



Western Australia

Working with Children (Criminal Record Checking) Act 2004

**Working with Children  
(Criminal Record Checking)  
Regulations 2005**

**Reprint 2: The regulations as at 14 January 2011**

## Guide for using this reprint

### *What the reprint includes*



### *Endnotes, Compilation table, and Table of provisions that have not come into operation*

1. Details about the original regulations and legislation that has amended its text are shown in the Compilation table in endnote 1, at the back of the reprint. The table also shows any previous reprint.
2. Transitional, savings, modifying or other provisions identified in the Compilation table may be important. The table may refer to another endnote setting out the text of these provisions in full.
3. A table of provisions that have not come into operation, to be found in endnote 1a if it is needed, lists any provisions of the regulations being reprinted that have not come into operation and any amendments that have not come into operation. The full text is set out in another endnote that is referred to in the table.

### *Notes amongst text (italicised and within square brackets)*

1. If the reprint includes a regulation that was inserted, or has been amended, since the regulations being reprinted were made, editorial notes at the foot of the regulation give some history of how the regulation came to be as it is. If the regulation replaced an earlier regulation, no history of the earlier regulation is given (the full history of the regulations is in the Compilation table).

Notes of this kind may also be at the foot of Schedules or headings.

2. The other kind of editorial note shows something has been —
  - removed (because it was repealed or deleted from the law); or
  - omitted under the *Reprints Act 1984* s. 7(4) (because, although still technically part of the text, it no longer has any effect).

The text of anything removed or omitted can be found in an earlier reprint (if there is one) or one of the written laws identified in the Compilation table.

### *Reprint numbering and date*

1. The reprint number (in the footer of each page of the document) shows how many times the regulations have been reprinted. For example, numbering a reprint as “Reprint 3” would mean that the reprint was the 3<sup>rd</sup> reprint since the regulations were published. Reprint numbering was implemented as from 1 January 2003.
2. The information in the reprint is current on the date shown as the date as at which the regulations are reprinted. That date is not the date when the reprint was published by the State Law Publisher and it is probably not the date when the most recent amendment had effect.

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Western Australia

Working with Children (Criminal Record Checking) Act 2004

## Working with Children (Criminal Record Checking) Regulations 2005

### Part 1 — Preliminary

#### 1. Citation

These regulations are the *Working with Children (Criminal Record Checking) Regulations 2005*<sup>1</sup>.

#### 2. Commencement

These regulations come into operation on the same day as the *Working with Children (Criminal Record Checking) Act 2004*, other than sections 50, 51 and 52, comes into operation<sup>1</sup>.

#### 3. Terms used

In these regulations —

*member of the College* has the meaning given to that term in the *Western Australian College of Teaching Act 2004* section 3(1);

*section* means section of the Act.

[Regulation 3 amended in Gazette 29 Dec 2006 p. 5876.]

## Part 2 — General

### 4. Exemptions to “child-related work” (Sch. 1)

The work described in Schedule 1 is prescribed under section 6(3)(b) as work to which section 6(1) does not apply.

### 5A. Prescription of Class 1 offences (Sch. 2A)

An offence against a provision of another jurisdiction listed in Schedule 2A is prescribed under section 7(1)(c) to be a Class 1 offence.

*[Regulation 5A inserted in Gazette 5 Oct 2010 p. 5114.]*

### 5. Prescription of Class 2 offences (Sch. 2)

An offence against a provision of another jurisdiction listed in Schedule 2 is prescribed under section 7(2)(c) to be a Class 2 offence.

### 6. CrimTrac Agency prescribed as a criminal records agency (Act s. 34(1))

(1) The CrimTrac Agency is prescribed as a criminal records agency under paragraph (c)(ii) of the definition of *criminal records agency* in section 34(1).

(2) In subregulation (1) —

*CrimTrac Agency* means the body of that name established as an Executive Agency under section 65 of the *Public Service Act 1999* of the Commonwealth.

### 7. Public authorities prescribed for Act s. 38(2)

The following public authorities are prescribed for the purposes of section 38(2) —

- (a) the department of the Public Service principally assisting in the administration of the *Children and Community Services Act 2004*;



- (b) the Department as defined in the *Health Legislation Administration Act 1984* section 3;
- (c) the department of the Public Service principally assisting in the administration of the *Transport Co-ordination Act 1966*;
- (d) the Western Australian College of Teaching established under the *Western Australian College of Teaching Act 2004*;
- (e) the Department of the Public Service principally assisting in the administration of the *Police Act 1892*.

*[Regulation 7 amended in Gazette 7 Dec 2007 p. 5977.]*

**8. Fees (Sch. 3)**

- (1) The fees set out in Schedule 3 are prescribed in respect of the matters specified in that Schedule.
- (2) The CEO may reduce, waive or refund, in whole or in part, a fee specified in Schedule 3 in a particular case if he or she considers it appropriate to do so in the circumstances of the case.
- (3) The holder of an assessment notice that has been lost, damaged or destroyed may apply to the CEO for a replacement for the assessment notice.
- (4) An application under subregulation (3) is to be —
  - (a) in the approved form; and
  - (b) signed by the applicant; and
  - (c) accompanied by the fee set out in Schedule 3 item 4.

## **Part 3 — Transitional arrangements**

### **Division 1 — General**

#### **9. Terms used**

A term defined in a provision of Part 6 of the Act has the same meaning in this Part as it does in that provision, unless the contrary intention appears.

#### **10. Day from which person to be screened if 2 or more days apply**

- (1) Subject to subregulations (2), (3) and (3a), if a provision of the Act would, but for this regulation, apply to, or in relation to, a person from 2 or more different days then the provision is to apply to, or in relation to, the person from the day that is earliest in time.
- (2) Subject to subregulation (3), if a provision of the Act would, but for this regulation, apply to, or in relation to, a person from 2 or more different days and —
  - (a) one of those days is prescribed under Division 2; and
  - (b) one of those days is prescribed under Division 3,

although the person has only one child-related job, then the provision is to apply to, or in relation to, the person from the day which is prescribed under Division 3 that is earliest in time.

- (3) Subject to subregulation (3a), if a provision of the Act would, but for this regulation, apply in relation to a person from 2 or more different days one day of which is prescribed under regulation 16 then those sections are to apply in relation to the person —
  - (a) from the day that is prescribed under regulation 16; or

- (b) from the day that is earliest in time, if the person has more than one child-related job.
- (3a) If a provision of the Act would, but for this regulation, apply to, or in relation to a person, from 2 or more different days and those days are provided under regulations 16 and 22 then the provision is to apply to, or in relation to, the person —
- (a) from the day that applies under regulation 22; or
  - (b) from the day that is earliest in time, if the person has more than one child-related job.
- (4) For the purposes of this regulation —
- child-related job***, in relation to a person, means carrying out child-related work —
- (a) while carrying on one child-related business; or
  - (b) under one contract of employment or apprenticeship (whether written or unwritten); or
  - (c) on a voluntary basis under one agreement (whether written or unwritten); or
  - (d) in his or her capacity as a minister of religion.

*[Regulation 10 amended in Gazette 28 Feb 2006 p. 907-8.]*

## **11. When applications may be made**

- (1) Unless otherwise approved, a person carrying out child-related work cannot make an application for an assessment notice sooner than —
- (a) if the applicant for the notice is a person who is employed in child-related employment specified in regulation 13(2), 18(2)(c), 19(2) or 20(1)(c), 24 months; or

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- (aa) if the applicant for the notice is a person carrying out child-related business specified in regulation 21(2), 4 months; or
- (ab) if the applicant for the notice is a person who is employed in child-related employment specified in regulation 21(3), 4 months; or
- (b) otherwise, 12 months,

before the day from which a provision of the Act is to apply to, or in relation to, the person in accordance with this Part.

- (1a) Unless otherwise approved, despite subregulation (1)(b), a person carrying out child-related work cannot make an application for an assessment notice sooner than 1 January 2009 if the applicant for the notice is a person registered as a teacher under the *Western Australian College of Teaching Act 2004* who —
  - (a) carries on a child-related business specified in regulation 23(3) immediately before 1 January 2007; or
  - (b) is employed in child-related employment specified in regulation 23(3) immediately before 1 January 2007.
- (1b) Subregulation (1)(b) does not apply to a person who is provisionally registered as a teacher, holds a limited authority to teach or is an associate member of the College under the *Western Australian College of Teaching Act 2004* carrying out child-related work and who —
  - (a) carries on a child-related business specified in regulation 23(3) immediately before 1 January 2007; or
  - (b) is employed in child-related employment specified in regulation 23(3) immediately before 1 January 2007.
- (2) Subregulations (1) and (1a) do not apply on and after 1 January 2011.

*[Regulation 11 amended in Gazette 28 Feb 2006 p. 908; 29 Dec 2006 p. 5876-7.]*

**11A. Effect of withdrawal of certain applications**

- (1) In subregulation (2) —  
*application* means —
- (a) an application by a person for an assessment notice, having been required to make the application by a notice given under section 16(3) or 17(3); or
  - (b) a notice by a person under section 29(1) or 30 that is treated under section 32(1) as an application for an assessment notice; or
  - (c) an application for an assessment notice by a person that is made in accordance with an approval given under regulation 11(1).
- (2) Despite this Part, if an application is withdrawn under section 11(1) and the applicant —
- (a) carries on a child-related business, then for the purposes of section 57(1), section 24(b) applies to the person from when the application is withdrawn; or
  - (b) is employed in child-related employment, then for the purposes of section 58(2), 59(2) or 60(2), sections 22(6) and 24(a) apply to the person from when the application is withdrawn.

*[Regulation 11A inserted in Gazette 1 Dec 2006 p. 5298; amended in Gazette 5 Oct 2010 p. 5114.]*

**Division 2 — Persons carrying on child-related businesses and persons employed in certain child-related employment**

**12. When Act s. 24(b) applies to persons carrying on child-related businesses (Act s. 57(1))**

For the purposes of section 57(1), section 24(b) applies to a person who carries on a child-related business —

- (a) from when the person starts to carry on the child-related business, if the person is a new operator; and

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- (b) from 1 January 2007, if the person is a continuing operator.

**13. When Act s. 22(6) and 24(a) apply to child-related employment listed in Act s. 6(1)(a) (Act s. 60(2))**

- (1) For the purposes of section 60(2), sections 22(6) and 24(a) apply in relation to a new employee being employed in child-related employment specified in subregulations (3) and (5) —
  - (a) from 1 January 2006; or
  - (b) from when the person starts to be so employed,whichever is later in time.
- (2) For the purposes of section 60(2), sections 22(6) and 24(a) apply in relation to a continuing employee being employed in child-related employment specified in subregulation (3) from 1 January 2011.
- (3) Subregulations (1) and (2) apply in relation to child-related employment —
  - [(a)-(f) deleted]*
  - (g) referred to in section 6(1)(a)(xvi) in connection with a transport service specifically for children; or
  - (h) referred to in section 6(1)(a)(xvii) in connection with a school crossing service, being a service provided to assist children to cross roads on their way to or from school.
- (4) For the purposes of section 60(2), sections 22(6) and 24(a) apply in relation to a continuing employee being employed in child-related employment specified in subregulation (5) from 1 January 2009.

- (5) Subregulations (1) and (4) apply in relation to child-related employment —
- (a) referred to in section 6(1)(a)(iv) in connection with a coaching or private tuition service; or
  - (b) referred to in section 6(1)(a)(v) in connection with an arrangement for the accommodation or care of children, whether in a residential facility or private residence; or
  - (c) referred to in section 6(1)(a)(xi) in connection with a religious organisation; or
  - (d) referred to in section 6(1)(a)(xii) in connection with 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; or
  - (e) referred to in section 6(1)(a)(xiv) in connection with a babysitting or childminding service; or
  - (f) referred to in section 6(1)(a)(xv) in connection with an overnight camp; or
  - (g) referred to in section 6(1)(a)(xviii) in connection with a children's entertainment or party service.

*[Regulation 13 amended in Gazette 7 Dec 2007 p. 5978.]*

**14. When Act s. 22(6) and 24(a) apply to child-related employment listed in Act s. 6(1)(b) (Act s. 60(2))**

- (1) For the purposes of section 60(2), sections 22(6) and 24(a) apply in relation to a new employee being employed in child-related employment referred to in section 6(1)(b) —
- (a) from 1 January 2006; or
  - (b) from when the person starts to be so employed,
- whichever is later in time.
- (2) For the purposes of section 60(2), sections 22(6) and 24(a) apply in relation to a continuing employee being employed in

child-related employment referred to in section 6(1)(b) from 1 January 2006.

### **Division 3 — Exceptions to Division 2**

#### **15. When Act s. 22(6) and 24 apply to people involved in certain coaching or tuition services (Act s. 57(1) and 60(2))**

- (1) For the purposes of section 57(1), section 24(b) applies to a person who carries on a child-related business specified in subregulation (3) —
  - (a) from 1 January 2008, if the person is a new operator who starts to carry on the business on or after 1 January 2006 but before 1 January 2007; or
  - (b) from when the person starts to carry on the business, if the person is a new operator who starts to carry on the business on or after 1 January 2007; or
  - (c) from 1 January 2008, if the person is a continuing operator.
- (2) For the purposes of section 60(2), sections 22(6) and 24(a) apply in relation to a person being employed in child-related employment specified in subregulation (3) —
  - (a) from 1 January 2008, if the person is a new employee who starts to be so employed on or after 1 January 2006 but before 1 January 2007; or
  - (b) from when the person starts to be so employed, if the person is a new employee who starts to be so employed on or after 1 January 2007.
- (3) Subregulations (1) and (2) apply in relation to child-related work referred to in section 6(1)(a)(iv) in connection with a coaching or private tuition service carried out by —
  - (a) a person who is, or is working for or under the supervision of, a training provider registered under the *Vocational Education and Training Act 1996*, or a corresponding law of another State or Territory; or



- (b) a person who is employed by, or provides education services for, an education service provider within the meaning of the *Education Service Providers (Full Fee Overseas Students) Registration Act 1991*.

**16. When Act s. 22(6) and 24(a) apply to volunteers in child-related employment (Act s. 58(2) and 60(2))**

- (1) For the purposes of section 58(2), sections 22(6) and 24(a) apply in relation to a continuing volunteer being employed in child-related employment —
  - (a) from 1 January 2007, if the person’s employment involves carrying out duties in connection with any child who has not yet attained the age of 8 years; or
  - (b) from 1 January 2008, if the person’s employment involves carrying out duties in connection with any child who has attained the age of 8 years but who has not yet attained the age of 13 years; or
  - (c) from 1 January 2009, if the person’s employment involves carrying out duties in connection with any child who has attained the age of 13 years but who has not yet attained the age of 18 years.
- (2) For the purposes of section 60(2), sections 22(6) and 24(a) apply in relation to a new employee being employed on a voluntary basis in child-related employment —
  - (a) from when the person starts to be so employed, if the person’s employment involves carrying out duties in connection with any child who has not yet attained the age of 8 years; or
  - (b) if the person’s employment involves carrying out duties in connection with any child who has attained the age of 8 years but who has not yet attained the age of 13 years —
    - (i) from 1 January 2008, if the person is a new employee who starts to be so employed on or

after 1 January 2006 but before 1 January 2007;

or

- (ii) from when the person starts to be so employed, if the person is a new employee who starts to be so employed on or after 1 January 2007;

or

- (c) if the person's employment involves carrying out duties in connection with any child who has attained the age of 13 years but who has not yet attained the age of 18 years —

- (i) from 1 January 2009, if the person is a new employee who starts to be so employed on or after 1 January 2006 but before 1 January 2008;

or

- (ii) from when the person starts to be so employed, if the person is a new employee who starts to be so employed on or after 1 January 2008.

**17. When Act s. 22(6) and 24(a) apply to ministers of religion in child-related employment (Act s. 59(2))**

For the purposes of section 59(2), sections 22(6) and 24(a) apply from 1 January 2007 in relation to a person being employed in child-related employment as a continuing minister of religion.

**18. When Act s. 22(6) and 24 apply to holders of class F or T driver's licences in child-related businesses or employment (Act s. 57(1) and 60(2))**

- (1) For the purposes of section 57(1), section 24(b) applies to a person who holds a driver's licence endorsed with extension F or T and who carries on a child-related business referred to in section 6(1)(a)(xvi) in connection with a transport service specifically for children —

- (a) from 1 January 2008, if the person is a new operator who starts to carry on the business on or after 1 January 2006 but before 1 January 2007; or

- (b) from when the person starts to carry on the business, if the person is a new operator who starts to carry on the business on or after 1 January 2007; or
  - (c) from 1 January 2008, if the person is a continuing operator.
- (2) For the purposes of section 60(2), sections 22(6) and 24(a) apply in relation to a person who holds a driver's licence endorsed with extension F or T and who is being employed in child-related employment referred to in section 6(1)(a)(xvi) in connection with a transport service specifically for children —
- (a) from 1 January 2008, if the person is a new employee who starts to be so employed on or after 1 January 2006 but before 1 January 2007; or
  - (b) from when the person starts to be so employed, if the person is a new employee who starts to be so employed on or after 1 January 2007; or
  - (c) from 1 January 2011, if the person is a continuing employee.

- (3) In this regulation —

***driver's licence endorsed with extension F or T*** means a driver's licence under the *Road Traffic Act 1974* endorsed with extension F or T, or an equivalent authorisation to drive.

*[Regulations 18 amended in Gazette 20 Jun 2008 p. 2707.]*

**19. When Act s. 22(6) and 24(a) apply to people in child-related employment in various institutions etc. (Act s. 60(2))**

- (1) For the purposes of section 60(2), sections 22(6) and 24(a) apply in relation to a new employee being employed in child-related employment specified in subregulations (3), (5) and (7) —
- (a) from 1 January 2008, if the person is a new employee who starts to be so employed on or after 1 January 2006 but before 1 January 2007; and

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- (b) from when the person starts to be so employed, if the person is a new employee who starts to be so employed on or after 1 January 2007.
- (2) For the purposes of section 60(2), sections 22(6) and 24(a) apply in relation to a continuing employee being employed in child-related employment specified in subregulation (3) from 1 January 2011.
- (3) Subregulations (1) and (2) apply in relation to child-related employment —
  - (a) referred to in section 6(1)(a)(ii) in connection with a community kindergarten registered under the *School Education Act 1999* Part 5; or
  - (b) referred to in section 6(1)(a)(iii) in connection with an educational institution for children; or
  - [(ba)-(e) deleted]*
  - (f) referred to in section 6(1)(a)(xiii) in connection with a ward of a public or private hospital in which children are ordinarily patients.
- (4) For the purposes of section 60(2), sections 22(6) and 24(a) apply in relation to a continuing employee being employed in child-related employment specified in subregulation (5) from 1 January 2009.
- (5) Subregulations (1) and (4) apply in relation to child-related employment —
  - (a) referred to in section 6(1)(a)(viii) in connection with a detention centre, as defined in the *Young Offenders Act 1994* section 3; or
  - (b) referred to in section 6(1)(a)(ix) in connection with a community child health service; or
  - (c) referred to in section 6(1)(a)(x) in connection with a counselling or other support service.

- (6) For the purposes of section 60(2), sections 22(6) and 24(a) apply in relation to a continuing employee being employed in child-related employment specified in subregulation (7) from 1 January 2010.
- (7) Subregulations (1) and (6) apply in relation to child-related employment referred to in section 6(1)(a)(vii) in connection with 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.

*[Regulation 19 amended in Gazette 28 Feb 2006 p. 908;  
7 Dec 2007 p. 5979.]*

**20. When Act s. 22(6) and 24(a) apply to people, appointed under various Acts, involved in child-related employment (Act s. 60(2))**

- (1) For the purposes of section 60(2), sections 22(6) and 24(a) apply in relation to a person specified in subregulation (2) who is being employed in child-related employment —
  - (a) from 1 January 2008, if the person is a new employee who starts to be so employed on or after 1 January 2006 but before 1 January 2007; or
  - (b) from when the person starts to be so employed, if the person is a new employee who starts to be so employed on or after 1 January 2007; or
  - (c) from 1 January 2011, if the person is a continuing employee.
- (2) Subregulation (1) applies in relation to a person who is —
  - (a) an employee as defined in the *Public Sector Management Act 1994* section 3(1); or
  - (b) a member of staff within the meaning of the *Electricity Corporation Act 1994*<sup>2</sup>; or
  - (c) a member of staff within the meaning of the *Water Corporation Act 1995*; or

- (d) a member of the Police Force of the State; or
- (e) an employee of Gold Corporation, the Mint or GoldCorp, appointed under the *Gold Corporation Act 1987*.

**21. When Act s. 22(4) and 24 apply to people involved in child care services (Act s. 57(1), 60(2) and 61)**

- (1) For the purpose of section 57(1), section 24(b) applies to a person who starts to carry on a child-related business referred to in section 6(1)(a)(i) in connection with a child care service on or after 1 January 2007, from when the person starts to carry on the business.
- (2) For the purpose of section 57(1), section 24(b) applies to a person who carries on a child-related business referred to in section 6(1)(a)(i) in connection with a child care service before 1 January 2007 and who —
  - (a) immediately before the commencement of the *Children and Community Services Act 2004* section 250 was the holder of a licence or a permit issued under the *Community Services Act 1972*<sup>3</sup> section 17B; or
  - (b) holds a licence, or is a managerial officer in relation to a body corporate that holds a licence, under the *Children and Community Services Act 2004* Part 8,

from the day that is on or after 1 January 2007 on which the term of the licence or permit expires.

- (2a) For the purpose of section 57(1), section 24(b) applies to a person who carries on a child-related business referred to in section 6(1)(a)(i) in connection with a child care service of a type referred to in the *Children and Community Services Act 2004* section 198(1)(c) and who —
  - (a) carried on a service of that type immediately before the commencement of the *Children and Community Services Act 2004* section 250 but did not hold a licence

or permit issued under the *Community Services Act 1972*<sup>3</sup> section 17B relating to the service; and

- (b) immediately before 1 January 2007 does not hold a licence issued under the *Children and Community Services Act 2004* Part 8 relating to the service,

from the day that is on or after 1 January 2007 on which a licence relating to the service is issued to the person under that Part.

- (3) Sections 22(4) and 24(a) do not apply in relation to a person who is employed in child-related employment referred to in section 6(1)(a)(i) in connection with a child care service before 1 January 2007 until —

- (a) in the case of a person who has produced, or given, to a licensee or permit holder —

(i) a current criminal record check for the person under the *Community Services (Child Care) Regulations 1988*<sup>3</sup> regulation 37A(1); or

(ii) a copy of a current criminal record check for the person under the *Community Services (Outside School Hours Care) Regulations 2002*<sup>3</sup> regulation 42(1),

the day that —

(iii) is on or after 1 January 2007; and

(iv) is 2 years after the day on which a check or copy was produced, or given, to the licensee or permit holder;

or

- (b) in the case of a person who has before 1 January 2007 given a licensee a copy of a current criminal record check under the *Children and Community Services (Child Care) Regulations 2006* regulation 28(1) or the *Children and Community Services (Outside School*

*Hours Care) Regulations 2006* regulation 27(1), the day that —

- (i) is on or after 1 January 2007; and
- (ii) is 2 years after the day on which the copy was given to the licensee;

or

- (c) in the case of a person who is the subject of a criminal record check provided by a licensee under the *Children and Community Services (Child Care) Regulations 2006* regulation 11(3) or 12(3) or (4), the day that —

- (i) is on or after 1 January 2007; and
- (ii) is the day on which the term of the licence of the licensee expires;

or

- (d) in the case of a person who —

- (i) is the subject of a criminal record check provided by a licensee under the *Children and Community Services (Family Day Care) Regulations 2006* regulation 11(3)(a); or
- (ii) is to be taken to have been appointed to act in place of the licensee with the approval of the CEO under the *Children and Community Services (Family Day Care) Regulations 2006* regulation 11(7),

the day that —

- (iii) is on or after 1 January 2007; and
- (iv) is the day on which the term of the licence of the licensee expires;

or

- (e) in the case of a person who is the subject of a criminal record check provided by a licensee under the *Children and Community Services (Outside School Hours Care)*



*Regulations 2006* regulation 12(3) or 13(3) or (4), the day that —

- (i) is on or after 1 January 2007; and
- (ii) is the day on which the term of the licence of the licensee expires;

or

(f) in the case of a person who —

- (i) is the subject of a criminal record check provided by a licensee under the *Children and Community Services (Outside School Hours Family Day Care) Regulations 2006* regulation 12(3)(a); or
- (ii) is to be taken to have been appointed to act in place of the licensee with the approval of the CEO under the *Children and Community Services (Outside School Hours Family Day Care) Regulations 2006* regulation 12(7),

the day that is on or after 1 January 2007 on which the term of a licence of the licensee expires; or

(g) in the case of a person who is employed by a person who carries on a child-related business referred to in section 6(1)(a)(i) in connection with a child care service of a type referred to in the *Children and Community Services Act 2004* section 198(1)(c) (the **employer**), if the employer —

- (i) carried on a service of that type immediately before the commencement of the *Children and Community Services Act 2004* section 250 but did not hold a licence or permit issued under the *Community Services Act 1972*<sup>3</sup> section 17B relating to the service; and

(ii) immediately before 1 January 2007 does not hold a licence issued under the *Children and Community Services Act 2004* Part 8 relating to the service,

the day that is on or after 1 January 2007 on which a licence relating to the service is issued to the employer under that Part.

- (4) Sections 22(4) and 24(a) do not apply in relation to a person who starts to be employed in child-related employment referred to in section 6(1)(a)(i) in connection with a child care service on or after 1 January 2007, until the person starts to be so employed.
- (5) Sections 22(4) and 24(a) do not apply in relation to a person who is employed in child-related employment referred to in section 6(1)(a)(i) in connection with a child care service before 1 January 2007 until, in the case of a person who has not been the subject of a criminal record check before 1 January 2007 under the *Community Services Act 1972*<sup>3</sup> or the *Children and Community Services Act 2004*, the day that is on or after 1 January 2009.

*[Regulation 21 inserted in Gazette 28 Feb 2006 p. 908-10; amended in Gazette 1 Mar 2006 p. 940; 1 Dec 2006 p. 5298-300; 7 Dec 2007 p. 5979-80.]*

**22. When Act s. 22(6) and 24(b) apply to people involved in placement arrangements under *Children and Community Services Act 2004* (Act s. 57(1) and 60(2))**

- (1) For the purpose of section 57(1), section 24(b) applies to a person who carries on a child-related business referred to in section 6(1)(a)(vi) in connection with a placement arrangement under the *Children and Community Services Act 2004* —
- (a) from 1 January 2008, if the person starts to carry on the business before 1 January 2007; or

- (b) from when the person starts to carry on the business, if the person starts to carry on the business on or after 1 January 2007.
- (2) For the purpose of section 60(2), sections 22(6) and 24(b) apply in relation to a person who is being employed in child-related employment referred to in section 6(1)(a)(vi) in connection with a placement arrangement under the *Children and Community Services Act 2004* —
  - (a) from 1 January 2008, if the person starts to be employed in the employment before 1 January 2007; or
  - (b) from when the person starts to be employed in the employment, if the person starts to be so employed on or after 1 January 2007.

*[Regulation 22 inserted in Gazette 28 Feb 2006 p. 910-11.]*

**23. When Act s. 22(6) and 24 apply to teachers involved in child-related businesses or employment (Act s. 57(1) and 60(2))**

- (1) For the purpose of section 57(1), section 24(b) applies to a person —
  - (a) who is a member of the College immediately before 1 January 2007; and
  - (b) who carries on a child-related business specified in subregulation (3),from —
  - (c) the day on which the person ceases to be a member of the College because his or her registration or provisional registration as a teacher, limited authority to teach or associate membership of the College, as the case may be, under the *Western Australian College of Teaching Act 2004* expires; or

- (d) 1 January 2011,  
whichever is the earlier.
- (2) For the purpose of section 60(2), sections 22(6) and 24(a) apply in relation to a person —
- (a) who is a member of the College immediately before 1 January 2007; and
  - (b) who is employed in child-related employment specified in subregulation (3),
- from —
- (c) the day on which the person ceases to be a member of the College because his or her registration or provisional registration as a teacher, limited authority to teach or associate membership of the College, as the case may be, under the *Western Australian College of Teaching Act 2004* expires; or
  - (d) 1 January 2011,
- whichever is the earlier.
- (3) Subregulations (1) and (2) apply in relation to child-related work —
- (a) referred to in section 6(1)(a)(ii) in connection with a community kindergarten registered under the *School Education Act 1999* Part 5; or
  - (b) referred to in section 6(1)(a)(iii) in connection with an educational institution for children; or
  - (c) referred to in section 6(1)(a)(iv) in connection with a coaching or private tuition service of any kind, but not including an informal arrangement entered into for private or domestic purposes; or
  - (d) referred to in section 6(1)(a)(xv) in connection with an overnight camp, regardless of the type of accommodation or how many children are involved, arranged by community kindergarten registered under

the *School Education Act 1999* Part 5, an educational institution for children or a service referred to in paragraph (c).

*[Regulation 23 inserted in Gazette 29 Dec 2006 p. 5877-8.]*

## **Schedule 1 — Work which is not “child-related work”**

[r. 4]

### **Division 1 — Voluntary work carried out by parents**

#### **1a. Child care services (Act s. 6(1)(a)(i))**

Work —

- (a) referred to in section 6(1)(a)(i) in connection with a child care service; and
- (b) carried out on a voluntary basis by a parent of a child —
  - (i) to whom the service is being provided; or
  - (ii) who is enrolled for, or otherwise ordinarily is provided with, the service.

*[Clause 1a inserted in Gazette 28 Feb 2006 p. 911.]*

#### **1. Community kindergartens and educational institutions (Act s. 6(1)(a)(ii) and (iii))**

Work —

- (a) referred to in section 6(1)(a)(ii) or (iii) in connection with —
  - (i) a community kindergarten registered under the *School Education Act 1999* Part 5; or
  - (ii) an educational institution for children;and
- (b) carried out on a voluntary basis by a parent of a child who is enrolled at the kindergarten or educational institution.

#### **2. Coaching or private tuition services (Act s. 6(1)(a)(iv))**

Work —

- (a) referred to in section 6(1)(a)(iv) in connection with a coaching or private tuition service; and
- (b) carried out on a voluntary basis by a parent of a child, to whom the service is being provided, in connection with an activity in which the child is participating, or ordinarily participates.

**2a. Coaching or private tuition services in connection with clubs, associations or movements (Act s. 6(1)(a)(iv))**

Work —

- (a) referred to in section 6(1)(a)(iv) in connection with a coaching or private tuition service; and
- (b) carried out in connection with 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; and
- (c) carried out on a voluntary basis by a parent of a child who is involved, or is ordinarily involved in some, or all, of the activities of the club, association or movement.

*[Clause 2a inserted in Gazette 7 Dec 2007 p. 5980.]*

**3. Accommodation or care of children (Act s. 6(1)(a)(v))**

Work —

- (a) referred to in section 6(1)(a)(v) in connection with an arrangement for the accommodation or care of children, whether in a residential facility or private residence; and
- (b) carried out on a voluntary basis by a parent of a child in connection with an activity in which the child is participating, or ordinarily participates.

**4. Community child health services (Act s. 6(1)(a)(ix))**

Work —

- (a) referred to in section 6(1)(a)(ix) in connection with a community child health service; and
- (b) carried out on a voluntary basis by a parent of a child, to whom the service is being provided, in connection with an activity in which the child is participating, or ordinarily participates.

**5. Counselling or other support services (Act s. 6(1)(a)(x))**

Work —

- (a) referred to in section 6(1)(a)(x) in connection with a counselling or other support service; and

- (b) carried out on a voluntary basis by a parent of a child, to whom the service is being provided, in connection with an activity in which the child is participating, or ordinarily participates.

**6. Religious organisations (Act s. 6(1)(a)(xi))**

Work —

- (a) referred to in section 6(1)(a)(xi) in connection with a religious organisation; and
- (b) carried out on a voluntary basis by a parent of a child in connection with an activity in which the child is participating, or ordinarily participates.

**7. Clubs, associations or movements (Act s. 6(1)(a)(xii))**

Work —

- (a) referred to in section 6(1)(a)(xii) in connection with 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; and
- (b) carried out on a voluntary basis by a parent of a child who is involved, or is ordinarily involved in some, or all, of the activities of the club, association or movement.

**8. Children in hospital (Act s. 6(1)(a)(xiii))**

Work —

- (a) referred to in section 6(1)(a)(xiii) in connection with a ward of a public or private hospital in which children are ordinarily patients; and
- (b) carried out on a voluntary basis by a parent of a child in connection with an activity in which the child is participating or ordinarily participates.

**8a. Baby sitting or child minding service (Act s. 6(1)(a)(xiv))**

Work —

- (a) referred to in section 6(1)(a)(xiv) in connection with a baby sitting or child minding service; and



- (b) carried out on a voluntary basis by a parent of a child, to whom the service is being provided, in connection with an activity in which the child is participating, or ordinarily participates.

*[Clause 8a inserted in Gazette 1 Dec 2006 p. 5300.]*

**9. Transport services for children (Act s. 6(1)(a)(xvi))**

Work —

- (a) referred to in section 6(1)(a)(xvi) in connection with a transport service specifically for children; and
- (b) carried out on a voluntary basis by a parent of a child who is a passenger on the transport service, or is ordinarily a passenger on the transport service.

**10. School crossing services (Act s. 6(1)(a)(xvii))**

Work —

- (a) referred to in section 6(1)(a)(xvii) in connection with a school crossing service, being a service provided to assist children to cross roads on their way to or from school; and
- (b) carried out on a voluntary basis by a parent of a child who is enrolled at the school.

**11. Children's entertainment or party services (Act s. 6(1)(a)(xviii))**

Work —

- (a) referred to in section 6(1)(a)(xviii) in connection with a children's entertainment or party service; and
- (b) carried out on a voluntary basis by a parent of a child in connection with an activity in which the child is participating, or ordinarily participates.

**Division 2 — Other exempt work**

**12. Child-related work carried out by visitors to the State (Act s. 6(1)(a))**

Work referred to in section 6(1)(a) carried out by a person —

- (a) who is not ordinarily resident in the State;

**Working with Children (Criminal Record Checking) Regulations 2005**

**Schedule 1** Work which is not “child-related work”

**Division 2** Other exempt work

**cl. 12a**

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- (b) during the period of 2 weeks after the person arrives in the State; and
- (c) that does not exceed a period of 2 weeks in any period of 12 months.

**12a. Child-related work carried out by police officers (Act s. 6(1)(a)(i), (iii), (iv), (v), (viii), (x), (xii), (xv), (xvii) or (xviii))**

Work referred to in section 6(1)(a)(i), (iii), (iv), (v), (viii), (x), (xii), (xv), (xvii) or (xviii) carried out by a person appointed under the *Police Act 1892* Part I to be a member of the Police Force of Western Australia in the course of performing his or her functions as such a member.

*[Clause 12a inserted in Gazette 1 Dec 2006 p. 5300-1; amended in Gazette 7 Dec 2007 p. 5980.]*

*[13. Deleted in Gazette 29 Dec 2006 p. 5878.]*

**14. Coaching or private tuition services provided to certain groups (Act s. 6(1)(a)(iv))**

Work referred to in section 6(1)(a)(iv) in connection with a coaching or private tuition service provided to a class of 2 or more students, unless that class is provided primarily for children.

**15. Accommodation or care of children in residence for tertiary education (Act s. 6(1)(a)(v))**

Work referred to in section 6(1)(a)(v) in connection with an arrangement for the accommodation or care of children in a residential facility connected to, or used predominantly by students of, a university or other institution of tertiary education.

**16. Children’s entertainment or party services (Act s. 6(1)(a)(xviii))**

Work referred to in section 6(1)(a)(xviii) in connection with a children’s entertainment or party service —

- (a) that is a performance open to the general public not involving physical contact with children, whether on the payment of a fee or otherwise; or

- (b) that provides equipment, food or a venue, and no other children's entertainment or party service.

**Schedule 2A — Offences under provisions of other  
jurisdictions prescribed as Class 1 offences**

[r. 5A]

*[Heading inserted in Gazette 5 Oct 2010 p. 5114.]*

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<b>Provision and jurisdiction</b>	<b>Description of offence</b>
<i>Criminal Code Act 1995</i> Schedule (Commonwealth)	
s. 272.8(1)	Engaging in sexual intercourse with child outside Australia (if the child against whom the offence is committed is under 13)
s. 272.8(2)	Causing child to engage in sexual intercourse in presence of accused person outside Australia (if the child against whom the offence is committed is under 13)

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*[Schedule 2A inserted in Gazette 5 Oct 2010 p. 5114-15.]*

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**Schedule 2 — Offences under laws of other jurisdictions  
prescribed as Class 2 offences**

[r. 5]

*[Heading inserted in Gazette 5 Oct 2010 p. 5115.]*

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<b>Provisions and jurisdiction</b>	<b>Description of offence</b>
<i>Criminal Code Act 1995</i> Schedule (Commonwealth)	
s. 271.4	Trafficking in children
s. 271.7	Domestic trafficking in children
s. 272.8(1)	Engaging in sexual intercourse with child outside Australia (if the child against whom the offence is committed is 13 or over)
s. 272.8(2)	Causing child to engage in sexual intercourse in presence of accused person outside Australia (if the child against whom the offence is committed is 13 or over)
s. 272.9(1)	Engaging in sexual activity with child outside Australia
s. 272.9(2)	Causing child to engage in sexual activity in presence of accused person outside Australia
s. 272.10	Aggravated offence — child with mental impairment or under care, supervision or authority of accused person
s. 272.11	Persistent sexual abuse of child outside Australia
s. 272.12(1)	Engaging in sexual intercourse with young person outside Australia — accused person in position of trust or authority

**Working with Children (Criminal Record Checking) Regulations 2005**

**Schedule 2** Offences under laws of other jurisdictions prescribed as  
Class 2 offences

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<b>Provisions and jurisdiction</b>	<b>Description of offence</b>
s. 272.12(2)	Causing young person to engage in sexual intercourse in presence of accused person outside Australia — accused person in position of trust or authority
s. 272.13(1)	Engaging in sexual activity with young person outside Australia — accused person in position of trust or authority
s. 272.13(2)	Causing young person to engage in sexual activity in presence of accused person outside Australia — accused person in position of trust or authority
s. 272.14	Procuring child to engage in sexual activity outside Australia
s. 272.15	“Grooming” child to engage in sexual activity outside Australia
s. 272.18	Benefiting from offence against Division 272
s. 272.19	Encouraging offence against Division 272
s. 272.20(1)	Preparing for or planning offence involving sexual intercourse or other sexual activity with child
s. 272.20(2)	Preparing for or planning offence involving sexual intercourse or other sexual activity with young person
s. 273.5	Possessing, controlling, producing, distributing or obtaining child pornography material outside Australia
s. 273.6	Possessing, controlling, producing, distributing or obtaining child abuse material outside Australia

**Working with Children (Criminal Record Checking) Regulations 2005**

Offences under laws of other jurisdictions prescribed as **Schedule 2**  
Class 2 offences

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<b>Provisions and jurisdiction</b>	<b>Description of offence</b>
s. 273.7	Aggravated offence — offence involving conduct on 3 or more occasions and 2 or more people
s. 309.2	Supplying controlled drug to child
s. 309.3	Supplying marketable quantity of controlled drug to child for trafficking
s. 309.4	Supplying controlled drug to child for trafficking
s. 309.7	Procuring child for trafficking marketable quantity of controlled drug
s. 309.8	Procuring child for trafficking controlled drug
s. 309.10	Procuring child for pre-trafficking marketable quantity of controlled precursor
s. 309.11	Procuring child for pre-trafficking controlled precursor
s. 309.12	Procuring child for importing or exporting marketable quantity of border controlled drug or border controlled plant
s. 309.13	Procuring child for importing or exporting border controlled drug or border controlled plant
s. 309.14	Procuring child for importing or exporting marketable quantity of border controlled precursor
s. 309.15	Procuring child for importing or exporting border controlled precursor
s. 310.2	Creating danger to child under 14 from exposure to unlawful manufacturing

**Working with Children (Criminal Record Checking) Regulations 2005**

**Schedule 2** Offences under laws of other jurisdictions prescribed as  
Class 2 offences

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<b>Provisions and jurisdiction</b>	<b>Description of offence</b>
s. 310.3	Causing harm to child under 14 from exposure to unlawful manufacturing
s. 310.4	Aggravated offences — manufacturing controlled drugs and controlled precursors
s. 471.16(1)	Causing child pornography material to be carried by a postal or similar service
s. 471.16(2)	Requesting person to cause child pornography material to be carried by a postal or similar service
s. 471.17	Possessing, controlling, producing, supplying or obtaining child pornography material for use through a postal or similar service
s. 471.19(1)	Causing child abuse material to be carried by a postal or similar service
s. 471.19(2)	Requesting person to cause child abuse material to be carried by a postal or similar service
s. 471.20	Possessing, controlling, producing, supplying or obtaining child abuse material for use through a postal or similar service
s. 471.22	Aggravated offence — offence involving conduct on 3 or more occasions and 2 or more people
s. 471.24	Using a postal or similar service to procure child under 16 to engage in sexual activity
s. 471.25	Using a postal or similar service to “groom” child under 16
s. 471.26	Using a postal or similar service to send indecent material to child under 16



**Working with Children (Criminal Record Checking) Regulations 2005**

Offences under laws of other jurisdictions prescribed as **Schedule 2**  
Class 2 offences

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<b>Provisions and jurisdiction</b>	<b>Description of offence</b>
s. 474.24A	Aggravated offence — offence involving conduct on 3 or more occasions and 2 or more people
s. 474.25A(1)	Engaging in sexual activity with child under 16 using a carriage service
s. 474.25A(2)	Causing child under 16 to engage in sexual activity with another person using a carriage service
s. 474.25B	Aggravated offence — child with mental impairment or under care, supervision or authority of accused person
s. 474.27A	Using a carriage service to transmit indecent communication to child under 16

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*[Schedule 2 inserted in Gazette 5 Oct 2010 p. 5115-18.]*

**Schedule 3 — Fees**

[r. 8]

1. Application for assessment notice (child-related employment) (s. 9(2)(c)) —
  - (a) where the applicant is, or is to be, remunerated for carrying out the child-related work ..... \$50
  - (b) otherwise ..... \$10
2. Application for assessment notice (child-related business) (s. 10(2)(c)) ..... \$50
3. Application for cancellation of a negative notice (s. 19(5)(c)) ..... \$50
4. Application for replacement assessment notice (r. 8(3) and (4)) ..... \$10



**Notes**

<sup>1</sup> This reprint is a compilation as at 14 January 2011 of the *Working with Children (Criminal Record Checking) Regulations 2005* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

**Compilation table**

<b>Citation</b>	<b>Gazettal</b>	<b>Commencement</b>
<i>Working with Children (Criminal Record Checking) Regulations 2005</i>	21 Dec 2005 p. 6189-214	1 Jan 2006 (see r. 2 and <i>Gazette</i> 30 Dec 2005 p. 6875)
<i>Working with Children (Criminal Record Checking) Amendment Regulations 2006</i>	28 Feb 2006 p. 907-12	1 Mar 2006 (see r. 2 and <i>Gazette</i> 14 Feb 2006 p. 695)
<i>Working with Children (Criminal Record Checking) Amendment Regulations (No. 2) 2006</i>	1 Mar 2006 p. 940	2 Mar 2006 (see r. 2)
<i>Working with Children (Criminal Record Checking) Amendment Regulations (No. 3) 2006</i>	1 Dec 2006 p. 5297-301	1 Dec 2006
<i>Working with Children (Criminal Record Checking) Amendment Regulations (No. 4) 2006</i>	29 Dec 2006 p. 5876-8	1 Jan 2007 (see r. 2)
<b>Reprint 1: The <i>Working with Children (Criminal Record Checking) Regulations 2005</i> as at 20 Jul 2007</b> (includes amendments listed above)		
<i>Working with Children (Criminal Record Checking) Amendment Regulations 2007</i>	7 Dec 2007 p. 5977-80	r. 1 and 2: 7 Dec 2007 (see r. 2(a)); Regulations other than r. 1 and 2: 8 Dec 2007 (see r. 2(b))
<i>Working with Children (Criminal Record Checking) Amendment (Road Traffic) Regulations 2008</i>	20 Jun 2008 p. 2706-7	r. 1 and 2: 20 Jun 2008 (see r. 2(a)); Regulations other than r. 1 and 2: 30 Jun 2008 (see r. 2(b) and <i>Gazette</i> 10 Jun 2008 p. 2471)
<i>Working with Children (Criminal Record Checking) Amendment Regulations 2010</i>	5 Oct 2010 p. 5113-18	r. 1, 2 and 3: 5 Oct 2010 (see r. 2(a)); r. 5: 6 Oct 2010 (see r. 2(b) and <i>Gazette</i> 5 Oct 2010 p. 5113); Regulations other than r. 1, 2, 3 and 5: 6 Oct 2010 (see r. 2(c))
<b>Reprint 2: The <i>Working with Children (Criminal Record Checking) Regulations 2005</i> as at 14 Jan 2011</b> (includes amendments listed above)		

<sup>2</sup> Now known as the *Electricity Transmission and Distribution Systems (Access) Act 1994*.

<sup>3</sup> Repealed by the *Children and Community Services Act 2004* s. 250.

**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>
application.....	11A(1)
child-related job .....	10(4)
CrimTrac Agency.....	6(2)
driver's licence endorsed with extension F or T .....	18(3)
employer .....	21(3)(g)
member of the College.....	3
section .....	3