

# The Shopfront

## YOUTH LEGAL CENTRE

### The Working with Children Check

#### 1 What is the Working with Children Check?

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The Working With Children Check (WWCC) is a screening process to help ensure people employed and volunteering in child-related roles do not pose an unacceptable risk to children.

Anyone over 18 who wants to work or volunteer in a child-related role must apply for a WWCC clearance before starting work.

It is an offence to work or volunteer in child-related work without a WWCC clearance or a valid application for clearance. It is also an offence for an employer to employ someone in a child-related role without a valid WWCC clearance or application for clearance.

The check is administered by the Office of the Children's Guardian NSW. It includes a national criminal history check and also a review of any findings of misconduct involving children.

The result of the check will either be a *clearance* or a *bar*.

A *clearance* allows you to work or volunteer in child-related work. A *clearance* is valid for 5 years and can be used for any paid or unpaid child-related work in NSW.

A *bar* means it is an offence to work or volunteer with children in a child-related role for 5 years. If you are already working with children, you must immediately remove yourself from this work.

#### 2 What is child-related work?

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##### 2.1 Who is a child and what is child-related work?

Under the *Child Protection (Working With Children) Act 2012*:

- A *child* is anyone under 18.
- *Child-related work* is work that involves direct (physical or face to face) contact with children. Contact with children must be a usual part of the work, not just incidental to the work.
- *Child-related work* also includes some roles that don't involve direct contact with children, e.g. being the head of an adoption agency or out-of-home-care provider.
- Child-related work includes *paid* or *volunteer* work (including student placements).

##### 2.2 Child-related work involving direct contact with children

"*Child-related work*" includes working in the following types of services (*Child Protection (Working With Children) Act* section 6(2) and *Child Protection (Working With Children) Regulations*):

- (a) mentoring and counselling services for children (if the services are provided as part of a formal mentoring program provided by a government or non-government agency).
- (b) child protection services.
- (c) the provision of health care in wards of hospitals where children are treated and the direct provision of other child health services.

(d) clubs, associations, movements, societies or other bodies (including bodies of a cultural, recreational or sporting nature) providing programs or services for children. [This includes coaches and team managers. It does not include people like referees, sporting officials or grounds persons whose work doesn't usually involve contact with children for extended periods without other adults being present.]

(e) respite care or other support services for children with a disability.

(f) education and care services, child care centres, nanny services and other child care. [This includes au pairs and babysitters, but doesn't include babysitters under a private arrangement.]

(g) schools or other educational institutions (other than universities) and private coaching or tuition of children.

(h) sporting, cultural or other entertainment venues used primarily by children and entertainment services for children. [This includes working at the venue, but doesn't include merely providing food or equipment at the venue.]

(i) juvenile detention centres and juvenile correctional centres [This also includes work as a supervisor or case manager of children on community justice placements, e.g. a Juvenile Justice Officer.]

(j) any religious organisation where children form part of the congregation or organisation.

(k) refuges used by children, long term (i.e. 3 weeks or more) homestays for children, boarding houses or other residential services for children, and overnight camps for children.

(l) transport services especially for children, including school bus services and taxi services for children with a disability, and supervision of school road crossings.

(m) any other service for children prescribed by the regulations. [This includes youth workers at government or non-government agencies.]

## 2.3 Other types of child-related work

"Child-related work" also includes some roles that have no direct contact with children (*Child Protection (Working With Children) Act* section 6(2) and *Child Protection (Working With Children) Regulations*). Examples include:

- managers, board members or certified supervisors of children's services,
- authorised carers (e.g. foster carers),
- school cleaners,
- people providing ongoing counselling, mentoring or distance education for children using any form of communication that does not primarily involve direct contact,
- workers handling confidential information in an organisation that delivers services to children.

## 2.4 Exceptions

There are some people involved in child-related work who may *not* need a working with children clearance. See *Who does not need to apply for a WWCC clearance?* below.

# 3 Who does and doesn't need to apply for a WWCC clearance?

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## 3.1 Who needs to apply for a WWCC clearance?

You will need to apply for a WWCC clearance if:

- you are over 18 years old; and
- you work in one of the categories of “child-related work” (see part 2.2 and 2.3 above), and
- you do not fall within one of the exceptions (see part 3.2 below).

It doesn't matter what your employment status is. The WWCC applies to:

- paid employees,
- self-employed persons,
- sub-contractors,
- volunteers,
- trainees undertaking practical training as part of an education course,
- working ministers of religious organisations,
- authorised carers (e.g. foster carers) and other adult persons living in their home,
- potential adoptive parents,
- people who provide babysitting through an agency,
- people (including parents) working or volunteering at a kids' overnight camp.

### **3.2 Who does not need to apply for a WWCC clearance?**

Not all employees or volunteers in “child-related” work will need to apply for a WWCC clearance.

You will *not* need to apply for clearance if:

- you are under 18;
- you don't have daily contact with children (unless you are in a role like the ones mentioned in 2.3 above);
- you are undertaking administrative, maintenance or clerical work that does not involve extended contact with children (however, you may still need a WWCC clearance if you are handling confidential information relating to children);
- you are working for a short period of time (no more than 5 working days in a calendar year and you have minimal contact with children);
- you are working only with children who are close relatives;
- your work is carried out in the form of an informal domestic arrangement (e.g. babysitting for your neighbours);
- you volunteer as a parent (or on behalf of a parent) for a specific task at a school or at a sporting activity (however, you are *not* exempt if your volunteer work is part of a formal mentoring program or involves intimate personal care of children with a disability, or includes an overnight camp);
- you are a private health practitioner and your work does not typically involve contact with children without one or more other adults present;
- you are a co-worker of a child or a work supervisor or work placement supervisor of a child;
- you are an interstate worker who is working in and visiting New South Wales for the purposes of child-related work, and you hold an interstate WWCC in the jurisdiction where you normally live or are exempt from such a check in that jurisdiction, and the period of child-related work in NSW does not exceed a total of 30 days in a calendar year.

## 4 How to apply for a Working with Children Check

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### 4.1 What type of clearance do I need?

There are two types of WWCC clearance available:

- Volunteer clearance: this allows you to engage in unpaid child-related work.
- Non-volunteer clearance: this allows you to undertake both paid and unpaid work.

Both are valid for up to 5 years.

### 4.2 Can I apply?

If you are a “disqualified person”, you cannot apply for a WWCC unless you have successfully applied for an “enabling order”. See Parts 5 and 9 of this fact sheet.

### 4.3 When do need to I apply?

You usually need to apply for clearance *before* you start work.

Under the *Child Protection (Working with Children Act)*, an employer cannot hire you unless you already have clearance or you have recently applied.

An employer must check and confirm that you have received clearance, or have lodged a valid application, before you can start work. They must also keep a record of your relevant details.

### 4.4 How do I apply?

1. First, apply online at the Office of the Children’s Guardian Website. The online form is quite simple and quick to complete. You can download the form here: <https://wwccheck.ocg.nsw.gov.au/Applicants/Application>
2. You will then get an email with an application number.
3. Go to a Service NSW Centre and:
  - give them your application number,
  - provide 3 forms of identification:
    - 1 commencement of identity document (e.g. birth certificate or Australian passport);
    - 1 primary use in the community document (e.g. driver licence); and
    - 2 secondary use in community documents (e.g. Medicare card, student ID, utility bill)
  - pay a fee of \$80 if you are going to be engaging in paid work (there is no fee for a volunteer clearance).

For information about ID requirements, see <https://www.kidsguardian.nsw.gov.au/child-safe-organisations/working-with-children-check/applicant/proof-of-identity>

There appear to be no arrangements allowing you to verify your identity online instead of attending in person. There are some limited exceptions, mainly for authorised carers and other types of people who live interstate: <https://www.ocg.nsw.gov.au/child-safe-organisations/working-with-children-check/applicant/other-application-processes>

### 4.5 What will be considered in my application?

When you apply you will need to provide authorisation for a criminal record check, a criminal history check and other enquiries that might be relevant to whether you pose a risk to children.

See our fact sheet on *Convictions and criminal records* for more information about convictions, criminal records and criminal histories.

The WWCC involves a full review of your national criminal history including:

- Convictions (whether spent or unspent) (*for the Working with Children Check, a conviction includes a finding of guilt, even if a formal conviction was not recorded*);
- Criminal charges (whether heard, unheard or dismissed);
- Juvenile records.

The Office of the Children's Guardian will also look at any workplace misconduct findings against you.

#### **4.6 How long does it take?**

Once you have provided proof of identity at a Service NSW Centre, you can receive your results within a few days, or it may take longer. You should wait four weeks before enquiring about your application's progress.

The most common reasons for a longer waiting time are:

- The application form was not completed correctly, or
- There is police or disciplinary information about you that must be retrieved and considered before determining your eligibility, or
- You have a common name and extra work is required to match the name with the correct criminal and workplace records.

#### **4.7 Request for further information**

If you have applied for clearance you may be asked to provide more details about certain things to the Office of the Children's Guardian to help them decide on your application. They can ask you about a previous offence or any other matter which is considered relevant to the application.

If you do not respond in writing within 3 months, and have not provided a reasonable excuse for not replying then your application may be cancelled.

If the Office of the Children's Guardian is thinking of not granting clearance, they need to tell you in writing and give you reasons saying why it was not granted. They do not have to do this if you are a disqualified person. The Office of the Children's Guardian must give you an opportunity to make a submission about their proposed decision.

#### **4.8 Interim bar**

The Office of the Children's Guardian can impose an interim bar on you while your application for clearance is pending (or after granting clearance, if they become aware of new information).

They may do this if they think you may pose a risk to the safety of children. They must notify you in writing if an interim bar is imposed.

An interim bar will prevent you from engaging in child-related work.

An interim bar will last for 12 months, or until it is revoked by the Office of the Children's Guardian, or until you are granted clearance at a later date.

#### **4.9 What happens when the WWCC is complete?**

You will receive an email.

If you have been cleared, this will include your clearance number. Give your clearance number to your employer so they can check it online.

If your clearance is refused, you will be notified in writing. Your employer or proposed employer will also be notified.

If your clearance has been refused (or you have an interim bar), see parts 8-10 below.

## 5 Offences which disqualify you from WWCC clearance

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If you have been convicted of certain types of offences as an adult, this may disqualify you from getting WWCC clearance altogether.

[Other types of convictions, or misconduct findings, may mean that a risk assessment needs to be done before clearance can be granted. See Part 6 of this fact sheet for details.]

### 5.1 What does it mean to be convicted?

For the purposes of the WWCC, “*convicted*” means where you have been found guilty of an offence or an offence has been proven. This includes if you have pleaded guilty.

This includes a situation when you have been found guilty without any conviction being formally recorded (e.g. dealt with under section 10 of the *Crimes (Sentencing Procedure) Act*).

“Spent” convictions can also be taken into account as part of the WWCC.

For more information about these terms, see our fact sheet on *Convictions and criminal records*.

### 5.2 Disqualifying offences

If you have been *convicted* of one of the following offences below, *and the offence was committed when you were aged 18 or over*, you are a “*disqualified person*”.

If you are an adult and have been *charged* with one of the following offences, you will be considered a “*disqualified person*” until the matter is finalised in court. If you are found *not guilty* or the charges are withdrawn, you will no longer be a disqualified person.

If you are a “*disqualified person*”, you will fail the WWCC and cannot work in child-related employment.

Disqualifying offences are set out in Schedule 2 of the Act:

<https://legislation.nsw.gov.au/view/html/inforce/current/act-2012-051 - sch.2>

These include the following types of offences. For some of these offences, you will be a disqualified person only if the victim was a child. For other offences, the age of the victim doesn't matter.

- Murder
- Manslaughter of a child except as a result of a motor vehicle accident;
- Intentional wounding/Intentional causing of grievous bodily harm to a child (this does not include an offence of reckless grievous bodily harm or wounding);
- Abandoning or exposing a child under 7 years;
- Sexual assault offences (including assault with intent to have sexual intercourse, attempted sexual assault) and offences involving sexual touching and sexual acts (which used to be called indecent assault and acts of indecency);
- Common law offences of rape or attempted rape;
- Sexual intercourse/attempted intercourse with a child under the age of 16;
- Sexual touching of children under 10 or those between 16 and 18 under special care
- Procuring or grooming child under 16 for unlawful sexual activity;
- Persistent sexual abuse of a child;
- Sexual intercourse/attempted intercourse with a young person between 16 and 18 under special care;
- Sexual touching of a young person between 16 and 18 under special care.

- Incest or bestiality charges;
- Sexual servitude offences;
- Kidnapping (except if the offence was committed by a parent of the child);
- Child prostitution offences;
- Causing injury to a child at the time of birth;
- Voyeurism;
- Publishing indecent articles;
- Installing a filming device to observe a child;
- Some offences involving child pornography and “child abuse material”;
- Forced labour of someone under 18;
- Child trafficking;
- Sexual offences against children outside Australia.

If you are unsure whether or not you are a disqualified person, you should get legal advice.

### **5.3 What about offences committed as a juvenile?**

If you have been found guilty of one of the above offences and you were under 18 when you committed the offence, you are not a disqualified person.

However, if you have been *charged* with one of these offences as a juvenile (regardless of the outcome of the case) you will have to undergo a risk assessment. See part 5 of this fact sheet for more details.

### **5.4 What about AVOs?**

Having an apprehended Violence Order (AVO) out against you does *not* make you a disqualified person and does not automatically trigger a risk assessment.

This is different to the old (pre-2013) WWCC system, which took into account AVOs made for the protection of children.

The Office of the Children’s Guardian *may* decide to conduct a risk assessment if they find out about AVO applications against you and they are concerned that you might pose a risk to children. See *Situations where a risk assessment may be conducted* below.

## **6 Risk assessments**

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### **6.1 What is a risk assessment?**

Even if you are not a disqualified person, you might need a risk assessment before you can get a Working With Children Check.

You may have to undergo a risk assessment if you were charged with certain types of offences (even if found not guilty!), if you have had misconduct findings against you, or if there is other evidence to suggest that you might pose a risk to children.

### **6.2 Situations requiring a risk assessment**

The Office of Children’s Guardian *must* do a risk assessment in the following situations:

- If you were *charged* with a *disqualifying offence* as a *juvenile* (under 18), regardless of the outcome of the proceedings. See part 5 of this fact sheet for a list of disqualifying offences.

- If you were *charged* with a *disqualifying offence* as an adult and you are not already a disqualified person (e.g. if you were found not guilty) See part 5 of this fact sheet for a list of disqualifying offences.
- If you have ever been *charged* with any of these offences (whether or not you are found guilty):
  - Intentional wounding or causing grievous bodily harm to a child;
  - A sexual offence committed against or in the presence of a child;
  - Spiking drinks/food with the intention to commit an offence;
  - Assault at school;
  - Stalking/intimidation/harassment with intent to cause fear;
  - Cruelty to animals;
- If you have ever been *charged* with any of these offences (unless you have been found *not guilty*):
  - Abandoning a child;
  - Child abuse/neglect;
  - Serious animal cruelty.
- If you have been *convicted* of any of these offences:
  - Intentional wounding or causing grievous bodily harm to a child (when the offender was a child)
  - Using poison to endanger or injure a child (when the offender was an adult)
  - Common assault against a child
  - Child pornography (when the offender was an adult)
  - Causing damage or destruction by fire or explosives.
- If you have been charged or convicted of offences involving violence or sexual misconduct sufficient to indicate a *pattern of behaviour* that warrants investigation as to whether it may cause a risk to children.
- If a “reporting body” has made a finding of misconduct against you. This includes a sex offence involving (or in the presence of) a child, sexual misconduct involving a child (including grooming), or serious physical assault of a child.

Reporting bodies include government departments and agencies, licensing authorities, religious institutions, out-of-home care agencies and employers working in child-related sectors.

Reporting bodies have to report certain findings of misconduct to the office of the Children’s Guardian. For more information on what types of misconduct can be reported, see <https://www.ocg.nsw.gov.au/child-safe-organisations/reportable-conduct-scheme/fact-sheets>
- If there has been an investigation after a notification by a “reporting body” and the Office of the Children’s Guardian has found that you pose enough of a risk to the safety of children to consider an interim bar.

### 6.3 Situations where a risk assessment *may* be conducted

The Office of the Children’s Guardian *may* (but doesn’t have to) do a risk assessment in other situations.

For example, even if you haven’t been charged with any of the offences listed in Schedule 1 or Schedule 2, they might suspect that you pose a risk to children due to other criminal charges, apprehended violence orders, or allegations made against you.



They may also do a risk assessment if they find out that your clearance was granted based on wrong or incomplete information.

#### **6.4 What is considered in a risk assessment**

The Office of the Children's Guardian must not determine that an applicant does not pose a risk to the safety of children unless the Children's Guardian is satisfied that:

- a reasonable person would allow his or her child to have direct contact with the applicant that was not directly supervised by another person while the applicant was engaged in any child-related work, and
- it is in the public interest to make the determination.

If the Office of the Children's Guardian is completing a risk assessment, the law requires them to consider certain things including:

- the seriousness of any matters and your total criminal record;
- the length of time since it occurred;
- the age and vulnerability of the victim(s);
- the relationship between you and the victim(s);
- the difference between you and victim(s);
- whether you knew or could have known the victim was under 18;
- your conduct since the offence(s);
- your age at the time of the offence(s) and your current age;
- the likelihood of the offences being repeated;
- the impact on children of the offences being repeated;
- any other matters the Office of the Children's Guardian considers necessary;

If you fail the risk assessment, you will be barred from working with children.

#### **6.5 How long does a risk assessment take?**

The risk assessment process is often complex and can take varying lengths of time to complete.

The process can take more than 6 months, depending on how your application is prioritised by the Office of the Children's Guardian and the nature and location of records involved.

The Office of the Children's Guardian will keep you informed throughout the process and will make all reasonable attempts to complete the risk assessment process as soon as practicable.

## **7 If you are granted clearance**

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### **7.1 Length of clearance**

If you are granted clearance it will last for 5 years (unless it is cancelled or surrendered).

If your clearance is due to expire within 3 months, you can submit an application for renewal.

Once clearance is granted, the Office of the Children's Guardian has an ongoing monitoring program to make sure you are still entitled to have clearance to work with children.

The Office of the Children's Guardian keeps a Working With Children register with the names of people who are cleared to work with children, their clearance numbers, and their type of clearance.

## 7.2 Notification of change in details

Once you receive your clearance, you will need to notify the Office of the Children's Guardian of any changes in your personal details including your name, address, and contact details. This must be done within 3 months of the changes occurring. If you do not provide these updates without a reasonable excuse, you could be guilty of an offence with a maximum penalty of \$550.

There is no need to apply for a new clearance when moving from one employer to another. However, an amendment to the Act (which has not yet come into effect) will require a clearance holder to notify the Children's Guardian when their employer or proposed employer changes.

## 7.3 Ongoing monitoring

A person with a Working With Children Check clearance will be subject to ongoing monitoring for relevant new criminal records for the 5-year life of the clearance.

Some records will trigger a risk assessment by the Office of the Children's Guardian, which may lead to the clearance being cancelled or suspended.

If you have a WWCC clearance and you are charged with a criminal offence, you do not have to let the Office of the Children's Guardian know because there is continuous monitoring.

## 7.4 Cancellation of clearance

If the Office of the Children's Guardian becomes aware that you are a disqualified person or if they believe you would pose a risk to children, they must cancel your clearance.

If this happens, you will be notified in writing and should be given the reason for the decision. If the Office of the Children's Guardian knows who your employer is, they will also tell them about the cancellation. You may be able to appeal or re-apply: see parts 8-10 below.

# 8 Review or appeal if clearance is refused or cancelled

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## 8.1 Review by NSW Civil and Administrative Tribunal (NCAT)

If your clearance has been refused or cancelled, you may apply to the NSW Civil and Administrative Tribunal (NCAT) for a review of that decision.

You need to apply within 28 days from when you were notified of the decision.

You can also apply to NCAT for a review of an interim bar, but only if it has been in force for at least 6 months.

For information about NCAT see [www.ncat.nsw.gov.au/](http://www.ncat.nsw.gov.au/).

## 8.2 People who cannot apply to NCAT

You cannot apply to NCAT if:

- you have ongoing criminal charges for a “disqualifying offence” and that was the reason for refusal. You can only appeal this decision when those proceedings have been finalised; or
- you have been convicted as an adult of a serious offence listed in section 26 (e.g. murder of a child, sexual assault of a child, sexual intercourse with a child under 16, distributing child abuse material), and
  - you were sentenced to full-time imprisonment, or
  - you are still on a community-based order for that offence (e.g. a bond, community correction order, intensive correction order).

If you are concerned about your eligibility to apply for review, you should seek legal advice.

### 8.3 What must NCAT consider?

When considering your application, the Tribunal must consider the same kind of things that the Office of the Children's Guardian considers when conducting a risk assessment.

### 8.4 Appeals from NCAT

If you are unhappy with the Tribunal's decision, you may be able to appeal to the District or Supreme Court of NSW. You should get legal advice before you decide to appeal.

## 9 Enabling orders

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### 9.1 What is an enabling order?

If you are a disqualified person, you may be able to apply to NCAT for an enabling order.

An enabling order says that you are *not* to be treated as a disqualified person. This means you will be deemed an eligible person, and you can go ahead with your application for a WWCC clearance.

### 9.2 Who can and cannot apply

You can only apply for an enabling order if you have been refused clearance, or your clearance was cancelled, because you are a disqualified person.

You *cannot* apply for an enabling order if you have been convicted as an adult of certain serious offences, and you were sentenced to full-time imprisonment or are still subject to a community-based order (see part 8.2 above).

If you are not sure whether you are eligible to apply for an enabling order, seek legal advice.

### 9.3 What the Tribunal will consider

The Tribunal must consider the same sort of things listed in part 8.3 above.

You will need to prove that you do not pose a risk to the safety of children.

The Tribunal *cannot* make an enabling order unless it is satisfied that:

- a reasonable person would allow his or her child to have direct contact with the affected person that was not directly supervised by another person while the affected person was engaged in any child-related work, and
- it is in the public interest to make the order.

### 9.4 Review of enabling orders

If you are unhappy with the Tribunal's decision, you may be able to appeal to the District or Supreme Court of NSW. You should get legal advice before you decide to appeal.

If you are granted an enabling order, the Office of the Children's Guardian can also apply to NCAT to revoke (remove) or vary (change) the enabling order.

## 10 Re-applying after clearance is refused or cancelled

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If you are refused clearance or your clearance has been cancelled (and you have not successfully appealed), then you will not be able to re-apply for another 5 years unless:

- charges that were pending at the time have been withdrawn or you have been found not guilty; or

- if you were a disqualified person or you had to do a risk assessment because of a conviction, and that conviction has been quashed (cancelled) or set aside; or
- if the Office of the Children’s Guardian allows you to reapply.

## 11 Who can access my information?

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When you have applied for clearance, your name and details will be placed on a Working with Children Register.

There are restrictions on who can access your personal information on the register. There are penalties for unauthorised access or disclosure of information.

Your employer can access information about whether you have clearance, but they will not be able to access information about your criminal history.

If you want to access any records that the Office of the Children’s Guardian may hold on you, you can submit an application. If your records are incorrect, you can ask to have them changed.

## 12 Where do I go for more information?

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### 12.1 Information and resources

General information about the Working With Children Check: <https://www.ocg.nsw.gov.au/child-safe-organisations/working-with-children-check>

Information for applicants (including how to apply, renew and update):  
<https://www.ocg.nsw.gov.au/child-safe-organisations/working-with-children-check/applicant>

Information for employers and links to information about schemes in other states:  
<https://www.ocg.nsw.gov.au/child-safe-organisations/working-with-children-check/employer/resources>

### 12.2 Office of the Children’s Guardian contact details

Working with Children Check Customer Service Team: phone (02) 8219 3777. Email enquiries via the website at: <https://www.ocg.nsw.gov.au/about-us/contact-us>

### **The Shopfront Youth Legal Centre Updated December 2021**

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*The Shopfront Youth Legal Centre is a service provided by Herbert Smith Freehills in association with Mission Australia and The Salvation Army.*

*This document was last updated in December 2021 and to the best of our knowledge is an accurate summary of the law in New South Wales at that time.*

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