Western Australia

Working with Children (Screening) Act 2004

Compare between:

[11 Dec 2023, 03-p0-00] and [21 Dec 2023, 03-q0-01]

Working with Children (Screening) Act 2004

An Act —

- **to provide for procedures for checking the criminal record of people who carry out, or propose to carry out, child-related work;**
- **to prohibit people who have been charged with or convicted of certain offences from carrying out child-related work,**

and to provide for related matters.

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Working with Children (Screening) Act 2004*.

[Section 1 amended: No. 47 of 2022 s. 4.]

2. Commencement

(1) This Act comes into operation on a day fixed by proclamation.

(2) Different days may be fixed under subsection (1) for different provisions.

3. Principle that best interests of children are paramount

In performing a function under this Act, the CEO or the State Administrative Tribunal is to regard the best interests of children as the paramount consideration.

4. Terms used

In this Act, unless the contrary intention appears —

another jurisdiction means a jurisdiction other than this State (including jurisdictions outside Australia);

approved means approved by the CEO;

assessment notice means a written notice issued by the CEO under section 12(1)(a);

authorised officer means an officer designated under section 34K for the purposes of this Act or for the purposes of the provision in which the term is used;

CEO means the chief executive officer of the Department;

CEO (Justice) means the chief executive officer of the department of the Public Service principally assisting in the administration of the *Sentence Administration Act 2003* Part 8;

charge means a non-conviction charge or a pending charge;

child means a person who is under 18 years of age;

child care service means —

(a) an education and care service as defined in the *Education and Care Services National Law (Western Australia)* section 5(1); or

(b) a child care service as defined in the *Child Care Services Act 2007* section 4;

child-related business means child-related work carried out by an individual for gain or reward otherwise than in the course of child-related employment;

child-related employment means —

(a) child-related work carried out by an individual under a contract of employment or training contract (whether written or unwritten); or

(b) child-related work carried out on a voluntary basis by an individual under an agreement (whether written or unwritten) with another person; or

(c) child-related work carried out by an individual as a minister of religion or in any other capacity for the purposes of a religious organisation; or

(d) child-related work carried out by a student with another person that may or must be undertaken as part of the student's course of study;

child-related work has the meaning given to that term in section 6;

Class 1 offence has the meaning given to that term in section 7(1);

Class 2 offence has the meaning given to that term in section 7(2);

Class 3 offence means an offence (including an offence under a law of another jurisdiction) that is not a Class 1 offence or a Class 2 offence;

Commissioner means the person holding or acting in the office of Commissioner of Police under the *Police Act 1892*;

conduct review authority means a person or body, or a person or body of a class, prescribed by the regulations for the purposes of this definition;

conduct review finding or outcome means —

(a) a finding of a kind prescribed by the regulations; or

(b) an outcome of a kind prescribed by the regulations;

contact includes —

(a) any form of physical contact; and

(b) any form of oral communication, whether face to face, by telephone or otherwise; and

(c) any form of electronic communication,

but does not include contact in the normal course of duties between an employer and an employee or between employees of the same employer;

conviction has the meaning given to that term in section 8;

corresponding authority means a person or body in another jurisdiction that performs functions in the operation or administration of a corresponding law that substantially correspond to the functions of the CEO under this Act;

corresponding law means a law of another State or a Territory that —

(a) contains provisions that substantially correspond with the provisions of this Act; and

(b) is prescribed by the regulations as a corresponding law for the purposes of this Act;

criminal record, in relation to a person, means —

(a) every conviction of the person for an offence in this State or another jurisdiction; and

(b) every charge made against the person for an offence in this State or another jurisdiction;

criminal record check means the procedures set out in section 34 to enable the CEO to determine whether a person has a criminal record and, if so, to obtain details of that criminal record;

criminal records agency means —

(a) the Commissioner; or

(b) the Commissioner of the Australian Federal Police; or

(c) the Commissioner (however designated) of the police force of another jurisdiction; or

(d) a person or body that is —

(i) established under a law of another State, a Territory or the Commonwealth; and

(ii) prescribed by the regulations for the purposes of this definition;

Department means the department of the Public Service principally assisting the Minister in the administration of this Act;

education provider means —

(a) a university established or continued under an Act of this State, the Commonwealth, another State or a Territory; or

(b) the university company as defined in the *Bond University Act 1987* (Queensland) section 2; or

(c) a college or other vocational and training institution as defined in the *Vocational Education and Training Act 1996* section 5(1); or

(d) a school specified under the *Vocational Education and Training Act 1996* section 6(1); or

(e) an authorised non-university institution, a recognised Australian university or a recognised overseas university as defined in the *Higher Education Act 2004* section 3; or

(f) any other provider of an educational or vocational course prescribed by the regulations for the purposes of this paragraph;

educational institution for children includes any school as defined in the *School Education Act 1999* but does not include —

(a) an educational institution that is recognised or established as a university under a written law; or

(b) an educational institution prescribed by the regulations for the purposes of this paragraph,

even if that university or institution has a student who has not reached 18 years of age;

external government agency means —

(a) a government department established, constituted or continued under a law of another jurisdiction; or

(b) a body (whether incorporated or not), or the holder of an office, post or position, that —

(i) is established, constituted or continued for a public purpose under a law of another jurisdiction; and

(ii) under the authority of a law of another jurisdiction, performs a statutory function on behalf of the government of that jurisdiction;

government agency means —

(a) a department of the Public Service; or

(b) a body (whether incorporated or not), or the holder of an office, post or position, that —

(i) is established, constituted or continued for a public purpose under a written law; and

(ii) under the authority of a written law, performs a statutory function on behalf of this State;

or

(c) an external government agency;

interim negative notice means a written notice issued by the CEO under section 13AA(2) or (3);

negative notice means a written notice issued by the CEO under section 12(1)(b);

non-conviction charge means a charge of an offence that has been disposed of by a court otherwise than by way of a conviction, and has a meaning affected by section 8A;

officer of the Department means a person employed in, or engaged by, the Department whether as a public service officer under the *Public Sector Management Act 1994*, under a contract for services or otherwise;

outcome includes —

(a) the suspension, cancellation or termination of a licence, registration, authority or other form of authorisation; and

(b) the making of a determination or decision, or the issuing of a notice, order or other instrument, that prohibits, restricts, regulates or controls the conduct of a particular activity, or the performance of particular work, by a person;

parent, of a child, means a person —

(a) who is the father, mother, stepfather or stepmother of the child; or

(b) who at law has responsibility for —

(i) the long-term care, welfare and development of the child; or

(ii) the day to day care, welfare and development of the child;

or

(c) who is in a de facto relationship with a person referred to in paragraph (a) or (b); or

(d) who is specified as the child's prospective adoptive parent under the *Adoption Act 1994* section 20(b);

pending charge means a charge of an offence that has not yet been disposed of by a court;

public authority means —

(a) a department of the Public Service; or

(b) a body (whether incorporated or not), or the holder of an office, post or position, that —

(i) is established, constituted or continued for a public purpose under a written law; and

(ii) under the authority of a written law, performs a statutory function on behalf of this State;

or

(c) an entity established by or under the *Health Practitioner Regulation National Law (Western Australia)*; or

(d) any other person or body, or person or body of a class, prescribed by the regulations for the purposes of this definition;

relative, in relation to a child, means —

(a) the child's —

(i) parent, grandparent or other ancestor;

(ii) sibling;

(iii) uncle or aunt;

(iv) cousin;

(v) spouse or de facto partner,

whether the relationship is established by, or traced through, consanguinity, marriage, a de facto relationship, a written law or a natural relationship; or

(b) in the case of a child who is a descendant of Aboriginal people of Australia — a person regarded under the

customary law or tradition of the child's community as the equivalent of a person mentioned in paragraph (a); or

(c) in the case of a child who is a descendant of the indigenous inhabitants of the Torres Strait Islands — a person regarded under the customary law or tradition of the Torres Strait Islands as the equivalent of a person mentioned in paragraph (a);

relevant conduct, in relation to a conduct review finding or outcome, means the conduct that gave rise to the finding or outcome;

specified, in relation to a notice, means specified in the notice;

student means a person who —

(a) is undertaking an educational or vocational course of study with an education provider; and

(b) may or must undertake child-related work as part of that course;

work includes practical training undertaken as part of an educational or vocational course;

WWC purpose —

(a) means a purpose that is for, or connected with, the operation or administration of, or compliance with, this Act; and

(b) includes any of the following purposes —

(i) verifying the identity of a person who is, or who has at any time been, an applicant for an assessment notice under this Act;

(ii) considering and deciding an application for an assessment notice under this Act;

(iii) making a decision under section 12 because of the operation of section 17(3)(d) or 17B(2)(b);

(iv) considering and deciding an application for a negative notice to be cancelled;

(v) acting under section 20;

(vi) acting after the CEO has been given a notice that the CEO must treat under section 32(1) as an application for an assessment notice;

(vii) ongoing monitoring of information about a person's criminal record while the CEO is proceeding as described in subparagraph (ii), (iii), (iv), (v) or (vi) in relation to the person;

(viii) ongoing monitoring of information about a person's criminal record after an interim negative notice has been issued to the person;

(ix) ongoing monitoring of information about a person's criminal record while the person has a current assessment notice for the purpose of determining whether the person should continue to hold the assessment notice;

(x) taking any action in connection with a matter that is the subject of proceedings on an application under section 26.

[Section 4 amended: No. 19 of 2007 s. 71; No. 7 of 2010 s. 4; No. 11 of 2012 s. 52; No. 20 of 2018 s. 32; No. 48 of 2020 s. 88; No. 47 of 2022 s. 5.]

5. Managerial officers of bodies corporate licensed under *Child Care Service Act 2007*, status of for this Act

(1) In this section —

managerial officer, means —

(a) a managerial officer, as defined in the *Child Care Services Act 2007* section 3, in relation to a body corporate that holds a licence under that Act; or

(b) a person with management or control, as defined in the *Education and Care Services National Law (Western*

Australia) section 5(1), in relation to an education and care service under that Law.

(2) Despite any other provision of this Act, a person who is a managerial officer —

(a) is taken for the purposes of this Act to carry on a child-related business; and

(b) if the person does not carry out any child-related work as a managerial officer — is taken for those purposes to carry out child-related work in connection with a child care service.

[Section 5 amended: No. 19 of 2007 s. 72; No. 11 of 2012 s. 53.]

6. Child-related work

(1) Subject to this section, work is ***child-related work*** if —

(a) the usual duties of the work involve, or are likely to involve, contact with a child in connection with —

(i) a child care service; or

(ii) a community kindergarten registered under the *School Education Act 1999* Part 5; or

(iii) an educational institution for children; or

(iv) a coaching or private tuition service of any kind, but not including an informal arrangement entered into for private or domestic purposes; or

(v) an arrangement for the accommodation or care of children, whether in a residential facility or private residence, but not including an informal arrangement made by a parent of the child concerned or accommodation or care provided by a relative of the child; or

(vi) a placement arrangement or secure care arrangement under the *Children and Community Services Act 2004*; or

(vii) the performance by an officer, as defined in the *Children and Community Services Act 2004* section 3, of a function given to the officer under that Act; or

(viii) a detention centre, as defined in the *Young Offenders Act 1994* section 3; or

(ix) a community child health service; or

(x) a counselling or other support service; or

(xi) a religious organisation; or

(xii) a club, association or movement (including of a cultural, recreational or sporting nature and whether incorporated or not) with a significant membership or involvement of children, but not including an informal arrangement entered into for private or domestic purposes; or

(xiii) a ward of a public or private hospital in which children are ordinarily patients; or

(xiv) a baby sitting or child minding service, but not including an informal arrangement entered into for private or domestic purposes; or

(xv) an overnight camp, regardless of the type of accommodation or how many children are involved; or

(xvi) a transport service specifically for children; or

(xvii) a school crossing service, being a service provided to assist children to cross roads on their way to or from school; or

(xviii) a children's entertainment or party service; or

(xix) any other work of a kind prescribed by the regulations;

or

(b) the work is the exercise or performance by a person of a power or duty delegated to the person by the CEO under section 45.

(2) For the purposes of subsection (1), ***contact with a child*** does not include contact —

(a) between a person and a child who is employed by the person; or

(b) between a person and a child who are both employed by the same person,

if the contact is lawful and arises in the normal course of the child's employment.

(3) Subsection (1) does not apply to work that is carried out on a voluntary basis by a child unless the work is carried out in circumstances, or by a child of a class of children, prescribed by the regulations.

(4) Subsection (1) does not apply to work that is carried out in circumstances, or by a person of a class of persons, prescribed by the regulations.

(5) Regulations made for the purposes of subsection (3) or (4) may, without limitation, prescribe a class of children or a class of persons (as the case requires) by reference to criminal record checks or other forms of screening (however described) made under another Act prescribed by the regulations.

[Section 6 amended: No. 49 of 2010 s. 23; No. 47 of 2022 s. 6.]

7. Class 1 offence and Class 2 offence

(1) A ***Class 1 offence*** is —

(a) an offence against a provision listed in Schedule 1 (if the offence complies with any condition specified in that Schedule); or

(b) an offence under a law of another jurisdiction prescribed by the regulations to be a Class 1 offence; or

(c) an offence under a law of another jurisdiction the elements of which, if they had occurred in this State, would have constituted an offence of a kind referred to in this subsection; or

(d) an offence committed, or alleged to have been committed, before 1 January 2006 that is an offence of a kind referred to in this subsection; or

(e) an offence of attempting, or of conspiracy or incitement, to commit an offence of a kind referred to in paragraphs (a) to (d).

(2) A ***Class 2 offence*** is —

(a) an offence against a provision listed in Schedule 2 (if the offence complies with any condition specified in that Schedule); or

(b) an offence under a law of another jurisdiction prescribed by the regulations to be a Class 2 offence; or

(c) an offence under a law of another jurisdiction the elements of which, if they had occurred in this State, would have constituted an offence of a kind referred to in this subsection; or

(d) an offence committed, or alleged to have been committed, before 1 January 2006 that is an offence of a kind referred to in this subsection; or

(e) an offence of attempting, or of conspiracy or incitement, to commit an offence of a kind referred to in paragraphs (a) to (d).

(3) For the purposes of Schedules 1 and 2, an offence falls within the ambit of this subsection if —

(a) the victim of the offence is a child who has reached 14 years of age; and

(b) the age difference between the victim and the offender does not exceed 5 years.

[Section 7 inserted: No. 47 of 2022 s. 7.]

8. Conviction in relation to offence

(1) For the purposes of this Act, a reference to a conviction in relation to an offence committed by a person is a reference to any of the following —

(a) a court making a formal finding of guilt in relation to the offence;

(b) a court convicting the person of the offence, if there has been no formal finding of guilt before conviction;

(c) a court accepting a plea of guilty from the person in relation to the offence;

(d) a court acquitting the person following a finding under *The Criminal Code* section 27 that the person is not guilty of the offence on account of unsoundness of mind or an acquittal following an equivalent finding under the laws of another jurisdiction.

(2) For the purposes of this Act, a reference to a conviction includes a reference to a conviction that is a spent conviction.

(3) For the purposes of subsection (2), an offence becomes spent if, under a law in any jurisdiction, the person concerned is permitted not to disclose the fact that the person was convicted or found guilty of the offence.

(4) A reference to a conviction in this Act does not include a reference to a conviction that is subsequently quashed or set aside by a court.

[Section 8 amended: No. 47 of 2022 s. 8.]

8A. Expunged convictions to be taken to be non-conviction charges for the purposes of this Act

(1) For the purposes of this Act, a reference to a non-conviction charge includes a reference to an expunged conviction, as that term is defined in the *Historical Homosexual Convictions Expungement Act 2018* section 3(1).

(2) Subsection (1) applies despite anything in the *Historical Homosexual Convictions Expungement Act 2018*.

[Section 8A inserted: No. 20 of 2018 s. 33.]

9A. Application of certain provisions to students

(1) This section applies in relation to a student.

(2) If this section applies —

(a) section 9(3)(b) does not apply and the approved form may include provision for information about the student's education provider or the person who employs, or proposes to employ, the student in child-related employment; and

(aa) section 11(3A)(a) applies as if —

(i) the reference to an employer or proposed employer included a reference to the student's education provider; and

(ii) the reference to employ or propose to employ the applicant in child-related employment included a reference to the student being employed or proposed to be employed in child-related employment as part of a course with an education provider;

and

(b) section 11(3) applies as if the reference to the other person were a reference to the other person or the student's education provider; and

(c) sections 13A(1)(b), 13AA(4) and 20(6) apply as if —

(i) the reference to child-related employment by another person were a reference to employment by another person as part of a course with an education provider; and

(ii) the reference to the other person were a reference to the other person or the student's education provider;

and

(d) section 16 applies as if section 16(1) were deleted and the following subsection were inserted:

(1) If a person or a student's education provider (the ***employer***) who employs a student or procures employment for the student (the ***employee***) in child-related employment —

(a) reasonably suspects that the employee has been charged with or convicted of an offence; and

(b) reasonably believes that the charge or conviction makes it inappropriate for the employee to continue to carry out child-related work,

the employer may give written notice to the CEO of the suspicion and belief and the grounds on which the suspicion and belief are held.

and

(e) section 18(2) applies in relation to a student employed in child-related employment as part of a course conducted by an education provider as if —

(i) the reference to the person's employer were a reference to the person's employer or education provider; and

(ii) the reference to the employer were a reference to the employer or the person's education provider;

and

(f) section 29(1) applies to a student employed in child-related employment as part of a course conducted by an education provider so that the student is under an obligation to give the student's education provider written notice of a relevant change in the student's criminal record as soon as is practicable after the change occurs; and

(g) section 29(2) applies in relation to a notice received by the CEO from a student employed in child-related employment as part of a course conducted by an education provider so that the CEO may advise the student's education provider of the relevant change in the student's criminal record disclosed in the notice; and

(h) section 31(3) applies to a student offered child-related employment as part of a course conducted by an education provider so that the student is under an obligation to give the CEO and the student's education provider written notice of the things referred to in paragraphs (a) and (b) of that subsection; and

(i) section 34B(1) applies as if —

(i) a reference to an employer or proposed employer included a reference to the student's education provider; and

(ii) a reference to employ or propose to employ a person in child-related employment included a reference to the student being employed or proposed to be employed in child-related employment as part of a course with an education provider.

[Section 9A inserted: No. 7 of 2010 s. 5; amended: No. 47 of 2022 s. 9.]

9B. Education provider not to procure employment for certain students in child-related employment

(1) An education provider must not, for the purpose of enabling a student to complete the syllabus for a course conducted by the provider, procure employment for the student in child-related employment if —

(a) the education provider —

(i) is aware of a Class 1 offence or a Class 2 offence of which the student has been convicted; or

(ii) is aware that the student has a pending charge in respect of a Class 1 offence or a Class 2 offence;

and

(b) the student does not have a current assessment notice and has not made an application for an assessment notice that is pending.

Penalty for this subsection: a fine of $60 000.

(2) An education provider must not, for the purpose of enabling a student to complete the syllabus for a course conducted by the provider, procure employment for the student in child-related employment if the education provider is aware that a negative notice or an interim negative notice has been issued to the student and is current.

Penalty for this subsection: a fine of $60 000.

(3) An education provider must not, for the purpose of enabling a student to complete the syllabus for a course conducted by the provider, procure child-related employment for the student in connection with a child care service if the student does not have a current assessment notice and has not made an application for an assessment notice that is pending.

Penalty for this subsection: a fine of $12 000.

(4) An education provider must not, for the purpose of enabling a student to complete the syllabus for a course conducted by the

provider, procure child-related employment for the student if the education provider is aware that the student has withdrawn an application for an assessment notice.

Penalty for this subsection: a fine of $12 000.

(5) An education provider must not, for the purpose of enabling a student to complete the syllabus for a course conducted by the provider, procure child-related employment for the student with a person (an ***employer***) if —

(a) the student has previously been employed by the employer in child-related employment for the purpose of enabling the student to complete the syllabus for that course for more than 5 days in a calendar year; and

(b) the student does not have a current assessment notice and has not made an application for an assessment notice that is pending.

Penalty for this subsection: a fine of $12 000.

(6) Subsection (5) does not apply in relation to the procurement of child-related employment for a student if subsection (1), (2), (3) or (4) applies in relation to that procurement of employment.

(7) A person charged with an offence under this section may be convicted of another offence under this section if that offence is established by the evidence.

[Section 9B inserted: No. 7 of 2010 s. 5; amended: No. 47 of 2022 s. 46.]

Part 2 — Assessment notices and negative notices

Division 1 — Application for assessment notice

9. Application for assessment notice (child-related employment)

(1) A person who is, or is proposed to be, employed in child-related employment by another person may apply to the CEO for an assessment notice.

(2) The application is to be —

(a) in the approved form; and

(b) signed by the applicant; and

(c) accompanied by the fee prescribed by the regulations.

(3) The approved form must include provision for —

(a) identifying information to be given about the applicant; and

(b) information about the person who employs, or proposes to employ, the applicant in child-related employment.

(3A) The approved form may require the provision of any other information the CEO thinks fit.

(4) On receiving the application, the CEO may ask the applicant, by written notice or otherwise, to provide any further information or documents that the CEO reasonably needs to establish the applicant's identity or for a proper consideration of the application.

(5) The regulations may prescribe other requirements that apply in relation to an application or the consideration of an application.

[Section 9 amended: No. 47 of 2022 s. 10.]

10. Application for assessment notice (child-related business)

(1) A person who carries on, or proposes to carry on, a child-related business may apply to the CEO for an assessment notice.

(2) The application is to be —

(a) in the approved form; and

(b) signed by the applicant; and

(c) accompanied by the fee prescribed by the regulations.

(3) The approved form is to include provision for identifying information to be given about the applicant.

(3A) The approved form may require the provision of any other information the CEO thinks fit.

(4) On receiving the application, the CEO may ask the applicant, by written notice or otherwise, to provide any further information or documents that the CEO reasonably needs to establish the applicant's identity or for a proper consideration of the application.

(5) The regulations may prescribe other requirements that apply in relation to an application or the consideration of an application.

[Section 10 amended: No. 47 of 2022 s. 11.]

11. Withdrawal of application for assessment notice

(1) An applicant for an assessment notice may withdraw the application at any time before the assessment notice is issued to the applicant.

(2A) Subsection (1) does not apply if the CEO has issued an interim negative notice to the applicant that is current.

(2) The applicant is taken to have withdrawn the application if —

(a) the CEO cannot establish with certainty the applicant's identity, that the applicant is, or proposes to be, employed in child-related employment by another

person or that the applicant carries on, or proposes to carry on, a child-related business (as the case may be); and

(b) the CEO gives the applicant a written notice —

(i) that asks the applicant to provide, within a reasonable specified time, specified information or documents that the CEO reasonably needs to establish any matter referred to in paragraph (a) that is relevant to the application; and

(ii) that informs the applicant that, if the applicant does not comply with the request, the applicant's application will be taken to have been withdrawn;

and

(c) the applicant does not comply with the notice within the specified time; and

(d) the CEO gives the applicant a written notice stating that the applicant is taken to have withdrawn the application.

(3A) In addition, the applicant is taken to have withdrawn the application if —

(a) an employer or proposed employer identified by the applicant for the purposes of the application fails, within a period determined by the CEO to be reasonable in the circumstances, to verify that they employ or propose to employ the applicant in child-related employment; and

(b) the CEO gives the applicant a written notice that informs the applicant that if a verification of the kind referred to in paragraph (a) is not provided to the CEO within a reasonable specified period then the applicant's application will be taken to have been withdrawn; and

(c) the verification is not provided to the CEO within the specified period under paragraph (b); and

(d) the CEO gives the applicant a written notice stating that the applicant is taken to have withdrawn the application.

(3) If —

(a) the applicant is a person who is, or is proposed to be, employed in child-related employment by another person; and

(b) the applicant withdraws the application or the CEO gives the applicant a notice under subsection (2)(d) or (3A)(d),

the CEO is to give the other person a written notice stating that the applicant has withdrawn, or is taken to have withdrawn, the application, as the case requires.

(4) This section does not apply to an application taken to be made under section 9 or 10 in accordance with section 17(3)(d)(i) or 17B(2)(b)(i).

[Section 11 amended: No. 7 of 2010 s. 6; No. 47 of 2022 s. 12.]

Division 2 — Issue of assessment notices and negative notices

12. Deciding applications for assessment notice

(1) The CEO is to decide an application under section 9 or 10 in accordance with this section —

(a) by issuing an assessment notice to the applicant; or

(b) by issuing a negative notice to the applicant.

(2) The CEO must not decide the application unless the CEO has —

(a) made a criminal record check in respect of the applicant; and

(b) checked whether notice of a conduct review finding or outcome has been received under section 17A(3) in respect of the applicant.

(3) If one or more conditions specified in the Table apply in relation to an applicant, the CEO is to decide the application in accordance with —

(a) if any one condition applies, the applicable provision opposite that condition; or

(b) if more than one condition applies, the applicable provision opposite the condition that has the higher or highest item number in the Table.

Table

Item	Condition	Applicable provision
1.	The CEO is not aware of — (a) any offence of which the applicant has been convicted; or (b) any charge of an offence against the applicant; or (c) any conduct review finding or outcome.	s. 12(4)
2.	The CEO is aware that the applicant has a non-conviction charge in respect of a Class 3 offence.	s. 12(4)
2A.	The CEO is aware that the applicant is, or has been, the subject of a conduct review finding or outcome other than as a result of a notice under section 17A(3).	s. 12(4)

Item	Condition	Applicable provision
3.	The CEO is aware of a pending charge against the applicant in respect of a Class 3 offence, other than as a result of — (a) a notice under section 16(1) or 17(1); or (b) designated information as defined in section 17(1A).	s. 12(4)
3A.	The CEO is aware that the applicant is, or has been, the subject of a conduct review finding or outcome as a result of a notice under section 17A(3).	s. 12(5)
4.	The CEO is aware of a pending charge against the applicant in respect of a Class 3 offence as a result of — (a) a notice under section 16(1) or 17(1); or (b) designated information as defined in section 17(1A).	s. 12(5)
5.	The CEO is aware of a Class 3 offence of which the applicant has been convicted.	s. 12(5)
6.	The CEO is aware that the applicant has a non-conviction charge in respect of a Class 1 offence or a Class 2 offence.	s. 12(5)

Item	Condition	Applicable provision
7.	The CEO — (a) is aware of a Class 3 offence of which the applicant has been convicted; and (b) reasonably believes that in the course of committing the offence the applicant performed an indecent act.	s. 12(6)
8.	The CEO is aware of a pending charge against the applicant in respect of a Class 2 offence.	s. 12(6)
9.	The CEO is aware of a Class 2 offence of which the applicant has been convicted.	s. 12(6)
9A.	The CEO is aware of a pending charge against the applicant in respect of a Class 1 offence that was allegedly committed by the applicant when a child.	s. 12(6)
10.	The CEO is aware of a Class 1 offence (committed by the applicant when a child) of which the applicant has been convicted.	s. 12(6)
10A.	The CEO is aware — (a) of a Class 1 offence (that was not committed by the applicant when a child) of which the applicant has been convicted; and (b) that the applicant has been granted a pardon in respect of that offence.	s. 12(6)

Item	Condition	Applicable provision
10B.	The CEO is aware of a pending charge against the applicant in respect of a Class 1 offence that was not allegedly committed by the applicant when a child.	s. 12(7)
11.	The CEO is aware of a Class 1 offence (that was not committed by the applicant when a child) of which the applicant has been convicted, other than where the applicant has been granted a pardon in respect of that offence.	s. 12(7)

(4) If this subsection applies, the CEO is to issue an assessment notice to the applicant.

(5) If this subsection applies, the CEO is to issue an assessment notice to the applicant unless the CEO is satisfied that, because of the particular circumstances of the case, a negative notice should be issued to the applicant.

(6) If this subsection applies, the CEO is to issue a negative notice to the applicant unless the CEO is satisfied that, because of the exceptional circumstances of the case, an assessment notice should be issued to the applicant.

(7) If this subsection applies, the CEO is to issue a negative notice to the applicant.

(8) If subsection (5) or (6) applies in respect of an offence or a conduct review finding or outcome, the CEO must decide whether the CEO is satisfied in relation to the particular or exceptional circumstances of the case, having regard to —

(a) the best interests of children; and

(b) when the offence was committed or is alleged to have been committed or the relevant conduct occurred or is alleged to have occurred; and

(c) the age of the applicant when the offence was committed or is alleged to have been committed or the relevant conduct occurred or is alleged to have occurred; and

(d) the nature of the offence or relevant conduct and any relevance it has to child-related work; and

(e) the effect of future conduct by the applicant in relation to a child if that future conduct were the same or similar to conduct the subject of —

(i) any offence committed by the applicant; or

(ii) any charge against the applicant; or

(iii) any conduct review finding or outcome in relation to the applicant;

and

(f) any information given by the applicant in, or in relation to, the application; and

(g) anything else that the CEO reasonably considers relevant to the decision.

[Section 12 inserted: No. 7 of 2010 s. 7; amended: No. 47 of 2022 s. 13.]

13A. Issue of assessment notices and negative notices

(1) On deciding the application —

(a) the CEO is to issue the assessment notice or the negative notice, as the case requires, to the applicant; and

(b) if the CEO is aware that the applicant is, or is proposed to be, employed in child-related employment by another person, the CEO must —

(i) if an assessment notice is issued — give details contained in the assessment notice to the other

person in the manner or form the CEO thinks fit (including by giving a copy of the assessment notice to the other person); and

(ii) if a negative notice is issued — give a copy of the negative notice to the other person.

(2) When a negative notice is issued to an applicant, the CEO is to provide with it a written notice that —

(a) states the reasons for the CEO's decision on the application; and

(b) states that the applicant may, subject to section 26(3A), apply to the State Administrative Tribunal, within 28 days after the date of the negative notice, to have the decision reviewed; and

(c) explains how the application for the review is made.

[Section 13A inserted: No. 7 of 2010 s. 7; amended: No. 47 of 2022 s. 14.]

13. CEO to give notice of intention to issue negative notice

(1) If the CEO proposes or is required to decide an application under section 12 by issuing a negative notice to the applicant, the CEO must give the applicant a written notice that —

(a) informs the applicant of the proposal or requirement; and

(b) states the information about —

(i) the applicant's criminal record of which the CEO is aware; and

(ii) any conduct review finding or outcome relating to the applicant of which the CEO is aware as a result of a notice under section 17A(3);

and

(c) invites the applicant to make a submission to the CEO, in writing or in another form approved by the CEO,

within a specified time about the information and about the applicant's suitability to be issued with an assessment notice.

(2) If the information stated in a notice under subsection (1) about an applicant's criminal record includes a Class 1 offence (other than a Class 1 offence committed or allegedly committed by the applicant when a child) of which the applicant has been convicted, or for which the applicant has a pending charge, the applicant may make a submission to the CEO under this section only if the applicant reasonably believes that the applicant's criminal record does not include that conviction or charge.

(3) The specified time referred to in subsection (1)(c) must be reasonable and, in any case, at least 28 days after the CEO gives the applicant the notice.

(4) Subsection (2) does not apply if the applicant has been granted a pardon in respect of the Class 1 offence.

(5) Before deciding the application, the CEO must consider any submission made by the applicant within the specified time.

[Section 13 inserted: No. 47 of 2022 s. 15.]

13AA. Interim negative notice

(1) Subsections (2) and (3) apply in relation to a person if the CEO —

(a) has received an application for an assessment notice made by the person and the application is pending; or

(b) has decided to act under section 17(3)(d) or 17B(2)(b) in respect of the person; or

(c) is acting under section 20 in respect of the person if the correct notice that would be substituted is a negative notice; or

(d) is given a notice that the CEO must treat under section 32(1) as an application by the person for an assessment notice.

(2) The CEO may issue an interim negative notice to the person if the CEO is of the opinion that there is a reasonable likelihood that the circumstances will result in a negative notice being issued to the person.

(3) The CEO must issue an interim negative notice to the person if the CEO is aware that the person —

(a) has been convicted of a Class 1 offence (other than a Class 1 offence committed by the person when a child or in respect of which the person has been granted a pardon); or

(b) has a pending charge in respect of a Class 1 offence (other than a Class 1 offence allegedly committed by the person when a child).

(4) If the CEO is aware that the person to whom an interim negative notice is issued is employed, or is proposed to be employed, in child-related employment by another person, the CEO must give a copy of the interim negative notice to the other person.

(5) An interim negative notice ceases to have effect when an assessment notice or negative notice is issued to the person.

[Section 13AA inserted: No. 47 of 2022 s. 15.]

14. Duration of assessment notices and negative notices

(1) An assessment notice has effect for 3 years unless sooner cancelled under this Act.

(2) A negative notice continues to have effect unless it is cancelled under this Act.

15. Further assessment notice may be obtained

(1) If an assessment notice no longer has effect, or will expire within a period of 3 months, the person to whom it was issued may apply under Division 1 for a further assessment notice.

(2) Section 12 applies to the application as if a reference in that section to issuing an assessment notice were a reference to issuing an assessment notice or a further assessment notice.

Division 3 — CEO may require assessment notice to be applied for

16. CEO may require certain employees to apply for assessment notice

(1) If a person (the ***employer***) who employs another person (the ***employee***) in child-related employment —

(a) reasonably suspects that the employee has been charged with or convicted of an offence; and

(b) reasonably believes that the charge or conviction makes it inappropriate for the employee to continue to carry out child-related work,

the employer may give written notice to the CEO of the suspicion and belief and the grounds on which the suspicion and belief are held.

(2) The CEO may ask the employer, by written notice or otherwise, to provide further information in relation to those grounds.

(3) If the CEO is satisfied that the employer has reasonable grounds for holding the suspicion and belief referred to in subsection (1), the CEO may give the employee a written notice requiring the employee to apply, within 10 days after the date of the notice, for an assessment notice.

(4) Subsection (3) applies to a person whether or not the person has a current assessment notice.

(5) The employee must comply with a notice given to the employee under subsection (3) within the period referred to in that subsection.

Penalty for this subsection: a fine of $1 000.

(6) It is a defence to a charge of an offence under subsection (5) to prove that, at the time the offence is alleged to have been committed, the person was not employed in child-related employment.

[Section 16 amended: No. 47 of 2022 s. 46.]

17. CEO may require certain people to apply for assessment notice

(1A) In this section —

designated authority means —

(a) the Commissioner; or

(b) a department of the Public Service; or

(c) a body (whether incorporated or not), or the holder of an office, post or position, that —

(i) is established, constituted or continued for a public purpose under a written law; and

(ii) under the authority of a written law, performs a statutory function on behalf of this State;

or

(d) any other person or body, or person or body of a class, prescribed by the regulations for the purposes of this definition;

designated information means information given to the CEO by —

(a) the Commissioner of the Australian Federal Police; or

(b) the Commissioner (however designated) of the police force of another jurisdiction; or

(c) any other person or body, or person or body of a class, prescribed by the regulations for the purposes of this definition.

(1) If a designated authority reasonably believes that a person charged with or convicted of an offence —

(a) is a person in respect of whom the CEO may ask for information under section 34; or

(b) carries out child-related work,

and the designated authority reasonably believes that the charge or conviction makes it inappropriate for the person to continue to carry out child-related work or have an assessment notice, the designated authority may give the CEO notice of the following —

(c) the person's name and any former name or alias;

(d) the person's date of birth;

(da) the person's address and other contact details;

(e) the offence with which the person has been charged or of which the person has been convicted;

(f) the details of the offence;

(fa) without limiting paragraph (f), whether a victim of the offence was a child at the time when the offence was committed or allegedly committed and, if so, the age of the victim at that time;

(g) the date of the charge or conviction;

(h) any other information the designated authority thinks fit.

(2) A designated authority may give notice under subsection (1) despite another Act or law.

(3) If the CEO is satisfied that there are reasonable grounds for believing that a person in respect of whom the CEO has been given notice under subsection (1), information under section 33A or 34 or designated information —

(a) carries out child-related work or has a current assessment notice; and

(b) has been charged with or convicted of an offence that may make it inappropriate for the person to continue to carry out child-related work or have an assessment notice,

the CEO may —

(c) if the person does not have a current assessment notice, give the person a written notice requiring the person to apply, within 10 days after the date of the notice, for an assessment notice; or

(d) if the person has a current assessment notice, make a decision under section 12 as if —

(i) an application had been made by the person under section 9 or 10, as the case requires; and

(ii) a reference in section 12 to issuing an assessment notice were a reference to issuing an assessment notice or a further assessment notice.

(3A) However, the CEO must not act under subsection (3) in relation to information about a charge or conviction if the CEO —

(a) was previously aware of the charge or conviction; and

(b) decided to issue an assessment notice under section 12(5) or (6) despite the existence of the charge or conviction.

(4) A person must comply with a notice given to the person under subsection (3)(c) within the period referred to in that paragraph.

Penalty for this subsection: a fine of $1 000.

(5) It is a defence to a charge of an offence under subsection (4) to prove that, at the time the offence is alleged to have been committed, the person was not carrying out child-related work.

[Section 17 inserted: No. 7 of 2010 s. 9; amended: No. 47 of 2022 s. 16 and 46.]

17A. Provision of information by conduct review authority

(1) In this section —

designated conduct review authority, for a conduct review finding or outcome, means the conduct review authority prescribed by the regulations as the designated conduct review authority in relation to conduct review findings or outcomes of that kind.

(2) This section applies if —

(a) a person is, or has been, the subject of a conduct review finding or outcome; and

(b) the conduct review authority that is the designated conduct review authority for that conduct review finding or outcome knows or reasonably believes that the finding or outcome is relevant to the performance of a function of the CEO under this Act.

(3) The conduct review authority may give the CEO notice of the following —

(a) the person's name and any former name or alias;

(b) the person's date of birth;

(c) the person's address and other contact details;

(d) the conduct review finding or outcome;

(e) details of the relevant conduct;

(f) details of any person who employs the person in child-related employment, or of any child-related business carried on by the person (to the extent that these details are known to the conduct review authority);

(g) any other information of a kind prescribed by the regulations.

(4) If a conduct review authority gives a notice to the CEO under subsection (3) and the conduct review finding or outcome to which the notice relates is subsequently quashed, set aside or withdrawn expressly or impliedly, or found to be unsubstantiated or incorrect, the conduct review authority must give the CEO notice of this change in circumstances.

(5) A conduct review authority may give a notice under subsection (3) or (4) despite another Act or law.

(6) On receiving a notice from a conduct review authority under subsection (3) or (4), the CEO may request the conduct review authority to provide any further information to the CEO that the CEO reasonably requires for the purposes of this section.

(7) A conduct review authority to which a request is made under subsection (6) is authorised to disclose the information to the CEO.

(8) The information given by a conduct review authority under this section may include information about, or relating to, a finding or outcome that was made before —

(a) the finding or outcome became a conduct review finding or outcome under this Act; or

(b) the conduct review authority became the designated conduct review authority for the finding or outcome under this Act.

(9) This section does not limit the powers of the CEO to request or obtain information under another provision of this Act.

[Section 17A inserted: No. 47 of 2022 s. 17.]

17B. Action based on information received in relation to conduct review finding or outcome

(1) The CEO may, on the basis of a notice given under section 17A, take action under subsection (2) if the CEO is satisfied that there are reasonable grounds for believing that the person to whom the notice relates —

(a) carries out child-related work or has a current assessment notice; and

(b) is, or has been, the subject of a conduct review finding or outcome that may make it inappropriate for the person to continue to carry out child-related work or have an assessment notice.

(2) The CEO may —

(a) if the person does not have a current assessment notice, give the person a written notice requiring the person to apply, within 10 days after the date of the notice, for an assessment notice; or

(b) if the person has a current assessment notice, make a decision under section 12 as if —

(i) an application had been made by the person under section 9 or 10, as the case requires; and

(ii) a reference in section 12 to issuing an assessment notice were a reference to issuing an assessment notice or a further assessment notice.

(3) A person must comply with a notice given to the person under subsection (2)(a) within the period referred to in that paragraph.

Penalty for this subsection: a fine of $1 000.

(4) It is a defence to a charge of an offence under subsection (3) to prove that, at the time the offence is alleged to have been committed, the person was not carrying out child-related work.

[Section 17B inserted: No. 47 of 2022 s. 17.]

17C. CEO may obtain further information about conduct review finding or outcome

(1) In this section —

related authority, in relation to a conduct review finding or outcome, means a person or body (other than a conduct review authority) —

(a) that made a finding, determination or decision that resulted in, led to or comprised the conduct review finding or outcome; or

(b) that —

(i) has been involved in any step or process connected with, or otherwise related to, the conduct review finding or outcome; and

(ii) is a person or body, or person or body of a class, prescribed by the regulations for the purposes of this paragraph.

(2) This section applies in respect of a person —

(a) who has a current assessment notice; or

(b) who has applied to the CEO for an assessment notice; or

(c) who has applied to the CEO for a negative notice to be cancelled; or

(d) in relation to whom the CEO has decided to act under section 17(3)(d) or 17B(2)(b); or

(e) in relation to whom the CEO is acting under section 20; or

(f) who has applied to the State Administrative Tribunal under section 26 or who is the subject of an appeal against a decision of the Tribunal on an application under that section; or

(g) in relation to whom the CEO has been given a notice that the CEO must treat under section 32(1) as an application by the person for an assessment notice.

(3) If the person is, or has been, the subject of a notice given under section 17A in respect of a conduct review finding or outcome, the CEO may request the conduct review authority that gave the notice or a related authority for any information relating to the person in its possession that is connected with, or otherwise related to, the conduct review finding or outcome.

(4) A conduct review authority or related authority to which a request is made under subsection (3) is authorised to disclose the information to the CEO.

(5) This section does not limit the powers of the CEO to request or obtain information under another provision of this Act.

[Section 17C inserted: No. 47 of 2022 s. 17.]

18. CEO may issue negative notice if notice issued by CEO not obeyed

(1) If a person does not comply with a notice given to the person under section 16(3), 17(3)(c) or 17B(2)(a) within the period referred to in that provision, the CEO may issue a negative notice to the person.

(2) If the CEO —

(a) issues a negative notice under subsection (1) to a person who is employed in child-related employment; and

(b) is aware of the person's employer,

the CEO is to give the employer written notice of having issued a negative notice to the person.

[Section 18 amended: No. 7 of 2010 s. 10; No. 47 of 2022 s. 18.]

Division 4 — Cancellation of assessment notices and negative notices

19. Application for cancellation of negative notice

(1) A person to whom a negative notice has been issued may apply to the CEO for the notice to be cancelled.

(2) The application cannot be made sooner than 3 years after —

(a) the negative notice was issued; or

(b) if the person has previously applied under this section — the date of the CEO's notice under subsection (10); or

(c) if the person has applied, under section 26, for a review of a decision by the CEO and the State Administrative Tribunal has affirmed the CEO's decision — the date of the Tribunal's decision.

(3) Subsection (2) does not apply if —

(a) a Class 1 offence or a Class 2 offence with which the person was charged when the negative notice was issued, the previous application was made, or the CEO's decision was affirmed, is later disposed of by a court otherwise than by way of a conviction; or

(b) an offence of which the person was convicted when the negative notice was issued, the previous application was made, or the CEO's decision was affirmed, is later quashed or set aside on appeal; or

(ba) a Class 1 offence of which the person was convicted when the negative notice was issued, the previous application was made, or the CEO's decision was affirmed, is later the subject of a pardon granted to the person; or

(c) the negative notice was issued under section 12(5) because the condition in item 4 of the Table to section 12(3) applied to the person and the pending charge in respect of an offence referred to in that item

was later disposed of by a court otherwise than by way of a conviction; or

(d) a conduct review finding or outcome of which notice was given under section 17A(3) and which was taken into account when the negative notice was issued, the previous application was made, or the CEO's decision was affirmed, is later quashed, set aside or withdrawn expressly or impliedly, or found to be unsubstantiated or incorrect.

(4) Subsection (2)(a) does not apply if the negative notice was issued under section 18.

(4A) Subsection (3)(d) does not apply if the conduct review finding or outcome is replaced by another conduct review finding or outcome.

(5) The application is to be —

(a) in the approved form; and

(b) signed by the applicant; and

(c) accompanied by the fee prescribed by the regulations.

(6) The approved form is to include provision for identifying information to be given about the applicant.

(7) The person may, in the application, state any information or make any submission that relates to —

(a) the person's suitability to carry out child-related work; or

(b) any change in the person's circumstances,

unless the person has previously stated that information or made that submission in or in respect of an application under this Act.

(8) Section 12(2) to (8) apply to the application as if —

(a) the application were an application for an assessment notice; and

(b) a reference in those provisions to issuing an assessment notice were a reference to granting the application; and

(c) a reference in those provisions to issuing a negative notice were a reference to refusing the application.

(9) If the CEO grants the application, the CEO —

(a) is to cancel the negative notice and give written notice to the applicant accordingly; and

(b) if the person so requests — is to issue an assessment notice to the person.

(10) If the CEO refuses the application, the CEO is to give the person a written notice that —

(a) states the reasons for the CEO's decision on the application; and

(b) states that the person may apply to the State Administrative Tribunal, within 28 days after the date of the notice, to have the decision reviewed; and

(c) explains how the application for the review is made.

[Section 19 amended: No. 7 of 2010 s. 11; No. 47 of 2022 s. 19.]

20. Cancellation of assessment notice or negative notice as result of wrong or incomplete information

(1) In this section —

correct notice means —

(a) in relation to the cancellation of an assessment notice — a negative notice; or

(b) in relation to the cancellation of a negative notice — an assessment notice.

(2) The CEO may cancel an assessment notice or negative notice (the ***first notice***) and substitute the correct notice if the CEO is satisfied that —

(a) the decision on the application for the first notice was based on wrong or incomplete information; and

(b) based on the correct or complete information, the CEO should issue the correct notice.

(3) If the correct notice to be substituted is a negative notice, the CEO is to comply with section 13 before the correct notice may be substituted.

(4) Without limiting subsection (2), an application for the cancellation of a negative notice may be made under this section by the person to whom it was issued.

(5) Section 19 does not apply to the application if the CEO is satisfied under subsection (2) that an assessment notice should be issued to the applicant.

(6) The CEO is to issue the correct notice to the person to whom the first notice was issued and, if the CEO is aware that that person is, or is proposed to be, employed in child-related employment by another person, the CEO is to give a copy of the correct notice to the other person.

21A. Cancellation of assessment notices of certain people not involved in child-related work

(1) If a person in respect of whom the CEO has received a notice under section 17(1) or 17A(3) has a current assessment notice and that person gives the CEO written notice that the person is not employed in child-related employment or carrying on a child-related business, the CEO is to cancel the assessment notice.

(2) If a person in respect of whom the CEO is required to make a decision in accordance with section 17(3)(d) or 17B(2)(b) gives the CEO a notice under subsection (1), the CEO may —

(a) cancel the person's assessment notice; and

(b) not make a decision in accordance with that paragraph.

(3) If the CEO cancels the person's assessment notice, the CEO is to give the person written notice of the cancellation.

[Section 21A inserted: No. 7 of 2010 s. 12; amended: No. 47 of 2022 s. 20.]

21B. Cancellation of assessment notice on person's request

(1) If a person applies to the CEO in writing or in an approved form for the cancellation of the person's assessment notice and the CEO reasonably believes that the person does not carry out child-related work, the CEO may cancel the notice.

(2) If the CEO cancels the person's assessment notice, the CEO is to give the person written notice of the cancellation.

[Section 21B inserted: No. 7 of 2010 s. 12.]

21C. Cancellation of assessment notices of certain people to whom s. 32 applies

(1) If —

(a) a notice given to the CEO under section 29(1) or 30 is treated under section 32(1) as an application for an assessment notice; and

(b) the person who gave the notice to the CEO advises the CEO that the person has ceased to be employed in child-related employment or to carry on a child-related business; and

(c) the person has a current assessment notice; and

(d) the person requests the CEO not to decide the application,

the person is taken to have withdrawn the application and the CEO is to cancel the assessment notice.

(2) If the CEO cancels the person's assessment notice, the CEO is to give the person written notice of the cancellation.

[Section 21C inserted: No. 7 of 2010 s. 12; amended: No. 47 of 2022 s. 21.]

21. Issue of notice cancels any previous notice

(1) An assessment notice issued to a person cancels any current assessment notice, negative notice or interim negative notice that has previously been issued to the person.

(2) A negative notice issued to a person cancels any current assessment notice or interim negative notice that has previously been issued to the person.

(3) An interim negative notice issued to a person cancels any current assessment notice that has previously been issued to the person.

Division 5 — Prohibitions relating to child-related work

22. Employers not to employ certain people in child-related employment

(1) In this section —

employer means a person who employs, or proposes to employ, another person in child-related employment.

(2) An employer must not employ a person in child-related employment if —

(a) the employer —

(i) is aware of a Class 1 offence or a Class 2 offence of which the person has been convicted; or

(ii) is aware that the person has a pending charge in respect of a Class 1 offence or a Class 2 offence;

and

(b) the person does not have a current assessment notice and has not made an application for an assessment notice that is pending.

Penalty for this subsection: a fine of $60 000 and imprisonment for 5 years.

(3) An employer must not employ a person in child-related employment if the employer is aware that a negative notice or an interim negative notice has been issued to the person and is current.

Penalty for this subsection: a fine of $60 000 and imprisonment for 5 years.

(4) An employer must not employ a person in child-related employment in connection with a child care service if the person does not have a current assessment notice and has not made an application for an assessment notice that is pending.

Penalty for this subsection: a fine of $12 000 and imprisonment for 12 months.

(5) An employer must not employ a person in child-related employment if the employer is aware that the person has withdrawn an application for an assessment notice.

Penalty for this subsection: a fine of $12 000 and imprisonment for 12 months.

(6) An employer must not employ a person in child-related employment if —

(a) the person has been employed by the employer in that employment for more than 5 days in a calendar year; and

(b) the person does not have a current assessment notice and has not made an application for an assessment notice that is pending.

Penalty for this subsection: a fine of $12 000 and imprisonment for 12 months.

(7) Subsection (6) does not apply in relation to the employment of a person if subsection (2), (3), (4) or (5) applies in relation to that employment.

(8) A person charged with an offence under this section may be convicted of another offence under this section if that offence is established by the evidence.

[Section 22 amended: No. 47 of 2022 s. 46.]

23. People with negative notice or interim negative notice not to carry out child-related work

If a negative notice or an interim negative notice has been issued to a person and is current, the person must not —

(a) be employed in child-related employment; or

(b) carry on a child-related business.

Penalty: a fine of $60 000 and imprisonment for 5 years.

24. People without current assessment notice not to carry out child-related work

A person who does not have a current assessment notice must not —

(a) be employed in child-related employment; or

(b) carry on a child-related business.

Penalty: a fine of $60 000 and imprisonment for 5 years.

25. Defences for an offence under s. 24

(1) It is a defence to a charge of an offence under section 24 to prove that —

(a) at the time the offence is alleged to have been committed, the person charged had applied for an assessment notice and the application was pending; and

(b) the application was not later withdrawn.

(2) Subsection (1) does not apply to a person who, at the time the offence is alleged to have been committed —

(a) has been convicted of a Class 1 offence (other than a Class 1 offence committed by the person when a child or in respect of which the person has been granted a pardon); or

(b) has a pending charge in respect of a Class 1 offence (other than a Class 1 offence allegedly committed by the person when a child).

(3) It is a defence to a charge of an offence under section 24 to prove that the person charged was employed in child-related employment or carried on a child-related business, as the case requires, on no more than 5 days during the calendar year in which the offence is alleged to have occurred.

(4) Subsection (3) does not apply to a person —

(a) who —

(i) has been convicted of a Class 1 offence (other than a Class 1 offence committed by the person when a child); or

(ii) has a pending charge in respect of a Class 1 offence (other than a Class 1 offence allegedly committed by the person when a child);

or

(b) who is carrying out child-related work in connection with a child care service; or

(c) whose assessment notice has been cancelled under section 21A(1) or (2) or 21C(1).

(5) Subsection (3) does not apply to a person who has had an assessment notice cancelled under section 31(5) if the person —

(a) has not been issued with a further assessment notice; or

(b) has applied for a further assessment notice and the application was pending at the time the offence under section 24 is alleged to have been committed.

(6) Subsection (3) does not apply to a person —

(a) who has applied for an assessment notice having been required to do so under section 16(3), 17(3)(c) or 17B(2)(a); or

(b) who has given the CEO a notice that is to be treated under section 32(1) as an application by the person for an assessment notice; or

(c) has been given a written notice by the CEO under section 13 that the CEO proposes or is required to decide an application under section 12 by issuing a negative notice,

if the person withdraws the application for an assessment notice before the CEO decides the application.

(7) Subsection (3) does not apply to a person referred to in section 17(3)(d) or 17B(2)(b).

[Section 25 amended: No. 7 of 2010 s. 13; No. 47 of 2022 s. 22.]

Division 6 — Review by State Administrative Tribunal

26. Reviewable decisions

(1) In this section —

defined period means —

(a) in relation to a decision by the CEO to issue a negative notice to a person — 28 days after the date of the negative notice; or

(b) in relation to a decision by the CEO not to grant an application for a negative notice issued to a person to be cancelled — 28 days after the date of the notice given to the person under section 19(10); or

(c) in relation to a decision by the CEO to refuse to cancel a negative notice and substitute the correct notice — 28 days after the date the CEO refuses to cancel the negative notice and substitute the correct notice.

(2) Subject to subsection (3A), a person may apply to the State Administrative Tribunal within the defined period for a review of a decision by the CEO —

(a) to issue a negative notice to the person; or

(b) not to grant an application for a negative notice issued to the person to be cancelled.

(3A) If a person has not made a submission to the CEO under section 13(1)(c) after having been invited to do so by the CEO, the person cannot make an application under subsection (2)(a) without the leave of the Tribunal.

(3B) A person may apply to the State Administrative Tribunal within the defined period for a review of a decision by the CEO to refuse to cancel a negative notice and substitute the correct notice under section 20(2) if the person —

(a) has been refused leave under subsection (3A); and

(b) has subsequently made a submission to the CEO under section 13(1)(c) having been invited to do so by the CEO.

(3) A decision that is the subject of an application under subsection (2) or (3B) continues to have effect pending the outcome of the review, unless the State Administrative Tribunal orders otherwise.

(4) A decision by the State Administrative Tribunal under the *State Administrative Tribunal Act 2004* section 29 so as to provide for the issue of an assessment notice —

(a) has effect as a decision of the CEO from the date of the Tribunal's decision; and

(b) does not affect the operation of any other provision of this Act as it applies before the date of the Tribunal's decision.

[Section 26 amended: No. 7 of 2010 s. 14; No. 47 of 2022 s. 23.]

Part 3 — Changes in criminal record and criminal record checks

Division 1 — Relevant changes in criminal record

27. Meaning of relevant change in criminal record and requirement to give notice of that change

(1) For the purposes of this Division, there is a relevant change in a person's criminal record, whether or not the person has a criminal record, if the person is charged with or convicted of a Class 1 offence or a Class 2 offence.

(2) A requirement imposed on a person under this Division to give notice about a relevant change in a person's criminal record does not require the person to give any information about the change except that the change has occurred.

28. Pending applications, applicant to notify CEO of relevant change in criminal history

(1) This section applies to a person if —

(a) the person has applied to the CEO —

(i) for an assessment notice; or

(ii) for a negative notice issued to the person to be cancelled;

and

(b) the application is pending.

(2) The person must give written notice to the CEO of a relevant change in the person's criminal record as soon as is practicable after the change occurs.

Penalty for this subsection: a fine of $60 000 and imprisonment for 5 years.

[Section 28 amended: No. 47 of 2022 s. 46.]

29. People employed in child-related employment to notify CEO of relevant change in criminal record

(1) A person employed in child-related employment must give the CEO and the person's employer written notice of a relevant change in the person's criminal record as soon as is practicable after the change occurs.

Penalty for this subsection: a fine of $60 000 and imprisonment for 5 years.

(2) If the CEO receives a notice under subsection (1), the CEO may advise the person's employer of the relevant change in the person's criminal record disclosed in the notice.

[Section 29 amended: No. 7 of 2010 s. 15; No. 47 of 2022 s. 24 and 46.]

30. People carrying on child-related business to notify CEO of relevant change in criminal record

A person carrying on a child-related business must give the CEO written notice of a relevant change in the person's criminal record as soon as is practicable after the change occurs.

Penalty: a fine of $60 000 and imprisonment for 5 years.

31. Duties and employment of people with assessment notice who have relevant change in criminal record

(1) This section applies to a person if —

(a) the person has a current assessment notice and is not employed in child-related employment or carrying on a child-related business; and

(b) there has been a relevant change in the person's criminal record since the assessment notice was issued to the person.

(2) A person to whom this section applies must not be employed in child-related employment or carry on a child-related business unless —

(a) the person has been issued with a further assessment notice; or

(b) the person has applied for a further assessment notice and the application is pending.

Penalty for this subsection: a fine of $60 000 and imprisonment for 5 years.

(3) A person to whom subsection (2)(b) applies who is offered child-related employment must give the person's proposed employer written notice that —

(a) there has been a relevant change in the person's criminal record since the person's current assessment notice was issued; and

(b) the person has applied for a further assessment notice and the application is pending.

Penalty for this subsection: a fine of $60 000 and imprisonment for 5 years.

(4) A person to whom this section applies must give written notice to the CEO of a relevant change in the person's criminal record as soon as is practicable after the change occurs.

Penalty for this subsection: a fine of $60 000 and imprisonment for 5 years.

(5) If the CEO receives a notice from a person under subsection (4), the CEO is to cancel the person's assessment notice.

(6) If the CEO cancels the person's assessment notice, the CEO is to give the person written notice of the cancellation.

[Section 31 amended: No. 7 of 2010 s. 16; No. 47 of 2022 s. 46.]

32A. Certain applicants for assessment notice to notify proposed employer of relevant change in criminal record

If —

(a) a person whose assessment notice has been cancelled (the ***cancelled assessment notice***) under section 31(5) has applied for a further assessment notice and the application is pending; and

(b) a person (the ***proposed employer***) proposes to employ the person in child-related employment,

the person must give the proposed employer written notice of any relevant change in the person's criminal record since the cancelled assessment notice was issued.

Penalty: a fine of $60 000 and imprisonment for 5 years.

[Section 32A inserted: No. 7 of 2010 s. 17; amended: No. 47 of 2022 s. 25.]

32. CEO to treat notice of relevant change under s. 29 and 30 as application for assessment notice

(1) The CEO is to treat a notice given to the CEO under section 29(1) or 30 as an application for an assessment notice by the person to whose criminal record there has been a relevant change.

(2) If the person to whose criminal record there has been a relevant change has a current assessment notice, section 12 applies to the application as if a reference in that section to issuing an assessment notice were a reference to issuing an assessment notice or a further assessment notice.

[Section 32 amended: No. 7 of 2010 s. 18.]

33. Class 1 offence: pending charge or conviction prevents child-related work

If the relevant change in a person's criminal record is that the person is charged with or convicted of a Class 1 offence (other than a Class 1 offence committed or allegedly committed by the person when a child), the person must not —

(a) be employed in child-related employment; or

(b) carry on a child-related business.

Penalty: imprisonment for 5 years and a fine of $60 000.

[Section 33 inserted: No. 47 of 2022 s. 26.]

Division 1A — Designated changes in criminal record

[Heading inserted: No. 47 of 2022 s. 27.]

33A. Commissioner may give information about change in criminal record

(1) This section applies in respect of a person —

(a) who has a current assessment notice; or

(b) who has applied to the CEO for an assessment notice if the application is pending; or

(c) who has applied to the CEO for a negative notice to be cancelled if the application is pending; or

(d) in relation to whom the CEO has decided to act under section 17(3)(d) or 17B(2)(b); or

(e) in relation to whom the CEO is acting under section 20; or

(f) in relation to whom the CEO has been given a notice that the CEO must treat under section 32(1) as an application by the person for an assessment notice if the application is pending.

(2) For the purposes of this section, there is a ***designated change*** in the person's criminal record, whether or not the person has a criminal record, if —

(a) the person is charged with or convicted of an offence; or

(b) the person becomes subject to a non-conviction charge; or

(c) there is a change in any other information mentioned in the person's criminal record.

(3) The Commissioner may give the CEO the following information in connection with a designated change in the person's criminal record —

(a) details of the change in the person's criminal record;

(b) information that is connected with, or otherwise related to, the change in the person's criminal record;

(c) any other information the Commissioner thinks fit.

(4) The CEO may give the Commissioner any information that is reasonably required in connection with the exercise of the Commissioner's powers under this section.

(5) This section does not limit the powers of the Commissioner to disclose information under another provision of this or any other Act.

[Section 33A inserted: No. 47 of 2022 s. 27.]

Division 2 — Criminal record checks

34. CEO may carry out criminal record check

(1) In this section —

DPP means —

(a) the Director of Public Prosecutions appointed under the *Director of Public Prosecutions Act 1991* section 5; or

(b) a person or body exercising functions that substantially correspond to the functions of the Director of Public Prosecutions under a law of another jurisdiction.

(2) This section applies in respect of a person —

(a) who has a current assessment notice; or

(b) who has applied to the CEO for an assessment notice; or

(c) who has applied to the CEO for a negative notice to be cancelled; or

(d) in relation to whom the CEO has decided to act under section 17(3)(d) or 17B(2)(b); or

(e) in relation to whom the CEO is acting under section 20; or

(f) who has applied to the State Administrative Tribunal under section 26 or who is the subject of an appeal against a decision of the Tribunal on an application under that section; or

(g) in relation to whom the CEO has been given a notice that the CEO must treat under section 32(1) as an application by the person for an assessment notice.

(3) The CEO may ask a criminal records agency for information or access to the records of the criminal records agency —

(a) to determine whether the person has a criminal record; and

(b) if the person has a criminal record, to obtain details of the criminal record.

(4) If the person has a criminal record, the CEO may ask a criminal records agency or the DPP for any information relating to the person in their possession that is connected with, or otherwise related to, a conviction or charge mentioned in the criminal record.

(5) A person or body in this State to which a request is made by the CEO under this section is authorised to disclose the requested information to the CEO.

(6) This section does not limit the powers of the CEO to request or obtain information under another provision of this Act.

[Section 34 amended: No. 47 of 2022 s. 28.]

Part 3A — Information gathering and sharing

[Heading inserted: No. 47 of 2022 s. 29.]

34A. General power to obtain, use and disclose information

(1) In this section —

CEO (Education) means the chief executive officer of the department of the Public Service principally assisting in the administration of the *School Education Act 1999*;

CEO (Health) means the chief executive officer of the department of the Public Service principally assisting in the administration of the *Health Services Act 2016*;

relevant information means —

(a) information that the CEO considers to be relevant to —

(i) a person to whom Part 2 applies (including a person who is subject to the application of section 32); or

(ii) a person who has applied to the State Administrative Tribunal under section 26;

or

(b) information that the CEO considers to be relevant to whether —

(i) a person should be issued an assessment notice, a further assessment notice, a negative notice or an interim negative notice; or

(ii) an assessment notice or a negative notice should be cancelled;

or

(c) any other information prescribed by the regulations for the purposes of this definition.

(2) The CEO may request relevant information for a WWC purpose from any person or body that, in the opinion of the CEO, may possess relevant information.

(3) A person or body in this State to which a request is made under subsection (2) is authorised to disclose relevant information to the CEO.

(4) The following persons and bodies must comply with a request under subsection (2) —

(a) the CEO (Education);

(b) the CEO (Health);

(c) a health service provider as defined in the *Health Services Act 2016* section 6.

(5) The CEO may use relevant information obtained by the CEO from any source for a WWC purpose.

(6) The CEO may disclose relevant information for a WWC purpose to —

(a) a government agency; or

(b) a criminal records agency.

(7) This section does not limit the powers of the CEO to request, obtain or disclose information under another provision of this Act.

[Section 34A inserted: No. 47 of 2022 s. 29.]

34B. Disclosure of information to employer or proposed employer

(1) The CEO may disclose the following information to an employer or proposed employer who employs or proposes to employ in child-related employment a person who is applying for an assessment notice or who holds a current assessment notice —

(a) information relevant to the identity of the person;

(b) information relevant to the employer or proposed employer verifying that they employ or propose to employ the person in child-related employment;

(c) any other information prescribed by the regulations for the purposes of this subsection.

(2) This section does not limit the powers of the CEO to disclose information under another provision of this Act.

[Section 34B inserted: No. 47 of 2022 s. 29.]

34C. Power to require reports from CEO (Justice)

(1) In this section —

prescribed report means any of the following —

(a) a written pre-sentence report, or a record of an oral pre-sentence report, made under the *Sentencing Act 1995* Part 3 Division 3;

(b) a report prepared for the purposes of the *Sentence Administration Act 2003* section 11A, 17 or 51;

(c) a report prepared for the purposes of the *Young Offenders Act 1994* section 47, 48(1) or 159;

(d) a report —

(i) made under, or prepared for the purposes of, the *Bail Act 1982*, the *Dangerous Sexual Offenders Act 2006* (repealed), the *High Risk Serious Offenders Act 2020*, the *Prisons Act 1981*, the *Sentence Administration Act 2003*, the *Sentencing Act 1995* or the *Young Offenders Act 1994*; and

(ii) of a kind prescribed by the regulations for the purposes of this definition.

(2) The CEO may, for a WWC purpose, by written notice request the CEO (Justice) to give the CEO a copy of a prescribed report.

(3) A request to the CEO (Justice) under this section may only relate to obtaining a report about an offender or alleged offender.

(4) The CEO (Justice) must comply with a request under this section within a reasonable period after the request is received.

(5) The CEO (Justice) is authorised to provide the requested report to the CEO.

(6) This section does not limit the operation of section 34A.

[Section 34C inserted: No. 47 of 2022 s. 29.]

34D. Exchange of information with corresponding authorities

(1) The CEO may disclose to a corresponding authority information obtained or created under this Act that —

(a) relates to —

(i) a person's criminal record; or

(ii) a conduct review finding or outcome; or

(iii) an application made by a person under this Act; or

(iv) a decision to issue an assessment notice, a further assessment notice, a negative notice or an interim negative notice;

or

(b) may otherwise be relevant to the performance of a function of the corresponding authority that substantially corresponds to a function of the CEO under this Act.

(2) The CEO may request a corresponding authority to disclose to the CEO information obtained or created by the corresponding authority that —

(a) corresponds to the information referred to in subsection (1)(a) and relates to a person who has made an application, or has been issued with a notice, under this Act; or

(b) may otherwise be relevant to the performance of a function of the CEO under this Act.

[Section 34D inserted: No. 47 of 2022 s. 29.]

34E. Exchange of information under *National Disability Insurance Scheme (Worker Screening) Act 2020*

(1) In this section —

CEO (NDIS) means the chief executive officer of the department of the Public Service principally assisting in the administration of the *National Disability Insurance Scheme (Worker Screening) Act 2020*;

interstate screening agency means an interstate screening agency as defined in the *National Disability Insurance Scheme (Worker Screening) Act 2020* section 5(1).

(2) The CEO may disclose to the CEO (NDIS) or an interstate screening agency information obtained or created under this Act that —

(a) relates to —

(i) a person's criminal record; or

(ii) a conduct review finding or outcome; or

(iii) an application made by a person under this Act; or

(iv) a decision to issue an assessment notice, a further assessment notice, a negative notice or an interim negative notice;

or

(b) may otherwise be relevant to the performance of a function of —

(i) the CEO (NDIS) under a law of this State; or

(ii) the interstate screening agency under a law of another jurisdiction.

(3) The CEO may request the CEO (NDIS) or an interstate screening agency to disclose to the CEO information obtained or created by the CEO (NDIS) or the interstate screening agency that —

(a) corresponds to the information referred to in subsection (2)(a) and relates to a person who has made an application, or has been issued with a notice, under this Act; or

(b) may otherwise be relevant to the performance of a function of the CEO under this Act.

(4) However, a prescribed report obtained from the CEO (Justice) under section 34C cannot be disclosed under subsection (2) without the approval of the CEO (Justice).

[Section 34E inserted: No. 47 of 2022 s. 29.]

34F. Disclosure of information to authorised entities

(1) In this section —

authorised entity means —

(a) a public authority prescribed by the regulations for the purposes of this definition; or

(b) a criminal records agency.

(2) If the CEO considers it to be in the public interest to do so, the CEO may, by written notice, disclose the following information to an authorised entity —

(a) that an application for an assessment notice has been made by a person in respect of which no decision has yet been made under section 12;

(b) that an assessment notice has been issued to a person;

(c) that an application for an assessment notice has been withdrawn by a person;

(d) that a negative notice has been issued to a person;

(e) that an interim negative notice has been issued to a person;

(f) that an assessment notice issued to a person has been cancelled under section 21A or 21C;

(g) that a person does not have a current assessment notice.

(3) If the CEO gives a notice to an authorised entity under subsection (2) that discloses information about a person and an assessment notice is subsequently issued to the person, the CEO must give notice of the issuing of the assessment notice to the authorised entity.

(4) If the CEO gives a notice to an authorised entity under subsection (2) that discloses the information referred to in subsection (2)(d) and the negative notice is subsequently cancelled without an assessment notice being issued, the CEO must give notice of the cancellation of the negative notice to the authorised entity.

(5) This section does not limit the powers of the CEO to disclose information under another provision of this Act.

[Section 34F inserted: No. 47 of 2022 s. 29.]

34G. Disclosure of information to Australian Crime Commission

(1) In this section —

ACC means the Australian Crime Commission established under the *Australian Crime Commission Act 2002* (Commonwealth) section 7.

(2) The CEO may disclose the following information to the ACC for inclusion in a national register or database established under the *Australian Crime Commission Act 2002* (Commonwealth) —

(a) that a negative notice or an interim negative notice has been issued to a person;

(b) any other information relating to a negative notice or an interim negative notice prescribed by the regulations for the purposes of this subsection;

(c) in connection with the disclosure of information under paragraph (a) or (b) —

(i) the name, address and date of birth of the person to whom the information relates; and

(ii) any other identifying information the CEO considers to be relevant in the circumstances.

(3) If the CEO discloses information to the ACC under subsection (2)(a) and the negative notice or interim negative notice is subsequently cancelled, the CEO must provide information about the cancellation to the ACC.

(4) If the CEO discloses information to the ACC under subsection (2)(b) or (c) and the information is no longer up to date or found to be incorrect or inaccurate in some other respect, the CEO may disclose new or revised information to the ACC.

(5) This section does not limit the powers of the CEO to disclose information under another provision of this Act.

[Section 34G inserted: No. 47 of 2022 s. 29.]

34H. Disclosure of information relevant to protection of children or other persons

(1) In this section —

CEO (Children and Community Services) means the CEO as defined in the *Children and Community Services Act 2004* section 3;

prescribed authority means —

(a) a public authority; or

(b) the CEO (Children and Community Services); or

(c) a person or body in another jurisdiction with functions that substantially correspond to the functions of the CEO (Children and Community Services); or

(d) the Commissioner; or

(e) the Commissioner of the Australian Federal Police; or

(f) the Commissioner (however designated) of the police force of another jurisdiction; or

(g) an external government agency prescribed by the regulations for the purposes of this definition; or

(h) any other person or body, or person or body of a class, prescribed by the regulations for the purposes of this definition.

(2) The CEO may disclose to a prescribed authority any information obtained or created as a result of the performance of a function or the exercise of a power under this Act —

(a) that, in the opinion of the CEO, is, or is likely to be, relevant to the wellbeing of a child or a class or group of children; or

(b) without limiting paragraph (a), in the case of disclosure to the CEO (Children and Community Services) — that, in the opinion of the CEO, is, or is likely to be, relevant to —

(i) the wellbeing of a person who under the *Children and Community Services Act 2004* section 96 qualifies for assistance for the purposes of Part 4 Division 6 of that Act; or

(ii) the safety of a person who has been subjected to, or exposed to, family violence; or

(iii) the administration of the *Children and Community Services Act 2004*;

or

(c) that is information of a kind prescribed by the regulations for the purposes of this subsection.

(3) However, a prescribed report obtained from the CEO (Justice) under section 34C cannot be disclosed under subsection (2) without the approval of the CEO (Justice).

(4) This section does not limit or derogate from any other Act or law relating to the disclosure of information for the protection of children or other persons.

[Section 34H inserted: No. 47 of 2022 s. 29.]

34I. Sharing of police information

(1) In this section —

relevant purpose means —

(a) a WWC purpose; or

(b) a purpose that is for, or connected with, the operation or administration of, or compliance with, a corresponding law.

(2) The Commissioner may disclose the following information about a person for a relevant purpose —

(a) information relating to the person's criminal record;

(b) without limiting paragraph (a), information relating to —

(i) a person that is connected with, or otherwise related to, a conviction or charge mentioned in a criminal record; or

(ii) the investigation or circumstances of any conduct or alleged conduct.

(3) A disclosure under this section is limited to the following —

(a) the CEO;

(b) a corresponding authority;

(c) the Commissioner of the Australian Federal Police;

(d) the Commissioner (however designated) of the police force of another jurisdiction;

(e) a person or body that is —

(i) established or constituted under the law of another jurisdiction; and

(ii) prescribed by the regulations for the purposes of this subsection.

(4) A person to whom information is disclosed under this section may disclose that information to a corresponding authority.

(5) This section does not limit the powers of a person or body to disclose information under another provision of this Act.

(6) This section does not limit the persons to whom, or the circumstances in which, information may be disclosed apart from under this Act.

[Section 34I inserted: No. 47 of 2022 s. 29.]

Part 3B — Compliance and enforcement

[Heading inserted: No. 47 of 2022 s. 29.]

Division 1 — Preliminary

[Heading inserted: No. 47 of 2022 s. 29.]

34J. Terms used

In this Part —

authorised purpose means —

(a) determining whether a person has complied with this Act; or

(b) without limiting paragraph (a), investigating a suspected offence under this Act;

entry warrant has the meaning given in section 34V(1);

investigation means an investigation of a suspected offence under this Act;

record —

(a) means a record of information, irrespective of how the information is recorded or stored or able to be recovered; and

(b) includes —

(i) any thing from which images, sounds or writings can be reproduced, with or without the aid of anything else; and

(ii) any thing on which information is recorded or stored, whether electronically, magnetically, mechanically or by some other means;

relevant record means a record or document that contains information that is or may be relevant to —

(a) determining whether a person has complied with this Act; or

(b) without limiting paragraph (a), an offence under this Act.

[Section 34J inserted: No. 47 of 2022 s. 29.]

Division 2 — Authorised officers

[Heading inserted: No. 47 of 2022 s. 29.]

34K. Designation of authorised officers

The CEO may, in writing, designate officers of the Department to be authorised officers —

(a) generally for the purposes of this Act; or

(b) for the purposes of a provision of this Act specified in the designation.

[Section 34K inserted: No. 47 of 2022 s. 29.]

34L. Identity cards

(1) The CEO must ensure that each authorised officer is issued with an identity card in an approved form.

(2) An authorised officer must display the authorised officer's identity card whenever dealing with a person in respect of whom the officer has exercised, is exercising, or is about to exercise, a power under this Act.

(3) In any proceedings the production by an authorised officer of the authorised officer's identity card is conclusive evidence of their designation under section 34K.

[Section 34L inserted: No. 47 of 2022 s. 29.]

Division 3 — Powers of authorised officers

[Heading inserted: No. 47 of 2022 s. 29.]

34M. Entry to places

(1) An authorised officer may, for an authorised purpose, enter a place if —

(a) its occupier gives informed consent to the entry; or

(b) the entry is authorised by an entry warrant.

(2) An occupier gives informed consent to entry to a place if the occupier gives consent after being informed by an authorised officer —

(a) of the powers the officer wants to exercise in respect of the place; and

(b) of the reasons why the officer wants to exercise those powers; and

(c) that the occupier can refuse to consent to the officer entering the place.

[Section 34M inserted: No. 47 of 2022 s. 29.]

34N. Powers after entering place

An authorised officer who enters a place under section 34M(1) may, for an authorised purpose, do any of the following —

(a) inspect the place and any thing at the place;

(b) search the place and any thing at the place;

(c) measure, test, photograph or film any part of, or any thing at, the place;

(d) take any thing, or a sample of or from any thing, at the place for analysis or testing;

(e) operate equipment or facilities at the place or direct a person at the place to do so;

(f) make a copy of, or take an extract from, any record or document at the place;

(g) seize any thing at the place that is or may afford evidence of an offence under this Act;

(h) direct (orally or in writing) the occupier of the place, or a person at the place, to give the officer any assistance the officer reasonably requires.

[Section 34N inserted: No. 47 of 2022 s. 29.]

34O. Directions to provide information or documents

(1) An authorised officer may, for an authorised purpose, do any of the following —

(a) direct a person —

(i) to give information; or

(ii) to answer a question put by the officer;

(b) direct a person to produce a record or document that is in the person's possession or under the person's control;

(c) make a copy of a record or document produced in response to a direction under paragraph (b).

(2) A direction under subsection (1)(a) —

(a) must specify the time at or within which the information or answer must be given; and

(b) may require that the information or answer —

(i) be given orally or in writing; and

(ii) be given at, or sent or delivered to, a place specified in the direction; and

(iii) in the case of written information or a written answer — be sent or delivered by a means specified in the direction; and

(iv) be verified by statutory declaration.

(3) A direction under subsection (1)(b) —

(a) must specify the time at or within which the record or document must be produced; and

(b) may require that the record or document be produced —

(i) at a place specified in the direction; and

(ii) by a means specified in the direction.

(4) A person is not excused from complying with a direction under this section to give information, answer a question or produce a record or document on the ground that complying with the direction might tend to incriminate the person or render the person liable to a penalty.

(5) However, any information or answer given by an individual in compliance with a direction under this section is not admissible in evidence against the individual in criminal or civil proceedings other than proceedings for perjury or for an offence under section 35.

(6) In directing a person under this section, an authorised officer must explain to the person —

(a) that it is an offence to contravene the direction; and

(b) the effect of subsections (4) and (5).

(7) A direction under this section may be given orally or in writing.

[Section 34O inserted: No. 47 of 2022 s. 29.]

34P. Additional powers for relevant records

An authorised officer may, for an authorised purpose, do any of the following —

(a) operate a computer or other thing on which the officer suspects on reasonable grounds a relevant record is or may be stored or direct a person who has the custody or control of the computer or thing to do so;

(b) direct (orally or in writing) a person who is, or appears to be, in control of a record or document that the officer suspects on reasonable grounds is a relevant record to give the officer a translation, code, password or other information necessary to gain access to, or interpret and understand, the record or document;

(c) make a copy of, take an extract from, download, print, photograph or film a record or document that the officer suspects on reasonable grounds is a relevant record;

(d) seize a record or document that the officer suspects on reasonable grounds is a relevant record and retain it for as long as is necessary for the purposes of this Act;

(e) seize a computer or other thing on which the officer suspects on reasonable grounds a relevant record is or may be stored and retain it for as long as is necessary for the purposes of this Act;

(f) take reasonable measures to secure or protect a relevant record, or computer or other thing on which a relevant record is or may be stored, against damage or unauthorised removal or interference.

[Section 34P inserted: No. 47 of 2022 s. 29.]

34Q. Offence to contravene direction

A person who, without reasonable excuse, fails to comply with a direction given to the person under this Division commits an offence.

Penalty: imprisonment for 12 months and a fine of $12 000.

[Section 34Q inserted: No. 47 of 2022 s. 29.]

34R. Exercise of power may be recorded

An authorised officer may record the exercise of a power under this Division, including by making an audiovisual recording.

[Section 34R inserted: No. 47 of 2022 s. 29.]

34S. Assistance and use of force to exercise power

(1) An authorised officer exercising a power under this Division may authorise as many other people to assist in exercising the power as are reasonably necessary in the circumstances.

(2) In exercising the power, an authorised officer, and a person authorised under subsection (1) to assist the officer, may use force that is reasonably necessary in the circumstances.

[Section 34S inserted: No. 47 of 2022 s. 29.]

34T. Procedure for seizing things

(1) If an authorised officer seizes any thing under this Division, the officer must give the person who was in possession of the thing a receipt for it in the approved form.

(2) If an authorised officer seizes any thing under this Division, the officer must, if practicable, allow a person who is otherwise entitled to possession of the thing to have reasonable access to it.

(3) An authorised officer who seizes any thing under this Division may take reasonable measures to prevent the thing being concealed, lost, damaged or destroyed.

(4) If it is not practicable to move a thing that has been seized under this Division, an authorised officer may do whatever is reasonably necessary to secure the thing where it is situated and to notify people that it is under seizure.

(5) A person must not, without the approval of an authorised officer, interfere or deal with any thing that the person knows, or ought reasonably to know, has been seized under this Division by an authorised officer.

Penalty for this subsection: imprisonment for 12 months and a fine of $12 000.

[Section 34T inserted: No. 47 of 2022 s. 29.]

34U. Application of *Criminal and Found Property Disposal Act 2006*

(1) The *Criminal and Found Property Disposal Act 2006* applies to any thing that is seized under this Division.

(2) For the purposes of the *Criminal and Found Property Disposal Act 2006*, the Department is a prescribed agency.

[Section 34U inserted: No. 47 of 2022 s. 29.]

Division 4 — Entry warrants

[Heading inserted: No. 47 of 2022 s. 29.]

34V. Application for entry warrant

(1) An authorised officer may apply to a magistrate for a warrant (an ***entry warrant***) authorising the entry of a place for an authorised purpose.

(2) Subject to this section —

(a) an application for an entry warrant must be in writing and include the information prescribed by the regulations; and

(b) the grounds of the application must be verified by affidavit; and

(c) the applicant must appear in person before the magistrate to provide information in support of the application on oath.

(3) An application for a warrant may be made by remote communication if a magistrate considers that such an application is reasonable in the circumstances.

(4) If an application for an entry warrant is made by remote communication and it is not practicable to send the magistrate written material —

(a) the application may be made orally; and

(b) the magistrate must make a written record of the application and any information given in support of it; and

(c) if the warrant is issued — the applicant must, as soon as practicable, send the magistrate an affidavit verifying the application and any information given in support of it.

[Section 34V inserted: No. 47 of 2022 s. 29.]

34W. Issue and content of entry warrant

(1) On an application for an entry warrant, a magistrate may issue the warrant if satisfied that it is necessary for an authorised officer to enter a place for an authorised purpose.

(2) An entry warrant must contain the following information —

(a) a reasonably particular description of the place to which the warrant relates;

(b) a reasonably particular description of the authorised purpose for which entry to the place is required;

(c) if the authorised purpose is the investigation of a suspected offence under this Act – the provision of the Act suspected of being contravened;

(d) the period, not exceeding 14 days, during which the warrant may be executed;

(e) the name of the magistrate who issued the warrant;

(f) the date and time when the warrant was issued.

(3) An entry warrant must be in the form prescribed by the regulations.

(4) If a magistrate issues an entry warrant on an application made by remote communication —

(a) if it is practicable to send a copy of the original warrant to the applicant by remote communication — the magistrate must do so; or

(b) if it is not practicable —

(i) the magistrate must provide the applicant, by remote communication, with the information that must be set out in the warrant; and

(ii) the applicant must complete a form of warrant with the information received and give the magistrate a copy of the form as soon as practicable after doing so; and

(iii) the magistrate must attach the copy of the form to the original warrant and any affidavit received from the applicant, and make them available for collection by the applicant.

(5) The copy of the original warrant sent, or the form of the warrant completed, under subsection (4) has the same force and effect as the original warrant.

[Section 34W inserted: No. 47 of 2022 s. 29.]

34X. Refusal of entry warrant

If a magistrate refuses to issue an entry warrant, the magistrate must record on the application, or the written record of the application, the fact of, the date and time of, and the reasons for, the refusal.

[Section 34X inserted: No. 47 of 2022 s. 29.]

34Y. Effect of entry warrant

(1) An entry warrant comes into force when it is issued by a magistrate.

(2) An entry warrant may be executed according to its terms by an authorised officer entitled to enter the place for the authorised purpose specified in the warrant.

(3) However, if an applicant for an entry warrant contravenes section 34V(4)(c) or 34W(4)(b)(ii), evidence obtained under the

entry warrant is not admissible in proceedings in a court or tribunal.

[Section 34Y inserted: No. 47 of 2022 s. 29.]

Division 5 — Additional power to request or provide information

[Heading inserted: No. 47 of 2022 s. 29.]

34Z. Additional power to request information

(1) In this section —

prescribed entity means —

(a) a public authority; or

(b) a criminal records agency; or

(c) a corresponding authority; or

(d) a Commonwealth agency or instrumentality; or

(e) a person or body, or person or body of a class, prescribed by the regulations for the purposes of this definition.

(2) The CEO may request the following information from a prescribed entity —

(a) information that is relevant to determining whether a person has complied with this Act, including in relation to the investigation or prosecution of a suspected or alleged offence under this Act;

(b) information that is relevant to the safety of an officer of the Department performing a function or exercising a power under this Act.

(3) A person or body in this State to which a request is made by the CEO under subsection (2) is authorised to disclose the requested information to the CEO.

(4) This section does not limit the powers of the CEO to request or obtain information under another provision of this Act.

[Section 34Z inserted: No. 47 of 2022 s. 29.]

34ZA. Provision of information to justice authorities

(1) In this section —

justice authority means —

(a) a public authority; or

(b) a government agency; or

(c) a criminal records agency; or

(d) a corresponding authority; or

(e) any other person or body that performs a function connected with the administration or operation of a law of this State or another jurisdiction that imposes a penalty or sanction; or

(f) a person or body, or person or body of a class, prescribed by the regulations for the purposes of this definition.

(2) The CEO may give a notice as described in subsection (3) to a justice authority in relation to a particular person if the CEO considers that the information to be contained in the notice is relevant to —

(a) determining or ensuring compliance with any law, including a law of another jurisdiction; or

(b) the investigation of a contravention (or alleged contravention) of any law, including a law of another jurisdiction; or

(c) any other matter prescribed by the regulations.

(3) A notice under this section may include the following information —

(a) contact details, employment details and identifying information about a person who has made an application under this Act;

(b) other information about the activities of a person who is employed, or proposed to be employed, in child-related employment or who is carrying on, or proposing to carry on, a child-related business;

(c) any other information prescribed by the regulations for the purposes of this subsection.

(4) A notice under this section must be in writing.

(5) This section does not limit the powers of the CEO to disclose information under another provision of this Act.

[Section 34ZA inserted: No. 47 of 2022 s. 29.]

Part 4 — General

35. False or misleading information

A person must not give information for the purposes of this Act that the person knows to be false or misleading in a material particular to —

(a) a person who employs, or proposes to employ, the person in child-related employment; or

(b) the CEO; or

(ba) an authorised officer; or

(c) if the person is a student, the person's education provider.

Penalty: a fine of $24 000 and imprisonment for 2 years.

[Section 35 amended: No. 7 of 2010 s. 19; No. 47 of 2022 s. 30.]

35A. Obstruction of authorised officer

A person must not obstruct or hinder an authorised officer who is performing or attempting to perform a function under this Act.

Penalty: imprisonment for 12 months and a fine of $12 000.

[Section 35A inserted: No. 47 of 2022 s. 31.]

35B. Impersonation of authorised officer

A person must not falsely represent, by words or conduct, that the person or another person is an authorised officer.

Penalty: imprisonment for 12 months and a fine of $12 000.

[Section 35B inserted: No. 47 of 2022 s. 31.]

35C. Change in particulars

(1) This section applies to a person —

(a) who has a current assessment notice; or

(b) who has applied to the CEO for an assessment notice and the application is pending; or

(c) who has applied to the CEO for a negative notice to be cancelled and the application is pending; or

(d) who is aware that the CEO is in the process of making a decision under section 12 in relation to the person because of the operation of section 17(3)(d) or 17B(2)(b); or

(e) who is aware that the CEO is acting under section 20 in relation to the person; or

(f) who has given a notice to the CEO that the CEO must treat under section 32(1) as an application for an assessment notice and the application is pending; or

(g) in any other circumstances prescribed by the regulations.

(2) The person must notify the CEO of a relevant change of particulars in accordance with this section as soon as practicable after the change occurs.

Penalty for this subsection: a fine of $5 000.

(3) For the purposes of subsection (2), a relevant change of particulars is any of the following —

(a) a change in the person's name, residential address or contact details;

(b) the person starting child-related employment with a particular employer;

(c) the person not starting child-related employment with a particular proposed employer;

(d) the person ceasing child-related employment with a particular employer;

(e) the person starting to carry on a child-related business;

(f) the person deciding not to start to carry on a proposed child-related business;

(g) the person ceasing to carry on a child-related business;

(h) if the person is a student —

(i) the person completing or otherwise ceasing a course of study under which the person may or must undertake child-related work as part of that course; or

(ii) a change in the person's education provider with whom the person is completing a course of study under which the person may or must undertake child-related work as part of that course;

(i) a change prescribed by the regulations.

(4) A notification under subsection (2) must be in the approved form.

(5) The approved form may require the provision of any information the CEO thinks fit in connection with a relevant change of particulars.

[Section 35C inserted: No. 47 of 2022 s. 31.]

36. Assessment notice to be returned to CEO in certain cases

A person must return to the CEO an assessment notice issued to the person as soon as is practicable after —

(a) the person is charged with or convicted of a Class 1 offence (other than a Class 1 offence committed or allegedly committed by the person when a child); or

(b) the CEO issues a negative notice or an interim negative notice to the person; or

(c) the CEO gives the person a notice of cancellation of the assessment notice under section 21A(3), 21B(2), 21C(2) or 31(6).

Penalty: a fine of $12 000 and imprisonment for 12 months.

[Section 36 amended: No. 7 of 2010 s. 20; No. 47 of 2022 s. 32.]

***[37, 37A, 38.** Deleted: No. 47 of 2022 s. 33.]*

39. Use and disclosure of information obtained or created in course of official functions

A person who is or has been engaged in the performance of functions under this Act must not, directly or indirectly, disclose or make use of information obtained or created in the course of performing those functions except —

(a) for the purpose of, or in connection with, performing functions under this Act; or

(b) for the purpose of the investigation of a suspected offence under this Act or the conduct of proceedings against a person for an offence under this Act; or

(c) as required or allowed under this Act or another written law; or

(ca) if the information relates to proceedings before a court or tribunal and the proceedings are or were open to the public; or

(cb) if the disclosure or use involves the provision of statistical information that could not reasonably be expected to identify a specific person; or

(d) with the written consent of the Minister or the person to whom the information relates.

Penalty: a fine of $24 000 and imprisonment for 2 years.

[Section 39 amended: No. 47 of 2022 s. 34.]

39A. Ability to provide information and protection from liability

(1) In this section —

law includes the common law and any rules of equity.

(2) This subsection applies to information disclosed —

(a) to the CEO for the purposes of, or in connection with, any provision of this Act; or

(b) without limiting paragraph (a), in connection with the administration or enforcement of this Act; or

[(c) deleted]

(d) as otherwise authorised or required under any provision of this Act; or

(e) as authorised by the regulations.

(3) In a case where subsection (2) applies, information may be disclosed despite any other enactment, law or agreement that prohibits or restricts its disclosure.

(4) Subsection (3) does not derogate from the operation of —

(a) section 34E(4) or 34H(3); or

(b) the *National Disability Insurance Scheme (Worker Screening) Act 2020* section 34(6).

(5) Subsections (2) and (3) extend to information relating to —

(a) spent convictions; or

(b) children.

(6) If information is disclosed by a person in good faith in a case where subsection (2) applies, the person —

(a) does not incur any civil or criminal liability; and

(b) is not to be taken to have breached any duty of confidentiality or secrecy imposed by law; and

(c) is not to be taken to have breached any professional ethics or standards or any principles of conduct

applicable to the person's employment or to have engaged in unprofessional conduct.

(7) Subsection (6) does not apply to the disclosure of information by an external government agency.

[Section 39A inserted: No. 48 of 2020 s. 90; amended: No. 47 of 2022 s. 35.]

40. Protection from personal liability

(1) A person does not incur civil liability for anything that the person has done in good faith in the performance or purported performance of a function under this Act.

(2) The protection given by subsection (1) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act had been enacted.

(3) The State is also relieved of any liability that it might otherwise have had for another person having done anything as described in subsection (1).

(4) In this section, a reference to the doing of anything includes a reference to the omission to do anything.

41. Employer to comply with Act despite other laws etc.

(1) If it would be a contravention of a provision of this Act for a person (the ***employer***) to employ another person in child-related employment, the employer is to comply with the provision despite another Act or law or any industrial award, order or agreement.

(2) The employer does not commit an offence or incur any liability because, in complying with the provision, the employer does not start or continue to employ the person in child-related employment.

(3) Nothing in this section operates to affect a person's right to seek or obtain a remedy under the *Industrial Relations Act 1979* unless —

(a) the remedy is for the dismissal of the person by the employer; and

(b) the reason the employer dismissed the person was to comply with this Act; and

(c) the grounds on which the person seeks the remedy relate to the fact that the person was dismissed for that reason.

*[**42.** Deleted: No. 47 of 2022 s. 36.]*

43. Liability of partners for certain offences

(1) If —

(a) a breach of a provision of this Act by a person (the ***employer***) who employs, or proposes to employ, another person in child-related employment is an offence; and

(b) the employer that breaches the provision is a partnership,

the offence is taken to have been committed by each of the partners in the partnership.

(2) Subsection (1) does not apply to a partner who proves that —

(a) the offence was committed without the partner's consent or connivance; and

(b) the partner exercised all due diligence to prevent the commission of the offence that ought to have been exercised having regard to the nature of the partner's functions and to all the circumstances.

43A. Protection of legal professional privilege

Nothing in this Act requires a person to disclose information that is the subject of legal professional privilege.

[Section 43A inserted: No. 47 of 2022 s. 37.]

44. Evidentiary matters

(1) In proceedings for an offence against this Act, an allegation in the prosecution notice of any of the following matters is, in the absence of evidence to the contrary, taken to be proved —

(a) that at a specified time a specified person did not have a current assessment notice;

(b) that at a specified time a negative notice or an interim negative notice had been issued to a specified person and was current.

(2) In proceedings for an offence against subsection (2), (3) or (5) of section 22, an allegation in the prosecution notice that an employer was aware of a specified matter referred to in that subsection is, in the absence of evidence to the contrary, taken to be proved.

(3A) In proceedings for an offence against section 9B(1), (2) or (4), an allegation in the prosecution notice that an education provider was aware at a specified time of a specified matter referred to in that subsection is, in the absence of evidence to the contrary, taken to be proved.

(3B) In proceedings for an offence against section 9B(1), (2), (3), (4) or (5), an allegation in the prosecution notice that the procurement by an education provider of employment for a student in child-related employment was for the purpose of enabling the student to complete the syllabus for a course conducted by the provider is, in the absence of evidence to the contrary, taken to be proved.

(3) In proceedings for an offence against this Act, an assessment notice, negative notice, interim negative notice or other notice issued under this Act may be proved by tendering a copy of it certified by the CEO to be a true copy of the original.

(4) Unless the contrary is proved, it is to be presumed that a document purporting to have been signed by the CEO was signed by a person who at the time was the CEO.

(5) Unless the contrary is proved, it is to be presumed that a document purporting to have been signed by a delegate of the CEO was signed by a person who at the time was a delegate of the CEO and was authorised to sign it.

(6) This section is in addition to, and does not affect the operation of, the *Evidence Act 1906*.

[Section 44 amended: No. 7 of 2010 s. 23.]

45. Delegation by CEO etc.

(1) The CEO may delegate to a public sector employee or, with the approval of the Minister, another person any power or duty of the CEO under another provision of this Act.

(2) In subsection (1) —

public sector employee means an employee as defined in the *Public Sector Management Act 1994* section 3(1).

(3) The delegation is to be in writing signed by the CEO.

(4) A person to whom a power or duty is delegated under this section cannot subdelegate that power or duty unless the person is expressly authorised by the CEO to do so.

(5) A person exercising or performing a power or duty that has been delegated to the person under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.

(6) Nothing in this section limits the ability of the CEO to perform a function through an officer of the Department or an agent.

45A. Delegation by public authority or other body

(1) In this section —

chief executive officer, in relation to a relevant authority, means the principal officer (however described) of that body;

relevant authority means —

(a) a public authority; or

(b) any other body prescribed by the regulations for the purposes of this definition.

(2) The chief executive officer of a relevant authority may delegate to an officer or employee of the relevant authority any power or duty of the relevant authority under this Act.

(3) The delegation must be in writing signed by the chief executive officer.

(4) A delegation may expressly authorise the delegate to further delegate the power or duty.

(5) A person exercising or performing a power or duty that has been delegated to the person under this section or as authorised under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.

(6) Nothing in this section limits the ability of the relevant authority to perform a function through an officer of the relevant authority or an agent.

[Section 45A inserted: No. 47 of 2022 s. 38.]

45B. Commencement of proceedings

(1) Proceedings under this Act for an offence or in respect of any other matter may be commenced in the name of the CEO by —

(a) the CEO; or

(b) a person authorised to do so by the CEO.

(2) In any proceedings no proof is required of —

(a) the appointment of the CEO; or

(b) the authorisation of a person under subsection (1)(b).

(3) An averment in a prosecution notice that a person is authorised under subsection (1)(b) is taken to be proved unless the contrary is proved.

(4) Subsection (1) does not limit the ability of a person to commence or conduct the prosecution of an offence if the person has authority at law to do so.

[Section 45B inserted: No. 47 of 2022 s. 38.]

45C. Time for commencement of prosecution

Proceedings under this Act for an offence must be commenced —

(a) if the penalty for the offence specified by this Act includes a term of imprisonment for 5 years — within 5 years after the day on which the offence is alleged to have been committed; or

(b) if the offence is under section 9B(1) or (2) — within 5 years after the day on which the offence is alleged to have been committed; or

(c) in any other case — within 2 years after the day on which the offence is alleged to have been committed.

[Section 45C inserted: No. 47 of 2022 s. 38.]

45D. Service of documents

(1) In this section —

document includes any written notice or decision;

give includes serve, send, issue and notify.

(2) A document that is authorised or required by this Act to be given to a person may be given by any of the following methods —

(a) delivering the document to the person personally;

(b) leaving the document for the person at the person's last known principal place of residence or ordinary place of business;

(c) sending the document by post to the person's last known principal place of residence or ordinary place of business;

(d) sending the document by email to an email address specified by the person for giving documents under this Act;

(e) any other method to which the person agrees for giving documents under this Act;

(f) any other method (including electronic means) prescribed by the regulations.

(3) The regulations may make provision for or in relation to the time at which a document that is given by a particular method is taken to have been given.

[Section 45D inserted: No. 47 of 2022 s. 38.]

46. Regulations

(1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

(2) Without limiting subsection (1), the regulations may —

(a) provide for the receipt and storage of information obtained or created under this Act that relates to a person's criminal record and the restriction of access to that information; and

(b) create offences and provide, in respect of an offence so created, for the imposition of a penalty not exceeding $6 000.

[Section 46 amended: No. 47 of 2022 s. 39.]

47. Review of Act

(1) The Minister must review the operation and effectiveness of this Act, and prepare a report based on the review —

(a) as soon as practicable after the 5th anniversary of the day on which the *Working with Children (Criminal Record Checking) Amendment Act 2022* section 40 comes into operation; and

(b) after that, at intervals of not more than 5 years.

(2) The Minister must cause the report to be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 12 months after the 5th anniversary or the expiry of the period of 5 years, as the case may be.

[Section 47 inserted: No. 47 of 2022 s. 40.]

[Part 5 (s. 48-55) omitted under the Reprints Act 1984 s. 7(4)(e).]

Part 6 — Transitional provisions

Division 1 — Transitional provisions for this Act

[Heading inserted: No. 47 of 2022 s. 41.]

56. Term used: commencement day

In this Division —

commencement day means the day on which section 24 comes into operation.

[Section 56 amended: No. 47 of 2022 s. 42.]

57. People carrying on a child-related business, when s. 24(b) applies to

(1) Until the day prescribed by the regulations for the purposes of this section, section 24(b) does not apply to a person who carries on a child-related business.

(2) Different days may be prescribed by the regulations for the purposes of subsection (1) by reference to the following —

(a) the kind of child-related work carried out by the person;

(b) the kind of person who carries out child-related work;

(c) the kind of place where child-related work is carried out by the person;

(d) whether the person is a continuing operator or a new operator.

(3) In subsection (2) —

continuing operator means a person —

(a) who carried on a child-related business immediately before the commencement day; and

(b) who continues to carry on that same business;

new operator means a person who starts to carry on a child-related business on or after the commencement day

(whether or not the person has ever carried on a child-related business before that day).

58. Volunteers continuing in child-related employment, when s. 22(6) and 24(a) apply to

(1) In this section —

continuing volunteer means a person —

(a) who was employed on a voluntary basis in child-related employment by another person immediately before the commencement day; and

(b) who continues to be employed on that basis in that employment by that person.

(2) Until the day prescribed by the regulations for the purposes of this subsection, sections 22(6) and 24(a) do not apply in relation to a person being employed in child-related employment as a continuing volunteer.

(3) Different days may be prescribed by the regulations for the purposes of subsection (2) by reference to the ages of the children in respect of whom child-related work is carried out by a continuing volunteer.

59. Ministers of religion etc. continuing in child-related employment, when s. 22(6) and 24(a) apply to

(1) In this section —

continuing minister of religion means a person —

(a) who was employed in child-related employment by another person immediately before the commencement day as a minister of religion or in any other capacity for the purposes of a religious organisation; and

(b) who continues to be employed in that employment by that person in that capacity.

(2) Until the day prescribed by the regulations for the purposes of this subsection, sections 22(6) and 24(a) do not apply in relation to a person being employed in child-related employment as a continuing minister of religion.

60. Other people in child-related employment, when s. 22(6) and 24(a) apply to

(1) This section does not apply to a person to whom section 58 or 59 applies.

(2) Until the day prescribed by the regulations for the purposes of this subsection, sections 22(6) and 24(a) do not apply in relation to a person being employed in child-related employment.

(3) Different days may be prescribed by the regulations for the purposes of subsection (2) by reference to the following —

(a) the kind of child-related work carried out by the person;

(b) the kind of person who carries out child-related work;

(c) the kind of place where child-related work is carried out by the person;

(d) whether the person is a continuing employee or a new employee;

(e) whether a criminal record check (however described) has been made in respect of the person —

(i) under another Act; or

(ii) as prescribed by the regulations.

(4) In subsection (3) —

continuing employee means a person —

(a) who was employed in child-related employment by another person immediately before the commencement day; and

(b) who continues to be employed in that employment by that person;

new employee means a person who starts to be employed in child-related employment on or after the commencement day (whether or not the person has ever been employed in child-related employment before that day).

60A. Wilful murder charges and convictions between 1 Jan 2006 and 2 Jul 2008 taken to be relevant changes in criminal record

Without limiting Part 3 Division 1, if a person was charged with or convicted of an offence against *The Criminal Code* section 278 (as read with section 282) on or after the commencement day and before the day on which the *Community Protection (Offender Reporting) Amendment Act 2008* section 13 came into operation (the ***relevant day***) —

(a) there is a relevant change in the person's criminal record for the purposes of that Division; and

(b) the relevant change is to be taken to have occurred on the relevant day.

[Section 60A inserted: No. 27 of 2008 s. 13(2).]

61. Transitional regulations

(1) If this Division does not provide sufficiently for a matter or issue of a transitional nature that arises as a result of the coming into operation of this Act, the Governor may make regulations prescribing all matters that are required, necessary or convenient to be prescribed for providing for the matter or issue.

(2) Regulations made under subsection (1) may provide that specified provisions of this Act —

(a) do not apply; or

(b) apply with specified modifications,

to or in relation to any specified person, matter or issue.

(3) If regulations made under subsection (1) provide that a specified state of affairs is taken to have existed, or not to have existed,

on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the commencement day, the regulations have effect according to their terms.

(4) In subsections (2) and (3) —

specified means specified or described in the regulations.

(5) If regulations contain a provision referred to in subsection (3), the provision does not operate so as —

(a) to affect in a manner prejudicial to any person (other than the State or an authority of the State) the rights of that person existing before the day of publication; or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication.

[Section 61 amended: No. 47 of 2022 s. 43.]

Division 2 — Transitional provisions for *Working with Children (Criminal Record Checking) Amendment Act 2022*

[Heading inserted: No. 47 of 2022 s. 44.]

Subdivision 1 — Preliminary

[Heading inserted: No. 47 of 2022 s. 44.]

62. Terms used

In this Division —

2022 Amendment Act means the *Working with Children (Criminal Record Checking) Amendment Act 2022*;

commencement day means the day on which section 44 of the 2022 Amendment Act comes into operation;

former classification provisions means section 7, and Schedules 1 and 2, as in force immediately before commencement day;

new classification provisions means section 7, and Schedules 1 and 2, as in force on and after commencement day;

pre-commencement assessment application means an application for an assessment notice that is pending immediately before commencement day;

pre-commencement cancellation application means an application for the cancellation of a negative notice under section 19 that is pending immediately before commencement day.

[Section 62 inserted: No. 47 of 2022 s. 44.]

Subdivision 2 — Classification of offences

[Heading inserted: No. 47 of 2022 s. 44.]

63. Pre-commencement assessment applications

(1) This section applies to a person who has a pre-commencement assessment application.

(2) Subject to this Subdivision, the former classification provisions continue to apply to and in relation to the person until the CEO makes a decision under section 12 in relation to the application and then —

(a) if an assessment notice is issued — until that assessment notice ceases to have effect or the person applies for a further assessment notice under Part 2 Division 1 (whichever occurs first); or

(b) if a negative notice is issued —

(i) until all rights of review and appeal have been exhausted; and

(ii) if an assessment notice is issued as a result of a review or appeal — until that assessment notice ceases to have effect or the person applies for a

further assessment notice under Part 2 Division 1 (whichever occurs first).

[Section 63 inserted: No. 47 of 2022 s. 44.]

64. Pre-commencement cancellation applications

(1) This section applies to a person who has a pre-commencement cancellation application.

(2) Subject to this Subdivision, the former classification provisions continue to apply to and in relation to the person until the CEO makes a decision on the application and then —

(a) if an assessment notice is issued — until that assessment notice ceases to have effect or the person applies for a further assessment notice under Part 2 Division 1 (whichever occurs first); or

(b) if the application is unsuccessful —

(i) until all rights of review and appeal have been exhausted; and

(ii) if an assessment notice is issued as a result of a review or appeal — until that assessment notice ceases to have effect or the person applies for a further assessment notice under Part 2 Division 1 (whichever occurs first).

[Section 64 inserted: No. 47 of 2022 s. 44.]

65. Decision to act under s. 17(3)(d)

(1) This section applies to a person if —

(a) the person is subject to a decision of the CEO to act under section 17(3)(d) made before commencement day; and

(b) the CEO has not made a decision under section 12 in respect of the person before commencement day.

(2) Subject to this Subdivision, the former classification provisions continue to apply to and in relation to the person until the CEO makes a decision under section 12 and then —

(a) if an assessment notice is issued — until that assessment notice ceases to have effect or the person applies for a further assessment notice under Part 2 Division 1 (whichever occurs first); or

(b) if a negative notice is issued —

(i) until all rights of review and appeal have been exhausted; and

(ii) if an assessment notice is issued as a result of a review or appeal — until that assessment notice ceases to have effect or the person applies for a further assessment notice under Part 2 Division 1 (whichever occurs first).

[Section 65 inserted: No. 47 of 2022 s. 44.]

66. Decision to act under s. 20

(1) This section applies to a person if —

(a) the person is subject to a decision of the CEO to act under section 20 made before commencement day; and

(b) the processes provided for, or referred to, in section 20 (the ***relevant processes***) have not been completed in respect of the person immediately before commencement day.

(2) Subject to this Subdivision, the former classification provisions continue to apply to and in relation to the person until the relevant processes are completed and then —

(a) if an assessment notice is issued — until that assessment notice ceases to have effect or the person applies for a further assessment notice under Part 2 Division 1 (whichever occurs first); or

(b) if a negative notice is issued or is not cancelled —

(i) until all rights of review and appeal have been exhausted; and

(ii) if an assessment notice is issued as a result of a review or appeal — until that assessment notice ceases to have effect or the person applies for a further assessment notice under Part 2 Division 1 (whichever occurs first).

[Section 66 inserted: No. 47 of 2022 s. 44.]

67. Processes associated with s. 32

(1) This section applies to a person if —

(a) the person is the subject of a notice given to the CEO before commencement day that the CEO must treat under section 32(1) as an application for an assessment notice; and

(b) the CEO has not made a decision under section 12 in respect of the person before commencement day.

(2) Subject to this Subdivision, the former classification provisions continue to apply to and in relation to the person until the CEO makes a decision under section 12 and then —

(a) if an assessment notice is issued — until that assessment notice ceases to have effect or the person applies for a further assessment notice under Part 2 Division 1 (whichever occurs first); or

(b) if a negative notice is issued —

(i) until all rights of review and appeal have been exhausted; and

(ii) if an assessment notice is issued as a result of a review or appeal — until that assessment notice ceases to have effect or the person applies for a

further assessment notice under Part 2 Division 1 (whichever occurs first).

[Section 67 inserted: No. 47 of 2022 s. 44.]

68. Proceedings before State Administrative Tribunal or court

(1) Subject to this Subdivision, the former classification provisions continue to apply (to the extent relevant) to and in relation to a person who is the subject of proceedings before the State Administrative Tribunal or a court under or in respect of this Act that were commenced —

(a) before commencement day; or

(b) on or after commencement day if the proceedings relate to —

(i) any proceedings commenced before commencement day; or

(ii) any matter where the right to commence those proceedings arose before commencement day and the period for commencing those proceedings had not expired before commencement day; or

(iii) any matter where the right to commence those proceedings expired before commencement day but the State Administrative Tribunal or a court grants an extension of time to commence those proceedings; or

(iv) any matter to which subsection (4) or any of sections 63 to 67 apply.

(2) Subsection (1)(b)(i) and (ii) extend to a case where the period for commencing proceedings expires and the State Administrative Tribunal or a court grants an extension of time to commence the proceedings.

(3) The former classification provisions apply under subsection (1) pending the outcome of the proceedings (and subject to subsection (4) and the other provisions of this Subdivision).

(4) Subject to this Subdivision —

(a) if, as a result of proceedings referred to in subsection (1), an assessment notice is issued to the person who was the subject of the proceedings, the former classification provisions continue to apply to and in relation to the person until that assessment notice ceases to have effect or the person applies for a further assessment notice under Part 2 Division 1 (whichever occurs first); and

(b) if, as a result of proceedings referred to in subsection (1), a negative notice still applies in relation to the person who was the subject of the proceedings, the former classification provisions continue to apply to and in relation to the person —

(i) until all rights of review and appeal have been exhausted; and

(ii) if an assessment notice is issued as a result of a review or appeal — until that assessment notice ceases to have effect or the person applies for a further assessment notice under Part 2 Division 1 (whichever occurs first).

[Section 68 inserted: No. 47 of 2022 s. 44.]

69. Rights of review and appeal: related provision

(1) This section applies if a provision of this Subdivision provides that the former classification provisions continue to apply to and in relation to a person until all rights of review and appeal have been exhausted.

(2) Subject to this Subdivision, if the State Administrative Tribunal or a court grants an extension of time to commence review or

appeal proceedings, the former classification provisions continue to apply to and in relation to the person pending the outcome of those proceedings.

[Section 69 inserted: No. 47 of 2022 s. 44.]

70. Rights of review and appeal no longer apply if application made under s. 19 or 20

If a person to whom a negative notice has been issued applies to the CEO on or after commencement day for the notice to be cancelled under section 19 or 20 —

(a) all rights of review and appeal in relation to the negative notice are taken to have been exhausted for the purposes of this Subdivision; and

(b) the former classification provisions cease to apply to and in relation to the person.

[Section 70 inserted: No. 47 of 2022 s. 44.]

71. Application of new classification provisions

(1) Despite any other section in this Subdivision, the new classification provisions apply to and in relation to a person if the person is charged with, or convicted of, an offence on or after commencement day that is classified as a Class 1 offence or a Class 2 offence under those provisions.

(2) Despite any other section in this Subdivision, the new classification provisions apply to and in relation to a person if the person is subject to a decision of the CEO to act under section 17(3)(d) or 17B(2)(b) made on or after commencement day.

(3) If the new classification provisions apply to a person by operation of subsection (1) or (2), a classification of an offence by virtue of those provisions applies to and in relation to the person even if the offence was not a Class 1 offence or a Class 2

offence (as the case may be) at the time when the offence was committed or allegedly committed.

[Section 71 inserted: No. 47 of 2022 s. 44.]

Subdivision 3 — Other provisions

[Heading inserted: No. 47 of 2022 s. 44.]

72. Application of amended s. 12

Section 12, as in force on and after commencement day, applies to and in relation to a person who is subject to Subdivision 2.

[Section 72 inserted: No. 47 of 2022 s. 44.]

73. Processes associated with interim negative notice

(1) Section 13, as in force immediately before commencement day, continues to apply in relation to an interim negative notice issued before commencement day.

(2) Unless subsection (1) applies, section 13AA applies to and in relation to the following —

(a) a pre-commencement assessment application;

(b) a decision of the CEO to act under section 17(3)(d) if the CEO has not made a decision under section 12 before commencement day;

(c) a decision by the CEO to act under section 20 before commencement day if the correct notice to be substituted would be a negative notice and the CEO has not made a decision under that section before commencement day;

(d) a notice that the CEO must treat under section 32(1) as an application for an assessment notice if the CEO has not made a decision under section 12 before commencement day.

[Section 73 inserted: No. 47 of 2022 s. 44.]

74. Application of Part 3B

The powers conferred by Part 3B may be exercised in relation to a suspected offence under this Act, or other conduct, whether occurring before, on or after commencement day.

[Section 74 inserted: No. 47 of 2022 s. 44.]

75. Disclosure of information by CEO

(1) This section applies if the CEO has given a notice to a person under section 38(2) or (3) before commencement day.

(2) Despite the repeal of section 38 by the 2022 Amendment Act, the CEO must comply with subsection (4) of that section if circumstances referred to in that subsection occur on or after commencement day.

[Section 75 inserted: No. 47 of 2022 s. 44.]

76. Transitional regulations

(1) In this section —

specified means specified or described in the regulations;

transitional matter —

(a) means a matter or issue of a transitional nature that arises as a result of any of the amendments to this Act made by the 2022 Amendment Act; and

(b) includes a saving or application matter.

(2) If there is not sufficient provision in this Division for dealing with a transitional matter, the regulations may prescribe all matters that are required, necessary or convenient to be prescribed for dealing with the matter.

(3) If regulations made under subsection (2) provide that a specified state of affairs is taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than

commencement day, the regulations have effect according to their terms.

(4) If regulations made under subsection (2) contain a provision of a kind described in subsection (3), the provision does not operate so as —

(a) to affect in a manner prejudicial to any person (other than the State or an authority of the State) the rights of that person existing before the day of publication of those regulations; or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.

[Section 76 inserted: No. 47 of 2022 s. 44.]

Schedule 1 — Class 1 offences

[s. 7(1)]

[Heading inserted: No. 47 of 2022 s. 45.]

Enactment	Description of offence	Conditions
The Criminal Code		
s. 181	Carnal knowledge of animal	
s. 186(1)	Occupier or owner allowing child to be on premises for unlawful carnal knowledge	
s. 187(2)	Facilitating sexual offence against child outside Western Australia	
s. 191	Procuring person to be prostitute	The victim is a child
s. 192	Procuring person to have unlawful carnal knowledge by threat, fraud or administering drug	The victim is a child
s. 204A(2)	Showing offensive material to child under 16	The offensive material is child exploitation material as defined in *The Criminal Code* section 217A
		The offence does not fall within the ambit of section 7(3)
s. 204B	Using electronic communication to procure, or expose to indecent matter, child under 16	The offence does not fall within the ambit of section 7(3)
s. 217	Involving child in child exploitation	The offence does not fall within the ambit of section 7(3)

Enactment	Description of offence	Conditions
s. 218	Producing child exploitation material	The offence does not fall within the ambit of section 7(3)
s. 219	Distributing child exploitation material	The offence does not fall within the ambit of section 7(3)
s. 220	Possession of child exploitation material	The offence does not fall within the ambit of section 7(3)
s. 279	Murder	The victim is a child
s. 294	Act intended to cause grievous bodily harm or prevent arrest	The victim is a child
s. 305	Setting dangerous thing	The intended victim is a child
s. 306(2)	Female genital mutilation	The victim is a child
s. 306(4)	Female genital mutilation – taking or arranging for child to be taken from the State	
s. 317A(b)	Assault with intent to do grievous bodily harm	The victim is a child
s. 320	Sexual offences against child under 13	
s. 321	Sexual offences against child of or over 13 and under 16	The offence does not fall within the ambit of section 7(3)
s. 321A(4)	Persistent sexual conduct with child under 16	The offence does not fall within the ambit of section 7(3)
s. 322	Sexual offences against child of or over 16 by person in authority etc.	

Enactment	Description of offence	Conditions
s. 323	Indecent assault	The victim is a child The offence does not fall within the ambit of section 7(3)
s. 324	Aggravated indecent assault	The victim is a child The offence does not fall within the ambit of section 7(3)
s. 325	Sexual penetration without consent	The victim is a child The offence does not fall within the ambit of section 7(3)
s. 326	Aggravated sexual penetration without consent	The victim is a child The offence does not fall within the ambit of section 7(3)
s. 327	Sexual coercion	The victim is a child
s. 328	Aggravated sexual coercion	The victim is a child
s. 329(2)	Sexually penetrating child known to be lineal relative or de facto child	
s. 329(3)	Procuring, inciting or encouraging child known to be lineal relative or de facto child to engage in sexual behaviour	
s. 329(4)	Indecently dealing with child known to be lineal relative or de facto child	

Enactment	Description of offence	Conditions
s. 329(5)	Procuring, inciting or encouraging child known to be lineal relative or de facto child to do indecent act	
s. 329(6)	Indecently recording child known to be lineal relative or de facto child	
s. 330	Sexual offences against incapable person	
s. 331B	Sexual servitude	The victim is a child or an incapable person
s. 331C(2)	Conducting business involving sexual servitude	The victim is a child or an incapable person
s. 331D	Deceptive recruiting for commercial sexual services	The victim is a child or an incapable person
s. 332	Kidnapping	The victim is a child and the offence is committed by a person other than a relative of the child
s. 343	Child stealing	The offence is committed by a person other than a relative of the child
repealed s. 278 (as read with repealed s. 282)	Wilful murder	The victim is a child
repealed s. 281A (as read with repealed s. 287A)	Infanticide	

Enactment	Description of offence	Conditions
Children and Community Services Act 2004		
s. 192	Employing child, or permitting child to be employed, to perform in indecent, obscene or pornographic manner	
Classification (Publications, Films and Computer Games) Enforcement Act 1996		
s. 59(1)	Possessing or copying indecent or obscene article with intent to sell or supply, or selling or supplying, or offering to sell or supply, indecent or obscene article	The article is child exploitation material as defined in *The Criminal Code* section 217A
s. 59(3) or (4)	Displaying, exhibiting or demonstrating indecent or obscene article in specified circumstances	The article is child exploitation material as defined in *The Criminal Code* section 217A
s. 59(5)	Possessing or copying indecent or obscene article	The article is child exploitation material as defined in *The Criminal Code* section 217A The offence does not fall within the ambit of section 7(3)
s. 101(1)	Using computer service to transmit, obtain, demonstrate, advertise or request objectionable material	The material is child exploitation material as defined in *The Criminal Code* section 217A
repealed s. 60	Child pornography	The offence does not fall within the ambit of section 7(3)

Enactment	Description of offence	Conditions
Prostitution Act 2000		
s. 16	Causing, permitting or seeking to induce child to act as prostitute	
s. 17(1)	Obtaining payment for prostitution by child	
s. 18(1)	Agreement for prostitution of child	

[Schedule 1 inserted: No. 47 of 2022 s. 45.]

Schedule 2 — Class 2 offences

[s. 7(2)]

[Heading inserted: No. 47 of 2022 s. 45.]

Enactment	Description of offence	Conditions
The Criminal Code		
s. 192	Procuring person to have unlawful carnal knowledge by threat, fraud or administering drug	The victim is a person other than a child
s. 204A(2)	Showing offensive material to child under 16	The offensive material is child exploitation material as defined in *The Criminal Code* section 217A
		The offence falls within the ambit of section 7(3)
s. 204B	Using electronic communication to procure, or expose to indecent matter, child under 16	The offence falls within the ambit of section 7(3)
s. 217	Involving child in child exploitation	The offence falls within the ambit of section 7(3)
s. 218	Producing child exploitation material	The offence falls within the ambit of section 7(3)
s. 219	Distributing child exploitation material	The offence falls within the ambit of section 7(3)
s. 220	Possession of child exploitation material	The offence falls within the ambit of section 7(3)
s. 221BD(2)	Distribution of intimate image	The image is of a child
s. 279	Murder	The victim is a person other than a child
s. 280	Manslaughter	

Enactment	Description of offence	Conditions
s. 281	Unlawful assault causing death	
s. 284(3)(c)	Culpable driving (not of motor vehicle or vessel) causing death	
s. 284(3)(d)	Culpable driving (not of motor vehicle or vessel) causing grievous bodily harm	
s. 288	Procuring, counselling or aiding another to commit suicide	
s. 290	Preventing birth of live child	
s. 292	Disabling in order to commit indictable offence	
s. 293	Stupefying in order to commit indictable offence	
s. 294	Act intended to cause grievous bodily harm or prevent arrest	The victim is a person other than a child
s. 297	Grievous bodily harm	
s. 298	Suffocation and strangulation	
s. 300	Persistent family violence	One or more of the prescribed offences under *The Criminal Code* section 299 are offences listed in Schedule 1 or this Schedule
s. 301	Wounding and similar acts	
s. 305	Setting dangerous thing	The intended victim is a person other than a child
s. 306(2)	Female genital mutilation	The victim is a person other than a child

Enactment	Description of offence	Conditions
s. 317A(b)	Assault with intent to do grievous bodily harm	The victim is a person other than a child
s. 321	Sexual offences against child of or over 13 and under 16	The offence falls within the ambit of section 7(3)
s. 321A(4)	Persistent sexual conduct with child under 16	The offence falls within the ambit of section 7(3)
s. 323	Indecent assault	The victim is a person other than a child or The offence falls within the ambit of section 7(3)
s. 324	Aggravated indecent assault	The victim is a person other than a child or The offence falls within the ambit of section 7(3)
s. 325	Sexual penetration without consent	The victim is a person other than a child or The offence falls within the ambit of section 7(3)
s. 326	Aggravated sexual penetration without consent	The victim is a person other than a child or The offence falls within the ambit of section 7(3)
s. 327	Sexual coercion	The victim is a person other than a child
s. 328	Aggravated sexual coercion	The victim is a person other than a child

Enactment	Description of offence	Conditions
s. 329(7)	Sexually penetrating person of or over 18 known to be lineal relative	
s. 329(8)	Consenting to being sexually penetrated by person known to be lineal relative	
s. 331B	Sexual servitude	The victim is a person other than a child or an incapable person
s. 331C(2)	Conducting business involving sexual servitude	The victim is a person other than a child or an incapable person
s. 331D	Deceptive recruiting for commercial sexual services	The victim is a person other than a child or an incapable person
s. 332	Kidnapping	The victim is a person other than a child or The victim is a child and the offence is committed by a relative of the child
s. 343	Child stealing	The offence is committed by a relative of the child
repealed s. 278 (as read with repealed s. 282)	Wilful murder	The victim is a person other than a child
Animal Welfare Act 2002		
s. 19	Cruelty to animals	This item does not apply if the CEO is satisfied that the offence did not involve serious cruelty to an animal

Enactment	Description of offence	Conditions
Children and Community Services Act 2004		
s. 101(1)	Failing to protect child from significant harm	
s. 102	Leaving child unsupervised in vehicle	
Classification (Publications, Films and Computer Games) Enforcement Act 1996		
s. 59(5)	Possessing or copying indecent or obscene article	The article is child exploitation material as defined in *The Criminal Code* section 217A
		The offence falls within the ambit of section 7(3)
repealed s. 60	Child pornography	The offence falls within the ambit of section 7(3)
Disability Services Act 1993		
s. 53	Offence of ill-treatment	
Misuse of Drugs Act 1981		
s. 7B(4)	Selling drug paraphernalia to child	
repealed s. 19A(2)	Selling, or offering to sell, cannabis smoking paraphernalia to child	
repealed s. 19B(2)	Selling, or offering to sell, ice pipe to child	
Road Traffic Act 1974		
s. 59	Dangerous driving causing death	

Enactment	Description of offence	Conditions
s. 59	Dangerous driving causing grievous bodily harm	
Western Australian Marine Act 1982		
s. 75B(1) and (2)	Dangerous navigation of vessel occasioning death	
s. 75BA(1) and (2)	Dangerous navigation of vessel occasioning grievous bodily harm	

[Schedule 2 inserted: No. 47 of 2022 s. ~~45.]~~45; amended: No. 31 of 2023 s. 38(2) and (3).]

Notes

This is a compilation of the *Working with Children (Screening) Act 2004* and includes amendments made by other written laws. For provisions that have come into operation, and for information about any reprints, see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

Compilation table

Short title	Number and year	Assent	Commencement
Working with Children (Criminal Record Checking) Act 2004 [1]	65 of 2004	8 Dec 2004	s. 1 and 2: 8 Dec 2004; Act other than s. 1, 2 and 50-52: 1 Jan 2006 (see s. 2 and *Gazette* 30 Dec 2005 p. 6875); s. 50-52: 1 Jan 2007 (see s. 2 and *Gazette* 29 Dec 2006 p. 5867)
Criminal Code Amendment (Cyber Predators) Act 2006 s. 7	3 of 2006	30 Mar 2006	30 Mar 2006 (see s. 2(1))
Child Care Services Act 2007 Pt. 7 Div. 4	19 of 2007	3 Jul 2007	10 Aug 2007 (see s. 2(b) and *Gazette* 9 Aug 2007 p. 4071)
Criminal Law and Evidence Amendment Act 2008 s. 74	2 of 2008	12 Mar 2008	27 Apr 2008 (see s. 2 and *Gazette* 24 Apr 2008 p. 1559)
Criminal Law Amendment (Homicide) Act 2008 s. 40	29 of 2008	27 Jun 2008	1 Aug 2008 (see s. 2(c) and (d) and *Gazette* 22 Jul 2008 p. 3353)
Community Protection (Offender Reporting) Amendment Act 2008 s. 13	27 of 2008	1 Jul 2008	2 Jul 2008 (see s. 2(b))
Reprint 1: The *Working with Children (Criminal Record Checking) Act 2004* as at 14 Nov 2008 (includes amendments listed above)			
Statutes (Repeals and Miscellaneous Amendments) Act 2009 s. 140	8 of 2009	21 May 2009	22 May 2009 (see s. 2(b))
Working with Children (Criminal Record Checking) Amendment Act 2010 Pt. 2	7 of 2010	27 May 2010	6 Oct 2010 (see s. 2(b) and *Gazette* 5 Oct 2010 p. 5113)

Short title	Number and year	Assent	Commencement
Child Pornography and Exploitation Material and Classification Legislation Amendment Act 2010 s. 15	21 of 2010	7 Jul 2010	28 Aug 2010 (see s. 2(b) and *Gazette* 27 Aug 2010 p. 4105)
Cannabis Law Reform Act 2010 Pt. 6	45 of 2010	28 Oct 2010	1 Aug 2011 (see s. 2(b) and *Gazette* 29 Jul 2011 p. 3127)
Children and Community Services Amendment Act 2010 Pt. 2 Div. 2	49 of 2010	24 Nov 2010	31 Jan 2011 (see s. 2(b) and *Gazette* 28 Jan 2011 p. 241)
Misuse of Drugs Amendment Act (No. 2) 2010 Pt. 3	50 of 2010	24 Nov 2010	25 Nov 2010 (see s. 2(b))
Reprint 2: The *Working with Children (Criminal Record Checking) Act 2004* as at 7 Jan 2011 (includes amendments listed above except those in the *Cannabis Law Reform Act 2010* and *Children and Community Services Amendment Act 2010*)			
Child Care Services Amendment Act 2011 Pt. 3	38 of 2011	4 Oct 2011	7 Jan 2012 (see s. 2(b) and *Gazette* 6 Jan 2012 p. 3)
Misuse of Drugs Amendment Act 2011 Pt. 5	56 of 2011	21 Nov 2011	30 Jan 2013 (see s. 2(b) and *Gazette* 29 Jan 2013 p. 324-5)
Reprint 3: The *Working with Children (Criminal Record Checking) Act 2004* as at 17 Feb 2012 (includes amendments listed above except those in the *Misuse of Drugs Amendment Act 2011*)			
Education and Care Services National Law (WA) Act 2012 Pt. 4 Div. 9	11 of 2012	20 Jun 2012	1 Aug 2012 (see s. 2(c) and *Gazette* 25 Jul 2012 p. 3411)
Education and Care Services National Law (WA) Amendment Act 2018 Pt. 4	18 of 2018	7 Sep 2018	1 Oct 2018 (see s. 2(b)(i))
Historical Homosexual Convictions Expungement Act 2018 Pt. 5	20 of 2018	18 Sep 2018	15 Oct 2018 (see s. 2(b) and *Gazette* 12 Oct 2018 p. 4059)
Criminal Law Amendment (Intimate Images) Act 2019 Pt. 4	4 of 2019	26 Feb 2019	15 Apr 2019 (see s. 2(b) and *Gazette* 9 Apr 2019 p. 1041)
National Disability Insurance Scheme (Worker Screening) Act 2020 Pt. 7 Div. 2	48 of 2020	9 Dec 2020	1 Feb 2021 (see s. 2(1)(b) and SL 2021/4 cl. 2)

Short title	Number and year	Assent	Commencement
Working with Children (Criminal Record Checking) Amendment Act 2022 Pt. 2	47 of 2022	7 Dec 2022	1 Jul 2023 (see s. 2(b) and SL 2023/90 cl. 2)
Western Australian Marine Amendment Act 2023 s. 38	31 of 2023	11 Dec 2023	21 Dec 2023 (see s. 2(c) and SL 2023/202 cl. 2(a))

Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA Legislation website.

Short title	Number and year	Assent	Commencement
Commissioner for Children and Young People Act 2006 s. 65 (Sch. 1 cl. 3)	48 of 2006	4 Oct 2006	To be proclaimed (see s. 2)
Prostitution Amendment Act 2008 s. 35	13 of 2008	14 Apr 2008	To be proclaimed (see s. 2(b))
Criminal Law (Mental Impairment) Act 2023 Pt. 15 Div. 28 and s. 412	10 of 2023	13 Apr 2023	~~To be proclaimed~~1 Sep 2024 (see s. 2(b~~))~~) and SL 2024/175 cl. 2)
~~*Western Australian Marine Amendment Act 2023* s. 38~~	~~31 of 2023~~	~~11 Dec 2023~~	~~To be proclaimed (see s. 2(c))~~

Other notes

1. Now known as the *Working with Children (Screening) Act 2004*; short title changed (see note under s. 1).

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