

Western Australia

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

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Working with Children (Criminal Record Checking) Regulations 2005

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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*.

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.

3. Interpretation

In these regulations —

“**section**” means section of the Act.

Part 2 — General

4. Exemptions to “child-related work” — Schedule 1

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

5. Prescription of Class 2 offences — Schedule 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 prescribed as a “criminal records agency” — 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 to which information about issue of negative notices and interim negative notices may be disclosed — s. 38(2)

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

- (a) the Department as defined in section 38(1);
- (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*.

8. Fees

- (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;
 - (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. Interpretation

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) and (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 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) If a provision of this 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.

- (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;
 - (b) under one contract of employment or apprenticeship (whether written or unwritten);
 - (c) on a voluntary basis under one agreement (whether written or unwritten); or
 - (d) in his or her capacity as a minister of religion.

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
 - (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.
- (2) Subregulation (1) does not apply on and after 1 January 2011.

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

12. Persons carrying on a child-related business (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
- (b) from 1 January 2007, if the person is a continuing operator.

13. Persons employed in certain child-related employment referred to in s. 6(1)(a) (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 subregulation (3) —
 - (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) referred to in section 6(1)(a)(iv) in connection with a coaching or private tuition service;
 - (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;
 - (c) referred to in section 6(1)(a)(xi) in connection with a religious organisation;
 - (d) referred to in section 6(1)(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;
 - (e) referred to in section 6(1)(a)(xiv) in connection with a babysitting or childminding service;
 - (f) referred to in section 6(1)(a)(xv) in connection with an overnight camp;

- (g) referred to in section 6(1)(a)(xvi) in connection with a transport service specifically for children;
- (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; or
- (i) referred to in section 6(1)(a)(xviii) in connection with a children's entertainment or party service.

14. Persons employed in child-related employment referred to in s. 6(1)(b)

- (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. Coaching or private tuition services (education or training provider) (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;

- (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. Volunteers in child-related employment (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;

- (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;
 - (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. Ministers of religion (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. Holders of driver's licences of class F or T (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 as of class F or class 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;
 - (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 as of class F or class 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;
 - (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 as of class F or class T”** means a driver’s licence within the meaning of the *Road Traffic Act 1974* endorsed under that Act as of class F or class T.

19. Persons employed in other child-related employment (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 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; and
 - (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;

- (b) referred to in section 6(1)(a)(iii) in connection with an educational institution for children;
- (c) referred to in section 6(1)(a)(viii) in connection with a detention centre, as defined in the *Young Offenders Act 1994* section 3;
- (d) referred to in section 6(1)(a)(ix) in connection with a community child health service;
- (e) referred to in section 6(1)(a)(x) in connection with a counselling or other support service; or
- (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.

20. Certain other persons (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;
 - (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);
 - (b) a member of staff within the meaning of the *Electricity Corporation Act 1994*;
 - (c) a member of staff within the meaning of the *Water Corporation Act 1995*;
 - (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*.

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

[r. 4]

Division 1 — Voluntary work carried out by parents

**1. Community kindergartens and educational institutions
(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 (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.

3. Accommodation or care of children (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 (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 (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 (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 (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 (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.

9. Transport services for children (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 (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 (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 (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;
- (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.

13. Community kindergartens and educational institutions (s. 6(1)(a)(ii) and(iii))

Work —

- (a) referred to in section 6(1)(a)(ii), (iii) or (iv) in connection with —
 - (i) a community kindergarten registered under the *School Education Act 1999* Part 5;
 - (ii) an educational institution for children; or
 - (iii) a coaching or private tuition service;and
- (b) carried out by a person who is a member of the Western Australian College of Teaching established under the *Western Australian College of Teaching Act 2004*.

14. Coaching or private tuition services provided to certain groups (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 (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 (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 2 — Offences under laws of other jurisdictions
prescribed as Class 2 offences**

[r. 5]

Enactment and Jurisdiction	Description of offence
<i>Criminal Code Act 1995</i> of the Commonwealth	
s. 271.4	Offence of trafficking in children
s. 271.7	Offence of domestic trafficking in children
s. 309.2	Supplying controlled drugs to children
s. 309.3	Supplying marketable quantities of controlled drugs to children for trafficking
s. 309.4	Supplying controlled drugs to children for trafficking
s. 309.7	Procuring children for trafficking marketable quantities of controlled drugs
s. 309.8	Procuring children for trafficking controlled drugs
s. 309.10	Procuring children for pre-trafficking marketable quantities of controlled precursors
s. 309.11	Procuring children for pre-trafficking controlled precursors
s. 309.12	Procuring children for importing or exporting marketable quantities of border controlled drugs or border controlled plants
s. 309.13	Procuring children for importing or exporting border controlled drugs or border controlled plants
s. 309.14	Procuring children for importing or exporting marketable quantities of border controlled precursors

Working with Children (Criminal Record Checking) Regulations 2005

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

s. 309.15	Procuring children for importing or exporting border controlled precursors
s. 310.2	Danger from exposure to unlawful manufacturing
s. 310.3	Harm from exposure to unlawful manufacturing
s. 310.4	Aggravated offences — manufacturing controlled drugs and controlled precursors

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

- ¹ This is a compilation of the *Working with Children (Criminal Record Checking) Regulations 2005*. The following table contains information about those regulations.

Compilation table

Citation	Gazettal	Commencement
<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)