



Western Australia

Working with Children (Criminal Record Checking) Act 2004

Compare between:

[06 Oct 2010, 01-f0-02] and [28 Oct 2010, 01-g0-02]

Western Australia

Working with Children (Criminal Record Checking) 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 (Criminal Record Checking) Act 2004*¹.

2. Commencement

- (1) This Act comes into operation on a day fixed by proclamation¹.
- (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 Western Australia (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);

CEO means the chief executive officer of the Department;

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

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

child care service has the meaning given in the *Child Care Services Act 2007* section 3;

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);
- (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 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*;

contact includes —

- (a) any form of physical contact;
- (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;

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criminal record, in relation to a person, means —

- (a) every conviction of the person of an offence, in Western Australia or another jurisdiction; and
- (b) every charge made against the person for an offence, in Western Australia 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;

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;

interim negative notice means a written notice issued by the CEO under section 13;

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;

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;

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;

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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;
- (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);

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.

[Section 4 amended by No. 19 of 2007 s. 71; No. 7 of 2010 s. 4.]

5. Managerial officers

- (1) In this section —

managerial officer has the meaning given to that term in the *Child Care Services Act 2007* section 3.

- (2) Despite any other provision of this Act, a person who is a managerial officer in relation to a body corporate that holds a licence under the *Child Care Services Act 2007* —
- (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 by No. 19 of 2007 s. 72.]

6. Term used: child-related work

- (1) Subject to subsection (3), 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;
 - (ii) a community kindergarten registered under the *School Education Act 1999* Part 5;
 - (iii) an educational institution for children;
 - (iv) a coaching or private tuition service of any kind, but not including an informal arrangement entered into for private or domestic purposes;
 - (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;
 - (vi) a placement arrangement under the *Children and Community Services Act 2004*;

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- (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;
- (viii) a detention centre, as defined in the *Young Offenders Act 1994* section 3;
- (ix) a community child health service;
- (x) a counselling or other support service;
- (xi) a religious organisation;
- (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;
- (xiii) a ward of a public or private hospital in which children are ordinarily patients;
- (xiv) a baby sitting or child minding service, but not including an informal arrangement entered into for private or domestic purposes;
- (xv) an overnight camp, regardless of the type of accommodation or how many children are involved;
- (xvi) a transport service specifically for children;
- (xvii) a school crossing service, being a service provided to assist children to cross roads on their way to or from school;
- (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 —
- (a) on a voluntary basis by a child; or
 - (b) in circumstances, or by a person, prescribed by the regulations.
- (4) Without limiting subsection (3)(b), the regulations may prescribe a person for the purposes of that provision by reference to a criminal record check (however described) made in respect of the person —
- (a) under another Act prescribed by the regulations; or
 - (b) as prescribed by the regulations.

7. Terms used: 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 relating to the age of the victim);

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- (b) an offence under a law of another jurisdiction the elements of which, if they had occurred in Western Australia, would have constituted an offence of a kind referred to in this subsection;
 - (c) an offence under a law of another jurisdiction that is prescribed by the regulations to be a Class 1 offence;
 - (d) an offence that, at the time it was committed —
 - (i) was a Class 1 offence for the purposes of this Act; or
 - (ii) in the case of an offence committed before the commencement of this section — was an offence of a kind referred to in this subsection.
- (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 relating to the age of the victim);
 - (b) an offence under a law of another jurisdiction the elements of which, if they had occurred in Western Australia, would have constituted an offence of a kind referred to in this subsection;
 - (c) an offence under a law of another jurisdiction that is prescribed by the regulations to be a Class 2 offence;
 - (d) an offence of attempting, or of conspiracy or incitement, to commit an offence of a kind referred to in this subsection or subsection (1);
 - (e) an offence that, at the time it was committed —
 - (i) was a Class 2 offence for the purposes of this Act; or
 - (ii) in the case of an offence committed before the commencement of this section — was an offence of a kind referred to in this subsection.

8. References to convictions

- (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 he or she 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.

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

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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

- (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.

[Section 9A inserted by No. 7 of 2010 s. 5.]

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

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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.

- (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.

[Section 9B inserted by No. 7 of 2010 s. 5.]

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 (the *employer*) may apply to the CEO for an assessment notice.
- (2) The application is to be —
 - (a) in the approved form;
 - (b) signed by the applicant; and
 - (c) accompanied by the fee prescribed by the regulations.
- (3) The approved form is to include provision for —
 - (a) identifying information to be given about the applicant; and
 - (b) certification by the employer that the employer employs, or proposes to employ, the applicant in child-related employment.
- (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.

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;
 - (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.
- (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.

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.
- (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),
- 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).

[Section 11 amended by No. 7 of 2010 s. 6.]

Division 2 — Issue of assessment notices and negative notices

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

| 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. | 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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Part 2 Assessment notices and negative notices

Division 2 Issue of assessment notices and negative notices

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| 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 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.

[Section 12 inserted by No. 7 of 2010 s. 7.]

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
 - (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.

[Section 13A inserted by No. 7 of 2010 s. 7.]

13. CEO to invite submission about criminal record and issue interim 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 —
- (a) the CEO is to give the applicant a written notice that —
 - (i) informs the applicant of the proposal or requirement;
 - (ii) states the information about the applicant's criminal record of which the CEO is aware; and
 - (iii) 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;
- and
- (b) the CEO may issue an interim negative notice to the applicant.
- (2) If the CEO is aware of a Class 1 offence (other than a Class 1 offence committed by the applicant when a child) of which the

applicant has been convicted, the CEO is to issue an interim negative notice to the applicant.

- (3) If the CEO —
- (a) issues an interim negative notice to the applicant; and
 - (b) is aware that the 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.
- (4) An interim negative notice has effect until the CEO decides the application and issues a negative notice or an assessment notice to the applicant.
- (5) If the information specified in a notice under subsection (1) about an applicant's criminal record includes a Class 1 offence (other than a Class 1 offence committed by the applicant when a child) of which the applicant has been convicted, 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.
- (6) The specified time referred to in subsection (1)(a)(iii) is to be reasonable and, in any case, at least 28 days after the CEO gives the applicant the notice.
- (7) Before deciding the application, the CEO is to consider any submission made by the applicant within the specified time.

[Section 13 amended by No. 7 of 2010 s. 8.]

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: 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.

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
 - (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.

[Section 17 inserted by No. 7 of 2010 s. 9.]

18. CEO may issue negative notice if assessment notice not applied for

- (1) If a person does not comply with a notice given to the person under section 16(3) or 17(3)(c) 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 by No. 7 of 2010 s. 10.]

Division 4 — Cancellation of assessment notices and negative notices

19. Applications 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 most recent previous application.
- (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, or the previous application was made, is later disposed of by a court otherwise than by way of a conviction; or
 - (b) any offence of which the person was convicted when the negative notice was issued, or the previous application was made, is later quashed or set aside on appeal; 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.

- (4) Subsection (2)(a) does not apply if the negative notice was issued under section 18.
- (5) The application is to be —
 - (a) in the approved form;
 - (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;
 - (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;
 - (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 by No. 7 of 2010 s. 11.]

20. Cancellation of notice because 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 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.

[Section 21A inserted by No. 7 of 2010 s. 12.]

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 by No. 7 of 2010 s. 12.]

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.

[Section 21C inserted by No. 7 of 2010 s. 12.]

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: 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: 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: 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: 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: 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.

23. People issued 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 section 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 convicted of a Class 1 offence (other than a Class 1 offence committed by the person when a child) at the time the offence is alleged to have been committed.
- (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) convicted of a Class 1 offence (other than a Class 1 offence committed by the person when a child); or
 - (b) 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) 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 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).

[Section 25 amended by No. 7 of 2010 s. 13.]

Division 6 — Review by State Administrative Tribunal

26. Review by State Administrative Tribunal

- (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)(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.
- (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.

[Section 26 amended by No. 7 of 2010 s. 14.]

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. Relevant change in criminal record of certain applicants

- (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: a fine of \$60 000 and imprisonment for 5 years.

29. Relevant change in criminal record of people employed in child-related employment

- (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: 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.

Penalty: a fine of \$24 000 and imprisonment for 2 years.

[Section 29 amended by No. 7 of 2010 s. 15.]

30. Relevant change in criminal record of people carrying on child-related business

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. Relevant change in criminal record of other people

- (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: 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: 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: 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 by No. 7 of 2010 s. 16.]

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.

[Section 32A inserted by No. 7 of 2010 s. 17.]

32. CEO to treat notice of relevant change in criminal record 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 by No. 7 of 2010 s. 18.]

33. People not to start or continue child-related work if convicted of Class 1 offence

If the relevant change in a person's criminal record is the person's conviction of a Class 1 offence (other than a Class 1 offence 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: a fine of \$60 000 and imprisonment for 5 years.

Division 2 — Criminal record checks

34. CEO may carry out criminal record check

(1) In this section —

authorised person means —

- (a) the chief executive officer of the department of the Public Service principally assisting the Minister in the administration of the *Sentencing Act 1995*;
- (b) the Commissioner; or
- (c) the Director of Public Prosecutions under the *Director of Public Prosecutions Act 1991*;

criminal records agency means —

- (a) the Commissioner of the Australian Federal Police;
- (b) the Commissioner (however designated) of the police force of another State or a Territory or another country; or
- (c) a person or body that is —
 - (i) established under the law of another State, a Territory or the Commonwealth; and
 - (ii) prescribed by the regulations for the purposes of this definition.

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

- (a) who has a current assessment notice;
- (b) who has applied to the CEO for an assessment notice;
- (c) who has applied to the CEO for a negative notice to be cancelled; or
- (d) if the CEO is given a notice that is to be treated under section 32(1) as an application by the person for an assessment notice.

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- (3) The CEO may ask the Commissioner or a criminal records agency for information or access to the respective records of the Commissioner or 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 an authorised person or a criminal records agency for information about the circumstances of a conviction or charge mentioned in the criminal record.
- (5) An authorised person may comply with a request made by the CEO under this section despite another Act or law.

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
- (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 by No. 7 of 2010 s. 19.]

36. Return of assessment notice to CEO

A person must return to the CEO an assessment notice issued to the person as soon as is practicable after —

- (a) the person is convicted of a Class 1 offence (other than a Class 1 offence 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 by No. 7 of 2010 s. 20.]

37. Exchange of information with corresponding authorities

- (1) In this section —

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corresponding authority means a person or body in another jurisdiction with functions that correspond to the functions of the CEO under this Act.

- (2) The CEO may disclose to a corresponding authority information obtained under this Act that relates to a person's criminal record or to an application made by, or a notice issued to, a person under this Act.
- (3) The CEO may ask a corresponding authority to disclose to the CEO information obtained by the corresponding authority that —
 - (a) corresponds to the information referred to in subsection (2); and
 - (b) relates to a person who has made an application, or been issued with a notice, under this Act.

38. Disclosure of information by CEO to certain bodies

- (1) In this section —

Department means the department of the Public Service principally assisting the Minister in the administration of the *Child Care Services Act 2007*;

public authority means —

- (a) a department of the Public Service; or
 - (b) a body, whether incorporated or not, that is established or continued for a public purpose under a written law and that, under the authority of a written law, performs a statutory function on behalf of the State.
- (2) If the CEO considers that it is in the public interest to do so, the CEO may give written notice to a public authority prescribed by the regulations 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.
- (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.
- (4) If —
- (a) the CEO has given notice in relation to a person under subsection (2) or (3); and
 - (b) subsequently —
 - (i) if that notice related to the issue of a negative notice to the person — the negative notice is cancelled; or
 - (ii) an assessment notice is issued to the person,

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the CEO is to give written notice of that fact to the public authority or the chief executive officer of the Department, as the case requires.

- (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.

[Section 38 amended by No. 19 of 2007 s. 73; No. 7 of 2010 s. 21.]

39. Confidentiality of information

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 in the course of performing those functions except —

- (a) for the purpose of, or in connection with, performing functions under this Act;
- (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;
- (c) as required or allowed under this Act or another written law; 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.

40. Protection from liability for wrongdoing

- (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;
 - (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.

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42. CEO may require information to confirm compliance with Act

(1) In this section —

regulated person means a person —

- (a) who employs another person in child-related employment; or
- (b) who carries on a child-related business; or
- (c) who is an education provider.

(2) The CEO may require a regulated person, by written notice or otherwise, to provide, within a reasonable specified time, specified information or documents that the CEO reasonably needs to establish that the regulated person has complied with this Act.

(3) A regulated person who does not provide the specified information or documents within the specified time commits an offence.

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

[Section 42 amended by No. 7 of 2010 s. 22.]

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.

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

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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 by No. 7 of 2010 s. 23.]

45. Delegation

- (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.

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 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.

47. Minister to review and report on Act

- (1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after the fifth anniversary of the commencement of this section.
- (2) The Minister is to prepare a report based on the review and, as soon as is practicable after the report is prepared, is to cause it to be laid before each House of Parliament.

[Part 5 (s. 48-55) omitted under the Reprints Act 1984 s. 7(4)(e).]

Part 6 — Transitional provisions

56. Term used: commencement day

In this Part —

commencement day means the day on which section 24 comes into operation.

57. People carrying on a child-related business

(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

(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

(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.

s. 60

60. Other people in child-related employment

- (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. Certain wilful murder charges and convictions

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 operation¹ (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 by No. 27 of 2008 s. 13(2).]

61. Transitional regulations

- (1) If this Part 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.

s. 61

- (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.

Schedule 1 — Class 1 offences

[s. 7(1)]

| Enactment | Description of offence |
|--------------------------|---|
| <i>The Criminal Code</i> | |
| 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. 320(2) | Sexually penetrating child under 13 |
| s. 320(3) | Procuring, inciting or encouraging child under 13 to engage in sexual behaviour |
| s. 321A | Persistent sexual conduct with child under 16 (if the offence includes a sexual act on at least one occasion when the child against 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) |
| s. 329(2) | Sexually penetrating child known to be lineal relative or de facto child (if the child against whom the offence is committed is under 13) |
| s. 329(3) | Procuring, inciting or encouraging child known to be lineal relative or de facto child to engage in sexual behaviour (if the child against whom the offence is committed is under 13) |

| Enactment | Description of offence |
|--|--|
| <i>Crimes Act 1914</i> of the Commonwealth | |
| s. 50BA | Sexual intercourse with child under 16 (if the child against whom the offence is committed is under 13) |
| s. 50BB | Inducing child under 16 to engage in sexual intercourse (if the child against whom the offence is committed is under 13) |

[Schedule 1 amended by No. 2 of 2008 s. 74; No. 8 of 2009 s. 140(2); No. 7 of 2010 s. 24.]

Schedule 2 — Class 2 offences

[s. 7(2)]

| Enactment | Description of offence |
|--------------------------|--|
| <i>The Criminal Code</i> | |
| s. 181 | Carnal knowledge of animal |
| 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) |
| s. 187 | Facilitating sexual offences against children outside Western Australia |
| s. 204B | Using electronic communication to procure, or expose to indecent matter, children under 16 |
| s. 217 | Involving child in child exploitation |
| s. 218 | Production of child exploitation material |
| s. 219 | Distribution of child exploitation material |
| s. 220 | Possession of child exploitation material |
| s. 279 | Murder |
| s. 280 | Manslaughter |
| s. 281 | Unlawful assault causing death |
| s. 290 | Killing unborn child |
| s. 297 | Grievous bodily harm |
| s. 320(4) | Indecent dealing with child under 13 |
| s. 320(5) | Procuring, inciting or encouraging child under 13 to do indecent act |
| s. 320(6) | Indecently recording child under 13 |
| s. 321 | Sexual offences against child of or over 13 and under 16 |
| s. 321A | Persistent sexual conduct with child under 16 |

| Enactment | Description of offence |
|------------------|---|
| | (if the offence does not include a sexual act on any occasion when the child against whom the offence is committed is under 13) |
| s. 322 | Sexual offences against child of or over 16 by person in authority etc. |
| s. 323 | Indecent assault |
| s. 324 | Aggravated indecent assault |
| s. 325 | Sexual penetration without consent |
| s. 326 | Aggravated sexual penetration without consent |
| s. 327 | Sexual coercion |
| s. 328 | Aggravated sexual coercion |
| s. 329(2) | Sexually penetrating child known to be lineal relative or de facto child (if the child against whom the offence is committed is 13 or over) |
| s. 329(3) | Procuring, inciting or encouraging child known to be lineal relative or de facto child to engage in sexual behaviour (if the child against whom the offence is committed is 13 or over) |
| s. 329(4) | Indecent dealing with child known to be lineal relative or de facto child |
| 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 |
| s. 331C | Conducting business involving sexual servitude |

| Enactment | Description of offence |
|---|---|
| s. 331D | Deceptive recruiting for commercial sexual services |
| s. 332 | Kidnapping |
| s. 343 | Child stealing |
| <i>Classification (Publications, Films and Computer Games) Enforcement Act 1996</i> | |
| the deleted s. 60 | Child pornography |
| s. 101 | Objectionable material offences (if the objectionable material is child pornography) |
| <i>Prostitution Act 2000</i> | |
| s. 16 | Causing, permitting or seeking to induce child to act as prostitute |
| s. 17 | Obtaining payment for prostitution by child |
| s. 18 | Agreement for prostitution by child |
| <i>Children and Community Services Act 2004</i> | |
| s. 101 | Failing to protect child from significant harm |
| s. 102 | Leaving child unsupervised in vehicle |
| s. 192 | Employing child, or permitting child to be employed, to perform in indecent, obscene or pornographic manner |
| <i>Crimes Act 1914 of the Commonwealth</i> | |
| s. 50BA | Sexual intercourse with child under 16 (if the child against whom the offence is committed is 13 or over) |
| s. 50BB | Inducing child under 16 to engage in sexual intercourse (if the child against whom the |

| Enactment | Description of offence |
|---|---|
| | offence is committed is 13 or over) |
| s. 50BC | Sexual conduct involving a child under 16 |
| s. 50BD | Inducing child under 16 to be involved in sexual conduct |
| s. 50DA | Benefiting from offence against Part IIIA |
| s. 50DB | Encouraging offence against Part IIIA |
| <i>Criminal Code Act 1995 of the Commonwealth</i> | |
| s. 474.19 | Using a carriage service for child pornography material |
| s. 474.20 | Possessing, controlling, producing, supplying or obtaining child pornography material for use through a carriage service |
| s. 474.22 | Using a carriage service for child abuse material |
| s. 474.23 | Possessing, controlling, producing, supplying or obtaining child abuse material for use through a carriage service |
| s. 474.26 | Using a carriage service to procure persons under 16 |
| s. 474.27 | Using a carriage service to “groom” persons under 16 |
| <i>Customs Act 1901 of the Commonwealth</i> | |
| s. 233BAB | Special offences relating to tier 2 goods (if the offence involves items of child pornography or of child abuse material) |

[Schedule 2 amended by No. 3 of 2006 s. 7; No. 27 of 2008 s. 13(3) and (4); No. 29 of 2008 s. 40; No. 8 of 2009 s. 140(3); No. 7 of 2010 s. 25; No. 21 of 2010 s. 15.]

Notes

¹ This is a compilation of the *Working with Children (Criminal Record Checking) Act 2004* and includes the amendments made by the other written laws referred to in the following table ^{1a}. The table also contains information about any reprint.

Compilation table

| Short title | Number and year | Assent | Commencement |
|---|------------------------|---------------|--|
| <i>Working with Children (Criminal Record Checking) Act 2004</i> | 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 <i>Gazette</i> 30 Dec 2005 p. 6875); s. 50-52: 1 Jan 2007 (see s. 2 and <i>Gazette</i> 29 Dec 2006 p. 5867) |
| <i>Criminal Code Amendment (Cyber Predators) Act 2006</i> s. 7 | 3 of 2006 | 30 Mar 2006 | 30 Mar 2006 (see s. 2(1)) |
| <i>Child Care Services Act 2007</i> Pt. 7 Div. 4 | 19 of 2007 | 3 Jul 2007 | 10 Aug 2007 (see s. 2(b) and <i>Gazette</i> 9 Aug 2007 p. 4071) |
| <i>Criminal Law and Evidence Amendment Act 2008</i> s. 74 | 2 of 2008 | 12 Mar 2008 | 27 Apr 2008 (see s. 2 and <i>Gazette</i> 24 Apr 2008 p. 1559) |
| <i>Criminal Law Amendment (Homicide) Act 2008</i> s. 40 | 29 of 2008 | 27 Jun 2008 | 1 Aug 2008 (see s. 2(c) and (d) and <i>Gazette</i> 22 Jul 2008 p. 3353) |
| <i>Community Protection (Offender Reporting) Amendment Act 2008</i> s. 13 | 27 of 2008 | 1 Jul 2008 | 2 Jul 2008 (see s. 2(b)) |
| Reprint 1: The <i>Working with Children (Criminal Record Checking) Act 2004</i> as at 14 Nov 2008 (includes amendments listed above) | | | |
| <i>Statutes (Repeals and Miscellaneous Amendments) Act 2009</i> s. 140 | 8 of 2009 | 21 May 2009 | 22 May 2009 (see s. 2(b)) |
| <i>Working with Children (Criminal Record Checking) Amendment Act 2010</i> Pt. 2 | 7 of 2010 | 27 May 2010 | 6 Oct 2010 (see s. 2(b) and <i>Gazette</i> 5 Oct 2010 p. 5113) |

| Short title | Number and year | Assent | Commencement |
|--|------------------------|---------------|--|
| <i>Child Pornography and Exploitation Material and Classification Legislation Amendment Act 2010</i> s. 15 | 21 of 2010 | 7 Jul 2010 | 28 Aug 2010 (see s. 2(b) and <i>Gazette</i> 27 Aug 2010 p. 4105) |

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

| Short title | Number and year | Assent | Commencement |
|--|-----------------------------------|------------------------------------|---|
| <i>Commissioner for Children and Young People Act 2006</i> Sch. 1 cl. 3 ² | 48 of 2006 | 4 Oct 2006 | To be proclaimed (see s. 2) |
| <i>Prostitution Amendment Act 2008</i> s. 35 ³ | 13 of 2008 | 14 Apr 2008 | To be proclaimed (see s. 2(b)) |
| <u><i>Cannabis Law Reform Act 2010</i> Pt. 6</u> ⁴ | <u>45 of 2010</u> | <u>28 Oct 2010</u> | <u>To be proclaimed (see s. 2(b))</u> |

² On the date as at which this compilation was prepared, the *Commissioner for Children and Young People Act 2006* Sch. 1 cl. 3 had not come into operation. It reads as follows:

“

Schedule 1 — Consequential amendments

[s. 65]

3. Working with Children (Criminal Record Checking) Act 2004 amended

- (1) The amendments in this clause are to the *Working with Children (Criminal Record Checking) Act 2004*.
- (2) Section 4 is amended as follows:
 - (a) by deleting the definition of “CEO”;

- (b) by deleting the definition of “Commissioner” and inserting instead —

“

Commissioner means the person holding or acting in the office of Commissioner for Children and Young People under the *Commissioner for Children and Young People Act 2006*;

”;

- (c) by inserting in the appropriate alphabetical position —

“

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

”.

- (3) The heading to Part 2 Division 3 is amended by deleting “CEO” and inserting instead —
“ Commissioner ”.
- (4) Section 17(1) is amended by inserting after “Commissioner” in both places where it occurs —
“ of Police ”.
- (5) Section 17(2) is amended by inserting after “Commissioner” —
“ of Police ”.
- (6) Section 34(1) is amended in paragraph (b) of the definition of “authorised person” by inserting after “Commissioner” —
“ of Police ”.
- (7) Section 34(3) is amended by inserting after “Commissioner” in both places where it occurs —
“ of Police ”.
- (8) The provisions mentioned in the Table to this subclause are amended by deleting “CEO” in each place where it occurs and inserting instead —
“ Commissioner ”.

Table

| | |
|--|------------------|
| s. 3 | s. 26(1) and (2) |
| s. 4 (definitions of “approved”, “assessment notice”, “criminal record check”, “interim negative notice”, “negative notice”) | s. 28(1) and (2) |

| | |
|----------------------------|----------------------------|
| s. 3 | s. 26(1) and (2) |
| s. 6(1)(b) | s. 29(2) |
| s. 9(1) and (4) | s. 30 |
| s. 10(1) and (4) | s. 32(1) |
| s. 11(2) and (3) | s. 34(2), (3), (4) and (5) |
| s. 12(1) to (10) | s. 35(b) |
| s. 13(1) to (7) | s. 36 |
| s. 16(1), (2) and (3) | s. 37(1), (2) and (3) |
| s. 17(1) and (3) | s. 38(2), (3) and (4) |
| s. 18(1) and (2) | s. 42(2) |
| s. 19(1), (9) and (10) | s. 44(3), (4) and (5) |
| s. 20(2), (3), (5) and (6) | s. 45(1), (3), (4) and (6) |

”

³ On the date as at which this compilation was prepared, the *Prostitution Amendment Act 2008* s. 35 had not come into operation. It reads as follows:

“

35. Working with Children (Criminal Record Checking) Act 2004 amended

- (1) The amendments in this section are to the *Working with Children (Criminal Record Checking) Act 2004*.
- (2) Schedule 2 is amended by deleting the entry relating to the *Prostitution Act 2000* and inserting instead —

“

Sexual Services Act 2000

- | | |
|-------|---|
| s. 16 | Causing, permitting or seeking to induce a child to act as a sex worker |
| s. 17 | Obtaining payment for commercial sexual act by a child |
| s. 18 | Agreement for a child to act as a sex worker |

”

”

⁴ On the date as at which this compilation was prepared, the *Cannabis Law Reform Act 2010* Pt. 6 had not come into operation. It reads as follows:

Part 6 — Working with Children (Criminal Record Checking) Act 2004 amended

14. Act amended

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

15. Schedule 2 amended

In Schedule 2 after the item relating to the *Children and Community Services Act 2004* section 192 insert:

Misuse of Drugs Act 1981

s. 19A(2)

Selling, or offering to sell, cannabis smoking paraphernalia to a child