

<b>Working With Children and Criminal History Checks</b>		Document No:	HR-02
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Responsible Officer:	Manager People & Culture	Version No:	5
Authorised Officer:	Chief Executive Officer		

### Purpose

The purpose of this policy is to provide guidance on Criminal History (Police) Checks and Working With Children Checks (WWCC's) which are required for current employees, preferred applicants for positions, nominated volunteers, nominated contractors, and other unpaid workers at Surf Coast Shire Council (Council). Councillors are invited to abide by this policy, undertake a WWCC and have their details recorded with Council.

### Policy Principles

Council is committed to creating a child safe and child friendly environment where children and young people are respected, valued and encouraged to do their best. Council is also committed to meeting its legislated obligations and seeks to ensure that its people understand these obligations.

Criminal History Checks and WWCC's help reduce the potential of engaging individuals who may be a risk to children and young people, other vulnerable groups of people, and Council's reputation and assets.

The WWCC is a legal requirement under The Worker Screening Act 2020 (the Act) for those undertaking paid or voluntary child-related work in Victoria. The Department of Justice assesses a person's suitability to work with children by examining relevant serious sexual, physical and drug offences in a person's national criminal history and, where appropriate, their professional history.

The Working with Children Clearance is granted to a person under the Act if:

- they have been assessed as suitable to work with children
- there has been no information that, if the person worked with children, they would pose a risk to those children
- they are not prohibited from attempting to obtain, undertake or remain in child-related employment.

The Working with Children Clearance allows a person to do child-related work for five years, unless it is surrendered or revoked.

A Criminal History Check is a national record of all recorded criminal activities, police records, and conviction history information of an individual. Where there is a criminal record or a court outcome against an individual's name on the criminal database it is deemed disclosable according to the State's legislation, it will be released by the authorities.

## **Scope**

This policy applies to existing employees, potential employees (once they have been deemed to be a preferred applicant for a position) nominated volunteers and nominated contractors and other unpaid workers at Council.

Employees, volunteers, students or recruitment applicants that are under 18 years of age are exempt from this policy.

## **Policy**

Surf Coast Shire Council recognises its duty of care to children, young people, clients, employees, contractors, Councillors, volunteers and the public. Council will ensure that relevant checks are completed before engaging all new employees, nominated contractors or nominated volunteers and other unpaid workers at Council and that regular monitoring of these checks is carried out in line with this policy. Council will promote to its employees, nominated contractors and nominated volunteers that they are responsible for advising Council via their direct supervisor of any change in circumstances relevant to their WWCC or criminal history checks.

Council has taken a leadership position on this legislation by expanding our interpretation of the Act to cover all employees, volunteers and nominated contractors of Council and require them to have a WWCC. Council takes its responsibility in safeguarding children very seriously, and therefore set ourselves high standards regarding compliance with safety screening checks.

Councillors must adhere to the Victorian Child Safe Standards and related legislation. Councillors will respect, listen to and promote the rights of children and ensure behaviour and interactions with children are age appropriate, respectful and adhere to the behavioural expectations outlined in the Child Safe Standards.

## **Council's obligations**

Council will:

- Not employ or engage people in child-related work if they do not have Working with Children Clearance or are subject to orders under the Act, unless that person is exempt from the Act;
- Not allow people who are charged with, convicted or found guilty of sexual, violent or drug offences specified in the Act to work with or care for children while their application is processed or their WWCC is being reassessed;
- Check if an individual is not allowed to work with children and maintain the systematic review of checks in line with this policy;
- Check that any nominated contractor, has a valid check and is not prohibited from working with children;
- Ensure that a person who has a Negative Notice does not work with or care for children;
- Ensure that a person who has an expired WWCC does not work with or care for children;
- Ensure employees performing child-related work have an Employee WWCC;
- Ensure that all information obtained through checks required under this policy will be treated as confidential. The WWCC card or any related information will be stored in individual personnel files and accessible by the People & Culture team. In accordance with the Privacy and Data Protection Act 2014, personal information obtained through the WWCC process will only be used for its intended purpose.
- Keep a record of the employee or nominated volunteers WWCC and all correspondence that the organisation receives about that person in relation to their WWCC;
- Ensure that recruitment and selection practices follow the Child Safety Standards for child safe organisations;
- Ensure that individuals with privacy concerns are treated sensitively and fairly;

- Ensure that recruitment and selection practices follow the Victorian Child Safety Standards for child safe organisations;
- Council will not discriminate based on a disclosed criminal history check that is not relevant to the inherent requirement of the role.

## **1. Obligations of the individual**

Employees, nominated volunteers and nominated contractors must notify the Department of Justice and Community Safety within 21 days if their personal or contact details change as specified within the WWCC application process.

Employees that currently have a WWCC must record a copy of the card with the People & Culture team and ensure that Council is listed as their employer through the WWCC online portal.

It is the responsibility of the individual to renew their WWCC prior to its expiry. Council will enforce the intent and content of this policy if an employee fails to renew their WWCC.

Employees that cannot work because of an expired WWCC will not be financially compensated during this time, they will need to access leave entitlements or leave without pay unless the CEO, at their discretion advises otherwise.

## **2. New employees, nominated contractors and nominated volunteers**

Council, through the recruitment process will ensure that all new employees, and nominated volunteers provide to Council prior to any employment offer or commencement of duty:

- A current WWCC, with the Surf Coast Shire Council named as the employer or volunteering organisation (A Victorian Institute of Teaching (VIT) registration for applicable employees and volunteers).
- As per the Act, an International Police Check will be required for applicants who have lived overseas for 12 months or longer in one country for in the last 10 years. This is not applicable if the individual was travelling through countries, for example backpacking and only staying in countries for short periods of time, or if the individual was a minor.
- A complete national criminal history check if they have only worked/lived within Australia.

Council will comply with the requirement that WWCC / VIT checks are current for employees whose roles are engaged in child related work. Any offer of appointment will be conditional on the completion of a criminal history check or currency of a WWCC / VIT registration that is suitable and relevant for the role.

In obtaining a criminal history check, Council will only take into consideration any reported offences or misdemeanours that are relevant to the inherent requirements of the position and will ensure a fair and consistent process is in place to determine whether the results meet that requirements of the position.

All position descriptions and job advertisements will state that a suitable WWCC and international and/or national criminal history check is a requirement of the position.

Letters of offer will state that the offer of employment is made conditional on the completion of a criminal history check that is suitable for the position and a current WWCC.

Instructions for completing criminal history checks will be sent to prospective employees and volunteers prior to their commencement with Council.

Individuals with privacy concerns (for example around previous names or other details disclosed on a Police Check application form) can organise with Council to obtain their own Police Check

directly through Council's current services provider, who can redact certain details from final Police Check notices / certificates on request.

It is the responsibility of the Council officer engaging a nominated contractor to ensure that the relevant WWCC is provided to Council.

Any previously completed criminal history check will not be deemed as being valid. New employees and nominated volunteers must complete a criminal history check via the designated Council process.

Council reserves the right to deny employment or engagement, or revoke on an offer of employment or engagement, in instances where a satisfactory WWCC or criminal history check is not provided.

If an applicant is denied employment or engagement with Council because of the results of a criminal history check they will be informed that this is the reason for the rejection of their application.

### **3. Current employees, nominated contractors and nominated volunteers**

An existing volunteer or contractor without a valid WWCC that changes positions within Council must obtain a WWCC before commencing in that new position if it is a nominated volunteering or contractor role.

Any employee, nominated contractor, nominated volunteer or unpaid worker of Council who receives a negative notice (fails the WWCC) or has their WWCC card revoked, must advise their supervisor and a member of the People & Culture team immediately.

The Department of Justice and Community Safety may advise the People & Culture team that the WWCC check has not been passed or has been revoked. The employee has the right to appeal the Department's decision by applying to VCAT within 28 days of the date on the Negative Notice.

An employee, nominated volunteer or nominated contractor, or unpaid worker of Council who is issued with a negative notice or where their WWCC has been revoked cannot undertake any further child-related work until an investigation is complete, including a criminal history check, to ascertain the nature of the offence/s committed.

Whilst awaiting the outcome of the investigation in relation to an employee, and having given consideration to the nature and timing of the offence/s and outcome of the investigation, Council may:

- Stand the person down from their position, with Council to determine if this will be with or without pay;
- Attempt to redeploy the person into a vacant position if Council deems that this is appropriate; or
- Determine that the employee cannot reasonably fulfil the duties of their position and may terminate the employment of the person on this basis.

Whilst awaiting the outcome of the investigation in relation to a nominated volunteer or nominated contractor, Council will stand the volunteer or contractor down from their position, role and duties until the investigation is complete.

The investigation will involve the relevant Manager and the HR Coordinator considering whether the offence(s) precludes the person from carrying out the position or role. When assessing a candidate's suitability for a position, each case should be judged on merit and consideration is to be given to the relevance of the offence in relation to the position. The person in question will need to provide their Manager with complete records that are relevant to the investigation including any

disclosable court outcomes. The relevant Manager and the HR Coordinator will present a recommendation to the relevant General Manager on the suggested outcome.

Criteria used by the Australian Human Rights Commission will be applied the HR Coordinator when undertaking an assessment of the suitability of the person (to be engaged or continue to be engaged by Council) are as follows:

- The relevance of the criminal offence in relation to the role or placement
- The nature of the offence and the relationship of the offence to the particular role or placement for which the individual is being considered
- The length of time since the offence took place
- Whether the individual was convicted or found guilty and/or placed on a bond
- Whether there is evidence of an extended police record
- The number of offences committed which may establish a pattern of behaviour which renders the individual unsuitable
- Whether the offence was committed as an adult or a juvenile
- The severity of the punishment imposed
- Whether the offence is still a crime, that is, has the offence now been decriminalised
- Whether there are other factors that may be relevant for consideration
- The person's general character since the offence was committed.

Equal opportunity legislation stipulates that where, a person's criminal record makes it inherently inappropriate for the person to perform a particular job, a distinction, exclusion or preference on this basis will not constitute discrimination. Council will not discriminate on the basis of a disclosed criminal history and Working with Children Clearance that is not relevant to the inherent requirements of the role.

Employees, nominated volunteers and nominated contractors without valid Working With Children Clearance will be precluded from taking part in activities, functions or events that could result in that person coming in direct contact with a child as defined within this policy and the Act.

Neither the Act nor this policy removes the need for existing or prospective employees, nominated contractors and nominated volunteers of Council to comply with any requirement imposed by or under any other Act, or any other policy or procedure of Council, in relation to their employment with Council, in particular, the requirement to obtain criminal history checks in relevant positions.

#### **4. Checking WWCC's**

Council will monitor the validity of WWCC's on a 3-monthly basis for all employees and nominated volunteers. The investigative processes outlined in this Policy will be followed in the event of a person's WWCC being revoked.

#### **5. Designated Work Areas requiring WWCC's**

- a) Nominated Volunteers  
Nominated volunteers engaged by Council will be required to have a WWCC, It is acknowledged that various categories of volunteers are engaged by Council for very short periods, and during their tenure are under constant supervision and instruction by Council employees. Council's Volunteer Policy outlines which volunteers will be deemed to be nominated volunteers, for the purpose of this policy.
- b) Nominated Contractors  
Contractors working within the following areas are considered nominated contractors for the purposes of this policy:

- Labour hire employee that attends a Council site and undertakes work activities that would normally be undertaken by a council employed officer.
- Contractors or Consultants that are based from a Council site that complete duties on behalf of Council if those duties have direct contact with children.
- Contractors that are likely to come in to contact (physically or on-line) with children

Nominated contractors working within these work areas are required to have a WWCC.

Consideration will be given to whether or not the requirement for the Contractor to provide evidence of Working with Children Checks applies.

If a determination is made that WWCC are applicable to the service being delivered, the Supplier will be required to provide at Council's request and prior to commencement of any works, evidence (to Council's satisfaction) of WWCC for all of its employees (inclusive of any subcontractors) who in performing the contracted services.

All WWCC checks are to remain current for the duration of the engagement.

## 6. Cost of WWCC's

Council will reimburse new employees and Councillors joining the organisation for the cost of their WWCC.

The cost to renew WWCC's (which are required 5 years from the date of first acquiring) will also be paid by employees or Councillors and be reimbursed by Council.

Nominated contractors will be required to pay for their own WWCC.

Volunteer WWCC's do not incur a cost.

## 7. Definitions

Child/Young Person/Minor	Under the Child Safety and Wellbeing Act 2005 a child or young person is a person under 18 years of age
Child related work	Child-related work is work in any of the occupational fields (referred to in the Worker Screening Act 2020 as services, bodies, places or activities), which usually involves direct contact with a child.
Nominated Contractor	A person engaged in child related work by Council.
Direct contact	Oral, written or electronic communication, as well as face to face and physical contact with a child or young person.
High Risk Activity	Activities that involve assisting, supporting or providing services to a vulnerable person in a private or personal setting.
International Police Check	A check of international police records from the country of residence of the applicant that provides details of previous convictions and releasable court outcomes that is carried out for the purpose of employment, nominated voluntary work or occupation-related licensing or registration.
Interim Negative Notice	Preliminary assessment of a person's criminal record or professional conduct reports by the Department of Justice

and Regulation will indicate that the applicant has not passed the WWCC.

Negative Notice	A Negative Notice prohibits a person from doing child-related work, even if the person is supervised or qualifies for an exemption. The Negative notice is effective from the date indicated on the notice.
Child/Young Person/Minor	Under the Child Safety and Wellbeing Act 2005 a child or young person is a person under 18 years of age.
Criminal History (Police) Check	A check of national police and criminal history records that provides details of previous convictions and releasable court outcomes that is carried out for the purpose of employment, voluntary work or occupation-related licensing or registration.
Prescribed Work Area	Areas that have a requirement to hold a current approved WWCC as a condition of employment or volunteering in line with the tables included in clause 10 of this document.
Nominated Volunteer	A person that is undertaking unpaid work for the Surf Coast Shire Council in nominated positions.
Vulnerable Person	Includes infants, children, Aboriginal children, children from culturally and/or linguistically diverse backgrounds, children with a disability, gender diverse children, young and aged people, frail and people with a disability.
Victoria Institute of Teaching (VIT)	Individuals who hold registration with the Victorian Institute of Teaching (VIT), are exempt from the WWCC. This is because registered teachers are subject to extensive criminal history screening and weekly monitoring.
Working With Children Check (WWCC)	A WWCC allows a person to do child related work for 5 years and is issued by the Department of Justice and Community Safety. Checks screen a person's criminal records and any reports about professional conduct. Volunteer WWCC are only valid for volunteer work. Employee Checks are valid for both paid and volunteer work. All employees are required to have an Employee WWCC. Nominated contractors and nominated volunteers are required to have either a volunteer or employee WWCC.
Employee WWCC	Assesses the criminal history and relevant professional conduct findings of applicants and notifies Council of the outcome of the check and any findings that occur during the life of the check.
Volunteer WWCC	Assesses the criminal history and relevant professional conduct findings of applicants and notifies the listed volunteering organisation of the outcome of the check and any findings that occur during the life of the check. These checks are free to obtain for applicants.

## Related Procedures

- Recruitment & Selection Policy.
- Equal Opportunity & Workplace Behaviours Policy.
- Discipline Policy.
- Child Safe Policy.
- Volunteers Policy.
- Early Years Policy (Services Students/Family Helpers/Formal Volunteers).

## External reference documents

- Victoria Police Procedure for Organisations Conducting National Police Records Checks.
- State of Victoria, Commission for Children and Young People. (April 2022) A Guide for Creating a Child Safe Organisation. V5.0 <http://www.ccp.vic.gov.au/downloads/creating-a-childsafe-organisation-guide.pdf>
- Worker Screening Act 2020.
- Victorian Charter of Human Rights and Responsibilities Act 2006.
- Victorian Equal Opportunity Act 2010.
- Family Day Care requirements - Education and Care Services National Regulations 2012.
- Child Wellbeing and Safety Act 2005.
- Privacy and Data Protection Act 2014.

## Document History

<b>Version</b>	<b>Document History</b>	<b>Approved by – Date</b>
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