

Western Australia

**Working with Children (Criminal Record  
Checking) Amendment Act 2010**

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As at 27 May 2010

No. 7 of 2010

Extract from [www.slp.wa.gov.au](http://www.slp.wa.gov.au), see that website for further information



## **Working with Children (Criminal Record Checking) Amendment Act 2010**

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Western Australia

## **Working with Children (Criminal Record Checking) Amendment Act 2010**

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**No. 7 of 2010**

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***An Act to amend the *Working with Children (Criminal Record  
Checking) Act 2004* and the *Spent Convictions Act 1988*.***

*[Assented to 27 May 2010]*

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

### **1. Short title**

This is the *Working with Children (Criminal Record Checking) Amendment Act 2010*.

### **2. Commencement**

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

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**Part 2 — Working with Children (Criminal Record Checking) Act 2004 amended**

**3. Act amended**

This Part amends the *Working with Children (Criminal Record Checking) Act 2004*.

**4. Section 4 amended**

(1) In section 4 insert in alphabetical order:

***Class 3 offence*** means an offence that is not a Class 1 offence or a Class 2 offence;

***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;

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*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;

(2) In section 4 in the definition of *child-related employment*:

- (a) in paragraph (a) delete “apprenticeship” and insert:

training contract

- (b) in paragraph (c) delete “organisation;” and insert:

organisation; or

- (c) after paragraph (c) insert:

- (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;

(3) In section 4 in the definition of *parent*:

- (a) after paragraph (c) insert:

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

- (b) after paragraphs (a) and (c) insert:

or



**5. Sections 9A and 9B inserted**

At the end of Part 1 insert:

**9A. Application of certain provisions to students employed in child-related employment as part of an educational or vocational course**

- (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 is to include provision for a student's education provider or employer to certify that the student is, or proposes to be, employed in child-related employment; 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), 13(3) 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

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(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 his or her 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 his or her education provider written notice of the things referred to in paragraphs (a) and (b) of that subsection.

**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: a fine of \$60 000.

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- (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: 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: 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: 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: 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.

**6. Section 11 amended**

- (1) After section 11(1) insert:

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

- (2) In section 11(2)(a) delete “identity;” and insert:

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

- (3) In section 11(2)(b)(i) delete “the applicant’s identity; and” and insert:

any matter referred to in paragraph (a) that is relevant to the application; and

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(4) After section 11(2)(b) insert:

and

(5) After section 11(3) insert:

(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).

**7. Section 12 replaced**

Delete section 12 and insert:

**12. Decision on application for an 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 is not to decide the application unless the CEO has made a criminal record check 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**

<b>Item</b>	<b>Condition</b>	<b>Applicable provision</b>
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.	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)
3.	The CEO is aware, not as a result of a notice under section 16(1) or 17(1), of a pending charge against the applicant in respect of a Class 3 offence.	s. 12(4)
4.	The CEO is aware, as a result of a notice under section 16(1) or 17(1), of a pending charge against the applicant in respect of a Class 3 offence.	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)

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<b>Item</b>	<b>Condition</b>	<b>Applicable provision</b>
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 1 offence or 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)
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)
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.	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, the CEO is to decide whether he or she is satisfied in relation to the particular or exceptional circumstances of the case having regard to —
  - (a) the best interests of children;
  - (b) when the offence was committed or is alleged to have been committed;
  - (c) the age of the applicant when the offence was committed or is alleged to have been committed;
  - (d) the nature of the offence and any relevance it has to child-related work;
  - (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;
  - (f) any information given by the applicant in, or in relation to, the application;
  - (g) anything else that the CEO reasonably considers relevant to the decision.

**13A. Issue of assessment notice or negative notice**

- (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

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

**8. Section 13 amended**

In section 13(4) delete “applicant, or the application is withdrawn.” and insert:

applicant.

**9. Section 17 replaced**

Delete section 17 and insert:

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

- (1) If the Commissioner 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 Commissioner 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 Commissioner may give the CEO notice of —
- (c) the person's name and address; and
  - (d) the person's date of birth; and
  - (e) the offence with which the person has been charged or of which the person has been convicted; and
  - (f) the details of the offence; and
  - (g) the date of the charge or conviction.
- (2) The Commissioner 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) or information under section 34 —
- (a) carries out child-related work or has a current assessment notice; and
  - (b) has been charged with or convicted of an offence, being a charge or conviction of which the CEO was not previously aware and the charge or conviction makes 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

**s. 10**

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- (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.
- (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: 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.

**10. Section 18 amended**

In section 18(1) delete “or 17(3)” and insert:

or 17(3)(c)

**11. Section 19 amended**

In section 19(3):

- (a) in paragraph (b) delete “appeal.” and insert:

appeal; or

- (b) after paragraph (b) insert:
  - (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.

**12. Sections 21A, 21B and 21C inserted**

After section 20 insert:

**21A. Cancellation of assessment notice of certain persons not involved in child-related work**

- (1) If a person in respect of whom the CEO has received a notice under section 17(1) 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) 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.

**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.

**21C. Cancellation of assessment notice of certain persons taken to have applied for an assessment notice**

- (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 he or she has ceased to be employed in child-related work 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.

**13. Section 25 amended**

- (1) In section 25(4):
  - (a) in paragraph (b) delete “service.” and insert:  
  
service; or
  - (b) after paragraph (b) insert:  
  
(c) whose assessment notice has been cancelled under section 21A(1) or (2) or 21C(1).
- (2) After section 25(4) insert:
  - (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) or 17(3)(c); 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

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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).

**14. Section 26 amended**

- (1) In section 26(1) in the definition of *defined period*:

(a) delete “section 19(10).” and insert:

section 19(10); or

(b) after paragraph (b) insert:

(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) In section 26(2) delete “A person” and insert:

Subject to subsection (3A), a person

- (3) After section 26(2) insert:

(3A) If a person has not made a submission to the CEO under section 13(1)(a)(iii) 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)(a)(ii) having been invited to do so by CEO.

- (4) In section 26(3) after “subsection (2)” insert:

or (3B)

**15. Section 29 amended**

- (1) In section 29(1) after “must give” insert:

the CEO and

- (2) Delete section 29(2) and insert:

- (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.

**16. Section 31 amended**

After section 31(3) insert:

- (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: 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.

**17. Section 32A inserted**

After section 31 insert:

**32A. Certain people to notify proposed employer of relevant change in criminal record**

If a person who has had his or her assessment notice cancelled (the *cancelled assessment notice*) under section 31(5) —

- (a) has applied for a further assessment notice and the application is pending; and
- (b) a person (the *proposed employer*) proposes to employ him or her 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.

**18. Section 32 amended**

In section 32(1) delete “section 29(2)” and insert:

section 29(1)

**19. Section 35 amended**

In section 35:

(a) in paragraph (b) delete “CEO.” and insert:

CEO; or

(b) after paragraph (b) insert:

(c) if the person is a student, the person’s education provider.

**20. Section 36 amended**

In section 36:

(a) in paragraph (b) delete “person.” and insert:

person; or

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- (b) after paragraph (b) insert:
  - (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).

**21. Section 38 amended**

- (1) In section 38(2) delete “that a negative notice or an interim negative notice has been issued to a person.” and insert:

that —

- (a) 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; or
  - (b) an assessment notice has been issued to a person; or
  - (c) an application for an assessment notice has been withdrawn by a person; or
  - (d) a negative notice or an interim negative notice has been issued to a person; or
  - (e) a person does not have a current assessment notice.
- (2) Delete section 38(3) and insert:
  - (3) If the CEO reasonably believes that a person —
    - (a) holds a licence under the *Child Care Services Act 2007*; or

- (b) is a nominated supervising officer, a supervising officer or a managerial officer, as defined in section 3 of that Act,

the CEO may give written notice to the chief executive officer of the Department that —

- (c) an application for an assessment notice has been made by the person in respect of which no decision has yet been made under section 12; or
- (d) an assessment notice has been issued to the person; or
- (e) an application for an assessment notice has been withdrawn by the person; or
- (f) a negative notice or an interim negative notice has been issued to the person; or
- (g) the person does not have a current assessment notice.

(3) After section 38(4) insert:

- (5) If the CEO gives a notice in relation to a person under subsection (2) to the Department of the Public Service principally assisting in the administration of the *Police Act 1892*, the CEO may also give that Department notice of the person's employment details.

Note: The heading to amended section 38 is to read:

**Disclosure of information by CEO to certain bodies**

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**22. Section 42 amended**

In section 42(1) in the definition of *regulated person*:

(a) in paragraph (b) delete “business.” and insert:

business; or

(b) after paragraph (b) insert:

(c) who is an education provider.

**23. Section 44 amended**

(1) In section 44(1) delete “complaint” and insert:

prosecution notice

(2) In section 44(2) delete “complaint” and insert:

prosecution notice

(3) After section 44(2) insert:

(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.

**24. Schedule 1 amended**

In Schedule 1 under the heading relating to *The Criminal Code* insert in the appropriate numerical order:

- |           |  |
|-----------|--|
| s. 186(1) | Occupier or owner allowing a child to be on premises for unlawful carnal knowledge (if the child in relation to whom the offence is committed is under 13) |
| s. 325    | Sexual penetration without consent (if the person against whom the offence is committed is a child under 13)   |
| s. 326    | Aggravated sexual penetration without consent (if the person against whom the offence is committed is a child under 13)                                    |
| s. 327    | Sexual coercion (if the person against whom the offence is committed is a child under 13)  |
| s. 328    | Aggravated sexual coercion (if the person against whom the offence is committed is a child under 13)   |

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**25. Schedule 2 amended**

In Schedule 2 under the heading relating to *The Criminal Code* delete the item relating to section 186 and insert:

- s. 186(1) Occupier or owner allowing a child to be on premises for unlawful carnal knowledge (if the child in relation to whom the offence is committed is 13 or over)



### Part 3 — *Spent Convictions Act 1988* amended

**26. Act amended**

This Part amends the *Spent Convictions Act 1988*.

**27. Section 28 amended**

(1) Before section 28(1) insert:

(1A) In this section —

***child*** means a person under 18 years of age;

***official criminal record*** means a record containing information about the results of criminal proceedings kept for the purposes of its functions by any police force, court, government department, local or other public authority in Western Australia.

(2) Delete section 28(2) and insert:

(2) Subsection (1) does not apply to a prescribed person if —

- (a) the person is required or permitted under a prescribed law of the Commonwealth, another State or a Territory to obtain or deal with information about a person who works, or seeks to work, with a child; and
- (b) the purpose of obtaining the information from an official criminal record is to obtain or deal with the information in accordance with the prescribed law.

**28. Schedule 3 amended**

After Schedule 3 clause 2(6) insert:

- (7) The CEO as defined in the *Working with Children (Criminal Record Checking) Act 2004* section 4 is excepted from the provisions of section 28(1) in respect of all spent convictions in disclosing information under section 37(2) of that Act if the disclosure is to a corresponding authority as defined in section 37(1) of that Act and that authority is a person prescribed under section 28(2).

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