



Government of **Western Australia**
Department of **Training**
and **Workforce Development**

DUTY OF CARE POLICY

For

**MINORS PARTICIPATING IN EDUCATION OR TRAINING AT
MURESK INSTITUTE**

EFFECTIVE: JULY 2021

VERSION: 7.0

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POLICY STATEMENT

This policy must be read in conjunction with the Procedures for Duty of Care of Minors Participating in Education or Training at Muresk Institute.

- a) The Department of Training and Workforce Development - Muresk Institute (subsequently referred to as the Muresk Institute) is committed to ensuring reasonable care is provided to students under 18 years of age, participating in an education or training program through an external provider on the Muresk Institute site to ensure their safety and welfare. The duty is to take such measures as are reasonable in all circumstances to protect students from risks of harm that reasonably ought to be foreseen. This requires not only protection from known hazards, but also protection from harm that could foreseeably arise and against which preventative measures can be taken.
- b) Muresk Institute staff are administrative staff only and are not employed in a teaching or supervisory capacity. External providers using, or seeking the use of Muresk Institute facilities (including the accommodation facilities) to deliver an education or training program to students, that includes students under 18 years of age, are required to address the duty of care requirements contained in this policy.
- c) The Muresk Institute General Manager must ensure:
 - the suitability of external providers in delivering an education or training program to students under 18 years of age on the Muresk Institute site;
 - a management plan is developed and is followed by the external provider in line with the duty of care requirements outlined in this policy; and
 - Muresk Institute staff are informed of the duty of care requirements and liabilities as outlined in this policy.

SCOPE

This policy applies to

- all Department employees based at the Muresk Institute site; and
- external providers using, or seeking the use of Muresk Institute to deliver an education or training program to students, that includes students under 18 years of age.

PRINCIPLES

Any education or training program involving minors poses a level of risk and as such an increased duty of care is required. Duty of care is a legal concept that has its origins in common law. The common law is a collection of principles that has been established over time by the courts. The duty of care principle not only underpins, but to a large extent drives, most education and training provider policies and practices.

The duty of care required is to take all reasonable steps to ensure the well-being of the student under 18 years of age. All reasonable steps are not a guarantee against mishaps occurring. There are differences in the amount of attention an external provider would devote to satisfy duty of care requirements. For example, a student in a classroom receives continuous attention, whereas a student in the workplace or on a break between classes, or in the accommodation staying overnight, is not under direct continuous supervision. However, in both circumstances, the external provider has duty of care responsibilities.

BACKGROUND

The Muresk Institute is a multi-tenanted, multi-functional vocational training and tertiary education facility. Students and other adults stay at Muresk, either on long term leases or in short stay accommodation, in order to access courses or other events being held on site that are being delivered by external providers.

The State of Western Australia, as the education authority, owes a non-delegable duty of care to students under 18 years of age, regardless of the person performing that duty. The standard of care owed to students under 18 years of age participating in education or training through an external provider at Muresk Institute and whether or not that duty of care has been breached will be a question of fact depending on all of the circumstances. The age of the student, type of activities and particular circumstances of the individual student will be relevant.

This policy addresses how Muresk Institute and its staff, and external providers and their staff, manage and discharge their duty of care to students under the age of 18 years who are participating in an education or training program run by the external provider at Muresk Institute.

DEFINITIONS

Caring

Caring for students may assume different meanings depending on the context. Examples include (but are by no means limited to) not putting students at risk by doing something or failing to do something that could cause the student to suffer injury or harm, taking precautions, intervening to prevent known or reasonably obvious hazards from causing injury or harm, following safety procedures and providing adequate instructions to students.

Compulsory school age

Attendance at school is compulsory in Western Australia between the ages of six and seventeen. From 1 January 2008 persons in their 17th year must be in school, training, or have a job until the end of that year, or meet other minimum requirements for graduation (as decided by the School Curriculum and Standards Authority.)

Duty of care

A duty imposed by law to take care to minimise the risk of harm to another.

External provider

A training provider, business, individual or school that uses the Muresk Institute facilities to deliver an education or training program.

Guidelines

Advice and examples of good practice for implementing policy. Guidelines are not compulsory.

Management plan

A document that describes how the proposed learning activities will be organised and managed to take account of the procedures set out in this document.

Minor

A person under the age of 18 years of age.

Muresk Institute site

The Muresk Institute site encompasses all the facilities available at Muresk Institute including the lecture theatres, laboratories, classrooms, accommodation, farm on campus and the recreational facilities such as the squash court and swimming pool.

Non-teaching staff

1. Staff from the external provider who are not employed in a teaching capacity.
2. Muresk Institute staff.

Reasonable care

A reasonable standard of care is determined by the practicalities of the situation, the need to meet the duty of care to all other persons who might be involved, the need to obey the law in all other respects and to observe the current community values about what is acceptable practice (rather than personal values).

Registered Training Organisation (RTO)

An organisation registered by a state or territory recognition authority to deliver training and/or conduct assessments and issue nationally recognised qualifications in accordance with the Australian Quality Training Framework.

Student under 18 years

In the context of this document student refers to a student under the age of 18 years undertaking an education or training program through an external education or training provider.

Supervisory team

Includes all employees from the external provider who have a role in managing and caring for students under 18 years of age during the program.

Teaching staff

In the context of this document teaching staff encompasses lecturers as specified in the *Western Australian TAFE Lecturers' General Agreement 2011* and teachers appointed by the Director General of Education pursuant to section 236(2) of the *School Education Act 1999*. This also includes employees of private RTOs who are employed to deliver training at Muresk Institute.

RELATED POLICIES AND OTHER RELEVANT DOCUMENTS

- *Procedures for Duty of Care of Minors Participating in Education or Training at Muresk Institute*
- *Criminal Screening Policy*
- *Department's Code of Conduct*
- *Duty of care for students (Department of Education policy)*
- *Duty of care VET for school students attending TAFEWA College programs (Department of Education)*
- *Records Management Policy*
- *Risk management*
- *State Training Provider Codes of Conduct*
- *TAFEWA Duty of Care for Minors Policy*
- *Occupational Safety and Health Policy*
- *Working with Children Checks*

RELEVANT LEGISLATION

- *Curriculum Council Act 1997*
- *Disability Discrimination Act 1992*
- *Equal Opportunity Act 1984 (WA)*
- *Occupational Safety and Health Act (1984)*
- *Occupational Safety and Health Regulations (1996)*
- *School Education Act 1999 ss 61(1) (b), 63(i)(c)(ii), 64(1)(e)*
- *School Education Regulations 2000, Regulations 38 & 39*
- *Western Australian College of Teaching Act 2004*
- *Western Australian College of Teaching Regulations 2004*
- *Workers Compensation and Rehabilitation Act 1981*
- *Working with Children (Criminal Record Checking) Act 2004 (WA)*
- *Working with Children (Criminal Record Checking) Regulations 2005 (WA)*
- *Vocational Education and Training Act 1996 (WA)*
- *Volunteers (Protection from Liability) Act 2002 (WA)*

REVIEW DATE

July 2023

CONTACT INFORMATION

Muresk Institute
 Service Resource Management
 Phone: (08) 9690 1556



Government of **Western Australia**
Department of **Training**
and **Workforce Development**

PROCEDURES

For

**DUTY OF CARE OF MINORS PARTICIPATING IN EDUCATION OR
TRAINING AT MURESK INSTITUTE**

EFFECTIVE: JULY 2021

VERSION: 2.0

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PROCEDURES

These procedures must be read in conjunction with the Policy for the Duty of Care of Minors Participating in Education or Training at Muresk Institute.

For the purposes of this document the procedures are separated into the following three areas: 1. reasonable care; 2. addressing the risks; and 3. roles and responsibilities.

Examples have been included in italic font and are not obligatory but are provided to support the decision making process where a procedure requires a professional judgement to be made.

1 REASONABLE CARE

1.1 What constitutes reasonable care will vary according to the circumstances.

The duty owed to students under 18 years of age is not a duty to ensure that no harm will ever occur, but rather a duty to take reasonable care to avoid harm being suffered.

A person suffering harm may be entitled to damages (compensation) if he or she can establish that a member of staff from an external provider or from Muresk Institute was negligent – that is, failed to take reasonable care – and the negligence was the cause of the person's harm (see Appendix A).

1.2 The following six factors, although not necessarily exhaustive, must be taken into consideration by the external provider and the Muresk Institute General Manager in assessing the 'reasonableness' of the level of care that will be provided to students under the age of 18 years.

1.2.1 The student's age, experience and capabilities

The level of care will be high where young students are concerned but may be less in the case of mature post-compulsory students.

1.2.2 Physical and intellectual impairment

A student with a disability is generally exposed to a higher level of risk of injury than a student without a disability. This may be because the student with a disability suffers from an impairment of motor skills or physical condition, a lack of physical inhibition or control, or it may be because the student has a limited appreciation of the possibility of danger. Where the physical or intellectual disability is such as to increase the risk inherent in undertaking an activity facilitated by an external provider, then the Muresk Institute General Manager must ensure that appropriate precautions are being taken by the external provider.

1.2.3 Medical condition

Where students are affected by particular medical conditions, for example, haemophilia, asthma, a heart condition, brittle bones or epilepsy, special care must be taken to protect such students if their condition is known and exposes them to a special risk of injury.

1.2.4 Behavioural characteristics

The level of care is increased in the case of students who are known to behave in a manner that increases the risk of injury.

1.2.5 Nature of the program being delivered by the external provider

Increased care is required in relation to activities with an inherently high level of risk of injury.

1.2.6 The nature of the Muresk Institute environment and premises

Unaccompanied students under the age of 18 years of age requiring accommodation to complete their studies through an external provider at the Muresk Institute should, where practicable, access accommodation at the Northam Residential College. This is a purpose built residential service of the Country High Schools Authority in close proximity to Muresk.

2 ADDRESSING THE RISKS

External provider responsibilities

21 External providers seeking the use of Muresk Institute facilities for students under 18 years of age, are required to provide the Muresk Institute General Manager with a management plan for the proposed program which provides account of:

- foreseeable risk;
 - environment;
 - capabilities of the supervisor/supervisory team;
 - students' capacity in relation to activities;
 - student injury and illness;
 - harassment and sexual harassment;
 - student management strategies;
 - communication strategies including during emergencies;
 - involvement of third parties used by the external provider;
 - management of third parties also using the Muresk Institute site; and
 - insurance issues.
- means of selecting staff and student participants; and
- information to be provided to legal guardian for consent.

- 22 The external provider must provide a management plan to the Muresk Institute General Manager for consideration at least two weeks before the relevant program is proposed to commence. A checklist of the requirements of this policy that must be addressed in the management plan by the external provider is provided as Appendix B.

Muresk Institute responsibilities

- 23 The Muresk Institute General Manager is required to assess the risk involved with the external provider's proposed program, and be satisfied that the management plan meets duty of care policy requirements. Consideration must be given to the following three factors:

2.3.1 The probability of the risk occurring

What is the likelihood of harm being suffered in the circumstances? Is it reasonably probable or so improbable as to be scarcely worth taking into account?

2.3.2 The magnitude of the risk

How serious may the consequences be if the risk is run and harm results? Are the potential consequences too great to justify running the risk?

2.3.3 The expense, difficulty and inconvenience involved in alleviating the risk.

What is to be gained by running the risk and allowing the external provider to undertake the program at Muresk Institute? What will be lost if it is not undertaken? What alternatives are reasonably available, and with what risks or other disadvantages are they attended? How easy is it to take precautions against the risk? The easier it is to take precautions, the greater the obligation to take those precautions.

- 2.4 The Muresk Institute General Manager is also required to establish:
- whether the booking is appropriate considering other courses or events being held on site at the time required; and
 - the suitability of the external provider, by taking into account the nature of the business and the history of their involvement in training programs with students under 18 years of age.
- 2.5 The Muresk Institute General Manager must ensure the external provider's management plan is linked to the Third Party User Access Tenancy Agreement, and any associated agreements or Memoranda of Understanding (MOUs) in place.
- 2.6 The Muresk Institute General Manager is responsible for monitoring third party compliance with the management plan.

3 DUTY OF CARE ROLES AND RESPONSIBILITIES

3.1 Teaching staff from the external provider

- 3.1.1 The teaching staff from the external provider must care or provide for the care of students under 18 years of age whilst students are on the Muresk Institute site.

When is a duty owed?

The duty of care owed to a student under 18 years of age by a member of the external provider's teaching staff automatically arises out of the teacher-student relationship. Such a relationship will exist whenever or wherever a student is involved in an education or training activity or the student is present for the purposes of the education or training activity.

The teacher-student relationship is not necessarily confined to students enrolled at the given education or training provider at which the member of the teaching staff is employed.

Example

A teacher who supervises a group of students from a number of different training providers or schools during a planned activity will owe a duty to all of the students under his or her control. This is to take such measures as are reasonable in all the circumstances to protect them from risks of harm that reasonably ought to be foreseen.

What does the duty encompass?

The duty encompasses a wide range of matters, including (but not limited to):

- a) provision of adequate supervision;
- b) ensuring grounds, premises and equipment are safe for use by students;
- c) implementing strategies to prevent bullying and other unlawful or antisocial behavior from occurring in school; and
- d) rendering medical assistance (if competent to do so) to, or seeking assistance from a medically trained person for, a student who is injured or becomes sick.

How may the duty be discharged?

In some circumstances a member of the teaching staff may only be able to discharge his or her duty of care by personally and directly caring for students whilst they are involved in education or training activities or are present for the purposes of such.

Example

Where a group of students are very immature and are known to 'play up' when supervised by anyone other than a member of the teaching staff.

In other circumstances however, it may be sufficient for a member of the teaching staff to entrust the care of students to a member of the non-teaching staff, a volunteer or a member of the teaching staff from another school or training provider.

3.1.2 Muresk Institute staff are administrative staff only and are not employed to provide a direct supervisory role to students. Muresk Institute staff may only be used for the supervision of students under 18 years of age in emergency situations upon the approval of the Muresk Institute General Manager.

3.1.3 When deciding whether a member of the external provider's non-teaching staff might personally care for students (without a member of the teaching staff also being present), teaching staff must satisfy themselves that the person is suitable for the task being assigned.

Teaching staff may breach their duty of care if reasonable care is not exercised in choosing an appropriate person to care for students.

3.1.4 When making this assessment, teaching staff must consider factors such as:

- number of students involved;
- age, experience, capabilities and behaviour of the students;
- nature of the Muresk Institute environment and premises;
- age, ability, experience and general suitability of the proposed carer; and
- the type of student activities involved, the relevant environment where those activities are occurring, and any inherent or associated risks.

3.1.5 The external provider must confirm that all staff from the external provider hold a Working with Children Check under the *Working with Children (Criminal Record Checking) Act 2004*.

3.1.6 External providers must ensure that all staff who will be involved in the program possess a current national police certificate and a current Working with Children Check.

External providers who are exempt from having a Working with Children Check and university staff members who are delivering an educational program to students under 18 years, should be requested to complete a Confidential Declaration (Appendix C) indicating whether or not they have any convictions or whether there are any circumstances or reasons that might preclude them from working with or near children.

- 3.1.7 Non-teaching staff are not generally responsible for personally caring for students unless they are employed as residential supervisors. Consequently, before entrusting non-teaching staff with the care of students, teaching staff must first obtain the agreement of such non-teaching staff to care for students (without a member of teaching staff also being present). Teaching staff must allow non-teaching staff and volunteers an opportunity to refuse a request to personally care for students, and respect any decision to refuse.

By reason of their job description form, some members of the non-teaching staff may be required to personally care for students under 18 years of age as part of their normal duties.

- 3.1.8 When non-teaching staff agree to personally care for students under 18 years of age (without a member of the teaching staff also being present), teaching staff must provide such non-teaching staff with clear instructions as to the level of care required.

3.2 Non-teaching staff from the external provider and Muresk Institute staff

- 3.2.1 The external provider's non-teaching staff and Muresk Institute staff (and indeed all members of the Muresk Institute community) must take reasonable care to avoid doing or not doing things that could reasonably be contemplated as causing injury to others (including students).

Examples

A Muresk Institute staff member should not leave a rubbish bin in the middle of a thoroughfare because it is reasonably foreseeable that someone could trip over it and suffer an injury.

A farm supervisor who sprays pesticides on Muresk Institute's farm should take reasonable care to ensure that the pesticide will not be harmful to the health of students.

A laboratory assistant should not leave dangerous chemicals lying around the science laboratory.

- 3.2.2 The external provider's non-teaching staff, unless employed as Residential Supervisors, and Muresk Institute staff do not have the same special duty or care relationship with students as do teaching staff, and unless they have been requested and have agreed to do so, are not responsible for personally caring for students under 18 years of age.

By reason of their job description form, e.g. Residential Supervisor, however some members of the external provider's non-teaching staff may be required to personally care for students as part of their normal duties.

3.2.3 The external provider's non-teaching staff and Muresk Institute staff have a right to refuse a request to personally care for students and to have their decision respected by the member of teaching staff.

A member of the external provider's non-teaching staff may have limited scope to refuse a request from a member of the teaching staff to personally care for students if, by reason of their job description form, the request relates to a task he or she is required to perform as part of his or her normal duties.

3.2.4 If the external provider's non-teaching staff or Muresk Institute staff agree to perform tasks that require them to personally care for students (e.g. supervise students without a member of the teaching staff also being present), they will owe the same duty of care to those students as the duty owed by teaching staff. In other words, they will be required to take such measures as are reasonable in all the circumstances to protect students from risks of harm that reasonably ought to be foreseen.

RELATED POLICIES AND OTHER RELEVANT DOCUMENTS

- *Duty of Care Policy for Minors Participating in Education or Training at Muresk Institute*
- *Criminal Screening Policy*
- *Department's Code of Conduct*
- *Duty of care for students (Department of Education policy)*
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- *Working with Children Checks*

RELEVANT LEGISLATION

- *Curriculum Council Act 1997*
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- *Equal Opportunity Act 1984 (WA)*
- *Occupational Safety and Health Act (1984)*
- *Occupational Safety and Health Regulations (1996)*
- *School Education Act 1999 ss 61(1) (b), 63(i)(c)(ii), 64(1)(e)*
- *School Education Regulations 2000, Regulations 38 & 39*
- *Western Australian College of Teaching Act 2004*
- *Western Australian College of Teaching Regulations 2004*
- *Workers Compensation and Rehabilitation Act 1981*
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- *Vocational Education and Training Act 1996 (WA)*
- *Volunteers (Protection from Liability) Act 2002 (WA)*

REVIEW DATE

July 2023

CONTACT INFORMATION

Muresk Institute
Service Resource Management
Phone: (08) 9690 1556

APPENDIX A: GENERAL LIABILITY

Liability in negligence may arise if an injured student can establish, on the balance of probabilities, that:

- a) at the time his or her injury was sustained, the person who was responsible for his or her safety owed the student a duty of care;

Members of the external provider's teaching staff will owe a duty of care whenever a student is involved in an education or training activity or present for the purposes of an education or training activity.

A duty of care will be owed by a member of the external provider's non-teaching staff or Muresk Institute staff whenever that person agrees to perform tasks which require him or her to personally care for students.

- b) the person who was responsible for the student's safety breached the duty of care by failing to exercise reasonable care for the safety and welfare of the student; and

The level of care is determined by balancing factors such as those set out in the reasonable care section of this policy, to determine whether the conduct of the person who was responsible for the student's safety on a particular occasion was responsible in the circumstances.

- c) as a result of the breach, the student suffered an injury which was reasonably foreseeable.

If the injury would have been sustained regardless of whether an act was done or neglected to be done, a claim in negligence may well fail. It would need to be demonstrated that, but for the failure to take due care, the injury would not have occurred.

In general, it is necessary to identify the nature of the step which the person who was responsible for the student's safety should have taken but did not take, and to establish by evidence or inference that, more probably than not, the taking of that step would have prevented or minimised the injury which was in fact suffered.

APPENDIX B: CHECKLIST FOR EXTERNAL PROVIDER MANAGEMENT PLAN

PURPOSE OF THE PROGRAM The educational purpose of the program is described.	<input type="checkbox"/>
1. ASSESS THE RISKS	<input type="checkbox"/>
1.1. ASSESS THE ENVIRONMENT The Muresk Institute site, and all resources provided at the site, have been assessed and are considered to be appropriate for the students. The management plan addresses how the external provider will manage the student's interaction with all third parties using the Muresk Institute site.	<input type="checkbox"/>
1.2. ASSESS TRANSPORT ARRANGEMENTS Arrangements have been made for the safe transport of students.	
1.3 ASSESS THE STUDENTS' CAPACITY <ul style="list-style-type: none"> • Program activities are suitable for the student's capacities. • Provision has been made for any student with special needs. • Up to date information regarding student health care maintenance and/or intensive health care needs have been obtained. 	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
1.4 ASSESS THE CAPABILITIES OF THE SUPERVISORY TEAM Collectively the supervisory team has the skills to: <ul style="list-style-type: none"> • identify and establish a safe environment; • identify and assess any actual, likely or potential risk/s; • effect a rescue and/or render emergency care; • monitor conditions before and during activities; and • monitor the physical well-being of students 	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
1.5 ASSESS THE INVOLVEMENT OF EXTERNAL PARTIES AND VOLUNTEERS <ul style="list-style-type: none"> • Competence of external parties or volunteers is established. • External parties conducting activities with students have applied for or hold a valid Working with Children Check card and hold a national police certificate (volunteers and external parties exempt from the Working with Children Check complete a Confidential Declaration on convictions or any circumstances or reasons that might preclude working with or near children). 	<input type="checkbox"/> <input type="checkbox"/>
2. ESTABLISH MANAGEMENT STRATEGIES Supervision strategies have been established and made known to students and staff for supervision, attendance, reporting problems, communication and excursions.	<input type="checkbox"/>
3. DEVELOP MEANS OF SELECTING STUDENT PARTICIPANTS Systems for identifying student participants have been established.	<input type="checkbox"/>
4. PROVIDE INFORMATION AND SEEK CONSENT <ul style="list-style-type: none"> • The legal guardians of student participants have been provided with full details of the program including nature of the Muresk Institute environment. • Student participation is subject to receipt of the signed parent consent form. 	<input type="checkbox"/> <input type="checkbox"/>
5. DEVELOP COMMUNICATION STRATEGIES Appropriate methods of communication, including emergency arrangements, have been developed.	<input type="checkbox"/>

<p>6. COMPLETE EMERGENCY RESPONSE PLANNING</p> <ul style="list-style-type: none"> • An appropriate emergency response plan has been established for general and individual emergencies. • The external provider has provided a list of names of participating students, contact telephone numbers, student medical information and relevant health care authorisations for supervisors and other staff involved. 	<input type="checkbox"/> <input type="checkbox"/>
<p>7. BRIEF STUDENTS AND SUPERVISORS</p> <p>Students and supervisors have been/will be fully briefed on responsibilities and obligations by the external training provider.</p>	<input type="checkbox"/>
<p>8. RETAIN PROGRAM RECORDS</p> <p>Relevant program details will be retained including any evaluations conducted.</p>	<input type="checkbox"/>
<p>9. GAIN APPROVALS</p> <p>Appropriate approvals have been gained.</p>	<input type="checkbox"/>

1. External Provider Chief Executive Officer (or equivalent) approval

I am satisfied that the management plan for this program meets duty of care policy requirements and will ensure that it is followed. I approve the students named in the attachment to participate in this program.

.....

Name	Title	Signature	Date
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2. Muresk Institute General Manager approval

I am satisfied that the management plan for this program meets duty of care policy requirements. I approve of the program being run at the Muresk Institute site.

APPENDIX C: CONFIDENTIAL DECLARATION

For persons who are not employees of the Department of Training and Workforce Development, the Department of Education or a State Training Provider (e.g. private training providers, private companies or volunteers attached to such) involved with the delivery of a program to students under 18 years of age on the Muresk Institute.

Please place a tick in one of the boxes below.

(1)	I declare that I <u>do not have</u> any convictions, circumstances or reasons that might preclude my working with or near children.	<input type="checkbox"/>
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or

(2)	I declare that <u>I do have</u> convictions, circumstances or reasons that might preclude my working with or near children. The nature of these convictions, circumstances or reasons is outlined below.	<input type="checkbox"/>

I certify the accuracy of the above information. I am aware that I may be required to provide a police clearance if it is considered necessary to verify the information provided.

Name:..... Date.....

Signature:.....

Company (if applicable):.....

Address:.....

Telephone:.....

External provider involved:.....