are factors that a supervising teacher must take into account.'*

However, the Courts have also been prepared to recognise that it is not in the public interest to require schools to take an over cautious approach. *The Trustees of the Roman Catholic Church for the Archdiocese of Sydney v Kondrajian [2001] NSWCA 308*.

*'The question of what amounts to reasonable care in a given case must be seen in the context that it is neither practicable nor desirable to maintain a system of education that seeks to exclude every risk of injury.'*

*'Nevertheless, although student participation in games may result in breaches of discipline and irresponsible behaviour, our society recognises that that is no reason, of itself, not to encourage and teach young children to engage in such activities.'*

*'Risks of serious injury while playing games of the kind to which I have referred, while real and not far-fetched, are remote They can be reduced further by training and supervision, and catering for the needs of the individual child. Because the risks are unlikely to materialise when the games are properly controlled, merely to allow children to participate in them will not, in the absence of special circumstances, be regarded as negligent.'*

*'It follows that the mere fact that a serious injury or even death may occur while children are playing a game at school will not automatically result in a finding of breach of the duty of care. Moreover, as I have noted, the fact that such a devastating result was foreseeable will also not necessarily mean that liability is established. It remains for the plaintiff to show that the school or teacher involved did not take such reasonable precautions for the safety of the child as would have prevented harm.'*

## **5. DUTY OF CARE OWED BY TEACHING STAFF**

The teacher's duty of care responsibility is automatic, arising from the teacher/student relationship. As stated above, the level of care is based on what is considered 'reasonable'. This will depend on a variety of factors e.g. age of students, behaviour of students, nature of activity, location of activity etc.

A teacher's duty of care is not limited to specific school activities such as excursions and incursions, it remains at all times whilst the student is in the teacher's care. A teacher's duty of care also includes being aware of and implementing school policies affecting students' safety and welfare e.g. Bullying, Occupational Health and Safety, Student Health, supervision ratios, safety of equipment and grounds.

Generally, the duty of care owed by teachers to students is non-delegable however, in certain situations the teacher may delegate this duty of care to non-teaching staff, volunteers and/or external providers.

### **5.1. Class materials**

Live crossing to or searching the internet during class, chapel, assembly or other mass gatherings should not be undertaken unless the material has first been examined by the staff member for appropriateness. Live streaming and/or searching can lead to inappropriate material being viewed as it appears in sudden 'popups' and other uncontrollable formats.

## 6. DUTY OF CARE OWED BY NON-TEACHING STAFF AND OTHERS

Others include volunteers and external providers. The Department of Education policy describes non-teaching staff, volunteers and external providers as follows:

*Non-teaching staff* – employees of the school who work on the school premises and are not part of the teaching staff. E.g. librarians, laboratory assistants, exam supervisors.

*Volunteers* – an adult or organisation who/which offers services for School Activities, but receives no remuneration from the school for the services provided. E.g. parents/guardians and other relatives, community members, employers who accept students on work experience, student teachers.

*External Providers* – a business/individual paid by the school to provide a venue, service and/or expertise appropriate to a particular school activity. E.g. private dance teacher, Perth Zoo, AQUA, Scitech.

Generally, non-teaching staff, volunteers (e.g. parents) and/or external providers must take reasonable care to avoid doing things that could reasonably be foreseen as causing harm and/or injury to others (including students).

Non-teaching staff, volunteers and/or external providers are not generally personally responsible for students and do not have the same duty of personal care to students as do teachers.

However, in certain situations and under certain conditions teachers may delegate their duty of care to non-teaching staff, volunteers and/or external providers in which case they will then owe the same level of care to students as a teacher.

Before the school and/or the teacher delegate the duty of care responsibility to non-teaching staff, volunteers and/or external providers, it is necessary for the school and/or the teacher to ensure the following are satisfied, as a failure to do so could result in a breach of the school and/or the teacher's duty of care to the student:

- That the non-teaching staff, volunteers and/or external providers are suitable for the task being delegated.
- That the non-teaching staff, volunteers and/or external providers involved are covered by either the school's insurance or have in place their own adequate insurance cover.



- That the non-teaching staff, volunteers and/or external providers agree to assume this personal duty of care for the students.
- That the teacher has provided the non-teaching staff, volunteers (e.g. parents) and/or external providers with clear instructions as to the level of care required.

It is recommended that these instructions for caring for students, the level of care required and the acceptance of this responsibility be recorded in writing and signed by the non-teaching staff, volunteers and/or external providers.

The situation with respect to volunteers has changed in recent times. Previously, it was accepted that because there was no employment relationship between the school and the volunteer the school could not be held vicariously liable for the actions of a volunteer. The introduction of the Volunteers (Protection from Liability) Act 2002 has changed this situation. The Act provides that schools, that are an incorporated association under the Associations Incorporations Act 1987, are responsible for the acts of a volunteer<sup>1</sup> (i.e. the school is vicariously liable for the volunteer) where the work performed by the volunteer is done on behalf of the school and is done in good faith by the volunteer.

It is recommended that all schools familiarise themselves with the *Volunteers (Protection from Liability) Act 2002*, this is available at [www.slp.wa.gov.au](http://www.slp.wa.gov.au)

## **7. WORKING WITH CHILDREN (CRIMINAL RECORD CHECKING) ACT 2004**

The Working with Children legislation came into effect on 1 January 2006 and aims to protect children by deterring or excluding from child-related work people whose criminal histories indicate a child may be harmed.

The Working with Children (WWC) Check is a compulsory national criminal record check of those people who work or volunteer with children i.e. persons under the age of 18, across many sectors of the community in WA.

A person whose WWC Check reveals a criminal history indicating that they might harm children will be prohibited from 'child-related work'.

The WWC Check is only one way of promoting a safer environment for children. Schools should also ensure that they also include other procedures including:

- Rigorous recruitment and selection practices, including thorough referee checks
- Good supervision and training
- Policies that promote safer and supportive environments for children

### 7.1. Who is required to get a WWC check?

WWC Checks are required by volunteers, employed and self-employed people in ‘child-related work’. Employers have obligations to make sure that their employees and volunteers who need the Check have one.

Work is ‘child-related work’ if the usual duties of the work involve, or are likely to involve, contact with a child in connection with one of the categories covered in section 6 of the Working with Children (Criminal Record Checking) Act 2004 (The WWC Act). People who are not in ‘child-related work’ as defined under the Act are not required to obtain a Check and do not need to apply.

#### **According to The WWC Act (S 6) - Meaning of “child-related work”**

Work is “**child-related work**” if the usual duties of the work involve, or are likely to involve, contact with a child in connection with:

- (i) a child care service
- (ii) a community kindergarten registered under the School Education Act 1999 Part 5
- (iii) an educational institution for children
- (iv) a coaching or private tuition service of any kind, but not including an informal arrangement entered into for private or domestic purposes
- (v) an arrangement for the accommodation or care of children, whether in a residential facility or private residence, but not including an informal arrangement made by a parent of the child concerned or accommodation or care provided by a relative of the child
- (vi) a placement arrangement under the Children and Community Services Act 2004
- (vii) the performance by an officer, as defined in the Children and Community Services Act 2004 section 3, of a function given to the officer under that Act
- (viii) a detention centre, as defined in the Young Offenders Act 1994 section 3
- (ix) a community child health service
- (x) a counselling or other support service
- (xi) a religious organisation
- (xii) a club, association or movement (including of a cultural, recreational or sporting nature and whether incorporated or not) with a significant membership or

involvement of children, but not including an informal arrangement entered into for private or domestic purposes

- (xiii) a ward of a public or private hospital in which children are ordinarily patients
- (xiv) a baby sitting or child minding service, but not including an informal arrangement entered into for private or domestic purposes
- (xv) an overnight camp, regardless of the type of accommodation or how many children are involved
- (xvi) a transport service specifically for children
- (xvii) a school crossing service, being a service provided to assist children to cross roads on their way to or from school
- (xviii) a children's entertainment or party service or
- (xix) any other work of a kind prescribed by the regulations.

**Examples of child-related work in the education sector include:**

- People tutoring children, whether individually or in groups (not including informal arrangements)
- Teaching staff of schools, kindergartens and/or pre-primary schools
- Training providers who run coaching or private tuition classes primarily for children
- School support staff working in various areas in a school and who have contact with children as part of the usual duties of their work
- People who provide health services to school children at the school
- Grounds and maintenance staff who work during school hours and assist with activities that involve contact with children, as part of the usual duties of the work
- School bus drivers
- Entertainers who provide services to children at schools
- Sports coaching or private tuition services for school children
- Students on placement doing child-related work, such as student teachers
- Volunteers helping with various school activities (except parents/guardians whose children are enrolled at the school)
- Parents volunteering at overnight school camps

**7.2. What is contact?**

Consider the categories of child-related work and assess the person's usual duties and whether these involve or are likely to involve contact with a child.

Contact is defined as:

- Any form of physical contact
- Any form of oral communication, whether face to face, by telephone or otherwise and
- Any form of electronic communication

but does not include contact in the normal course of duties between an employer and an employee (including employees under 18 years) or between employees of the same employer.

### **7.3. Who does not require a WWC Check?**

There are many work situations where there is occasional contact with children or where the customers may be children. Examples of this include the general retail industry, the local deli or cinema. Such work situations do not require a Working With Children Check.

There are also some situations where exemptions apply under the legislation. These exemptions mean that the following persons are not required to apply for a Working with Children Check and should not apply:

- Volunteers and students on unpaid placement who are under 18 years of age
- Parents volunteering at a school in which their child is enrolled (This exemption does not apply to parents volunteering in child-related work at overnight camps attended by their children)
- Short-term visitors to WA carrying out 'child-related work' during the period of 2 weeks after their arrival in Western Australia, and for no more than 2 weeks in any period of 12 months.

While parent volunteers are exempt from obtaining a WWC Check, the school can have its own policy stating that parent volunteers must have either a National Police Check for Volunteers or a National Police Certificate.

A full list of exemptions is shown on '**Fact Sheet 5: Child-related work and Exemptions**'. Factsheets are available on the website [www.checkwwc.wa.gov.au](http://www.checkwwc.wa.gov.au)

### **7.4. What is the 5 Day Threshold?**

It is an offence to carry out child-related work without a WWC Card. However, the Act allows reasonable flexibility to enable employers to deliver services in unforeseen circumstances such as the illness of a worker. The 'threshold' is different for volunteers/employees/students and for employers/education providers.

Employers/education providers do not commit an offence if they engage most people for no more than five days in a calendar year before that person has applied for a WWC Card. However, this five day threshold does not apply if the employer/education provider knows that the person has been convicted of, or has a pending charge for a Class 1 or 2 offence, in which case an employer/education provider will commit an offence if they do not ensure that the employee/volunteer/student applies for a WWC Check before they actually start their child-related work role.

The five day threshold also does not apply where the employer/education provider is aware that a person has a current Negative Notice, an Interim Negative Notice, or has withdrawn their application for a WWC Check.

For volunteers/employees/students, the 5 day threshold is a 'defence'. It allows most people to be engaged in child-related work on no more than five days during a calendar year without a WWC Check. It also gives employees and volunteers flexibility as they are not committing a breach of the Act if they suddenly find that they are required to engage in child-related work, for example if their role changes to include child-related work or if they are required to fill in for a sick colleague or volunteer.

However this defence does not apply to everyone and is not available to a number of people. Please refer to the website [www.checkwwc.wa.gov.au](http://www.checkwwc.wa.gov.au) '**Factsheet 10: Information for the Education Sector.**'

If a person does not apply for a WWC Check because they do not work on more than 5 days in a calendar year, they are still required under the Act to:

- report in writing any relevant change in their criminal record to the WWC Screening Unit and to their employer, and
- cease child-related work immediately if convicted of a Class 1 offence as an adult.

The 5 day threshold is not an exemption from the Act: self-employed people, employees, students and volunteers in child-related work may still apply, and their employers can require that they apply for a WWC Check.

## **7.5. How to apply for a WWC Check**

Application forms are obtained from participating Australia Post outlets: see [www.auspost.com.au/workingwithchildren](http://www.auspost.com.au/workingwithchildren). An application for a WWC Check must be lodged in person.

When applying, applicants need to present sufficient documents to meet the 100 points identification criteria. Accurate identifying information is essential to make sure the criminal history check is done for the correct person, which includes the applicant's current address details and photographic identification. The application form has full information on what ID is acceptable.

Employers/education providers must co-sign the application forms of employees/students/volunteers. It is important that agency representatives do not sign blank application forms. The agency representative who signs the form will receive any related correspondence from the WWC Screening Unit.

Applicants who do not have sufficient identification or who live in remote communities and are unable to access an authorised Australia Post outlet, should contact the WWC Screening Unit.

#### **7.6. Outcome of a WWC Check**

- A 'successful' WWC Check results in a WWC Card which is portable for 3 years across all types of child-related work, unless cancelled.
- A card with a photograph will be issued as proof of a WWC Check. A WWC Card IS NOT an endorsement of a person's general suitability to work with children. Suitability covers a wider range of factors than offence history, such as character, skills and experience. Obtaining WWC Checks is only one of the practices that responsible organisations put in place to achieve safe environments for children. These include referee checks, supervision and training, as well as practices within the workplace which enable children to voice their concerns.
- An 'unsuccessful' WWC Check results in a Negative Notice, which prohibits the holder from carrying out child-related work (including voluntary work) under any category with any employer or as a self-employed person.
- The agency representative on the WWC application form will be told what the outcome of the Check is, and any subsequent changes to a person's status should they have a change in their criminal history, but will not be given information about a person's criminal record.
- The WWC Card is 'live' which means that it is monitored and updated information is received, including from the WA Police. If a person is charged with, or convicted of, any offence of concern, their WWC Card can be reassessed. If the re-assessment is

unsuccessful a Negative notice is issued. The Negative Notice cancels the WWC Card and current employers known to the WWC Screening Unit will be notified of this.

## 7.7. Record Keeping Example

It is essential for employers and volunteer coordinators to keep valid records.

### Working with Children Check – Record Keeping (Example)

Position	Volunteer /Paid	Current Holder of Position	Exemptions Apply – Why?	Status & Action (if req'd) 1 Holds Current Card 2 Application lodged 3 Interim Negative Notice 4 Negative Notice 5 Application withdrawn 6 Confidential Declaration	WWC Receipt Number (if applicant does not yet have valid card)	WWC Card Number	Expiry Date	Date position reviewed	Date Last Validated
School Bus Driver									
Chair of Council									
U 11 Coach	Volunteer	Joe Bloggs	Yes – parent of child member	1	X123456	7891011	1/12/22	1/11/19	1/12/19
Canteen Staff	Paid	Mary Bloggs	No	1					

Be sure to periodically review positions as duties may change and exemptions may no longer apply (eg. parent may no longer have an exemption if their child leaves the club or school, but they continue to volunteer in child-related work). First determine which positions within your school involve 'child-related' work then consider whether the people currently holding these positions require a WWC Check.



## **7.8. Obligations of all parties**

### **Paid employees and volunteers**

Employees and Volunteers have responsibilities and obligations under the WWC legislation. Not complying with these responsibilities can result in fines of up to \$60,000 and up to five years imprisonment.

- If you are in child-related work, you must hold a current WWC Card or have a pending application within the required time. See the information provided regarding the five day threshold.
- You must apply for a WWC Check within the time stated if asked to do so by the WWC Screening Unit.
- You must not give false or misleading information to the WWC Screening Unit.
- You must update your address and employment details on the WWC website if they change.
- The WWC Check must be renewed every three years, if you are still in child-related work.
- You must not carry out child-related work if you have been convicted of a Class 1 offence committed as an adult.
- You must return your WWC Card to the WWC Screening Unit as soon as practicable after being convicted of a Class 1 offence committed as an adult or if your WWC Card is cancelled by the WWC Screening Unit.
- If you have been issued with an Interim Negative Notice or a Negative Notice you must not carry out child-related work, and you must return your WWC Card to the WWC Screening Unit as soon as practicable.
- If you are issued with an Interim Negative Notice you cannot withdraw your application for a WWC Card.
- If you are charged with or convicted of a Class 1 or Class 2 offence you are required to provide written notice to your employer of the change in your criminal record. You do not have to provide details of the offence, only state that there has been a 'relevant change'. You must also give written notice to the WWC Screening Unit.
- If you have a current WWC Card and have a relevant change in your criminal record and are no longer in child-related work you are still required to give written notice to the WWC Screening Unit of the relevant change. Your Card will be cancelled and you cannot start child-related work until you have been issued with a further WWC Card or made an application for one. You must also notify your proposed employer that there has been a relevant change to your criminal record and that you have applied for a new WWC Check.

## **Employers and organisations**

Employers of people in child-related work, including paid employees and volunteers, and self-employed people in child-related work have a number of responsibilities under the Act:

- Identify which of the listed categories of child-related work you and your employees, volunteers or students carry out.
- Ensure that all volunteers, paid employees and self-employed people in child-related work have applied for a WWC Check by the date required.
- Do not engage a person in child-related work on more than five days in a calendar year unless they hold a current WWC Card or have applied for one unless you are a licensed child care service.
- Keep adequate records that demonstrate the organisation is complying with the WWC legislation. You may be asked to provide records to demonstrate compliance with the Act by the WWC Screening Unit.
- Check, record and validate (using the validation facility on the WWC Check website) the WWC cards of all new employees, volunteers, students and self-employed contractors and periodically check and record that all current employees' and volunteers' WWC Cards are valid, current and have not been cancelled.
- Develop strategies to ensure employees and volunteers renew their cards every 3 years.
- Register your organisation as an employer on the WWC Check website to advise us when you have new employees, volunteers and students who already have a WWC Card from a previous employer. This will enable the WWC Screening Unit to better protect children by enabling them to advise you about any changes in status of the person's WWC Card and of other matters if necessary.
- Notify the WWC Screening Unit in writing if you reasonably suspect an employee, volunteer or student has been charged with or convicted of an offence which makes it inappropriate for them to continue to carry out child-related work.
- Do not give false or misleading information to the WWC Screening Unit.
- Employers must not start or continue someone in "child-related work" if the person has an Interim Negative Notice, a Negative Notice, or if their WWC application has been withdrawn, or if they are aware of a conviction or pending charge for a Class 1 or Class 2 offence against that person and they have do not hold a current WWC Card and have not applied for one.
- As an employer you must comply with the WWC Act despite another Act or law or any industrial award, order or agreement and you will not incur any liability if you do so.

An employer not complying with their responsibilities can result in a fine of up to \$60,000 and five years' imprisonment.

It is vital that schools sight the WWC card of volunteers and self-employed people used by the school. Police are concerned with the number of people working with children who say they have a valid WWC card, however on further inspection it is discovered that they either do not have a card or have been issued with a negative notice.

More information about employer and employee obligations is available on the Working with Children website at [www.checkwwc.wa.gov.au](http://www.checkwwc.wa.gov.au)

### **7.9. Impact on schools**

Compliance by schools with their obligations under the WWC Act and the necessity for various persons (in particular teachers) whose usual duties involve child-related work to obtain a WWC check, will collectively combine to facilitate and enhance a school's duty of care towards its students. However, compliance with the WWC Act will not necessarily mean that a school can safely say that it has complied with its duty of care obligations to have taken 'reasonable care' (see section 4 above) in all instances. Information about the WWC process clearly states that a successful assessment does not on its own establish suitability to work with children or lead to a child safe environment. Other factors include assessments of personal characteristics, skills and experience, supervision and training.

Hence, for example, under the WWC Act a parent of a student enrolled at a school is (with certain exceptions) exempt under the WWC Act from obtaining a WWC check when carrying out voluntary work on school premises or with students such as helping in the canteen. However, even though this exemption applies under the WWC Act, which does not mean that in appropriate circumstances a school should not still require a volunteer parent to provide a police clearance. This might be called for by the school if it has genuine and realistic concerns about the background of a particular parent. The procedure to obtain such a police clearance could be that set out in section 8 below.

However, a requirement in these circumstances that a parent provide a police clearance before the parent is given access to school premises is a sensitive issue particularly where a police clearance is sought from one particular parent rather than a group of parents in a small school. Hence, schools should approach this issue with caution and take advice from their legal advisors on a case by case basis before implementing a particular course of action.

### **7.10. Cost**

The cost of the WWC Check is \$10.30 for volunteers and unpaid workers, such as student teachers on placement as part of their studies, and \$53.00 for paid workers and self-employed people.

### **7.11. Where to go for further information?**

The Working with Children Screening Unit, Department for Child Protection is responsible for administering the Working with Children Checks. The Unit can be contacted through:

- [www.checkwwc.wa.gov.au](http://www.checkwwc.wa.gov.au) or
- telephone their helpline on (08) 6217 8100 or 1800 883 979 (country callers)

## **8. ARE POLICE CLEARANCES REQUIRED?**

### **8.1. WACOT registered teacher**

WACOT registered teachers are required as part of their WACOT registration to have a Criminal Record Check. This check is part of the WACOT assessment process to determine whether a person is suitable for registration as a teacher. Information completed on the form will be forwarded to the *CrimTrac* Agency, other Australian police services or other law enforcement agencies for checking.

The teacher will be asked to disclose whether they are the subject of any criminal charges still pending before the Court, or whether they have been the subject of any convictions or findings of guilt before a Court.

Under Western Australian legislation (*Spent Convictions Act 1988 (WA)*), spent convictions are not disclosed as part of the criminal history checks. However, WACOT has received an exemption that allows them to receive information on ALL criminal convictions or findings of guilt, including spent convictions in WA. Spent convictions in other states will only be released if the State based legislation in that state allows them to release it.

Teachers are also required to have a WWC Check as part of the WWC Checking legislation. It is the school's responsibility to ensure that all teachers have a current WWC Check.

### **8.2. Other School Staff**

Other school staff are also required to have a WWC Check if the usual duties their work involve, or are likely to involve contact with a child, as per the explanations in Section 7 of this document. Schools may require all staff to also have a criminal check/police clearance.

A National Police Certificate is a list of your disclosable Court outcomes and pending charges sourced from the databases of all Australian Police Jurisdictions. Certain convictions may not be disclosed on a NPC in accordance with the legislation and policies of various police jurisdictions (e.g. spent Convictions and most traffic and juvenile convictions). National Police Certificates are commonly used for employment or licensing purposes. To obtain a National Police Certificate, collect a form from a participating Australia Post outlet or download the form [here](#).

A national criminal history check involves identifying and releasing any relevant criminal history information subject to relevant spent convictions/non-disclosure legislation and/or information release policies.

What is a spent conviction?

A spent conviction is a conviction for either a Commonwealth, Territory, State or foreign offence which satisfies all of the following conditions:

- it is 10 years since the date of the conviction (or 5 years for child offenders)
- the individual was not sentenced to imprisonment or was not sentenced to imprisonment for more than 30 months
- the individual has not re-offended during the 10 year (5 years for child offenders) waiting period: and
- a statutory or regulatory exclusion does not apply. (A full list of exclusions is available from the Privacy Commissioner.

Volunteers may be requested to complete a Confidential Declaration indicating whether or not they have any convictions or whether there are any circumstances or reasons that might preclude them from working with or near children. If a school wishes, it could request that the person signs a Statutory Declaration instead as this requires the declaration to be witnessed. Criminal History Checks can then be requested if necessary. A sample of a Confidential Declaration is shown on the next page.

## CONFIDENTIAL DECLARATION

This form is for persons requiring access to schools who are not employees of the school and are not covered by the Working with Children legislation.

Please place a tick in **one** of the boxes below.

I declare that I **do not have** any convictions, circumstances or reasons that might preclude my working with or near children.

I declare that I **do have** convictions, circumstances or reasons that might preclude my working with or near children. The nature of these convictions, circumstances or reasons is outlined below.

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*I certify the accuracy of the above information. I am aware that I may be required to provide a police clearance if is considered necessary to verify the information provided.*

Name:

\_\_\_\_\_  
(BLOCK PRINT PLEASE)

Date:

\_\_\_\_\_

Signature:

\_\_\_\_\_

Address:

\_\_\_\_\_

Company:

\_\_\_\_\_

Telephone:

\_\_\_\_\_

<sup>1</sup>The definition of the term 'volunteer'...

The definition of 'volunteer' in the *Volunteers (Protection from Liability) Act 2002* is defined in section 4 of the act. This differs from the definition of 'volunteer' in the *Department of Education and Training Duty of Care policy* (described in the AISWA document). The term 'volunteer' used in the guidelines for staff recruitment in the *'Registration and Renewal of Registration of Non-Government Schools in Western Australia – Standards and Other Requirements'* is not defined in that document.

If a school is in doubt as to the definition of 'volunteer' and the application of the *Volunteers (Protection from Liability) Act 2002*, it is advisable that legal advice is sought.

## **9. CONCLUSION**

What is clear is that, whilst each situation will be judged on its own merits, generally the school and the teaching staff have a special duty of care to all students in their care and that this duty can only be delegated in very specific and controlled situations. The issues discussed in the appendices are intended as broad guidelines of the types of issues that need to be considered.

## 10. APPENDIX 1 – STUDENTS ON SCHOOL GROUNDS

### Duty of Care – School-Based Applications

**Liability in negligence depends upon the application of a standard of reasonableness in all the circumstances. Each case will therefore be different, turning on its own particular set of facts. The examples provided in this document are therefore to be used as a guide only. GMAS acknowledges the Department of Education and Training of WA for the information contained in this appendix.**

*GMAS grounds are supervised by school staff from 8am until 4pm. Outside of these hours, school staff will not be expected to supervise students. A refusal to acknowledge the presence of students will not provide a defence against liability. Refusing to open school gates or forcing students to remain on the street verge will not remove the school's responsibility.*

#### **Before School**

Where it is known that students arrive at school at a certain time (e.g. if buses start delivering students from a particular time) it is the responsibility of the school to provide adequate supervision for the students commencing at that time. Students who arrive at school early should be directed to a particular area to enable the supervisors to be able to observe exactly what is occurring.

Allowing for the fact that some parents will still ignore this recommendation and deliver students to school earlier than this time, these parents should be contacted individually and asked to come in to the school to discuss the matter. It should be pointed out that it is impossible for the school to guarantee supervision for students at these times. The parents should be requested to find some other way of occupying their children at this time.

Students who unavoidably remain on campus after school (e.g. have missed their bus, or parent/guardian is running late) are to report to Student Services prior to 4pm, and wait at reception for collection. No student will be left on school premises without adult supervision.

#### **After School**

##### GENERAL RESPONSIBILITIES

The school is responsible for

- *Students who remain on school grounds whilst waiting for a school bus or after school care bus.* The responsibility for providing adequate supervision will extend at least until the last bus departs the premises.



- *Students who remain on school grounds whilst waiting to be collected.* In respect to very young students or students who are otherwise unable to care for themselves, the duty of care is likely to last until the student is collected. Students should be directed to a particular area to enable the supervisor(s) to be able to observe them. However, it is not reasonable to expect staff members to supervise students whose caregivers are regularly and significantly late in collecting their children. GMAS should consider reporting concerns to the Department for Community Development and/or delivering students into the care of the police if staff members regularly have to wait for significant times with students whose parents have neglected to collect them.

Parents/guardians are responsible for

- *Students who leave school grounds and return later (e.g. in the evenings, weekends) to use the grounds*
- *Students who remain on school grounds after being collected by parents/guardians*

Duty or Co-curricular Staff are responsible for

- *Students who otherwise remain on school grounds at the close of school*
- Staff are scheduled to be on duty until 4:00pm to ensure that the majority of students are no longer present. That time has been widely circulated around the school community. The school cannot accept responsibility for students remaining on school premises after that time.
- A staff member who coaches a sporting team outside school hours will owe a duty to take reasonable care for the safety of the participating students if the sporting activity is an authorised school activity.

External events

- If an activity is not an authorised school activity, the staff member will be acting in a private capacity and the principle of vicarious liability (see Appendix 2) will not apply. Further, the school's public liability insurance cover may not extend to privately arranged sporting activities.
- The wearing of a school uniform by members of a team comprised of students of a particular school and the naming of the team by reference to a school will not necessarily convert the sporting activity to an authorised school activity. It may, however, be the case that parents and guardians may be led to believe that the activity is being organised and conducted by the school.
- Where the sporting activity is not an authorised school activity, the event organiser should advise parents and guardians that the school assumes no responsibility for the supervision of students and for any aspect of the activity such as coaching.

Some parents will allow children to stay at school beyond the set times. These parents should be contacted individually and asked to come in to the school to discuss the matter. It should be pointed out that it is unfair to expect the school to provide supervision for students at these times. The parents should be requested to find some other way of occupying their children at this time.

### **Journey to and from place at which School Activity is undertaken**

As a general rule, the school has no 'door-to-door' responsibility for students. However, a duty of care will be owed in situations where the school assumes responsibility for students, such as where the school provides transport for students to and from a school activity, or where the school assumes responsibility for escorting students across a railway line or busy highway.

### **Duty and Out-of-bounds areas during school hours**

All educational staff at GMAS are expected to assist with yard duty supervision and will be included in the weekly roster.

Staff must wear a provided safety/ hi-vis vest whilst on yard duty.

Those who are rostered for yard duty must remain in the designated area until they are replaced by a relieving staff member.

During yard duty, supervising school staff must:

- actively and methodically move around the designated zone
- be proximal and close to where students are located
- be alert and vigilant
- intervene immediately if potentially dangerous or inappropriate behaviour is observed in the yard
- enforce behavioural standards and implement appropriate consequences for breaches of safety rules, in accordance with any relevant disciplinary measures set out in the school's Behaviour Management policy
- ensure that students who require first aid assistance receive it as soon as practicable
- log any incidents or accidents as appropriate

If being relieved of their yard duty shift by another staff member (for example, where the shift is 'split' into 2 consecutive time periods), the staff member must ensure that a brief but

adequate verbal 'handover' is given to the relieving staff member in relation to any issues which may have arisen during the first shift.

If the supervising teacher is unable to conduct yard duty at the designated time, they should contact the Timetable & Curriculum Officer with as much notice as possible prior to the relevant yard duty shift to ensure that alternative arrangements are made.

If the supervising teacher needs to leave yard duty during the allocated time, they should contact the Timetable & Curriculum Officer but should not leave the designated area until the relieving teacher has arrived in the designated area.

If a next duty teacher does not arrive for yard duty, the teacher currently on duty should send a message to the Main Office who will contact the Timetable & Curriculum Officer, and not leave the designated area until a relieving teacher has arrived.

Out-of-bounds areas (unless supervised by a staff member) are:

- Classrooms & MAC
- Bush area bounding Oval 2
- Road areas bounding the school periphery
- Roads past the Kiss and Drop area
- Maintenance Shed
- Front of Administration
- Carpark areas
- Bus Bays Hawker Approach

### **Students leaving school grounds during school hours**

GMAS does not allow students to leave school premises during the school day in circumstances where there is no parental/guardian permission, with the exception of medical emergencies. If a student is permitted to leave in these circumstances, the school must be satisfied that no foreseeable harm will come to them.

The form of the permission should clearly state the terms upon which parents are giving permission for the student to leave premises, including the purpose for which the permission is given, the times during which students may absent themselves (for example daily or on a specified day each week) and the period for which the permission is given (for example a term).

The parent/guardian must also provide a written acknowledgement that the school cannot be held responsible for any injury that befalls the student away from the school premises or for any misconduct on the part of the student. Having said this, the school must be satisfied that the parent is giving informed permission by advising the parent(s)/guardian(s) of any concerns it has for the student's safety.

Moreover, if the school, having assessed the situation, considers that the student may be placed at risk if allowed to leave the school premises, then permission to leave should be refused notwithstanding that parental permission has been given. If for example the school becomes aware of unsatisfactory behaviour, risk related behaviour or other circumstances likely to affect the health, safety or welfare of the student, it will be justified in withdrawing permission, and should discuss these concerns with the student's parent/s or guardian/s.

The situation will be directly influenced by the age of the student. There is probably no reason why the school could not accede to a request by a mature post-compulsory student to leave the premises during free periods and breaks, provided written authority by the student's parent or guardian (assuming the student is under the age of 18) has been given.

Provided that the school is satisfied on reasonable grounds that no foreseeable harm will come to a student, the student-teacher relationship will end and a duty of care will no longer be owed once the student leaves the premises during a free period/break or for other non-school activities, such as a medical appointment.

### **Outside term dates and/or school events**

Children should not be accompanying staff to school events unless supervised by a third party and their (child) presence on campus has been sanctioned. Examples where children of staff should not be in the care of parents (staff) are: staff briefings-meetings, office areas, school events where the staff member has a role –duty; transportation during school events, rehearsals etc.

## **11. APPENDIX 2 – MINOR INCIDENT RESPONSE**

### **Before and After School Incidents**

Please refer to the GMAS Critical Incident Management Plan in the event of a major incident.

In the event of a minor incident:

#### **Accident/injury and/or death**

GMAS will

- Inform all school staff of the incident details
- Alert parents/guardians via SEQTA if necessary
- Ensure appropriate risk management strategies are implemented
- Inform parents/guardians in writing when supervision is to commence before school and cease after school, including the designated areas that are supervised
- Provide appropriate supervision before and after school, and have designated pickup points for students
- Inform staff, parents/guardians and students that police are to be contacted on 131 444 to report incidents, e.g. bus accident
- Advise AISWA and ASC of the incident so that other schools in the area can also be informed
- Offer counselling and support if required

#### **Suspicious person/potential kidnapping incident**

GMAS will

- Inform all school staff of the incident details
- Ask teaching staff to reinforce the stranger danger message to their students
- Alert parents/guardians to child protection alerts via SEQTA and/or letter
- Ensure appropriate risk management strategies are implemented
- Inform parents/guardians in writing when supervision is to commence before school and cease after school, including the designated areas that are supervised
- Provide appropriate supervision before and after school, and have designated pickup points for students
- Inform staff, parents/guardians and students that police are to be contacted on 131 444 to report incidents
- Advise AISWA and ASC of the incident so that other schools in the area can also be informed

Students can help by

- Travelling with friends and avoiding unsafe shortcuts
- Being aware of the safe places they have available to them on their walk to school e.g. a friend's house, a neighbour if known and accepted by the family
- Telling teachers or parents when they see someone loitering on or near the school grounds or acting suspiciously
- Telling teachers or parents if they are approached by someone they don't know on the way to or from school
- If approached by someone suspicious, walk away and recite to yourself as many details as you can remember e.g. car colour, type, number plate, description of person
- Taking a photo of the vehicle or person with their mobile phone, if possible
- Not
  - talking to strangers
  - going anywhere with strangers
  - taking anything from strangers
  - lingering on the way to or from school

Parents/guardians can help by

- Ensuring that young children don't travel to and from school unaccompanied
- Making sure children are not on school premises unsupervised
- Using school designated areas if dropping children off or collecting them from school
- Reporting suspicious vehicles and persons to Police 131 444 or Crime Stoppers 1800 333 000

Staff can help by

- Reporting all sightings of suspicious people or vehicles to administration so that they can then be reported to the local police
- Ensuring playground, after school supervision and duty rosters are adhered to
- Advising duty staff to look out for suspicious vehicles or people

General safety tips provided by the WA Police

- Be aware of your surroundings at all times and who or what is nearby
- Program 000 and 131 444 police phone numbers into your mobile phone
- Walk with a friend or group wherever possible
- Walk in areas that are clear of overgrown trees and bushes

Refer to the [ASC Child Safe Policy](#) document for further information.