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SOURCE OF OBLIGATION

The Child Safety (Prohibited Persons) Act 2016 (SA) (the Prohibited Persons Act) and the Child Safety (Prohibited Persons) Regulations 2019 (the Prohibited Persons Regulations) aim to ensure that organisations are child safe environments by ensuring that people who work with, or care for, children have their suitability to do so checked by the Department of Human Services (DHS) Screening Unit.

Together, the Prohibited Persons Act and the Prohibited Persons Regulations create a Working with Children Check (WWCC) scheme.

People who are assessed as posing an unjustifiable risk to the safety of children will fail the Working with Children Check and the Prohibited Persons Act prohibits these people from working or volunteering with children. The Prohibited Persons Act imposes penalties for schools and individuals that do not comply with that Act.

The College, our staff, Volunteers, Contractors and others have a number of responsibilities and obligations under the Prohibited Persons Act and the Prohibited Persons Regulations, which are outlined in this policy.

KEY DEFINITIONS

Employed, employment and employee

Under the Prohibited Persons Act, a person (an **employee**) is **employed** by the College if the person:

- carries out work under a contract for services (i.e. a staff member or a contractor);
- carries out work as a minister of religion or as part of the duties of a religious or spiritual vocation; undertakes practical training as part of an educational or vocational course;
- carries out work as a volunteer; or
- performs unpaid community work in accordance with an order of a court.

Employment is construed accordingly.

Child-related work and work with children

The following services or activities relevant to the College are considered **child-related work** under the Prohibited Persons Act and Prohibited Persons Regulations:

- services or activities provided by religious organisations in the course of which the person has or would reasonably be expected to have contact with a child;
- childcare or child-minding services (including Out of School Hours Care);
- services or activities provided in the course of the operation of clubs and associations with a significant membership of, or involvement by, children;



- coaching or tuition services for children (instruction in education, sports, recreational activities, cultural awareness or activities, and arts and crafts);
- disability services for children;
- preschool, primary and secondary education services for children;
- health services for children;
- transport services for children; and
- the provision of traffic control at, or other supervision of, school pedestrian crossings.

A person will be taken to work with children if, in the course of their work, the person:

- provides a service or undertakes an activity that is child-related work; or
- carries on a business in which an employee works with children (whether or not the person themselves works with children).

A person is not engaged in child-related work if the person has contact with children only incidentally or that contact would not reasonably be expected to occur. For example, a person volunteering in an administrative role at a school who only has incidental contact with children is not engaged in child-related work.

In the context of and relevant to the College, it is our policy that the following are considered to work with children:

- College Board Members.
- All staff members.
- Teaching students undergoing practical training.
- Direct Contact Volunteers.
- Direct Contact Contractors.

Contact with children

Contact is defined in the Prohibited Persons Regulations as when a person:

- has physical contact with the child; or
- is in close physical proximity to the child; or
- communicates with the child (whether orally or by written, electronic or other means).

Minimum frequency for working with children

The Prohibited Persons Act sets a minimum frequency for working with children, under which a WWCC is not required. In general, a WWCC is only required once a person works with children for more than seven days (whether consecutive or not) in a calendar year.

However, the minimum frequency does not apply to persons who provide education or early childhood services, including preschool, primary or secondary education services, to children. It also does not apply if the child-related work involves overnight excursions/stays or close personal contact (such as toileting, bathing, etc) with children with disability.

This means that, regardless of how often they work at or for the College, all persons who:

- provide education services at the College;
- work or volunteer at overnight excursions/stays; or
- have close personal contact with children with disability



must have a WWCC, including all staff, Direct Contact Volunteers and Direct Contact Contractors.

However, other exclusions from the need to have a WWCC may apply, particularly for parent volunteers. See Key Exclusions: Who Does Not Need a WWCC.

Prohibited person

Prohibited persons are people who have been:

- issued with a prohibition notice;
- prohibited from working with children under a law of the Commonwealth or of another State or Territory;
- or found guilty of a prescribed offence.

It is an offence for a prohibited person to work with children (even if that work is for less than the minimum frequency for working with children or as a parent volunteer). It is also an offence for the College to employ a prohibited person in a prescribed position.

Prescribed offence

Prescribed offences are listed in the Prohibited Persons Act and the Prohibited Persons Regulations. They include:

- Serious sexual offences against a child.
- Serious violent offences against child, including murder, manslaughter and kidnapping of a child.
- Child exploitation offences, including trafficking of children, child sex offences outside Australia and using postal or similar services for child pornography or child abuse material or to groom or procure a child.

Prescribed position

Prescribed positions are defined in the Prohibited Persons Act and Prohibited Persons Regulations and include:

- a position in which a person works or is likely to **work with children**;
- a position in which a person is employed to provide preschool, primary or secondary education to a child (whether or not the person is a registered teacher).

In the context of and relevant to the College, the following are considered to be prescribed positions:

- College Board Members;
- All staff members, including administrative, temporary or casual staff;
- Direct Contact Volunteers; and
- Direct Contact Contractors.

Unique identifier

A unique identifier is a number that is issued by the DHS Screening Unit to:

- Each applicant for a WWCC; and
- Each person who is issued with a prohibition notice.

The unique identifier can be used to interrogate the DHS Screening Unit's records management system, to find out if a person has had a WWCC and if they are a prohibited person.

The DHS Screening Unit will issue the unique identifier by sending the person a notice that sets out their unique identifier.

WHO NEEDS A WORKING WITH CHILDREN CHECK

Before being appointed to, or engaged to act in, a prescribed position at the College a person must undergo a WWCC. This means that:

- College Board Members;
- all staff members, including administrative, temporary or casual staff;
- Direct Contact Volunteers, other than certain parent volunteers (see **Key Exclusions: Who Does Not Need a WWCC**); and
- Direct Contact Contractors

who have not had a WWCC in the past five years must apply for a WWCC prior to being offered employment, or being engaged by, the College.

Once employed or engaged by the College, the WWCC must be conducted again every five years.

It is an offence for the College to employ, or to continue to employ, a person in a prescribed position without having verified that a WWCC has been conducted in relation to the person in the past five years and that the person is not a prohibited person.

It is also an offence for a person to work with children without a WWCC having been conducted in the past five years.

It is our policy that, as a condition of engagement, External Education Providers must ensure that all relevant staff have undergone a WWCC.

KEY EXCLUSIONS: WHO DOES NOT NEED A WWCC

The Prohibited Persons Act and Prohibited Persons Regulations exclude certain persons from the requirement to undergo a WWCC before working with children. This includes:

- Persons aged under 14 (e.g. children aged under 14 undertaking practical experience at the College or who are involved in tutoring younger students); persons who work with children for less than the minimum frequency for working with children.
- Volunteer parents or guardians, provided that the volunteer service or activity includes their child (e.g. volunteering in their child's class), and that the service or activity does not consist of or include:
 - accommodation and residential services for a child other than their own child; or
 - close personal contact (such as using the toilet or activities involving nudity or exposure or partial exposure of the genitals, buttocks or breasts) with a child other than their own child;
- Persons who are residents of another state or territory who are providing a service or activity (including overnight excursions or stays, accommodation and residential services, and close personal contact with a child) provided that:
 - the person is not prohibited from working with children under a law of the Commonwealth or of another state or territory; and
 - if the person is resident of another state or territory that has a working with children check scheme, the person holds a current accreditation or is otherwise authorised under that scheme to work with children; and
 - the child-related work occurs in the course of an organised event and does not exceed 10 consecutive days.

HOW TO APPLY FOR A WWCC

Each individual is responsible for applying for their own WWCC, and for advising the DHS Screening Unit of changes to their information. To apply for a WWCC, or to update your information, visit the DHS Screening Unit website [here](#) and follow the prompts.

However, the College, as an employer, can apply for a WWCC on behalf of an **employee**. The College will apply for a WWCC on behalf of College Board Members, Direct Contact Volunteers. When applying for a WWCC on behalf of a person, the College must notify the person about whom the application is made.

Applications for a WWCC will be assessed by the DHS Screening unit even if the application is subsequently withdrawn.

However, the DHS Screening unit may refuse to conduct a WWCC if a WWCC has been conducted in the preceding five years and it resulted in the issue of a prohibition notice to the person that has not been revoked.

WHAT IS ASSESSED?

When conducting a WWCC, the DHS Screening Unit assesses a variety of information about a person against prescribed risk assessment criteria to determine whether or not the person poses an unacceptable risk to children. The information that is assessed includes:

- Criminal matters, including information relating to:
 - pending charges;
 - findings of guilt;
 - restraining orders and intervention orders.
- Information relating to disciplinary proceedings in which the person is a defendant/respondent, disciplinary action taken against the person and findings of misconduct.
- Child protection information, including information relating to cancellation of approval as a foster parent, notifications and other information that relates to the possible abuse or neglect of a child;
 - any information provided by the applicant in the application process; and
 - any other information requested by the DHS Screening Unit from a public sector agency or any other person.

The information above will be assessed against a number of risk assessment criteria, such as:

- The type of and circumstances surrounding any offending, disciplinary or child protection matter or other relevant behaviour.
- The presence of a pattern of offending, a disciplinary or child protection matter or other relevant behaviour (if any).
- The time elapsed since the offence/matter/behaviour occurred.
- The severity of a court-imposed penalty or disciplinary action.
- The age and vulnerability of the victim.
- The relationship to the victim and age difference.
- The applicant's own age at the time of the offence/matter/behaviour.
- The relevance of the offence to the role of the applicant.
- The applicant's conduct since the time of the offence/matter/behaviour.



OUTCOMES OF THE WWCC

Based on the information and assessment described in **What is Assessed?** the DHS Screening Unit determines whether the person is, or is not, to be prohibited from working with children.

If the assessment is that the person is not prohibited from working with children, no specific notice is given to the person or their employer. However, the online records management system records the person's unique identifier and the date of the WWCC.

If the person is not prohibited from working with children, the WWCC may be used in relation to any child-related work despite being conducted in relation to a particular position, service or activity or employer.

If the assessment is that the person is to be prohibited from working with children, the DHS Screening Unit issues a new **unique identifier** and a prohibition notice to the person. It is an offence for that person to work with children (even for less than the **minimum frequency for working with children** or as a parent volunteer) and it is also an offence for the College to employ that person in a **prescribed position**.

The prohibition notice remains in force until it is revoked.

REQUIREMENTS TO NOTIFY THE DHS SCREENING UNIT OF NEW OR CHANGED INFORMATION

Persons who have a unique identifier must notify the DHS Screening Unit if they:

- change their name or use another name;
- become prohibited from working with children under a law of the Commonwealth or another state or territory;
- become a registrable offender under the Child Sex Registration Offenders Act 2006 (SA); or
- are required to make a disclosure to their employer under the Child Sex Offenders Registration Act 2006 (SA).

When notifying the DHS Screening Unit of this information, the person must include their full name, date of birth and unique identifier and the name and address of each current employer.

Courts and police must notify the DHS Screening Unit if a person is charged with or found guilty of a prescribed offence.

Employers, such as the College, of a person employed in a prescribed position must notify the DHS Screening Unit if:

- they become aware of any assessable information in relation to the person (e.g. disciplinary proceedings or actions or findings of misconduct; mandatory notifications; etc);
- they become aware that the person is prohibited from working with children under a law of the Commonwealth or another state or territory;
- they become aware that the person is, or becomes, a registrable offender under the Child Sex Offenders Registration Act 2006 (SA); or
- the person makes a disclosure to their employer under the Child Sex Offenders Registration Act (SA).

Upon receiving any of the above information, if the person has had a WWCC in the past five years, the DHS Screening Unit may – on application of the person or an employer such as the College, or of its own motion – undertake an additional WWCC and reassess the person's suitability to work with children.

INFORMATION THAT MAY BE PROVIDED TO THE COLLEGE UNDER THE WWCC SCHEME

The DHS Screening Unit will take reasonable steps to notify the College if a person known to be employed by the College:

- becomes a prohibited person;
- has not had a WWCC conducted in relation to the person for more than five years;
- or has a change to their unique identifier.

STAFF, VOLUNTEER AND CONTRACTOR OBLIGATIONS

Prior to commencing work in a **prescribed position** at the College, new staff, Direct Contact Volunteers and Direct Contact Contractors must:

- provide sufficient information to the College to enable the College to apply on their behalf; and/or
- provide proof of their full name, address, date of birth and unique identifier so that the College can verify with the DHS Screening Unit that a WWCC has been conducted in the preceding five years and that the person is not a prohibited person.

See **How to Apply for a WWCC**.

After commencing work in a prescribed position at the College, all staff, Direct Contact Volunteers and Direct Contact Contractors must:

- apply for a new WWCC every five years or provide sufficient information to the College to enable the College to apply on their behalf; and
- immediately notify the DHS Screening Unit of any required information. See **Requirements to Notify the DHS Screening Unit of New or Changed information**;

To enable the College to meet its obligations under the WWCC scheme, it is the College's policy that, in addition to the above, all staff, Direct Contact Volunteers and Direct Contact Contractors must immediately notify the Head and immediately cease to work with children if they become a **prohibited person**.

If the parent or guardian of a child for whom a staff member, Direct Contact Volunteer or Direct Contact Contractor is performing child-related work requests the full name and unique identifier, the staff member, Volunteer or Contractor must provide it.

THE COLLEGE'S OBLIGATION

The College must, prior to employing or engaging a person in a **prescribed position** (unless the person does not need a WWCC - see **Key Exclusions: Who Does Not Need a WWCC**):

- obtain from the person proof of their full name, address, date of birth and unique identifier;
- verify, by interrogating the online records management system and obtaining a Certificate of Interrogation, that:
 - a WWCC has been conducted in relation to the person within the preceding five years;
 - and the person is not a prohibited person.
- not employ a person in a prescribed position who has not had a WWCC or who is a prohibited person.

For current **employees in prescribed positions**, the College must (unless the person does not need a WWCC - see **Key Exclusions: Who Does Not Need a WWCC**):

- verify at least once in every five year period, by interrogating the online records management system and obtaining a Certificate of Interrogation, that:

- a WWCC has been conducted in relation to the person within the preceding five years;
- and the person is not a prohibited person.
- not continue to employ the person in a prescribed position unless a WWCC has been conducted in the preceding five years; and
- not continue to employ a person in a prescribed position if the person is or becomes a prohibited person.

The College must immediately notify the DHS Screening Unit of any required information of which it becomes aware. **See Requirements to Notify the DHS Screening Unit of New or Changed information.**

RECORD KEEPING ABOUT WWCCS

It is the College's policy to keep records of each employee to whom the WWCC scheme applies including:

- Full name.
- Date of birth.
- Unique identifier.
- Certificates of interrogation relating to the verification of the person's WWCC.
- Any notifications received from the DHS Screening Unit about the person.

For more information, see the **Child Protection Record Keeping** section of this Program.

CONFIDENTIALITY AND PRIVACY OF WWCC INFORMATION

Trinity College will protect the privacy of persons whose WWCC information is received by the College in accordance with the Prohibited Persons Act and our **Privacy Program**.

Under the Prohibited Persons Act, parents or guardians can require a person who is performing child-related work with respect to their child to provide their full name and unique identifier, unless the person does not have to have a WWCC. If a parent or guardian requests that information from the College, it is the College's policy to:

- provide that information with the informed consent of the relevant employee; or
- refer the parent or guardian to the employee for them to provided that information directly to the parent or guardian.

Note that under the Prohibited Persons Act, any person may access and inspect the DHS online records management system.

See the **Confidentiality and Privacy** section of this program.

PENALTIES

It is an offence to:

- Work with children without a WWCC having been conducted in the preceding five years, unless you are not required to have a WWCC (see **Key Exclusions: Who Does Not Need a WWCC**).
- Work with children if you are a prohibited person.
- Fail to provide the parent of a child for who you are performing child-related work with your full name and unique identifier when requested by the parent.

- Employ or continue to employ a person in a prescribed position who has not had a WWCC conducted in the preceding 5 years or is not required to have a WWCC – see **Key Exclusions: Who Does Not Need a WWCC**).
- Employ or continue to employ a prohibited person in a prescribed position.
- Falsely represent that a WWCC has been conducted in relation to a person in the preceding five years or that a person is not prohibited from working with children.
- Make false or misleading statements when providing information under the Prohibited Persons Act.
- Disclose information obtained in the course of the WWCC scheme’s operation except for the purposes specified in the Prohibited Persons Act.
- Victimise a person on the grounds that the person has or intends to provide information under the Prohibited Persons Act.

There are serious penalties that apply for non-compliance with the WWCC Scheme obligations, including significant fines and jail terms for individuals.