



12. Working with Children Legislation

Protecting children from sexual or physical harm is a fundamental requirement of all social arrangements and the Church is fully committed to ensuring that children are so protected while in its settings. While the Working with Children Act has protecting children from sexual or physical harm as its objectives, many people are exempt from requiring a WWCC, many offences which go to a person's character are not taken into account and not all adverse findings are screened before a WWCC is issued. The Act may inadvertently lure employers¹ and parents into a false sense of security. Possessing a WWCC does not in itself mean the person is suitable to be with children anymore than having a driver's license means that the holder is a good driver and that you would want to be a passenger in a car driven him or her in all circumstances. Appraising the suitability of those involved with children against a high standard, including those not required to possess a Check either because they are exempt or fall outside the ambit of this legislation, and constant vigilance remain an ongoing requirement of all involved.

The interdependent nature of the Church is a strong argument for the adoption of a single policy applying to all parts of the Church throughout the Province of Melbourne (State of Victoria). The Ballarat Diocesan Policy is consistent with that of the Archdiocese of Melbourne and the Diocese of Sale and Sandhurst.

Summary of the Working with Children Protocol as it relates to parish and school settings

1. The Working with Children Act, a scheme that the Government promotes as designed to create minimum standards across Victoria for those who work with children (ie those under 18), has already been enacted and is being phased in over 5 years (2006 – 2010). It involves:
 - (a) the screening of those in child related work for convictions, findings of guilt, pending charges and offences against this and other Acts, as well as professional disciplinary records. It is distinct from and wider reaching than a Criminal Records Check.
 - (b) continuous monitoring and the triggering of reassessments should circumstances change, and
 - (c) the issue of an assessment notice declaring one 'not unsuitable' and the entitlement to undertake child related work. It is valid for 5 years.There is no cost to volunteers. The fee for employees and contractors is \$70.

2. The diocese has opted for blanket coverage of adults working in parishes including school settings with very limited exceptions. The test, under this policy as to whether a person needs a Working with Children Check is as follows:
 - (a) Is the person a **worker** (paid or unpaid)?

¹ In this context, those who engage are referred to as employers, even when it includes relationships that are not employment related, eg the person who engages a contractor or a volunteer, the bishop who appoints priests.

- (b) Is the organisation conducting the service **associated with the parish/school** and does it involve, or likely to usually involve "regular", "direct" contact that is not directly supervised by another person?
 - (c) If so, does a **deliberately excluded** policy exemption apply to the person?
3. A **worker** is either an employee contractor, volunteer and includes clergy, other religious and Board member. Other participants are not workers.
4. **Associated with a parish or school** means any one of the following:
- (a) Auspiced activities conducted on parish/school premises.
 - (b) Auspiced activities not conducted on parish/school premises but involving children.
 - (c) Organisations which are not auspiced by the parish/school which use parish/school facilities. Agreement to the protocol is a condition of their continued use of the facility.
 - (d) Organisations which are not auspiced by the parish/school which use its name or where the Parish Priest or Principal is part of the managing body and children are involved. Agreement to the protocol is a condition of their continued use of the name or ongoing membership.
 - (e) Other organisations which the employer determines may be seen as a parish activity should an adverse circumstance arise.
- The protocol does not apply to building sites where the builder has taken site **possession** for the duration of the building works.
5. Those **deliberately excluded** are:
- (a) Those with a statutory exclusion in all circumstances, ie registered teachers, sworn police not under suspension, those under 18 years of age, and visitors.
 - (b) An 18 or 19 year old student volunteer where the volunteer work is at or has been organised by their educational institution.
 - (c) At the discretion of the employer:
 - Those who have applied for a WWCC but have yet to receive a Notice.
 - Those undertaking certain categories of work as set out in the protocol, eg lectors, and thanksgiving counters.
 - Those undertaking other categories of work that do not involve children, for no more than 5 working days (or part thereof) in a calendar year.
 - A volunteer with an exemption under the Act engaged in work that involves children for no more than 5 working days (or part thereof) in a calendar year.

The Full Working With Children Policy follows -

Purpose

1. The purpose of this policy is to promulgate the Working with Children Act protocol.

This policy applies to all settings in the Diocese of Ballarat. It also applies in the Archdiocese of Melbourne and Diocese of Sandhurst.

Background – a summary of the Working with Children Act

2. Introduction

3.

The Working with Children Act (WWC Act), a scheme that the Government promotes as designed to create minimum standards across Victoria for those who work with ²children, is being phased in over 5 years.

It involves:

- (a) the screening of those involved in child related work for relevant criminal records (different from a Criminal Records Check) for convictions, findings of guilt, pending charges and offences against this and other Acts, as well as professional disciplinary records,
- (b) continuous monitoring and the triggering of reassessments should circumstances change, and
- (c) the issue of an assessment notice of 'not unsuitable' and an entitlement to undertake child related work, which is valid for 5 years.

A person can work pending the issue of a notice, referred to as a Working with Children Check (WWCC), provided they:

- (a) have applied for a WWCC; and
- (b) have not at any time been given a negative notice; or
- (c) have not been subject to reporting obligations under the Sex Offenders Registration Act, or an extended supervision order under the Serious Sex Offenders Monitoring Act.

4. Application

An individual will need to apply for a WWCC if:

- (a) They are an employee, a minister of religion or performing duties of a religious vocation, an officer of a body corporate, a member of a committee of management (unincorporated body, association) or partnership, self-employed person or volunteer;
- (b) They work in, or work in connection with, any of the 20 child-related occupational fields listed in the WWC Act (which includes religious organisations and hence all diocesan activities and schools);
- (c) The work usually involves (or be likely usually to involve) regular, direct contact with a child where that contact is not directly supervised;
 - Direct contact is physical contact, talking face to face or physically being within eyeshot.
 - Supervision must be immediate and personal. It does not require constant physical presence. For example, a person who is directly

² A child is a person under 18 years of age

supervising a worker may leave the room in which the worker is engaging in the work to make a phone call. The fact that the supervisor has left the room for a short period does not mean that the worker is no longer under direct supervision.

- (d) They are not exempted under the WWC Act. An individual does not need a WWCC if they are;
- under the age of 18 years,
 - a sworn police officer who has not been suspended from duty,
 - a teacher who has current registration with the Victorian Institute of Teaching (VIT),
 - a parent volunteer whose child is participating or ordinarily participates in the activity,
 - closely related to each child they have contact with in the child-related work,
 - an 18 or 19 year old student volunteer where the volunteer work is at or has been organised by their educational institution,
 - a visiting worker who does not ordinarily reside and perform child-related work in Victoria.

5. Assessment categories and outcomes

- Category 1 The Secretary of the Dept of Justice must refuse to give an assessment notice and issue a negative notice for a person on the Sex Offenders Register or subject to a supervision order under the Serious Sex Offenders Monitoring Act or who, as an adult, has been convicted or found guilty of sex offences against a child or been convicted or found guilty of a child pornography offence.
- Category 2 The Secretary must refuse to give an assessment notice and issue a negative notice for a person convicted, found guilty or who has charges pending regarding a broad range of offences, including other sex offences, violent offences, and drug offences, unless the Secretary is satisfied that issuing an assessment notice to the person would not pose an unjustifiable risk to the safety of children.
- Category 3 The Secretary must give an assessment notice for those convicted or who have charges pending for some offences under the WWC Act or who have been subject to findings of a prescribed body, eg VIT, unless the Secretary considers it appropriate to refuse to give an assessment notice.
- Category 4 The Secretary must give an assessment notice to all others.

There are rights of appeal through the Victorian Civil and Administrative Tribunal (VCAT).

6. The phased implementation of the scheme
The phasing in program, as it affects the dioceses, is in 3 overlapping stages.

- (a) 1 July 2006 to 30 June 2007
Foster carers, school crossing services, outside school hours care, family day care, school crossing services and overnight camps
- (b) 1 July 2006 to 31 December 2007
Schools
- (c) 1 July 2007 to 30 June 2008
Religious organisations (not previously covered)

Individuals lodge their application in person at participating Australia Post outlets.

7. Responsibility

The onus for complying with the WWC Act rests with both the individual and the person who engages the individual (and in our settings the ³Parish Priest is the employer of all involved in parish activities).

- (a) It is an offence for an individual to engage in child related work without an assessment notice and to engage in paid work with an assessment notice given in respect of volunteer work. It is also an offence for an individual whose circumstances change (relevant charges, findings of guilt and convictions and findings from VIT) not to notify their employer and the Department of Justice.
- (b) It is an offence for a person to engage an individual in child related work without a notice and to engage an individual in paid work where the person's assessment notice was given in respect of volunteer work.

Custodial sentences and fines are possible consequences of breaches.

8. Cost

There is no cost to volunteers. Our legal advice is that priests, sisters and brothers who are members of religious institutes should apply as volunteers. The fee for others including diocesan priests is \$70.

Policy response

- 9. Protecting children from sexual or physical harm is a fundamental requirement of all social arrangements and the Church is fully committed to ensuring that children are so protected while in its settings. While the Act has protecting children from sexual or physical harm as its objectives, many people are exempt from requiring a WWCC, many offences which go to a person's character are not taken into account and not all adverse findings are screened before a WWCC is issued. The Act may inadvertently lure employers⁴ and parents into a false sense of security. Possessing a WWCC does not in itself mean the person is suitable to be with children anymore than having a driver's license means that the holder is a good driver and that you would want to be a passenger in a car driven him or

³ In context of this paper, the term Parish Priest includes all Canonical Administrators of a parish.

⁴ In this context, those who engage are referred to as employers, even when it includes relationships that are not employment related, eg the person who engages a contractor or a volunteer, the bishop who appoints priests.

her in all circumstances. Appraising the suitability of those involved with children against a high standard, including those not required to possess a Check either because they are exempt or fall outside the ambit of this legislation, and constant vigilance remain an ongoing requirement of all involved.

10. The interdependent nature of the Church is a strong argument for the adoption of a single policy applying to all parts of the Church throughout the Province of Melbourne (State of Victoria). The Diocese will work with other parts of the Church in pursuit of a consistent policy position.
11. The diocese's policy is twofold. A **blanket approach** applies in parish, school and other settings frequented by children except where the controlling entity has internal capabilities of being able to interpret the Act in all its subtleties and concomitant mechanisms to support more selective arrangements eg the Vicar General's Office or a large agency such as the Catholic Education Office, where the **selective approach** applies. With both approaches the employer maintains control of record keeping.

Blanket approach (with parishes and schools in mind)

12. All persons over 18 engaged as workers, be they employees, contractors or volunteers (which includes clergy, other religious and Board members) **associated with a parish or school** are required to possess a WWCC unless they are **deliberately excluded**.
13. Employers are to examine all activities **associated with a parish or school** to determine the applicability of this protocol. The protocol applies to:
 - (a) Parish/school activities.
 - (b) Auspiced activities conducted on parish/school premises.
 - (c) Auspiced activities not conducted on parish/school premises but involving children.
 - (d) Organisations which are not auspiced by the parish/school which use parish/school facilities. Agreement to the protocol is a condition of their continued use of the facility
 - (e) Organisations which are not auspiced by the parish/school which use its name or where the Parish Priest or Principal is part of the managing body and children are involved. Agreement to the protocol is a condition of their continued use of the name or ongoing membership.
 - (f) Other organisations which the employer determines may be seen as a parish activity should an adverse circumstance arise.

The protocol does not apply to building sites where the builder has taken site **possession** for the duration of the building works.

14. Those **deliberately excluded** are:
 - (d) Those with a statutory exclusion in all circumstances, ie those with VIT registration, sworn police not under suspension, those under 18 years of age, and visitors⁵.
 - (e) An 18 or 19 year old student volunteer where the volunteer work is at or has been organised by their educational institution.

⁵ Where the visiting is not customary a WWCC is not required.

- (f) Those departing from the workplace prior to the expiration of the lodgement window.
- (g) At the discretion of the employer and applied in a common sense manner with a focus on risk:
- Those who have applied for a WWCC but have yet to receive a Notice.
 - Those undertaking categories of work in the circumstances identified in attachments 1 and 2.
 - Those undertaking other categories of work that **do not** involve children, for no more than 5 working days (or part thereof) in a calendar year
 - A volunteer with an exemption under the Act engaged in work that **involves children** for no more than 5 working days (or part thereof) in a calendar year.
15. If a person receives an Interim Negative Notice, which may arise as a result of ongoing monitoring where the employer is so notified and/or advice from the worker, the employer is asked to contact the Vicar General in Diocesan settings or, if it is a school matter, the Director of Catholic Education and seek advice before taking any action. Organisations covered by this policy are required to contact the employer if someone they are responsible for is issued with an Interim Negative Notice.
16. It is expected that the vast majority of persons will agree to a WWCC where required. However, in circumstances where a person declines to have a WWCC on grounds that a WWCC is not required by law, the Vicar General or the Director of Catholic Education in the Education Office should be contacted for further advice.
17. Employers are obliged to sight either the WWCC or the application receipt before permitting the worker directly engaged by him or her to commence work. If the application receipt is what is sighted, the WWCC needs to be subsequently sighted if work is ongoing. It is not necessary for the worker to have their WWCC in their possession at all times. Employers should, however, check the Department of Justice website (paragraph 9) if their suspicions are aroused at any time.
18. Employers are to ensure that contractors who themselves engage other workers comply with this policy and monitor their compliance.
19. Parish registers need to contain the following information – Names of all workers including those of auspiced groups, WWCC Number and expiry dates. Registers maintained by organisations deemed connected with the parish need to be available for inspection by the employer or his delegate on request.
20. Periodic review of registers and application of this policy is required. Registers should be checked with matters such as the following in mind;
- (a) the ages of children and student volunteers supervising children,
 - (b) whether any volunteers have moved into paid work,
 - (c) whether any in deliberately excluded categories have changed roles, and
 - (d) the application of the five day rule. Note Below

The 5 day rule is where the worker is employed for no more than 5 working days (or part thereof) in a calendar year where the employer is in no doubt that:

- In the case of a non volunteer, the worker is not or could not engage in child related work, or
- In the case of a volunteer, the worker either has an exemption under the Act and pleads his or her case, or is not or could not engage in child related work.

It provides a measure of flexibility within a blanket coverage policy position. It has no standing under the legislation. See paragraph 15 (d) (iii) and (iv).

Rationale

21. The intention of narrowing coverage is at odds with the practicality and anxiety of implementing an Act with criminal sanctions.
22. Parishes and schools are places frequented by children. A cautious and tight policy is highly desirable and needed to ensure that the Act's weaknesses are not exploited in these settings.
23. Schools and parishes are settings where the employer cannot be expected to have a detailed knowledge of the Act.
24. The definition of child related work in the Act is difficult to interpret with any degree of certainty. The term 'regular direct contact with a child' in particular is not defined. An adult playing with children in a cricket team alongside a child is not child related work, yet coaching them is.
25. Implementing the parent exemption is problematic. The exemption applies only to the specific activity the child participates in. For example, a parent who coaches a school football team in which his or her child ordinarily plays is exempt from a WWCC even if his or her child is not present on particular days due to sickness or some other reason. However, a parent who coaches a school football team whose child plays football for another team at the same school is not exempt from a WWCC.
26. The parent definition is quite far reaching. A parent includes, the father and mother of the child, the spouse of the father or mother of the child, the domestic partner of the father or mother of the child, a person who has custody of the child, a person whose name is entered as the father in the register of births in the Register of Births, Deaths and Marriages, a person who acknowledges that he is the father of the child by an instrument of the kind described in the Status of Children Act, and a person in respect of whom a court has made a declaration of, or finding or order regarding the paternity of the child.
27. Our conclusion is that it is unlikely that parishes and schools could collect and keep current the intimate and detailed personal information concerning the worker and the children supervised or, even if they could, would want to.
28. There is no real acknowledgement in the Act that community settings rely on;
 - (a) volunteers and teamwork, the nature of which means that roles are constantly evolving and interchangeable, and
 - (b) being able to use available resources with a great deal of flexibility.

29. A Church is an association of people who share a particular belief system. Its presence is all pervasive. By its very nature its boundaries are loosely defined making the limits of its legal responsibility less certain than for most other organisations. More critically, the public's perception of the Church's responsibility often goes way beyond the Church's legal responsibilities, where adverse situations arise in its settings. Failure to comply with the WWCC Act would, in addition to any unfortunate consequences of the circumstances of the case, imperil the good name of the Church. Any shortcomings on the part of the Church may only reinforce existing prejudices and misconceptions already held by many in the community.
30. The Brisbane Archdiocese's experience with a similar policy response to similar legislation is that properly explained, volunteerism will not fall off as a result of a protocol such as this.

Selective approach

31. All priests available for supply and seminarians require a WWCC, unless they have VIT registration. The Vicar General is responsible for record keeping for diocesan priests. Provincials and Congregational Leaders are responsible for pursuing this position with their clergy and maintaining appropriate records.
32. The Catholic Education Commission of Victoria (CECV) policy determines which employees, contractors and volunteers working in the responding Catholic Education Offices require a WWCC and the Director of Catholic Education is responsible for record keeping. In other agencies and departments eg Centacare, the agency head determines, on advice from the Vicar General, which employees, contractors and volunteers require a WWCC. Depending upon the agency, either the agency head or the Vicar General is responsible for record keeping.

Rationale

33. All priests available for supply may be placed in a position where they are required to undertake child related work. While there are many priests who are not employers of school based staff or those involved in outside school hours child care, all priests with faculties could be asked at short notice to administer a parish which has a school and or an outside school hours child care activity. Pastores Emeriti who supply during an extended absence of the Parish Priest may find themselves in a position of practical, as distinct from canonical, control of the school and or an outside school hours child care activity. Seminarians may also be placed in a position where they are required to undertake child related work.
34. The larger agencies have either detailed knowledge of the Act or immediate access to it. Many of these settings are less fluid than parishes or schools and many are not involved with children in parishes or schools and a more nuanced approach is possible.

Enquiries should be directed to Mark Bromley, Business Manager, Catholic Diocese of Ballarat on 53377128

Categories of staff identified by the Vicar General\Business Managers of the responding dioceses, as ones which the employer at his discretion may choose not to require a WWCC in a parish setting (non school).

1. Eucharist and other ceremonial volunteers, eg Collectors, Lectors, Choristers, Extraordinary Ministers and others providing support to the celebrating priest and the worshipping community immediately before, during or immediately after Mass or other ceremonies. This is provided there are no children involved as altar servers or in the choir and they are under the direct supervision of a priest, eg an Extraordinary Minister will require a WWCC if his or her role extends beyond assisting the priest at Mass etc.
2. Planned giving counters, provided there are no children involved in the counting and the setting is not co-located with any child related work such as the Children's Liturgy
3. Members of the Finance Council, where that is their sole role.

Categories of staff identified by the Directors of Catholic Education of the responding dioceses, as ones which the employer at his or her discretion may choose not to require a WWCC in a school setting.

NIL