



Western Australia

# **Working with Children (Criminal Record Checking) Act 2004**

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Western Australia

## Working with Children (Criminal Record Checking) Act 2004

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### CONTENTS

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#### **Part 1 — Preliminary**

1.	Short title	2
2.	Commencement	2
3.	Principle that best interests of children are paramount	2
4.	Terms used	2
5.	Managerial officers	6
6.	Term used: child-related work	6
7.	Terms used: Class 1 offence and Class 2 offence	8
8.	References to convictions	10

#### **Part 2 — Assessment notices and negative notices**

##### **Division 1 — Application for assessment notice**

9.	Application for assessment notice (child-related employment)	11
10.	Application for assessment notice (child-related business)	11
11.	Withdrawal of application for assessment notice	12

	<b>Division 2 — Issue of assessment notices and negative notices</b>	
12.	Decision on application for an assessment notice	13
13.	CEO to invite submission about criminal record and issue interim negative notice	15
14.	Duration of assessment notices and negative notices	17
15.	Further assessment notice may be obtained	17
	<b>Division 3 — CEO may require assessment notice to be applied for</b>	
16.	CEO may require certain employees to apply for assessment notice	17
17.	CEO may require certain people who carry out child-related work to apply for assessment notice	18
18.	CEO may issue negative notice if assessment notice not applied for	19
	<b>Division 4 — Cancellation of assessment notices and negative notices</b>	
19.	Applications for cancellation of negative notice	20
20.	Cancellation of notice because of wrong or incomplete information	21
21.	Issue of notice cancels any previous notice	22
	<b>Division 5 — Prohibitions relating to child-related work</b>	
22.	Employers not to employ certain people in child-related employment	23
23.	People issued with negative notice or interim negative notice not to carry out child-related work	24
24.	People without current assessment notice not to carry out child-related work	24
25.	Defences for section 24	25
	<b>Division 6 — Review by State Administrative Tribunal</b>	
26.	Review by State Administrative Tribunal	25

**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	27
28.	Relevant change in criminal record of certain applicants	27
29.	Relevant change in criminal record of people employed in child-related employment	27
30.	Relevant change in criminal record of people carrying on child-related business	28
31.	Relevant change in criminal record of other people	28
32.	CEO to treat notice of relevant change in criminal record as application for assessment notice	29
33.	People not to start or continue child-related work if convicted of Class 1 offence	29

**Division 2 — Criminal record checks**

34.	CEO may carry out criminal record check	30
-----	---	----

**Part 4 — General**

35.	False or misleading information	32
36.	Return of assessment notice to CEO	32
37.	Exchange of information with corresponding authorities	32
38.	CEO may disclose to certain bodies information about issue of negative notices and interim negative notices	33
39.	Confidentiality of information	34
40.	Protection from liability for wrongdoing	34
41.	Employer to comply with Act despite other laws etc.	35
42.	CEO may require information to confirm compliance with Act	36
43.	Liability of partners for certain offences	36
44.	Evidentiary matters	37
45.	Delegation	38
46.	Regulations	38
47.	Minister to review and report on Act	39

Contents

---

**Part 6 — Transitional provisions**

56.	Term used: commencement day	40
57.	People carrying on a child-related business	40
58.	Volunteers continuing in child-related employment	41
59.	Ministers of religion etc. continuing in child-related employment	41
60.	Other people in child-related employment	42
60A.	Certain wilful murder charges and convictions	43
61.	Transitional regulations	43

**Schedule 1 — Class 1 offences**

**Schedule 2 — Class 2 offences**

**Notes**

Compilation table	50
Provisions that have not come into operation	51

**Defined Terms**



Western Australia

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at 14 November 2008

## **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*<sup>1</sup>.

### 2. Commencement

- (1) This Act comes into operation on a day fixed by proclamation<sup>1</sup>.
- (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 apprenticeship (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;

**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);

**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;

**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;

**s. 4**

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***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;

***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;
- (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);

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

**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;

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

*[Section 4 amended by No. 19 of 2007 s. 71.]*

**s. 5**

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**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*;
- (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

**s. 7**

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(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);

- (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.

**s. 8**

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**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.



## **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.
- (2) The applicant is taken to have withdrawn the application if —
  - (a) the CEO cannot establish with certainty the applicant's identity;
  - (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 the applicant's identity; 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;
  - (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.

## **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 the CEO is not aware of —
- (a) any offence of which the applicant has been convicted; or
  - (b) any offence (other than an offence that is neither a Class 1 offence nor a Class 2 offence) with which the applicant has been charged,

the CEO is to issue an assessment notice to the applicant.

- (4) If the CEO —
- (a) is not aware of any offence of which the applicant has been convicted; and
  - (b) is aware that the applicant has a non-conviction charge in respect of a Class 1 offence or a Class 2 offence,

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.

- (5) If the CEO is aware of an offence (other than a Class 1 offence or a Class 2 offence) of which the applicant has been convicted, 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 the CEO —
- (a) is aware of a Class 1 offence (committed by the applicant when a child) of which the applicant has been convicted;
  - (b) is aware of a Class 2 offence of which the applicant has been convicted; or
  - (c) is aware that the applicant has a pending charge in respect of a Class 1 offence or a Class 2 offence,
- 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 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 a negative notice to the applicant.
- (8) If subsection (4), (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) any information given by the applicant in, or in relation to, the application;
  - (f) anything else that the CEO reasonably considers relevant to the decision.
- (9) 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.
- (10) 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;
  - (b) states that the applicant may 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.

**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, or the application is withdrawn.
- (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.

**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 who carry out child-related work to apply for assessment notice**

- (1) If the Commissioner reasonably believes that a person charged with or convicted of a Class 1 offence or a Class 2 offence is —
  - (a) a person in respect of whom the CEO may ask for information under section 34; or
  - (b) a person who carries out child-related work,the Commissioner may give the CEO notice of —
  - (c) the person's name and address;
  - (d) the person's date of birth;
  - (e) the offence with which the person has been charged or of which the person has been convicted;
  - (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; and
  - (b) has been charged with or convicted of a Class 1 offence or a Class 2 offence, being a charge or conviction of which the CEO was not previously aware,

the CEO may give the person a written notice requiring the person 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) A person must comply with a notice given to the person 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 carrying out child-related work.

**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) 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.

**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.
- (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.

**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.

**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.

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



## **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 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) The employer must give the CEO written notice of a relevant change in the employee's criminal record as soon as is practicable after the employer is given notice under subsection (1).

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

**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.

**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(2) 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.

**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.

- (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.

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

### 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.

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

### 37. Exchange of information with corresponding authorities

- (1) In this section —

*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. CEO may disclose to certain bodies information about issue of negative notices and interim negative notices**

- (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 negative notice or an interim negative notice has been issued to a person.
- (3) The CEO may give written notice to the chief executive officer of the Department that a negative notice or an interim negative notice has been issued to a person if the CEO reasonably believes that the 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.

**s. 39**

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- (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,
- 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.

*[Section 38 amended by No. 19 of 2007 s. 73.]*

**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.

**s. 42**

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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.

(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.

**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 complaint 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 complaint 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.
- (3) In proceedings for an offence against this Act, an assessment notice, negative notice, interim negative notice or other notice issued under this Act may be proved by tendering a copy of it certified by the CEO to be a true copy of the original.
- (4) Unless the contrary is proved, it is to be presumed that a document purporting to have been signed by the CEO was signed by a person who at the time was the CEO.
- (5) Unless the contrary is proved, it is to be presumed that a document purporting to have been signed by a delegate of the CEO was signed by a person who at the time was a delegate of the CEO and was authorised to sign it.
- (6) This section is in addition to, and does not affect the operation of, the *Evidence Act 1906*.

**s. 45**

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**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**

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**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 operation<sup>1</sup> (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**

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- (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.

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**Schedule 1 — Class 1 offences**

[s. 7(1)]

<b>Enactment</b>	<b>Description of offence</b>
<i>The Criminal Code</i>	
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. 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 activity (if the child against whom the offence is committed is under 13)
<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 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.]*

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**Schedule 2 — Class 2 offences**

[s. 7(2)]

<b>Enactment</b>	<b>Description of offence</b>
<i>The Criminal Code</i>	
s. 181	Carnal knowledge of animal
s. 186	Occupier or owner allowing child to be on premises for unlawful carnal knowledge
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. 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 (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

<b>Enactment</b>	<b>Description of offence</b>
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 activity (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 engage in sexual activity
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
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>	
s. 60	Child pornography
s. 101	Objectionable material offences (if the objectionable material is child pornography)

<b>Enactment</b>	<b>Description of offence</b>
<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 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

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<b>Enactment</b>	<b>Description of offence</b>
s. 474.22	Using a child 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</i> of the Commonwealth	
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.]*

### Notes

- <sup>1</sup> This reprint is a compilation as at 14 November 2008 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 <sup>1a</sup>. 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 *Working with Children (Criminal Record Checking) Act 2004* as at 14 Nov 2008** (includes amendments listed above)

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- <sup>1a</sup> On the date as at which this reprint was prepared, provisions referred to in the following table had not come into operation and were therefore not included in compiling the reprint. For the text of the provisions see the endnotes referred to in the table.



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**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 <sup>2</sup>	48 of 2006	4 Oct 2006	To be proclaimed (see s. 2)
<i>Prostitution Amendment Act 2008</i> s. 35 <sup>3</sup>	13 of 2008	14 Apr 2008	To be proclaimed (see s. 2(b))

<sup>2</sup> On the date as at which this reprint 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. 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)

”.

<sup>3</sup> On the date as at which this reprint 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                            |

”  
”

Defined Terms

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**Defined Terms**

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

<b>Defined Term</b>	<b>Provision(s)</b>
another jurisdiction .....	4
approved.....	4
assessment notice .....	4
authorised person .....	34(1)
CEO .....	4
charge.....	4
child .....	4
child care service.....	4
child-related business .....	4
child-related employment .....	4
child-related work .....	4, 6(1)
Class 1 offence.....	4, 7(1)
Class 2 offence.....	4, 7(2)
commencement day .....	56
Commissioner .....	4
contact.....	4
contact with a child .....	6(2)
continuing employee .....	60(4)
continuing minister of religion.....	59(1)
continuing operator .....	57(3)
continuing volunteer .....	58(1)
conviction.....	4
correct notice.....	20(1)
corresponding authority .....	37(1)
criminal record.....	4
criminal record check.....	4
criminal records agency .....	34(1)
defined period .....	26(1)
Department.....	4, 38(1)
educational institution for children .....	4
employee .....	16(1)
employer .....	9(1), 16(1), 22(1), 41(1), 43(1)(a)
first notice .....	20(2)
interim negative notice.....	4
managerial officer .....	5(1)
negative notice .....	4
new employee .....	60(4)
new operator .....	57(3)

**Defined Terms**

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non-conviction charge.....	4
officer of the Department.....	4
parent .....	4
pending charge .....	4
public authority .....	38(1)
public sector employee .....	45(2)
regulated person .....	42(1)
relative .....	4
relevant day.....	60A
specified .....	4, 61(4)
work .....	4