



# Information sheet

## The blue card

### The Commission for Children and Young People and Child Guardian

The Commission is an independent statutory authority which promotes and protects the rights, interests and wellbeing of children and young people in Queensland.

The work of the Commission is regulated by the *Commission for Children and Young People and Child Guardian Act 2000*.

The Act requires people who work with children under 18 in particular categories of businesses, paid or voluntary employment to be screened – the Working with Children Check.

### What is the Working with Children Check?

The Working with Children Check is a detailed national check of a person's criminal history, including any charges or convictions.

The Commissioner also considers disciplinary information held by certain professional organisations for:

- teachers
- child care service providers
- foster carers
- nurses, midwives, and certain health practitioners.

In addition, information from police investigations into allegations of serious child-related sexual offences will be taken into account, even if no charges were laid because the child was unwilling or unable to proceed.

A person whose application is approved is issued with a positive notice (letter) and a blue card. If a person's application is refused, they are issued with a negative notice which prohibits them from working in the categories of employment or carrying on businesses defined by the Act.

If people do not comply with their obligations under the Act, penalties apply, including fines and terms of imprisonment.

### Who does the check apply to?

#### Paid employees and volunteers

All volunteers and paid employees who work with children or young people in the following categories of employment must apply for a blue card:

- residential facilities
- school boarding houses
- \*schools (other than teachers) including non-teaching staff
- \*child care
- churches, clubs and associations
- child counselling and support services
- private teaching, coaching or tutoring
- \*education programs outside of school
- child accommodation services including homestays
- \*religious representatives
- sport and active recreation
- \*emergency services cadet programs, and
- \*school crossing supervisors

Note: The categories marked with \* are retrospectively screened. This means all people who work in these categories of employment must hold a blue card regardless of when they started work.

A volunteer is a person employed by another person or organisation who is not paid, other than being reimbursed for out-of-pocket expenses.



## Businesses

A person carrying on the following regulated businesses must also apply for a blue card:

- counselling and support services
- private teaching, coaching and tutoring
- child care
- education programs outside schools
- religious representatives
- child accommodation services, including homestays
- providers of recreational activities such as sporting camps and programs (excluding amusement parks)
- operators of hostels for rural children

## How often must I work with children and young people to hold a blue card?

### Paid Employees

Paid employees must apply for the check if they work, or are likely to work, in regulated employment for at least:

- eight consecutive days, or
- once a week, each week, over four weeks, or
- once a fortnight, each fortnight, over eight weeks, or
- once a month, each month, over six months.

If an employer does not ensure that paid employees working in the categories screened hold or have applied for a blue card, they are committing an offence and may face fines or imprisonment.

Paid employees **can begin or continue to work** in regulated employment while **waiting for the outcome** of their blue card application.

If an employer knows or reasonably suspects that an employee who is **not** retrospectively

screened has a criminal history relevant to working with children or young people, they can apply for a blue card for that employee. The application form for this is a 'Current Employee blue card application form'.

### Volunteers

**From 17 January 2005**, all volunteers (unless exempt) must have a Working with Children Check and **hold a blue card before they start** volunteering in any area of regulated employment, regardless of how often they come into contact with children and young people.

However, volunteers (unless exempt) who started work and applied for blue cards **before 17 January 2005** can **continue to work** until whichever of the following happens first:

- one year has passed since the new requirement commenced (i.e. up to 16 January 2006)
- a negative notice is issued, or
- the volunteer's application is withdrawn.

Failure of the employer to comply with this obligation is an offence and may result in fines or imprisonment.

## How do I apply?

When you start a new job, renew an employment agreement, set up a business or volunteer to work with children and young people, you need to fill out an application form for a Working with Children Check. You may also need to apply if the nature or frequency of your work with children or young people changes.

### Paid employees and volunteers

The employer, volunteer organisation or education provider (where the applicant is a student) is responsible for applying to the

Commission for a Working with Children Check for paid employees and volunteers.

They must also sight the applicant's identification documents specified on the application form.

However, a prescribed person, i.e. a justice, a commissioner for declarations, a lawyer or a police officer, may sight the documents, but only if:

- the applicant's usual residence is more than 50km from the business address or the place used by the education provider for conducting courses, or
- the applicant has a disability that affects his or her mobility.

## Businesses

People carrying on a regulated business are responsible for applying for their own Working with Children Check. A prescribed person must confirm that they have sighted the original documents proving the applicant's identity by signing the declaration on the application form.

## Is anyone exempt from the check?

Yes. The following people do not need a blue card:

- children under 18 who are volunteers (except students required to work in regulated employment as part of their studies)
- parents\* who volunteer their services or conduct activities at a school at which their child is attending, as long as the child is under 18, and
- parents\* who volunteer their services or conduct activities through a church, club or association, or are involved in sport and active recreation, where their child is involved in the same or similar activity.

\*A 'parent' is the child's mother, father or another adult who has parental responsibility for the child.

Exemptions also apply to some employees such as registered teachers. For more information on exemptions, please see the Commission's website or ring Employment Screening Unit (for details go to back page).

## How much does the Working with Children Check cost?

A Working with Children Check is free for volunteers. Paid employees and those carrying on a regulated business must pay \$40.

## Will a person with a criminal history be refused a blue card?

A person with a criminal history will not necessarily be refused a blue card.

If a person's criminal history suggests they should not hold a blue card, the Commissioner will ask them to provide a submission on any police or disciplinary information held about them, explaining why they should not be refused a blue card.

The Commissioner assesses the submission, any references or other relevant material provided, the nature of the offence/s and circumstances surrounding the case before making a final decision.

The employer, volunteer co-ordinator or education provider is notified of the outcome of the person's blue card application, but any personal, police or disciplinary information is kept strictly confidential.

## What does the Commissioner consider when assessing an applicant with a criminal history?

When assessing a person's criminal history, the Commissioner considers:

- whether there are charges or convictions
- whether any offence is a serious offence (defined by the Act)
- when the offence was committed or alleged to have been committed
- the nature of the offence and its relevance to working with children or young people

- in the case of a conviction, the penalty imposed by the court and any reasons given if the court made no imprisonment order or no order disqualifying the person from holding or applying for a blue card, and
- any other relevant information relating to the offence or alleged offence.

A negative notice will be issued if a person has been convicted of a serious offence (other than an excluding offence - see below) unless they can satisfy the Commissioner that their case is an exceptional one, in which it would **not** harm the best interests of children to issue a blue card.

When assessing investigative or disciplinary information held about a person, the Commissioner considers a range of other factors required by the Act.

A list of serious and excluding offences is available on the Commission's website.

### **What if a blue card holder's criminal history changes?**

A person's criminal history changes if they are charged or convicted of a criminal offence, whether or not a conviction is recorded.

If a person has a change in their criminal history they must immediately notify their existing or prospective employer, volunteer organisation or education provider of the change.

The employer, volunteer organisation or education provider must not continue to employ the person without applying for a new Working with Children Check. Failure to do so is an offence.

If a person carrying on a regulated business has a change to their criminal history they must immediately notify the Commission.

If a blue card holder is convicted of a serious offence, they cannot start or continue in regulated employment or carry on a regulated business until a new card is issued. Failure to comply with this obligation is an offence and may result in penalties.

Changes to the Act from 17 January 2005 allow the Commissioner to let an employer know if an employee, volunteer or student is being reassessed

if the information is considered relevant to their work with children.

Where new information emerges about a person's criminal history (other than investigative information) the Commissioner must notify the employer whether the person has been charged or convicted with an offence, and whether it is a serious offence, a serious child-related sexual offence or a non-serious offence. No further details are provided about the information that has prompted the reassessment.

The employer is not entitled to dismiss the employee because of the notice given by the Commissioner. Instead, the employer should ensure their risk management strategy caters for this situation.

### **What if a person is charged or convicted of an excluding offence?**

If a person is charged with an excluding offence after they have lodged an application but before it has been decided, they are deemed to have withdrawn their consent to screening. The Commission will issue a withdrawal notice to the applicant and their employer or organisation if applicable.

If a person is charged with an excluding offence after they have received a blue card, the blue card is automatically suspended and they cannot begin or continue to work in regulated employment or carry on a regulated business until their 'Change of Criminal History Application Form' has been processed and a new card issued.

Suspension of a person's blue card does not stop them from working in non-regulated employment.

If an applicant has been convicted of an excluding offence they will automatically be excluded from holding a blue card if:

- they were sentenced to imprisonment for the offence or
- the judge made a disqualification order preventing them from holding a blue card.

In these situations the Commission is required to issue a negative notice.

## Can a person appeal if issued with a negative notice?

There is no right of appeal or review where a person has been issued with a negative notice for a conviction for an excluding offence where they were sentenced to imprisonment or a disqualification order was made. This means the person is banned for life from holding or applying for a blue card.

However, if an applicant is issued with a negative notice for any other kind of offence, the person is notified of the decision and the reasons for it. They then have the right to have the decision reviewed by the Children Services Tribunal, administered by the Department of Justice and Attorney General.

A negative notice is valid indefinitely unless cancelled by the Commissioner or on successful review by the Children Services Tribunal. However, the applicant may ask the Commissioner for the decision to be reviewed again after two years.

## How long is a blue card valid?

A blue card is valid for two years from the date it is issued unless it is cancelled earlier by the Commissioner. This may occur where there has been a change in criminal history, or the card has been suspended because the holder has been charged with an excluding offence.

The blue card is transferable across all categories of employment and businesses screened by the Commission. For example, if a person applies for the card as an employee and subsequently volunteers to work with children and young people in another capacity, the card will be valid for that purpose.

The Commissioner will notify the holder when their card is due to expire so they can apply for a renewal.

## What if I change my name or contact details or end my employment?

Blue card holders, applicants and those issued with negative notices must advise the Commissioner if their name or contact details change.

A person whose application is not finalised must also advise the Commissioner if their employment ends with the employer who applied for a blue card on their behalf.

The Commissioner must be notified of any changes within 14 days. Failure to do so is an offence and may result in a fine.

## What if my blue card is lost or stolen?

The Commissioner must be notified within 14 days. Failure to do so is an offence and may result in a fine.

## Can employers be sure that those with blue cards are safe to work with children?

No. Although employment screening is a vital child protection mechanism, the blue card is not a guarantee of a person's safety around children and is no substitute for appropriate risk management strategies.

Recent amendments to the Act require employers and people carrying on regulated businesses to develop and implement a risk management strategy to promote the wellbeing of children in their care and protect them from harm.

The strategy should cater for the following types of employees:

- a person who has started work pending the outcome of their blue card application
- a blue card holder
- a person in regulated employment who is not required to hold a blue card, and
- a person who the Commissioner is reassessing.

## If I am screened as a volunteer then get paid work do I need another check?

No. Although volunteers do not pay the application fee, if their status changes and they are in paid work in an area requiring screening when they reapply, they will have to pay \$40.

Blue cards must be renewed every two years.

## Is screening by other authorities (for example, local police) acceptable instead of a blue card?

No. A criminal history check arranged through the Queensland Police Service may not provide a full criminal history.

The Commission's Act overrides time limits which apply to some police checks and allows the Commissioner to access a person's full criminal history including their juvenile history and any charges.

It also allows the Commissioner to take into account information held by the Board of Teacher Registration, other professional bodies and investigative information relating to serious child-related sexual offences.

## Offences and penalties

There are a range of penalties for not complying with the legislation. For more information see the Commission's website.

**For more details about anything in this information sheet** see our website at [www.bluecard.qld.gov.au](http://www.bluecard.qld.gov.au) or call the Commission on 1800 113 611.

Telephone interpreting services are available on request by ringing the freecall number above.

Obligations	Maximum Penalty
<b>Employers</b> <b>Volunteers</b> - An employer must not employ a volunteer who does not have a current positive notice and blue card. <b>Paid employees</b> - An employer must not employ or continue to employ a paid or prospective paid employee if they work, or are likely to work, in regulated employment for at least the minimum threshold (see frequency test). An employer must not employ a person in regulated employment where: <ul style="list-style-type: none"> <li>an application for a blue card has been lodged, but the employee has withdrawn their consent, or</li> <li>the employer has been given notice that the employee has been charged with an excluding offence; or</li> <li>the employer is aware that a negative notice has been issued to the employee and is current.</li> </ul>	\$750  \$750  \$750  \$7500  \$7500
<b>Employees</b> A person must not apply for, start or continue in, regulated employment: <ul style="list-style-type: none"> <li>if they hold a current negative notice; or</li> <li>if they have withdrawn their consent or are taken to have withdrawn their consent to employment screening.</li> </ul>	\$37500/ 5 yrs imp  \$7500/ 1 yr imp
<b>Regulated Businesses</b> A person must not carry on a regulated business without a current positive notice and blue card	\$37500/ 5 yrs imp

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