



Queensland

Commission for Children and Young People and Child Guardian Amendment Act 2004

Act No. 49 of 2004



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Queensland

Commission for Children and Young People and Child Guardian Amendment Act 2004

Act No. 49 of 2004

***An Act to amend the *Commission for Children and Young
People and Child Guardian Act 2000* and for other purposes***

[Assented to 29 November 2004]

The Parliament of Queensland enacts—

1 Short title

This Act may be cited as the *Commission for Children and Young People and Child Guardian Amendment Act 2004*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

3 Act amended

This Act amends the *Commission for Children and Young People and Child Guardian Act 2000*.

4 Amendment of s 15 (Commissioner's functions)

Section 15(1)—

insert—

‘(ra) to audit or monitor compliance with part 6;’¹.

5 Replacement of pt 6 hdg (Employment screening for child-related employment)

Part 6, heading—

omit, insert—

**‘Part 6 Screening for regulated
employment and regulated
businesses’.**

¹ Part 6 (Screening for regulated employment and regulated businesses)

6 Replacement of s 95 (Purpose of pt 6)

Section 95—

omit, insert—

‘95 Main purpose of pt 6

‘The main purpose of this part is to ensure that persons employed in particular employment, or carrying on particular businesses, as prescribed under this Act undergo screening under this part.’

7 Amendment of s 97 (Employment and businesses regulated by this part)

Section 97(2), after ‘child’—

insert—

‘, unless the child is a trainee student of an education provider and the employment is part of the course undertaken by the trainee student with the education provider’.

8 Insertion of new ss 98A and 98B and pt 6, div 1A hdg

After section 98—

insert—

‘98A This part does not apply to person engaged in employment for the police service

‘This part does not apply to the employment of a person who, within the meaning of the *Police Service Administration Act 1990*, section 5AA.3,² is a person engaged by the service, to the extent the person is performing a function mentioned in the *Police Service Administration Act 1990*, section 2.3.³

2 *Police Service Administration Act 1990*, section 5AA.3 (Meaning of *engaged by the service*)

3 *Police Service Administration Act 1990*, section 2.3 (Functions of service)

‘98B Declaration relating to exemption to category of regulated employment or regulated business

- ‘(1) If employment of a person as mentioned in a section of schedule 1, part 1 is regulated employment of the person under that section, the employment remains regulated employment and it does not matter that—
- (a) another section of schedule 1, part 1 expressly provides that employment of the person is not regulated employment; or
 - (b) another section of schedule 1, part 2 expressly provides that a business carried on by the person is not a regulated business.
- ‘(2) If a person is carrying on a business as mentioned in a section of schedule 1, part 2 and carrying on the business is carrying on a regulated business under that section, carrying on the business remains carrying on a regulated business and it does not matter that—
- (a) another section of schedule 1, part 2 expressly provides that a business carried on by the person is not a regulated business; or
 - (b) another section of schedule 1, part 1 expressly provides that employment of the person is not regulated employment.

Examples for this section—

- 1 A psychologist is employed at a school as a student counsellor and the psychologist is not a registered teacher or a volunteer who is a parent of a child attending the school. The employment of the psychologist at the school is regulated employment under schedule 1, part 1, section 3 even though, under schedule 1, part 1, section 5(2)(a), the employment of the psychologist is not regulated employment.
- 2 If a person carries on a business that includes private tutoring of children, the person is carrying on a regulated business under schedule 1, part 1, section 5 even if employment of the person is not regulated employment under schedule 1, part 1, section 3 because the person is a registered teacher.

9 Amendment of s 99 (What is employment)

(1) Section 99(2)—

insert—

‘(e) whether the agreement provides for the other person to carry out work on 1 occasion or on an ongoing basis, whether regularly or irregularly.’.

(2) Section 99, before the examples—

insert—

‘(3) Also, for this section, the nature of the work is immaterial.

‘(4) This section is subject to section 99A.’.

(3) Section 99, example 3, from ‘duties,’—

omit, insert—

‘duties.’.

(4) Section 99, example 4—

omit, insert—

‘4 A tour operator arranges with the parents of a family to provide a child accommodation service in their home to an international student.’.

10 Insertion of new ss 99A to 99F

Part 6, division 1A, after section 99—

insert—

‘99A What is employment when education provider arranges trainee student to carry out work for someone else

‘(1) This section applies if—

(a) the first person mentioned in section 99 is an education provider; and

(b) the other person mentioned in section 99 is a trainee student of the education provider; and

- (c) the work to be carried out is part of the course that the trainee student is undertaking with the education provider; and
 - (d) the work is to be carried out for someone else.
- ‘(2) The education provider may apply for a prescribed notice about the trainee student for regulated employment as mentioned in section 100(1B).⁴
- ‘(3) If the education provider applies for a prescribed notice about the trainee student as mentioned in subsection (2), the person for whom the trainee student is to carry out work, or carries out work, need not apply for the prescribed notice.
- ‘(4) For section 99, the person for whom the trainee student is to carry out work, or carries out work, is employing the trainee student even though—
- (a) the education provider applied for a prescribed notice about the trainee student; and
 - (b) no agreement for the trainee student to carry out work is made expressly between the person and the trainee student.

‘99B What is employment in child care

- ‘(1) This section applies to the employment of a person as a carer in, or staff member of, a child care service.
- ‘(2) A reference in this Act to employment of the person includes a reference to engagement of the person within the meaning of the *Child Care Act 2002*, section 58.⁵

‘99C What is a *serious offence*

- ‘(1) A *serious offence* is—
 - (a) for each Act mentioned in schedule 2, an offence against a provision mentioned in column 1 of that schedule for

4 Section 100 (Application for notice—regulated employment)

5 *Child Care Act 2002*, section 58 (Meaning of *engage*)

- that Act, subject to any limitation relating to the provision mentioned opposite in column 3; or
- (b) an offence of counselling or procuring the commission of, or attempting or conspiring to commit, an offence mentioned in paragraph (a); or
 - (c) an offence against a provision mentioned in schedule 2A that is an expired or repealed provision of the Criminal Code, subject to any qualification relating to the provision mentioned opposite in column 3; or
 - (d) an offence against a law at any time of another jurisdiction that substantially corresponds to an offence mentioned in paragraph (a), (b) or (c); or
 - (e) an offence that is a class 1 or 2 offence as defined under the *Child Protection (Offender Reporting) Act 2004* that is not otherwise a serious offence under this subsection.

Note—

Column 2 in schedules 2 and 2A is included for information purposes only and states a section heading for the provision mentioned opposite in column 1.

- ‘(2) For this section, it is immaterial if a provision mentioned in schedule 2 or 2A, column 1, for an Act has been amended from time to time or that the provision was previously numbered with a different number.

‘99D What is a *serious child-related sexual offence*

- ‘(1) A *serious child-related sexual offence* is—
 - (a) an offence against a provision of the Criminal Code mentioned in schedule 2B, column 1; or
 - (b) an offence against a provision mentioned in schedule 2C, column 1, that is an expired or repealed provision of the Criminal Code, subject to any qualification relating to the provision mentioned opposite in column 3.

Note—

Column 2 in schedules 2B and 2C is included for information purposes only and states a section heading for the provision mentioned opposite in column 1.

- ‘(2) However, an offence mentioned in subsection (1) is a serious child-related sexual offence only if, at the time of the offence, the person in relation to whom the offence was committed was—
- (a) for a provision that mentions or mentioned a specific age relevant to the offence—a child under that age; or
 - (b) otherwise—a child.
- ‘(3) For this section, it is immaterial if a provision mentioned in schedule 2B or 2C, column 1 has been amended from time to time or that the provision was previously numbered with a different number.

‘99E What is an *excluding offence*

‘An *excluding offence* is—

- (a) a serious child-related sexual offence; or
- (b) an offence against a provision mentioned in schedule 2, in relation to the entry for the *Classification of Computer Games and Images Act 1995*, *Classification of Films Act 1991* or *Classification of Publications Act 1991*.

‘99F Who is a *volunteer*

- ‘(1) A *volunteer* is a person who is employed by another person and does not carry out any work for the other person for a financial reward.
- ‘(2) In this section—
- financial reward* does not include a payment that is a reimbursement for out-of-pocket expenses.’.

11 Insertion of new pt 6, div 1B

Before part 6, division 2, heading—

insert—

‘Division 1B Risk management strategies

‘99G Risk management strategies about regulated businesses and persons employed in regulated employment

- ‘(1) This section applies to each of the following—
- (a) a person who carries on a regulated business;
 - (b) a person (an *employer*) who employs someone else in employment that is regulated employment.
- ‘(2) For each year, a person to whom this section applies must develop and implement a written strategy about the regulated business and, if the person is an employer, for persons employed in regulated employment (a *risk management strategy*).
- Maximum penalty—20 penalty units.
- ‘(3) The purpose of a risk management strategy is to implement employment practices and procedures to promote the wellbeing of a child affected by the regulated business or employment and to protect the child from harm.
- ‘(4) Without limiting subsection (3), a regulation may prescribe the matters that are to be included in a risk management strategy.
- ‘(5) In this section—
- persons employed in regulated employment* includes each of the following who are employed in regulated employment—
- (a) persons for whom the employer has applied for a prescribed notice;
 - (b) persons who hold a positive notice;
 - (c) persons who need not hold a positive notice;

- (d) persons about whom the employer is notified under section 122B.⁶.

12 Replacement of pt 6, div 2 hdg (Issue of suitability notices)

Part 6, division 2, heading—

omit, insert—

‘Division 2 Issue of prescribed notices for regulated employment or regulated businesses’.

13 Amendment of s 100 (Application for notice—regulated employment)

- (1) Section 100(1), from ‘a suitability notice’—

omit, insert—

‘a prescribed notice about the employee in relation to regulated employment.’.

- (2) Section 100—

insert—

‘(1A) However, the employer need not make an application under subsection (1) about a person who is a trainee student of an education provider if—

- (a) the employer proposes to start employing the trainee student; and
- (b) the education provider has applied, under subsection (1B), for a prescribed notice about the trainee student.

‘(1B) If, as part of a course undertaken by a trainee student of an education provider, the education provider proposes for the trainee student to perform work that is regulated employment, the education provider may apply to the commissioner for a

⁶ Section 122B (Commissioner to give notice to employer about making employment-screening decision about employee)

prescribed notice about the trainee student in relation to regulated employment.’.

- (3) Section 100(2)(b), after ‘employer’—

insert—

‘or education provider’.

- (4) Section 100(2)(c), ‘employee’—

omit, insert—

‘relevant person’.

- (5) Section 100(3), (4) and (5)—

omit, insert—

- ‘(3) The approved form must include provision for—

(a) identifying information about the relevant person; and

(b) certification by the employer, education provider or a prescribed person that the employer, education provider or prescribed person has sighted documents, relating to proof of the relevant person’s identity, prescribed under a regulation; and

(c) if the employer or education provider does not give the certification mentioned in paragraph (b), certification by the employer or education provider that the reason the employer or education provider did not sight the documents is only because—

(i) the relevant person’s usual place of residence is more than 50 km from the employer’s business address or a place used by the education provider for conducting courses; or

(ii) the relevant person is a person with a disability that affects mobility; and

(d) the relevant person’s consent to employment screening under this part.

- ‘(4) On receiving the application, the commissioner may ask the employer, education provider or relevant person—

- (a) for further information that the commissioner reasonably considers necessary to establish the relevant person's identity; or
 - (b) about why the employer or education provider did not sight the documents as mentioned in subsection (3)(c).⁷
- ‘(5) If a relevant person is given a written request under subsection (4), the relevant person is taken to have withdrawn the application if—
- (a) the request includes a warning that, if the request is not complied with within a stated time, the relevant person's application will be taken to have been withdrawn; and
 - (b) the relevant person does not comply with the request within the stated time; and
 - (c) the commissioner gives the relevant person a notice stating that the relevant person is taken to have withdrawn the application.
- ‘(6) In this section—
- prescribed person* means a justice, commissioner for declarations, lawyer or police officer.
- relevant person* means—
- (a) an employee as mentioned in subsection (1); or
 - (b) a trainee student of an education provider as mentioned in subsection (1B).’.

14 Amendment of s 101 (Application for notice—regulated business)

Section 101(1), from ‘a suitability notice’—

omit, insert—

‘a prescribed notice about the person in relation to the regulated business.’.

⁷ See section 123 (Withdrawal of employee's consent to employment screening) in relation to an employee failing to comply with a written request for further identifying information.

15 Replacement of s 102 (Decision on application)

Section 102—

omit, insert—

‘101A Notice of change of employment, or name and contact details in application under ss 100 or 101

‘(1) This section applies to a person if an application under section 100 or 101 is made for a prescribed notice about the person (the *relevant person*) and any of the following (each a *relevant change*) happens before the commissioner has issued a prescribed notice to the relevant person in relation to the application—

- (a) the relevant person’s name or contact details, as stated in the application, change;
- (b) the relevant person’s employment, as stated in the application, ends;
- (c) the relevant person stops carrying on the business as stated in the application.

‘(2) The relevant person must give notice, in the approved form, to the commissioner of the relevant change within 14 days after the relevant change happens.

Maximum penalty—10 penalty units.

‘(3) The approved form mentioned in subsection (2) must provide for a relevant person to give notice withdrawing the person’s consent to employment screening under this part.

‘102 Decision on application

‘(1) This section applies if an application under section 100 or 101 is made for a prescribed notice about a person (the *relevant person*).

‘(2) The commissioner must decide the application by issuing either of the following unless the application is withdrawn—

- (a) a notice declaring the application for the prescribed notice is approved (a *positive notice*);

- (b) a notice declaring the application for the prescribed notice is refused (a *negative notice*).
- ‘(3) Subject to subsection (4), the commissioner must issue a positive notice to the relevant person if the commissioner—
- (a) is not aware of any police information or disciplinary information about the relevant person; or
 - (b) is not aware of a conviction of the relevant person for any offence but is aware that there is 1 or more of the following about the relevant person—
 - (i) investigative information;
 - (ii) disciplinary information;
 - (iii) a charge for an offence other than an excluding offence;
 - (iv) a charge for an excluding offence that has been dealt with other than by a conviction; or
- Note for subparagraph (iv)—*
- See sections 119C and 123(3B) in relation to charges for excluding offences that have not been dealt with.
- (c) is aware of a conviction of the relevant person for an offence other than a serious offence.
- ‘(4) The commissioner is required to issue a positive notice under subsection (3)(b) or (c) unless the commissioner is satisfied it is an exceptional case in which it would not be in the best interests of children for the commissioner to issue a positive notice.
- ‘(5) If the commissioner is satisfied under subsection (4) that it is an exceptional case, the commissioner must issue a negative notice.
- ‘(6) Subject to subsection (7), the commissioner must issue a negative notice to the relevant person if the commissioner is aware of—
- (a) a conviction of the relevant person for an excluding offence for which the court that convicted the relevant person imposed an imprisonment order for the offence or made a disqualification order under section 126C; or

- (b) a conviction of the relevant person for a serious offence, other than an excluding offence dealt with in a way mentioned in paragraph (a).
- ‘(7) The commissioner is required to issue a negative notice under subsection (6)(b) unless the commissioner is satisfied it is an exceptional case in which it would not harm the best interests of children for the commissioner to issue a positive notice.
- ‘(8) If the commissioner is satisfied under subsection (7) that it is an exceptional case, the commissioner must issue a positive notice.

‘102A Decision-making under s 102 in relation to discretionary matters

- ‘(1) This section applies if the commissioner is deciding whether or not there is an exceptional case as mentioned in section 102(4) or (7).
- ‘(2) If the commissioner is aware that a person has been convicted of, or charged with, an offence, the commissioner must have regard to the following—
 - (a) in relation to the commission, or alleged commission, of an offence by the person—
 - (i) whether it is a conviction or a charge; and
 - (ii) whether the offence is a serious offence and, if it is, whether it is an excluding offence; and
 - (iii) when the offence was committed or is alleged to have been committed; and
 - (iv) the nature of the offence and its relevance to employment, or carrying on a business, that involves or may involve children; and
 - (v) in the case of a conviction—the penalty imposed by the court and if it decided not to impose an imprisonment order for the offence, or decided not to make a disqualification order under section 126C, the court’s reasons for its decision;

- (b) anything else relating to the commission, or alleged commission, of the offence that the commissioner reasonably considers to be relevant to the assessment of the person.
- ‘(3) If the commissioner is aware of investigative information about a person, the commissioner must have regard to the following—
- (a) when the acts or omissions constituting the alleged offence to which the investigative information relates were committed;
 - (b) anything else relating to the commission of the acts or omissions that the commissioner reasonably considers relevant to the assessment of the person.
- ‘(4) If the commissioner is aware of disciplinary information about a person, the commissioner must have regard to the following—
- (a) the decision or order of the decision maker relating to the disciplinary information and the reasons for the decision or order;
 - (b) any decision or order of an entity to which a decision or order mentioned in paragraph (a) is appealed and the reasons for the decision or order;
 - (c) the relevance of the disciplinary information to employment, or carrying on a business, that involves or may involve children;
 - (d) anything else relating to the disciplinary information that the commissioner reasonably considers to be relevant to the assessment of the person.
- ‘(5) In this section—
- appeal* includes review.

‘102B Actions of commissioner after making decision on application

- ‘(1) After making a decision about an application under section 100 or 101, the commissioner must issue a prescribed notice to the relevant person.
- ‘(2) If the prescribed notice is a negative notice, the prescribed notice must be accompanied by a notice stating the following—
- (a) the reasons for the commissioner’s decision on the application;
 - (b) if the reasons do not include investigative information, a statement that the relevant person may apply to the Children Services Tribunal, within 28 days after the relevant person is given the notice, to have reviewed only a decision of the commissioner about whether there is an exceptional case as mentioned in section 102(4) or (7);
 - (c) if the reasons include investigative information, a statement that, within 28 days after the relevant person is given the notice, the relevant person—
 - (i) may appeal as mentioned in section 121C(2)⁸ to a Magistrates Court about only the investigative information; or
 - (ii) may decide not to appeal under section 121C(2) but apply to the Children Services Tribunal to have reviewed only a decision of the commissioner about whether there is an exceptional case as mentioned in section 102(4) or (7);
 - (d) how the person may apply for the review to the Children Services Tribunal or appeal to the Magistrates Court.
- ‘(3) The notice also must include a copy of section 121.⁹

8 Section 121C (Decision by police commissioner that information is investigative information)

9 Section 121 (Person may apply for review of decision)

- ‘(4) After the commissioner issues the prescribed notice to the relevant person under this section, the commissioner must give written notice to the following stating whether the relevant person was given a positive notice or negative notice—
- (a) if the application was made by an employer of the relevant person—the employer;
 - (b) if the application was made by an education provider about a trainee student—the education provider;
 - (c) if the commissioner is aware that the relevant person is a licensee, or the nominee of a licensee, under the *Child Care Act 2002*—the chief executive of the department in which that Act is administered;
 - (d) if the commissioner is aware that the relevant person is carrying on a regulated business as a religious representative and considers there is an entity within the relevant organised or recognised religious group with responsibility for supervising or disciplining the relevant person—the entity.
- ‘(5) Within 14 days after a prescribed notice is issued under this section to a relevant person who previously held another prescribed notice, the relevant person must give the commissioner—
- (a) the previously held prescribed notice; and
 - (b) if the previously held prescribed notice was a positive notice—any positive notice blue card previously held by the relevant person.

Maximum penalty—10 penalty units.

- ‘(6) In this section—
- relevant person*** means a person to whom an application under section 100 or 101 relates.’.

16 **Amendment of s 103 (Commissioner to invite submissions from person about particular information)**

- (1) Section 103, before subsection (1)—

insert—

‘(1AA) This section applies if, for an application under section 100 or 101, the commissioner must decide whether or not there is an exceptional case as mentioned in section 102(4) or (7).’.

(2) Section 103(1)(a)—

omit, insert—

‘(a) stating the following—

- (i) the police information about the person that the commissioner is aware of;
- (ii) any disciplinary information about the person that the commissioner is aware of; and’.

(3) Section 103(1)(b), from ‘a submission’—

omit, insert—

‘a submission about why the commissioner should not issue a negative notice.’.

(4) Section 103—

insert—

‘(4) A submission mentioned in subsection (1)(b) may be made orally or in a language other than English if the commissioner considers a submission in that form is reasonable in the circumstances.’.

17 Amendment of s 104 (Currency of notice)

(1) Section 104, heading, ‘**notice**’—

omit, insert—

‘**prescribed notice and positive notice blue card**’.

(2) Section 104—

insert—

‘(3) A positive notice blue card relating to a positive notice remains current for the same period as the positive notice.’.

18 Replacement of pt 6, div 3 hdg (Obligations and offences relating to suitability notices) and subdiv 1 hdg (Regulated employment)

Part 6, division 3, heading and subdivision 1, heading—
omit, insert—

‘Division 3 Obligations and offences relating to prescribed notices

‘Subdivision 1 Regulated employment as volunteers

‘104A Application of subdiv 1

‘This subdivision applies to employment of a volunteer.

‘104B Starting employment

‘(1) This section applies if—

- (a) a person who is proposed to be employed (the *proposed employee*) does not have a current positive notice; and
- (b) another person (the *employer*) proposes to employ the employee in regulated employment.

‘(2) The employer must not employ the proposed employee in regulated employment unless—

- (a) the employer has applied for a prescribed notice about the proposed employee; and
- (b) a positive notice is issued to the proposed employee.

Maximum penalty for subsection (2)—10 penalty units.

‘Subdivision 1A Regulated employment other than as volunteers

‘104C Application of subdiv 1A

‘This subdivision does not apply to employment of a volunteer.’.

19 Amendment of s 105 (Continuing employment of certain regular employees)

(1) Section 105(1)(b)—

omit, insert—

‘(b) after considering any agreement relating to the employment and the hours or times that the employee previously carried out work for the employer, the employer reasonably expects that the employee is likely to carry out work as part of the employment for—

(i) at least 8 consecutive days; or

(ii) at least once a week for each week during a period of 4 weeks; or

(iii) at least once a fortnight for each fortnight during a period of 8 weeks; or

(iv) at least once a month for each month during a period of 6 months; and’.

(2) Section 105(2), ‘suitability’—

omit, insert—

‘prescribed’.

20 Amendment of s 106 (Starting employment of certain regular employees)

(1) Section 106(1)(b) and (c)—

omit, insert—

‘(b) it is less than 1 year since the employee last carried out the regulated employment for the employer; and

(c) in the course of proposed employment of the employee by the employer, the employer reasonably expects that the employee is likely to carry out work for any of the following after considering any agreement relating to the proposed employment and the person’s employment during the period when the employee was last employed by the employer—

(i) at least 8 consecutive days; or

- (ii) at least once a week for each week during a period of 4 weeks; or
 - (iii) at least once a fortnight for each fortnight during a period of 8 weeks; or
 - (iv) at least once a month for each month during a period of 6 months; and’.
- (2) Section 106(2), ‘suitability’—
omit, insert—
‘prescribed’.

21 Insertion of new s 106A

After section 106—

insert—

‘106A Starting employment of new employees

- ‘(1) This section applies if—
- (a) a person (the *employee*) is not employed in regulated employment; and
 - (b) the employee does not have a current positive notice; and
 - (c) another person (the *employer*) proposes to employ the employee in regulated employment; and
 - (d) the employer reasonably expects that the employee is likely to carry out work as part of the employment for any of the following after considering any agreement relating to the employment between the employer and employee—
 - (i) at least 8 consecutive days; or
 - (ii) at least once a week for each week during a period of 4 weeks; or
 - (iii) at least once a fortnight for each fortnight during a period of 8 weeks; or
 - (iv) at least once a month for each month during a period of 6 months; and

(e) section 106 does not apply to the employment.

‘(2) The employer must not employ the employee in regulated employment unless the employer has applied for a prescribed notice about the employee.

Maximum penalty for subsection (2)—10 penalty units.’.

22 Amendment of s 107 (Prohibited employment)

Section 107(2)(a) and (b)—

omit, insert—

‘(a) the employer has applied for a prescribed notice about the employee and has been notified by the commissioner, other than as provided under paragraph (b), that the employee has withdrawn the employee’s consent to employment screening under this part; or

(b) the employer has been given a notice of deemed withdrawal relating to the employee under section 123(3B); or’.

23 Replacement of s 108 (Unsuitable person not to apply for, or start or continue in, child-related employment)

Section 108—

omit, insert—

‘Subdivision 1B Obligations if holder of negative notice or application for prescribed notice is withdrawn

‘108 Person holding negative notice, or who has withdrawn consent to employment screening, not to apply for, or start or continue in, regulated employment

‘(1) A person must not apply for, or start or continue in, regulated employment if a negative notice has been issued to the person and is current.

Maximum penalty—500 penalty units or 5 years imprisonment.

- ‘(2) A person must not apply for, or start or continue in, regulated employment if an application about the person was made under section 100¹⁰ but the person withdrew the person’s consent, or is taken to have withdrawn the person’s consent, to employment screening under this part before a prescribed notice was issued.

Maximum penalty—100 penalty units or 1 year’s imprisonment.

- ‘(3) However, if the person held a positive notice but a negative notice was substituted for the positive notice under section 119,¹¹ a court may not find the person contravened subsection (1) unless the court is satisfied that written notice of the substitution was given to the person.’.

24 Amendment of s 109 (Carrying on regulated business)

- (1) Section 109, penalty—

omit, insert—

‘Maximum penalty—500 penalty units or 5 years imprisonment.’.

- (2) Section 109, after the penalty—

insert—

- ‘(2) If the person is a corporation, each executive officer of the corporation whose principal place of residence is in Australia must have a current positive notice.

Maximum penalty—500 penalty units or 5 years imprisonment.’.

¹⁰ Section 100 (Application for notice—regulated employment)

¹¹ Section 119 (Commissioner may cancel a prescribed notice and substitute another prescribed notice)

25 Amendment of s 111 (Effect of conviction for serious offence)

- (1) Section 111, heading, after ‘**offence**’—

insert—

‘**or charge for excluding offence**’.

- (2) Section 111(1), from ‘if’—

omit, insert—

‘immediately on the person’s conviction for a serious offence or the person being charged with an excluding offence.’.

- (3) Section 111(2), penalty—

omit, insert—

‘Maximum penalty—500 penalty units or 5 years imprisonment.’.

26 Amendment of s 112 (Change in criminal history of employee)

Section 112(3), ‘suitability notice, or further suitability’—

omit, insert—

‘prescribed notice, or further prescribed’.

27 Amendment of s 113 (Change in criminal history of person carrying on regulated business)

- (1) Section 113(2), ‘suitability’—

omit, insert—

‘prescribed’.

- (2) Section 113—

insert—

- ‘(3) This section does not limit section 111.’.

28 Amendment of s 114 (Change in criminal history of other persons)

Section 114(2), (3) and (4), ‘suitability’—

omit, insert—

‘prescribed’.

29 Amendment of s 117 (Return of notice to commissioner)

(1) Section 117, heading, ‘notice’—

omit, insert—

‘positive notice and any positive notice blue card’.

(2) Section 117(2), after ‘notice’—

insert—

‘, and any positive notice blue card issued to the person.’.

30 Replacement of pt 6, div 4 hdg (Cancellation and replacement of suitability notices)

omit, insert—

‘Division 4 Cancellation and replacement of prescribed notices’.

31 Amendment s 118 (Cancellation of suitability notice on application)

(1) Section 118, heading—

omit, insert—

‘118 Cancellation of negative notice and issuing of positive notice’.

(2) Section 118(5), from ‘about whether’ to ‘employment’—

omit.

(3) Section 118(6), after ‘102’—

insert—

‘, 102A, 102B’.

- (4) Section 118(6)(a), ‘suitability’—
omit, insert—
‘prescribed’.
- (5) Section 118(7), ‘suitability’—
omit, insert—
‘negative’.

32 Replacement of ss 119 and 120

Sections 119 and 120—
omit, insert—

‘119 Commissioner may cancel a prescribed notice and substitute another prescribed notice

- ‘(1) The commissioner may cancel a positive notice (the *cancelled notice*) about a person and substitute a negative notice if the commissioner is satisfied that—
- (a) the decision on the application for the cancelled notice was based on wrong or incomplete information and, based on the correct or complete information, the commissioner should issue the negative notice; or
 - (b) it is appropriate to cancel the positive notice having regard to disciplinary information, or information received under section 122 or 122A(1),¹² about the person.
- ‘(2) The commissioner may cancel a negative notice (the *cancelled notice*) and substitute a positive notice if the commissioner is satisfied that—
- (a) the decision on the application for the cancelled notice was based on wrong or incomplete information and, based on the correct or complete information, the commissioner should issue the positive notice; or

¹² Section 122 (Commissioner may obtain information from police commissioner) or 122A (Notice of change in police information about a person)

- (b) a penalty or order of a court of the type mentioned in section 119A(1), that required the commissioner to cancel the positive notice and issue a negative notice, is not upheld on appeal.
- ‘(3) In making a decision under subsection (1) or (2), the commissioner must make the decision as if it were a decision about an application for a prescribed notice and, for that purpose, sections 102, 102A and 102B¹³ apply to the decision under this section.
- ‘(4) Also, the commissioner must consider whether notice must be given under section 126B(2).¹⁴
- ‘(5) If the commissioner proposes to substitute a negative notice as mentioned in subsection (1), the commissioner must first comply with section 103¹⁵ as if—
 - (a) the reference in section 103(1) to deciding the application by issuing a negative notice were a reference to substituting a negative notice for a positive notice; and
 - (b) the reference in section 103(3) to deciding the application were a reference to substituting a negative notice for a positive notice.
- ‘(6) The commissioner may exercise a power under subsection (1) or (2)—
 - (a) on application by the person to whom the cancelled notice was issued or the person who applied for the cancelled notice; or
 - (b) on the commissioner’s own initiative.

13 Sections 102 (Decision on application), 102A (Decision-making under s 102 in relation to discretionary matters) and 102B (Actions of commissioner after making decision on application)

14 Section 126B (Commissioner information to accreditation board about director of school’s governing body)

15 Section 103 (Commissioner to invite submissions from person about particular information)

‘119A Cancellation if conviction for excluding offence and imprisonment or disqualification order

- ‘(1) This section applies if, after the commencement of this section, a person who is the holder of a positive notice, including a positive notice that is suspended under section 119C,¹⁶ is convicted of an excluding offence and the court that convicts the person—
- (a) imposes an imprisonment order; or
 - (b) makes a disqualification order under section 126C.¹⁷
- ‘(2) The commissioner must cancel the positive notice held by the person and substitute a negative notice.
- ‘(3) At the time the commissioner gives the person the negative notice, the commissioner must give the person a further written notice stating—
- (a) there is no appeal under this Act against the decision of the commissioner to cancel the positive notice and substitute a negative notice; and
 - (b) the person can not apply under section 118¹⁸ for the cancellation of the negative notice, even after 2 years; and
 - (c) the person may apply under section 119 for the cancellation of the negative notice if the decision to issue the cancelled notice was made under this section and the penalty or order mentioned in subsection (1)(a) or (b) is not upheld on appeal against the imposition of the penalty or making of the order and that is the only reason for an application under section 119.
- ‘(4) Also, the commissioner must give written notice to the following stating the person was given a negative notice—
- (a) if the person is employed in regulated employment—the employer;

16 Section 119C (Effect of charge for excluding offence pending charge being dealt with)

17 Section 126C (Disqualification order)

18 Section 118 (Cancellation of negative notice and issuing of positive notice)

- (b) if the person is a trainee student of an education provider—the education provider;
 - (c) if the relevant person is a licensee, the nominee of a licensee, or an adult occupant of a carer’s home that is a licensed home based service, under the *Child Care Act 2002*—the chief executive of the department in which that Act is administered;
 - (d) if the relevant person is carrying on a regulated business as a religious representative—an entity within the relevant organised or recognised religious group that the commissioner reasonably considers has responsibility for supervising or disciplining the relevant person.
- ‘(5) Also, the commissioner must consider whether notice must be given under section 126B(2).¹⁹
- ‘(6) There is no appeal under this Act against a decision of the commissioner under this section to cancel the positive notice and substitute a negative notice.
- ‘(7) In this section—
appeal includes review.

‘119B Cancellation if conviction for excluding offence but no imprisonment or disqualification order

- ‘(1) This section applies if, after the commencement of this section, a person who is the holder of a positive notice, including a positive notice that is suspended under section 119C, is convicted of an excluding offence but the court that convicts the person—
- (a) imposes a penalty that does not include an imprisonment order for the offence; or
 - (b) does not make a disqualification order under section 126C.²⁰

19 Section 126B (Commissioner may give information to accreditation board about director of school’s governing body)

20 Section 126C (Disqualification order)

- ‘(2) The commissioner must cancel the person’s positive notice and substitute a negative notice unless the commissioner is satisfied it is an exceptional case in which it would not harm the best interests of children for the commissioner not to cancel the positive notice.
- ‘(3) In making a decision under subsection (2), the commissioner must make the decision as if it were a decision about an application for a prescribed notice and, for that purpose, sections 102, 102A and 102B²¹ apply to the decision under this section.
- ‘(4) Also, the commissioner must consider whether notice must be given under section 126B(2).²²
- ‘(5) If the commissioner proposes to substitute a negative notice as mentioned in subsection (2), the commissioner must first comply with section 103²³ as if—
- (a) the reference in section 103(1) to deciding the application by issuing a negative notice were a reference to substituting a negative notice for a positive notice; and
 - (b) the reference in section 103(3) to deciding the application were a reference to substituting a negative notice for a positive notice.

‘119C Effect of charge for excluding offence pending charge being dealt with

- ‘(1) If, after the commencement of this section, a person who is the holder of a positive notice is charged with an excluding offence, the commissioner must suspend the positive notice by written notice given to the person.

21 Sections 102 (Decision on application), 102A (Decision-making under s 102 in relation to discretionary matters) and 102B (Actions of commissioner after making decision on application)

22 Section 126B (Commissioner may give information to accreditation board about director of school’s governing body)

23 Section 103 (Commissioner to invite submissions from person about particular information)

- ‘(2) The notice about the suspension must state the following—
- (a) the positive notice held by the person is suspended;
 - (b) the reason for the suspension;
 - (c) how long the suspension will continue;
 - (d) the effect of the suspension;
 - (e) the person must return the positive notice, and any positive notice blue card, to the commissioner within 7 days after the notice is given to the person.
- ‘(3) Until a suspension is cancelled, the person whose positive notice is suspended and who is given a notice under subsection (1) must not do any of the following—
- (a) apply, start or continue to perform work that is regulated employment;
 - (b) start or continue to carry on a regulated business.
- Maximum penalty—200 penalty units or 2 years imprisonment.
- ‘(4) Within 7 days after a person is given notice under subsection (1), the person must return each of the following to the commissioner—
- (a) the positive notice;
 - (b) any positive notice blue card relating to the positive notice.
- Maximum penalty—100 penalty units.
- ‘(5) Also, the commissioner must give written notice to the following persons stating that the positive notice held by the person is suspended and the effect of the suspension—
- (a) if the person is employed in regulated employment—the employer;
 - (b) if the person is a trainee student of an education provider—the education provider;
 - (c) if the person is a licensee, the nominee of a licensee, or an adult occupant of a carer’s home that is a licensed home based service, under the *Child Care Act*

2002—the chief executive of the department in which that Act is administered;

- (d) if the person is carrying on a regulated business as a religious representative—an entity within the relevant organised or recognised religious group that the commissioner reasonably considers has responsibility for supervising or disciplining the relevant person.
- ‘(6) Also, the commissioner must consider whether notice under subsection (5) must be given under section 126B(2).²⁴
- ‘(7) A notice under subsection (5) must state that a person to whom the notice is given under subsection (5) or (6)—
- (a) must not allow the person to perform work that is regulated employment; and
 - (b) must not terminate the person’s employment or continued employment solely or mainly because the person’s positive notice is suspended.
- ‘(8) A person to whom a notice is given under subsection (5) or (6) must not allow the person to perform work that is regulated employment.
- Maximum penalty for subsection (8)—200 penalty units or 2 years imprisonment.
- ‘(9) Without limiting subsection (3) and despite section 104(2), a positive notice remains current during the period of suspension even if it would otherwise end under section 104(2) during that period.

‘119D Cancellation of suspension and issue of further prescribed notice

- ‘(1) This section applies to a positive notice held by a person that is suspended under section 119C (the *suspended notice*).
- ‘(2) The suspension is cancelled if—

²⁴ Section 126B (Commissioner may give information to accreditation board about director of school’s governing body)

- (a) the suspended notice is cancelled under section 119A(2) or 119B(2); or
 - (b) on application by the person for the cancellation of the suspension and issue of a further prescribed notice, the commissioner cancels the suspended notice and issues a further positive notice or a negative notice.
- ‘(3) If, in relation to the charge of an excluding offence that resulted in the person’s positive notice being suspended, the person—
- (a) was not convicted of any offence or was convicted of an offence that is not a serious offence, the commissioner must issue a further positive notice unless the commissioner is satisfied it is an exceptional case in which it would not be in the best interests of children for the commissioner to issue a further positive notice; or
 - (b) was convicted of a serious offence, the commissioner must issue a negative notice unless the commissioner is satisfied it is an exceptional case in which it would not harm the best interests of children for the commissioner to issue a further positive notice.
- ‘(3A) If the commissioner is satisfied that—
- (a) there is an exceptional case under subsection (3)(a), the commissioner must issue a negative notice; or
 - (b) there is an exceptional case under subsection (3)(b), the commissioner must issue a further positive notice.
- ‘(4) In making a decision under subsection (3), the commissioner must make the decision as if it were a decision about an application for a prescribed notice and, for that purpose, sections 102, 102A and 102B²⁵ apply to the decision under this section.

25 Sections 102 (Decision on application), 102A (Decision-making under s 102 in relation to discretionary matters) and 102B (Actions of commissioner after making decision on application)

- ‘(5) Also, the commissioner must consider whether notice must be given under section 126B(2).²⁶
- ‘(6) If the commissioner proposes to issue a negative notice, the commissioner must first comply with section 103.²⁷

‘120 Replacement of positive notice or positive notice blue card

- ‘(1) If a person’s current positive notice, or current positive notice blue card, is lost or stolen, the person must apply for a replacement notice or card within 14 days after the loss or theft.

Maximum penalty—10 penalty units.

- ‘(2) The application must be in the approved form and accompanied by the fee prescribed under a regulation for the application.
- ‘(3) The commissioner must—
 - (a) cancel the lost or stolen notice or card; and
 - (b) issue a replacement notice or card to the person.
- ‘(4) The commissioner may issue the replacement notice or card with a different registration number to the number of the lost or stolen notice or card.
- ‘(5) If the person’s lost or stolen notice or card is returned to, or otherwise recovered by, the person after the application for a replacement notice or card, within 14 days after receiving a replacement notice or card the person must give the replaced notice or card to the commissioner.

Maximum penalty—10 penalty units.

- ‘(6) The commissioner must give written notice to the police commissioner about the fact that a current positive notice, or current positive notice blue card, has been lost or stolen.

26 Section 126B (Commissioner may give information to accreditation board about director of school’s governing body)

27 Section 103 (Commissioner to invite submissions from person about particular information)

‘120A Change of details for prescribed notice or positive notice blue card

- ‘(1) This section applies if the holder of a positive notice or negative notice does any of the following (each of which is a *relevant change*)—
- (a) changes a name the holder has previously given to the commissioner;
 - (b) starts to use different name to the name or names the holder has previously given to the commissioner;
 - (c) changes contact details previously given to the commissioner.
- ‘(2) The holder must give notice, in the approved form, to the commissioner about the relevant change within 14 days after the relevant change.
- Maximum penalty—10 penalty units.
- ‘(3) If the commissioner considers it is appropriate to do so, the commissioner may issue to the holder a replacement positive notice or replacement positive notice blue card.
- ‘(4) If the commissioner issues to the holder a replacement positive notice, or replacement positive notice blue card, within 14 days after receiving the replacement notice or card the holder must return the replaced notice or card to the commissioner.
- Maximum penalty—10 penalty units.
- ‘(5) The commissioner must cancel the previously held positive notice or positive notice blue card if the commissioner has issued a replacement notice or card.’

33 Amendment of s 121 (Person may apply for review of decision)

- (1) Section 121(1), from ‘to have’—
omit, insert—

‘for a review of a decision by the commissioner as to whether or not there is an exceptional case as mentioned in section 102(4) or (7), 119B(2) or 119D(3) if the commissioner

did not issue, or refused to cancel, a negative notice about the person or refused to cancel a suspension of a positive notice.’.

(2) Section 121—

insert—

‘(3) To remove any doubt, it is declared that there is no appeal, or review, under this Act against a decision of the commissioner to issue, or refuse to cancel, a negative notice about a person other than a decision mentioned in subsection (1).

‘(4) This section does not limit section 121C.²⁸

‘(5) In this section—

issue a negative notice includes substitute a negative notice after cancelling a positive notice.’.

34 Insertion of new s 121A to 121E

After section 121—

insert—

‘121A Police commissioner may decide that information about a person is investigative information

‘(1) The police commissioner may decide under this section that information about a person (the *investigated person*) is *investigative information* if—

(a) there is or was evidence of acts or omissions that, at the time of the acts or omissions, constituted a serious child-related sexual offence (the *alleged offence*) by the investigated person against a child or a person who was a child at the time of the offence (each of whom is a *complainant*); and

(b) the police investigated the alleged offence and the investigated person was formally notified about the investigation, including—

28 Section 121C (Decision by police commissioner that information is investigative information)

- (i) by participating in an interview, or by being asked to participate in an interview, about the alleged offence; or
 - (ii) by otherwise being given an opportunity to answer allegations about the alleged offence; and
- (c) there was sufficient evidence available that was capable of establishing each element of the alleged offence but a decision was made not to charge the investigated person because—
- (i) the complainant died before the charge was brought; or
 - (ii) either or both of the following applied—
 - (A) the complainant was unwilling to proceed;
 - (B) an adult who, at the relevant time, was the complainant's parent or guardian decided that, in the interests of the complainant, the matter should not proceed.
- ‘(2) Evidence of acts or omissions includes information from a third party if the complainant did not make a formal complaint at or about the time of the investigation.

‘121B Police commissioner not to delegate power under s 121A

‘Despite the *Police Service Administration Act 1990*, section 4.10, the police commissioner may not delegate the police commissioner's powers under section 121A.

‘121C Decision by police commissioner that information is investigative information

- ‘(1) This section applies if—
- (a) the police commissioner decides that information about a person is investigative information; and

- (b) the investigative information is given, under section 122 or 122A,²⁹ to the commissioner;³⁰ and
 - (c) a negative notice is issued, or a positive notice is cancelled and a negative notice is substituted for it, after the investigative information is given to the commissioner.
- ‘(2) The person may appeal to a Magistrates Court about the decision that information, given to the commissioner as investigative information, is investigative information.
- ‘(3) However, an appeal under subsection (2) may only be made after the commissioner has issued a negative notice to the person under section 102B(1) and within 28 days after the negative notice is given to the person.
- ‘(4) The commissioner and police commissioner must be given a copy of the notice of appeal.
- ‘(5) The Children Services Tribunal does not have jurisdiction to review a decision of the police commissioner that information about a person is investigative information or that information that is investigative information may be given to the commissioner.

‘121D Court to decide matters afresh

- ‘(1) A Magistrates Court hearing an appeal under section 121C is to decide afresh whether information given to the commissioner as investigative information about a person is investigative information.
- ‘(2) A person who is the relevant complainant under section 121A must not be asked or called on by the investigated person under that section to give evidence in person before the court.
- ‘(3) Subsection (2) does not prevent documentary evidence being tendered and received in evidence by the court.

29 Section 122 (Commissioner may obtain information from police commissioner) or 122A (Notice of change in criminal history)

30 The police commissioner is the commissioner of the police service and the commissioner is the Commissioner for Children and Young People and Child Guardian.

- ‘(4) After hearing an appeal under section 121C, the court may confirm or set aside the decision and the clerk of the court is to give the appellant notice of the decision.
- ‘(5) For subsection (4), the court must have regard to the matters the police commissioner was required to have regard to under this Act when the police commissioner made the decision.

‘121E Consequence of decision on appeal

- ‘(1) If, on appeal, a Magistrates Court sets aside the police commissioner’s decision under section 121A that information given to the commissioner about a person is investigative information, the person may apply under section 119³¹ to cancel the negative notice issued to the person on the grounds that the decision to issue the negative notice was based on wrong information.
- ‘(2) If the court confirms the decision appealed against, the notice under section 121D(4) must state that within 28 days after the date the person is given the notice, the person may apply to the Children Services Tribunal to have the commissioner’s decision to issue the negative notice reviewed and how the person may apply for the review.’.

35 Amendment of s 122 (Commissioner may obtain information from police commissioner)

- (1) Section 122(1)(b), ‘suitability’—
omit, insert—
‘prescribed’.
- (2) Section 122(1)(c), after ‘about the person’—
omit, insert—
‘or to cancel a suspension of the person’s positive notice under section 119C’.
- (3) Section 122(2), from ‘what’—

31 Section 119 (Commissioner may cancel a prescribed notice and substitute another prescribed notice)

omit, insert—

‘what police information exists, if any, in relation to the person.’.

(4) Section 122(3)—

omit, insert—

‘(2A) For subsection (2), the commissioner’s request may include the following information—

(a) the person’s name and any other name that the commissioner believes the person may use or may have used;

(b) the person’s gender and date and place of birth;

(c) if the person is currently the holder of a prescribed notice—any number or date relevant to the prescribed notice or a positive notice blue card;

(d) if the application relates to employment of the person—whether or not the person carries out the work as a volunteer;

(e) the status of the relevant application, applicant or prescribed notice, including, for example, by reference to subsection (1).

‘(3) If there is police information about the person, the commissioner may ask the police commissioner for a brief description of the circumstances of a conviction, charge or investigative information mentioned in the police information.’.

(5) Section 122(4), after ‘section’—

insert—

‘unless the police commissioner is, under subsection (8), told not to provide the information’.

(6) Section 122—

insert—

‘(6) The police commissioner need not disclose investigative information about the person to the commissioner under this

section if the police commissioner is reasonably satisfied that giving the information may do any of the following—

- (a) prejudice the investigation of a contravention or possible contravention of the law in a particular case;
- (b) enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained;
- (c) endanger a person's life or physical safety;
- (d) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law.

‘(7) If the police commissioner gives investigative information about the person to the commissioner under this section, the police commissioner must give notice, in the approved form, to the person that—

- (a) the police commissioner has decided that information about the person is investigative information; and
- (b) investigative information has been given to the commissioner.

‘(8) If the commissioner decides that information requested under subsection (2) about the person is no longer required, the commissioner must tell the police commissioner not to provide the information.

‘(9) Information given to the police commissioner under this section must not be accessed or disclosed for any purpose except for a purpose under this part or any other purpose relevant to law enforcement.

‘(10) Information given to the police commissioner under this section must not be used for any purpose except if—

- (a) for information other than information about a withdrawal—the use is for a purpose under this part or for any other purpose relating to child protection; or
- (b) for information about a withdrawal—the use is for a purpose under this part.

- ‘(11) However, subsections (9) and (10) do not apply to information the police commissioner obtained before the commissioner gave the information to the police commissioner under this section.’.

36 Amendment of s 122A (Notice of change in criminal history)

- (1) Section 122A, heading, ‘**criminal history**’—
omit, insert—
‘**police information about a person**’.
- (2) Section 122A(1), ‘person’s criminal history’—
omit, insert—
‘police information about the person’.
- (3) Section 122A(2)(a) to (e)—
omit, insert—
‘(a) the person’s name and any other name that the police commissioner believes the person may use or may have used;
(b) the person’s gender and date and place of birth;
(c) if the change in police information includes a change in the person’s criminal history, the offence the person is charged with, particulars of the offence and the date of the charge.’.
- (4) Section 122A—
insert—
- ‘(5) If the police commissioner gives investigative information to the commissioner under this section, the police commissioner must give notice, in the approved form, to the person that investigative information has been given to the commissioner.’.

37 Insertion of new s 122B

After section 122A—

insert—

‘122B Commissioner to give notice to employer about making employment-screening decision about employee

- ‘(1) This section applies if—
- (a) the police commissioner, the holder of a prescribed notice (the *employee*) or another person gives notice to the commissioner that police information about the employee has changed; or
 - (b) the commissioner otherwise becomes aware that police information about the employee has changed.
- ‘(2) However, this section does not apply if the change is that the employee has been convicted or charged with an excluding offence.
- ‘(3) If the commissioner considers the change in police information may be relevant to child-related employment, the commissioner must give written notice to the person (the *employer*) who employs the employee in regulated employment—
- (a) identifying the employee; and
 - (b) stating only that the commissioner is making an employment-screening decision in relation to the employee.
- ‘(4) However, if the change in police information is a change in criminal history, the notice under subsection (3) must state whether or not—
- (a) the change in criminal history is a charge or a conviction; and
 - (b) the offence is a serious offence or serious child-related sexual offence.
- ‘(5) The employer may not dismiss the employee solely or mainly because the employer is given the notice.’

38 Amendment of s 123 (Withdrawal of employee's consent to employment screening)

(1) Section 123(1) and (4), 'suitability'—

omit, insert—

'prescribed'.

(2) Section 123—

insert—

'(3A) Also, the employee is taken to have withdrawn his or her consent to employment screening under this part if—

(a) the employer has given the commissioner written notice that the person is no longer employed by the employer or the commissioner can not obtain information, in writing, from the employer that the person is employed by the employer; and

(b) the employee has not given written notice to the commissioner about the end of the employment as required under section 101A;³² and

(c) the commissioner gives the employee and the employer a notice of deemed withdrawal relating to the employee.

'(3B) Further, the employee is taken to have withdrawn his or her consent to employment screening under this part if—

(a) the employee gives the commissioner, or the commissioner gives the employee, written notice that the employee is charged with an excluding offence; and

(b) the commissioner gives the employee and the employer a notice of deemed withdrawal under this subsection relating to the employee.'

(3) Section 123—

insert—

'(4A) For subsection (3A), an employer may give written notice to the commissioner that a stated person—

³² Section 101A (Notice of change of employment, or name and contact details in application under ss 100 or 101)

- (a) is employed, or continues to be employed, by the employer; or
- (b) is no longer employed by the employer.’.

39 Amendment of s 124 (Compliance with requirement to end, or not start, a person’s regulated employment)

- (1) Section 124(1) and (3), after ‘employ’—

insert—

‘, or continue to employ.’.

- (2) Section 124—

insert—

- ‘(4) A person whose positive notice is suspended under section 119C³³ may be employed in employment that is not regulated employment until the charge for the excluding offence is dealt with and the commissioner cancels the suspension and issues a further prescribed notice.’.

40 Amendment of s 126 (Use of criminal history information)

- (1) Section 126, heading, ‘**criminal history information**’—

omit, insert—

‘information obtained under this part about a person’.

- (2) Section 126, from ‘obtained’ to ‘criminal history’—

omit, insert—

‘obtained under this part about a person’.

41 Replacement of s 126A (What is employment in child care)

Section 126A—

omit, insert—

³³ Section 119C (Effect of charge for excluding offence pending charge being dealt with)

‘126A Commissioner must give police commissioner a person’s current address

- ‘(1) The commissioner must, on written application of the police commissioner, give the police commissioner information about an address for a person if—
 - (a) the commissioner has an address for the person that is different to the address stated by the police commissioner in the application; and
 - (b) the police commissioner is, under this part, required to give a notice to the person.
- ‘(2) Information given to the police commissioner under this section must not be used, disclosed or accessed for any purpose except to give a notice under this part to the person.

‘126B Commissioner may give information to accreditation board about director of school’s governing body

- ‘(1) The commissioner may, on written application of the accreditation board signed by the chairperson, give the accreditation board the following information about a director³⁴ of a school’s governing body—
 - (a) whether the director is the holder of a positive notice or negative notice;
 - (b) whether the director is an applicant under section 101.³⁵
- ‘(2) The commissioner must notify the accreditation board about the following—
 - (a) if the commissioner issues a negative notice to a director of a school’s governing body—the issue of the negative notice;

34 *Education (Accreditation of Non-State Schools) Act 2001*, section 15 (Application of Commission for Children and Young People and Child Guardian Act 2000, pt 6) states—

For the *Commission for Children and Young People and Child Guardian Act 2000*, part 6, a person is taken to be a person carrying on a regulated business under that Act by being a director of the governing body of a provisionally accredited, or accredited, school.

35 Section 101 (Application for notice—regulated business)

(b) if, under section 119C,³⁶ the commissioner suspends the positive notice of a director of a school's governing body—the suspension of the positive notice or the cancellation of the suspension and issue of a further prescribed notice under section 119D.³⁷

‘(3) In this section—

accreditation board means the Non-State Schools Accreditation Board established under the *Education (Accreditation of Non-State Schools) Act 2001*, section 105.

chairperson see the *Education (Accreditation of Non-State Schools) Act 2001*, schedule 3.

director, of a school's governing body, see the *Education (Accreditation of Non-State Schools) Act 2001*, schedule 3.

issue a negative notice includes substitute a negative notice after cancelling a positive notice.

‘126C Disqualification order

‘(1) This section applies if—

- (a) a person is convicted of an excluding offence; and
- (b) the court that convicted the person did not impose an imprisonment order for the offence.

‘(2) The court may, on application by the prosecutor or on its own motion, make an order (**disqualification order**) in relation to the person stating that the person may never hold a positive notice or apply for a prescribed notice.

‘(3) In this section—

Crown prosecutor includes—

- (a) the Attorney-General; and
- (b) the director of public prosecutions; and

36 Section 119C (Effect of charge for excluding offence pending charge being dealt with)

37 Section 119D (Cancellation of suspension and issue of further prescribed notice)

- (c) another person, other than a police officer, appearing for the State.

prosecutor means—

- (a) in the context of a proceeding before, or an application to, a Magistrates Court—a police officer or Crown prosecutor; or
- (b) otherwise—a Crown prosecutor.’.

42 Amendment of s 127 (Initial application of this part)

- (1) Section 127, heading, ‘**Initial application**’—

omit, insert—

‘**Application**’.

- (2) Section 127(1)—

omit.

43 Amendment of s 128 (Application for suitability notice for current employee)

- (1) Section 128, heading, ‘**suitability**’—

omit, insert—

‘**prescribed**’.

- (2) Section 128(2), ‘suitability’—

omit, insert—

‘prescribed’.

- (3) Section 128(5)(b)(i) and (ii)—

omit, insert—

‘(i) whether there is police information about the employee; and

(ii) if there is police information about the employee, what that information is; and’.

44 Insertion of new s 144A

Part 8, division 2, before section 145—

insert—

‘144A Positive notice blue card is evidence of holding positive notice

‘If a person holds a current positive notice blue card, the card is evidence of the person holding a current positive notice.’.

45 Amendment of s 146 (Indictable and summary offences)

(1) Section 146(1), from ‘if’—

omit, insert—

‘that is a crime.’.

(2) Section 146(2), after ‘an indictable offence’—

insert—

‘that is a crime’.

46 Insertion of new s 151A

Part 8, division 2, after section 151—

insert—

‘151A Executive officers must ensure corporation complies with Act

‘(1) The executive officers of a corporation must ensure the corporation complies with this Act.

‘(2) If a corporation commits an offence against a provision of this Act, each of the corporation’s executive officers also commits an offence, namely, the offence of failing to ensure the corporation complies with the provision.

Maximum penalty—the penalty for the contravention of the provision by an individual.

‘(3) Evidence that the corporation has been convicted of an offence against a provision of this Act is evidence that each of the executive officers committed the offence of failing to ensure the corporation complies with the provision.

- ‘(4) However, it is a defence for an executive officer to prove—
- (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence, the officer exercised reasonable diligence to ensure the corporation complied with the provision; or
 - (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.’.

47 Replacement of s 164 (Review of pt 6)

Section 164—

omit, insert—

‘164 Commissioner may enter into arrangement about giving and receiving information with police commissioner

- ‘(1) This section applies only to the extent that another provision under this Act allows the commissioner to give information to the police commissioner or the police commissioner to give information to the commissioner.
- ‘(2) The commissioner and the police commissioner may enter into a written arrangement by which the information is given or received.
- ‘(3) Without limiting subsection (2), the arrangement may provide for the electronic transfer of information, including on a daily basis.
- ‘(4) However, if information is to be electronically transferred and, under this Act, there is a limitation on who may access the information or the purposes for which the information may be used, the arrangement must provide for the limitation.’.

48 Amendment of s 167 (Regulation-making power)

Section 167—

insert—

- ‘(2) A regulation may be made about fees, including refunding or waiving fees, for this Act.’.

49 Insertion of new pt 9, div 7

After section 187—

insert—

**‘Division 7 Transitional provisions for the
Commission for Children and
Young People and Child Guardian
Amendment Act 2004**

‘188 Volunteers

- ‘(1) This section applies to a person to whom section 104B³⁸ applies.
- ‘(2) Section 104B applies to the person even though the agreement about carrying out work, that is regulated employment, was entered into before the commencement of this section.
- ‘(3) However if, before the commencement, the employee under section 104B started carrying out work and the relevant employer under the section applied for a prescribed notice about the employee—
 - (a) the employee may continue to be employed by the relevant employer until the earlier of the following—
 - (i) 1 year after the commencement;
 - (ii) the employee is issued with a negative notice by the commissioner or the application is withdrawn; and
 - (b) the employer may continue to employ the employee until the earlier of the following—
 - (i) 1 year after the commencement;
 - (ii) the employer is given notice by the commissioner that a negative notice has been issued to the employee or the application is withdrawn.

‘189 Application of amendment of sch 1 to particular employment

- ‘(1) This section applies to a person who, immediately before the commencement of this section, was employed or was continuing to be employed in employment that, after the commencement, is regulated employment mentioned in schedule 1, part 1, section 3, 6C, 6E or 6F.³⁹
- ‘(2) To the extent that, under section 127(2), part 6 does not apply to the employment of a person mentioned in subsection (1), section 127(2) no longer applies, or does not apply, to the employment of the person and part 6 applies to the employment of the person.
- ‘(3) However, despite part 6 applying to the employment, sections 105 and 106⁴⁰ do not apply to the employment of the person until the earliest of the following—
 - (a) 1 year after the commencement;
 - (b) if an application for a prescribed notice about the person is made within that year and is not withdrawn—the day a prescribed notice is issued to the person;
 - (c) if an application for a prescribed notice about the person is made within that year and is withdrawn—the day of the withdrawal.
- ‘(4) In this section—
employment includes continuing employment.

‘190 Employment that becomes regulated employment other than employment mentioned in s 189(1)

- ‘(1) This section applies to employment of a person that—

39 Schedule 1 (Regulated employment and businesses for employment screening), part 1 (Regulated employment), section 3 (Schools—employees other than teachers and parents), 6C (Religious representatives), 6E (Emergency services cadet program) or 6F (School crossing supervisors)

40 Sections 105 (Continuing employment of certain regular employees) and 106 (Starting employment of certain regular employees)

- (a) was not regulated employment immediately before the commencement of section 189; and
 - (b) is regulated employment after that commencement.
- ‘(2) Section 127(2) applies to the employment of the person unless the employment is regulated employment under schedule 1, part 1, section 3, 6C, 6E or 6F.
- ‘(3) In this section—
employment includes continuing employment.

‘191 Carrying on regulated business

- ‘(1) This section applies to a person who, immediately before the commencement of this section, was carrying on a business mentioned in schedule 1, part 2, section 12, 13, 14 or 15.⁴¹
- ‘(2) Sections 109 and 113⁴² do not apply to the carrying on of the business until the earliest of the following—
- (a) 1 year after the commencement of the section;
 - (b) if the person applies for a prescribed notice within that year and does not withdraw the application—the day a prescribed notice is issued to the person;
 - (c) if the person applies for a prescribed notice within that year but withdraws the application—the day of the withdrawal.

‘192 Provision because of the definition *serious offence*

- ‘(1) This section applies to a decision made under this Act before the commencement of this section that involved a serious offence as that term was defined before the commencement.

41 Schedule 1 (Regulated employment and businesses for employment screening), part 2 (Regulated businesses), section 12 (Religious representatives), 13 (Child accommodation services including home stays), 14 (Sport and active recreation) or 15 (Hostel for children other than residential facility)

42 Sections 109 (Carrying on regulated business) and 113 (Change in criminal history of person carrying on regulated business)

- ‘(2) It is declared that the change to the definition does not affect the decision made under this Act before the commencement.
- ‘(3) To remove any doubt, it is declared that a person to whom a negative notice was issued because of the decision can not make an application to cancel the notice, as mentioned in section 118(3) or 119(3), before the end of 2 years after the issue of the notice.

‘193 Issue of positive notice blue card before commencement

- ‘(1) This section applies if, before the commencement of this section, the commissioner issued—
 - (a) a document (however described) that, immediately before the commencement, was a current suitability notice; and
 - (b) a document purporting to be a positive notice blue card (the *purported blue card*) and the date stated on the document as its expiry date has not happened.
- ‘(2) The purported blue card is a positive notice blue card for this Act.
- ‘(3) If the expiry date stated on the purported blue card was a day later than the expiry day for the relevant suitability notice, the purported blue card and suitability notice remain current until the date stated in the purported blue card.
- ‘(4) Subsection (3) applies despite section 104.⁴³

‘194 Charge for excluding offence not to apply to particular holders of positive notices

- ‘(1) This section applies to a person who, immediately before the commencement of this section—
 - (a) was the holder of a current positive notice; and
 - (b) had been charged with an offence that has not been dealt with.

43 Section 104 (Currency of prescribed notice and positive notice blue card)

- ‘(2) If, immediately after the commencement, the offence is an excluding offence, section 119C⁴⁴ does not apply to the person.
- ‘(3) However if, after the commencement, the person is convicted of the excluding offence with which the person was charged before the commencement, or another excluding offence, a court may make a disqualification order under section 126C and section 119A or 119B⁴⁵ may apply to the person.

‘195 References to suitability notice

‘In an Act or document, a reference to a suitability notice may, if the context permits, be taken to be a reference to a prescribed notice.’.

50 Amendment of sch 1 (Regulated employment and businesses for employment screening)

- (1) Schedule 1, part 1, section 1—
omit, insert—

‘1 Residential facilities

- ‘(1) Employment is regulated employment if any of the usual functions of the employment is carried out, or is likely to be carried out, inside—
- (a) a residential facility; or
 - (b) another place, other than a residential facility, at which a child accommodation service is provided under funding provided by the Commonwealth or by the department in which the *Education (General Provisions) Act 1989* is administered.

44 Section 119C (Effect of charge for excluding offence pending charge being dealt with)

45 Section 126C (Disqualification order) and section 119A (Cancellation if conviction for excluding offence and imprisonment or disqualification order) or 119B (Cancellation if conviction for excluding offence but no imprisonment or disqualification order)

‘(2) However, employment mentioned in subsection (1) is not regulated employment if—

- (a) the employer is a government service provider; or
- (b) the employment is part of a licensed care service as defined under the *Child Protection Act 1999*.’.

(2) Schedule 1, part 1, section 3—

omit, insert—

‘3 Schools—employees other than teachers and parents

‘(1) Employment is regulated employment if the usual functions of the employment include or are likely to include—

- (a) providing services at a school that are directed mainly towards children; or
- (b) conducting activities at a school that mainly involve children.

‘(2) However, employment mentioned in subsection (1) is not regulated employment if the employee is—

- (a) a registered teacher; or
- (b) a volunteer who is a parent of a child attending the school.’.

(3) Schedule 1, part 1, sections 5, 6 and 6A—

omit, insert—

‘5 Counselling and support services

‘(1) Employment is regulated employment if the usual functions of the employment include, or are likely to include, providing counselling or a similar support service to a child in a situation where—

- (a) the employee is physically present with the child while no-one else is present; or
- (b) the employee is not physically present with the child.

Example for paragraph (b)—

employment that includes providing counselling to children over the telephone or via the Internet

- ‘(2) However, employment mentioned in subsection (1) is not regulated employment if—
- (a) the employee is a registered health practitioner; or
 - (b) the employment is part of a licensed care service as defined under the *Child Protection Act 1999*; or
 - (c) the employer is a government service provider and carries on a business that includes providing counselling or a similar support service.

‘6 Private teaching, coaching or tutoring

- ‘(1) Employment is regulated employment if the usual functions of the employment include or are likely to include prescribed teaching.
- ‘(2) However, employment mentioned in subsection (1) is not regulated employment if—
- (a) the employee is a registered teacher; or
 - (b) the employer is an education provider.
- ‘(3) In this section—
- prescribed teaching*** means teaching, coaching or tutoring 1 child, or more than 1 child at the same time, on a commercial basis.

‘6A Education programs conducted outside of school

- ‘(1) Employment is regulated employment if the usual functions of the employment include, or are likely to include, providing services or conducting activities for—
- (a) an education program under the *Education (General Provisions) Act 1989*, section 30; or
 - (b) a program, provided by an entity, under arrangements approved under the *Education (General Provisions) Act 1989*, section 114A(1) or 114B(1).
- ‘(2) However, employment mentioned in subsection (1) is not regulated employment if—

- (a) the employee is a registered teacher; or
- (b) the employer is a provider under the *Youth Participation in Education and Training Act 2003*, section 12.

‘6B Child accommodation services including home stays

- ‘(1) Employment is regulated employment if the usual functions of the employment include, or are likely to include, a child accommodation service.
- ‘(2) If accommodation constituting a child accommodation service is provided, or is to be provided, by a person in the person’s home (a *home stay provider*), each adult residing in that home, other than the home stay provider, is taken to be a volunteer who is engaged in regulated employment.
- ‘(3) However, employment mentioned in subsection (1) or (2) is not regulated employment if—
 - (a) the home stay provider is a relative of the child who receives the child accommodation service to which the employment relates; or
 - (b) the employer is a government service provider and carries on a business that includes arranging a child accommodation service.
- ‘(4) In this section—

home, of a person, includes the person’s principal place of residence and any holiday home of the person.

‘6C Religious representatives

- ‘Employment is regulated employment if—
- (a) the employee is a religious representative; and
 - (b) the usual functions of the employment include, or are likely to include—
 - (i) providing services, as a religious representative, directed mainly towards children; or
 - (ii) conducting activities, as a religious representative, mainly involving children.

‘6D Sport and active recreation

- ‘(1) Employment is regulated employment if—
- (a) the usual functions of the employment include, or are likely to include—
 - (i) providing services directed mainly towards children; or
 - (ii) conducting activities mainly involving children; and
 - (b) the services are provided, or the activities are conducted, as part of sport or active recreation.
- ‘(2) However, employment mentioned in subsection (1) is not regulated employment if—
- (a) the employment takes place at an amusement park; or
 - (b) the employer is a government entity; or
 - (c) the employee is a volunteer who is a parent of a child to whom the services are provided, or in relation to whom the activities are conducted, as part of the sport or active recreation; or
 - (d) the services are provided, or the activities are conducted, by or within a church, club, association or similar entity, as mentioned in section 4(1)(b) of this schedule.

‘6E Emergency services cadet program

- ‘(1) Employment is regulated employment if the usual functions of the employment include or are likely to include—
- (a) undertaking the role of an adult member in the cadet program managed by the department responsible for emergency services; and
 - (b) prescribed teaching.
- ‘(2) In this section—
- prescribed teaching*** means teaching, coaching or tutoring 1 child, or more than 1 child at the same time.

‘6F School crossing supervisors

‘Employment is regulated employment if the usual functions of the employment include, or are likely to include, providing services as a crossing supervisor within the meaning of the *Transport Operations (Road Use Management) Act 1995*, section 138.⁴⁶’.

- (4) Schedule 1, part 2, section 8—

insert—

- ‘(2) However, a business mentioned in subsection (1) is not a regulated business if the usual activities mentioned in that subsection are licensed care services as defined under the *Child Protection Act 1999*.’.

- (5) Schedule 1, part 2, section 9, from ‘a child’—

omit, insert—

‘1 child, or more than 1 child at the same time, on a commercial basis.’.

- (6) Schedule 1, part 2, section 9—

insert—

- ‘(2) However, a business mentioned in subsection (1) is not a regulated business if the business is conducted by an education provider.’.

- (7) Schedule 1, part 2—

insert—

‘12 Religious representatives

‘A business is a regulated business if the usual activities of the business include, or are likely to include, a religious representative—

- (a) providing services, as a religious representative, directed mainly towards or involving children; or
- (b) conducting activities, as a religious representative, directed mainly towards or involving children.

⁴⁶ *Transport Operations (Road Use Management) Act 1995*, section 138 (Scheme to facilitate children crossing streets)

‘13 Child accommodation services including home stays

- ‘(1) A business is a regulated business if the usual activities of the business include, or are likely to include, a child accommodation service and—
- (a) the person who carries on the business provides the accommodation that constitutes the child accommodation service in the person’s home; or
 - (b) the person who carries on the business provides the child accommodation service under an arrangement organised by a government service provider.
- ‘(2) However, a business mentioned in subsection (1) is not a regulated business if the business is conducted at a boarding facility, residential facility or another place of the type mentioned in section 1(1)(b) of this schedule.
- ‘(3) In this section—
- home*, of a person, includes the person’s principal place of residence and any holiday home of the person.

‘14 Sport and active recreation

- ‘(1) A business is a regulated business if the usual activities of the business include, or are likely to include, sport or active recreation activities directed mainly towards or involving children.
- ‘(2) However, a business mentioned in subsection (1) is not a regulated business if—
- (a) the business takes place at an amusement park; or
 - (b) the activities are conducted by or within a church, club, association or similar entity, as mentioned in section 4(1)(b) of this schedule.

‘15 Hostel for children other than residential facility

- ‘(1) A business is a regulated business if the usual activities of the business include, or are likely to include, operating a place, other than a residential facility, at which a child accommodation service is provided under funding provided

by the Commonwealth or by the department in which the *Education (General Provisions) Act 1989* is administered.

- ‘(2) However, a business mentioned in subsection (1) is not a regulated business if the employer is a government service provider.’.

51 Replacement of sch 2 (Other serious offence provisions of the Criminal Code)

Schedule 2—

omit, insert—

‘Schedule 2 Current serious offences

section 99C

1 *Classification of Computer Games and Images Act 1995*

Provision of Act	Relevant heading	Limitation relating to the provision of the Act
23	Demonstration of an objectionable computer game before a minor	
26(3)	Possession of objectionable computer game	
27(3) and (4)	Making objectionable computer game	
28	Obtaining minor for objectionable computer game	

2 *Classification of Films Act 1991*

Provision of Act	Relevant heading	Limitation relating to the provision of the Act
41(3)	Possession of objectionable film	
42(3) and (4)	Making objectionable film	
43	Procurement of minor for objectionable film	

3 *Classification of Publications Act 1991*

Provision of Act	Relevant heading	Limitation relating to the provision of the Act
12	Sale etc. of prohibited publication or child abuse photograph	Only if an offender was or could have been liable as mentioned in section 12, penalty, paragraph (c)
13	Possession of prohibited publication	Only if an offender was or could have been liable as mentioned in section 13, penalty, paragraph (c)
14	Possession of child abuse publication or child abuse photograph	
15	Exhibition or display of prohibited publication or child abuse photograph	

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16	Leaving prohibited publication or child abuse photograph in or on public place	Only if an offender was or could have been liable as mentioned in section 16, penalty, paragraph (c)
17	Producing prohibited publication	Only if an offender was or could have been liable as mentioned in section 17(1), penalty, paragraph (c) or 17(2), penalty, paragraph (c) or the offence is an offence under section 17(3) or (4)
18	Procurement of minor for RC publication or child abuse photograph	
20	Leaving prohibited publication or child abuse photograph in or on private premises	Only if an offender was or could have been liable as mentioned in section 20, penalty, paragraph (c)

4 Criminal Code

Provision of Act	Relevant heading	Limitation relating to the provision of the Act
208	Unlawful sodomy	
209	Attempted sodomy	
210	Indecent treatment of children under 16	
211	Bestiality	
213	Owner etc. permitting abuse of children on premises	

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215	Carnal knowledge with or of children under 16	
216	Abuse of intellectually impaired persons	
217	Procuring young person etc. for carnal knowledge	
218	Procuring sexual acts by coercion etc.	
218A	Using internet etc. to procure children under 16	
219	Taking child for immoral purposes	
221	Conspiracy to defile	
222	Incest	
228	Obscene publications and exhibitions	Only if an offender was or could have been liable as mentioned in section 228(2) or (3)
229B	Maintaining a sexual relationship with a child	
229G	Procuring prostitution	Only if an offender was or could have been liable as mentioned in 229G(2)
229H	Knowingly participating in provision of prostitution	Only if an offender was or could have been liable as mentioned in 229H(2)

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229I	Persons found in places reasonably suspected of being used for prostitution etc.	Only if an offender was or could have been liable as mentioned in 229I(2)
229L	Permitting young person etc. to be at place used for prostitution	
300	Unlawful homicide	Only if the unlawful killing is murder under section 302
306	Attempt to murder	
309	Conspiring to murder	
313	Killing unborn child	
315	Disabling in order to commit indictable offence	
316	Stupefying in order to commit indictable offence	
317	Acts intended to cause grievous bodily harm and other malicious acts	
320A	Torture	
322	Maliciously administering poison with intent to harm	
323A	Female genital mutilation	

323B	Removal of child from State for female genital mutilation	
324	Failure to supply necessities	
326	Endangering life of children by exposure	
349	Rape	
350	Attempt to commit rape	
351	Assault with intent to commit rape	
352	Sexual assaults	
354	Kidnapping	
354A	Kidnapping for ransom	
363	Child-stealing	
363A	Abduction of child under 16	
364	Cruelty to children under 16	
409	Definition of <i>robbery</i>	Only if an offender was or could have been liable as mentioned in section 411(2)
419	Burglary	Only if an offender was or could have been liable as mentioned in section 419(3)(b)(i) and (ii)

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427	Unlawful entry of vehicle for committing indictable offence	Only if an offender was or could have been liable as mentioned in section 427(2)(b)(i) or (ii)
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5 Drugs Misuse Act 1986

Provision of Act	Relevant heading	Limitation relating to the provision of the Act
5	Trafficking in dangerous drugs	
6	Supplying dangerous drugs	Only if the offence is one of aggravated supply as mentioned in section 6(2)
8	Producing dangerous drugs	Only if an offender was or could have been liable for a penalty as mentioned in section 8, penalty, paragraph (a) or (b)

‘Schedule 2A Repealed or expired serious offences

section 99C

Criminal Code

Provision of Act	Relevant heading	Qualification relating to the provision of the Act
212	Defilement of Girls under Twelve	As the provision was in force from time to time before its repeal by the <i>Criminal Code, Evidence Act and Other Acts Amendment Act 1989</i>
214	Attempt to Abuse Girls under Ten	As the provision was in force from time to time before its repeal by the <i>Criminal Code, Evidence Act and Other Acts Amendment Act 1989</i>
220	Unlawful Detention with Intent to Defile or in a Brothel	As the provision was in force from time to time before its repeal by the <i>Criminal Code, Evidence Act and Other Acts Amendment Act 1989</i>
223	Incest by adult female	As the provision was in force from time to time before its repeal by the <i>Criminal Law Amendment Act 1997</i>
325	Endangering life or health of apprentices or servants	As the provision was in force from time to time before its repeal by the <i>Training and Employment Act 2000</i>

344	Aggravated assaults	As the provision was in force from 20 December 1946 to 30 June 1997 if the circumstance of aggravation was that the unlawful assault was an offence of a sexual nature as defined in the <i>Criminal Law Amendment Act 1945</i> , section 2A ^a
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a *Criminal Law Amendment Act 1945*, section 2A was inserted into the *Criminal Law Amendment Act 1945* by the *Criminal Law Amendment Act 1996*.

‘Schedule 2B Current serious child-related sexual offences

section 99D

Criminal Code

Provision of Act	Relevant heading
208	Unlawful sodomy
209	Attempted sodomy
210	Indecent treatment of children under 16
213	Owner etc. permitting abuse of children on premises
215	Carnal knowledge with or of children under 16
216	Abuse of intellectually impaired persons
217	Procuring young person etc. for carnal knowledge
218	Procuring sexual acts by coercion etc.
219	Taking child for immoral purposes
222	Incest
229B	Maintaining a sexual relationship with a child

229G	Procuring prostitution
349	Rape
350	Attempt to commit rape
351	Assault with intent to commit rape
352	Sexual assaults

‘Schedule 2C Repealed or expired serious child-related sexual offences

section 99D

Criminal Code

Provision of Act	Relevant heading	Qualification relating to the provision of the Act
212	Defilement of Girls under Twelve	As the provision was in force from time to time before its repeal by the <i>Criminal Code, Evidence Act and Other Acts Amendment Act 1989</i>
214	Attempt to Abuse Girls under Ten	As the provision was in force from time to time before its repeal by the <i>Criminal Code, Evidence Act and Other Acts Amendment Act 1989</i>
220	Unlawful Detention with Intent to Defile or in a Brothel	As the provision was in force from time to time before its repeal by the <i>Criminal Code, Evidence Act and Other Acts Amendment Act 1989</i>

223	Incest by adult female	As the provision was in force from time to time before its repeal by the <i>Criminal Law Amendment Act 1997</i>
344	Aggravated assaults	As the provision was in force from 20 December 1946 to 30 June 1997 if the circumstance of aggravation was that the unlawful assault was an offence of a sexual nature as defined in the <i>Criminal Law Amendment Act 1945</i> , section 2A'.

52 Amendment of sch 4 (Dictionary)

- (1) Schedule 4, definitions *current*, *employing*, *employment-screening decision*, *negative notice*, *positive notice*, *serious offence*, *serious offence involving a child*, *suitability notice* and *work*—

omit.

- (2) Schedule 4—

insert—

'active recreation, for schedule 1, means a form of physical exertion or activity engaged in for the purpose of relaxation or enjoyment, that is not based on formal competition.

amusement park, for schedule 1, includes a park that is permanent or temporary but does not include an amusement arcade.

business includes a business or organisation in which profit is not the primary purpose of the activity constituting the business.

current, for a prescribed notice or a positive notice blue card, means current under section 104.

dealt with, in relation to a charge of an offence, means any of the following—

- (a) the person who is charged is convicted or acquitted of the charge;

- (b) the person who is charged is convicted of another offence in relation to which the acts or omissions were substantially the same as the acts or omissions of the charge of the offence;
- (c) the charge has been withdrawn or dismissed;
- (d) a nolle prosequi or no true bill is presented in relation to the charge.

disciplinary information means information received by the commissioner under any of the following—

- (a) the *Child Care Act 2002*, section 50A or 107A;
- (b) the *Child Protection Act 1999*, section 140A;
- (c) the *Education (Teacher Registration) Act 1988*, section 71B;⁴⁷
- (d) the *Health Practitioners (Professional Standards) Act 1999*, section 384A;⁴⁸
- (e) the *Nursing Act 1992*, section 139A.⁴⁹

disqualification order see section 126C.

education provider means—

- (a) a university established by an Act or a law of the Commonwealth or another State; or
- (b) the university company within the meaning of the *Bond University Act 1987*; or
- (c) a registered training organisation within the meaning of the *Vocational Education, Training and Employment Act 2000*, section 19; or

47 *Education (Teacher Registration) Act 1988*, section 71B (Board may notify Commissioner for Children and Young People and Child Guardian about particular information)

48 *Health Practitioners (Professional Standards) Act 1999*, section 384 (Disciplinary body may notify Commissioner for Children and Young People and Child Guardian about particular information)

49 *Nursing Act 1992*, section 139A (Executive officer, council or tribunal may notify Commissioner for Children and Young People and Child Guardian about particular information)

- (d) an overseas higher education institution within the meaning of the *Higher Education (General Provisions) Act 2003*, schedule 2 in relation to which there is an approval under part 3 of that Act; or
- (e) a non-university provider within the meaning of the *Higher Education (General Provisions) Act 2003*, schedule 2 in relation to which there is an accreditation for an accredited course under part 4 of that Act; or
- (f) an interstate university within the meaning of the *Higher Education (General Provisions) Act 2003*, schedule 2 in relation to which there is an approval under section 63 of that Act.

employment means—

- (a) in relation to the engagement of a person under the *Child Care Act 2002*—see section 99B; or
- (b) in relation to a trainee student—see sections 99 and 99A; or
- (c) otherwise for part 6, part 9, division 7 or schedule 1—see section 99.

employment-screening decision, in relation to a person, means a decision about whether a positive notice or a negative notice should be issued to the person.

excluding offence see section 99E.

executive officer, of a corporation, means any person, by whatever name called and whether or not the person is a director of the corporation, who is concerned or takes part in the management of the corporation.

imprisonment order means an order of a court that convicts a person for an offence, if the order includes a penalty that includes imprisonment for the offence, including imprisonment that is wholly or partially suspended.

investigative information, about a person, see section 121A.

jurisdiction, other than in relation to this jurisdiction, means the Commonwealth, a State or a foreign jurisdiction.

negative notice see section 102(2)(b).

police information, about a person, means the following—

- (a) the person's criminal history;
- (b) investigative information about the person.

positive notice see section 102(2)(a).

positive notice blue card means a document, in the form of a card, issued to a person who is the holder of a current positive notice at or about the time that the person is issued with the positive notice, that includes the following information—

- (a) the name of the person who is the holder of the positive notice;
- (b) a registration number for the person;
- (c) an expiry date for the positive notice;
- (d) the signature, or an electronic version of the signature, of the person to whom the positive notice is issued.

prescribed notice means a notice issued under section 102(2).

religious representative means a person—

- (a) who is a member of—
 - (i) an organised religion; or
 - (ii) a religious group even if the group is not part of, or does not consider itself to be part of, an organised religion; and
- (b) who, because of the way the organised religion or religious group operates—
 - (i) holds a position in the religion or group that is supported by the religion or group, including financial support, in a way that allows the person—
 - (A) to devote himself or herself to promoting the religion's or group's objects or values; and
 - (B) to hold himself or herself out as a representative of the religion or group; or
 - (ii) is training to hold a position mentioned in subparagraph (i).

serious child-related sexual offence see section 99D.

serious offence see section 99C.

sport means a form of human activity capable of achieving a result requiring physical exertion or physical skill that, because of its nature or organisation, is competitive and is generally recognised as sport.

trainee student, of an education provider, means a person undertaking a course of study with the education provider.

volunteer see section 99F.

work, for part 6, includes the provision of a service, or the conduct of an activity—

- (a) as part of providing a child accommodation service; or
- (b) in the course of a religious vocation.’.

53 **Amendment of other Acts**

The schedule amends the Acts mentioned in it.

Schedule Acts amended

section 53

Child Care Act 2002

1 Section 26(2), ‘suitability’—

omit, insert—

‘prescribed’.

2 Section 27, heading, ‘Suitability’—

omit, insert—

‘Prescribed’.

3 Part 2, division 9, after section 50—

insert—

‘50A Chief executive may notify Commissioner for Children and Young People and Child Guardian about particular information

‘(1) This section applies if the chief executive amends, suspends or revokes a person’s licence under section 43, 45 or 46 (a *disciplinary action*).

‘(2) If the chief executive reasonably believes the disciplinary action may be relevant to the functions or powers of the children’s commissioner under the commissioner’s Act, the chief executive may give written notice about the disciplinary action to the children’s commissioner.

‘(3) A notice under subsection (2) must state the following—

- (a) the person’s name and address and date of birth;
- (b) the form of disciplinary action and the reasons for it;
- (c) when the conduct happened that was a ground for the disciplinary action;

Schedule (continued)

(d) the nature of the conduct.

‘(4) However, the notice must not contain information that identifies, or is likely to identify, a particular child.

‘(5) In this section—

children’s commissioner means the Commissioner for Children and Young People and Child Guardian under the commissioner’s Act.

commissioner’s Act means the *Commission for Children and Young People and Child Guardian Act 2000*.’.

4 Section 54(7) and (8), ‘suitability’—

omit, insert—

‘prescribed’.

5 Part 3, division 5, heading, ‘Suitability’—

omit, insert—

‘Prescribed’.

6 Sections 74, 80(1) and 97(1), (4) and (5), ‘suitability’—

omit, insert—

‘prescribed’.

7 After section 107—

insert—

‘107A Chief executive to give notice to the Commissioner for Children and Young People and Child Guardian

‘(1) If the chief executive gives a person a prohibition notice under this part, the chief executive must give written notice of the decision to the Commissioner for Children and Young People and Child Guardian.

Schedule (continued)

- ‘(2) A notice under subsection (1) about a person must state the following—
- (a) the person’s name, address and date of birth;
 - (b) the decision and the reasons for the decision of the chief executive and any decision of the tribunal;
 - (c) when the conduct that resulted in the prohibition notice happened;
 - (d) the nature of the conduct.
- ‘(3) However, if the conduct relates to a particular child, the notice must not contain information that identifies, or is likely to identify, the child.’.

8 Sections 137(1)(d) and 139(1), (2), (3) and (5), ‘suitability’—

omit, insert—

‘prescribed’.

9 Section 140, ‘suitability notice’—

omit, insert—

‘prescribed notice’.

10 Section 165A, heading, ‘suitability’—

omit, insert—

‘prescribed’.

11 Section 165A(1)(b), ‘suitability’—

omit, insert—

‘positive prescribed’.

Schedule (continued)

- 12 Section 165A(1)(c), ‘suitability’—**
omit, insert—
‘prescribed’.
- 13 Section 166, heading, ‘suitability’—**
omit, insert—
‘prescribed’.
- 14 Section 166(1)(a), (b) and (2), ‘suitability’—**
omit, insert—
‘prescribed’.
- 15 Section 166(3), after ‘under’—**
insert—
‘this Act or’.
- 16 Section 166A, heading, ‘suitability’—**
omit, insert—
‘prescribed’.
- 17 Section 166A(1)(a), ‘suitability notice’—**
omit, insert—
‘positive prescribed notice’.
- 18 Sections 166A(1)(b) and (2) and 184(2), ‘suitability’—**
omit, insert—
‘prescribed’.

Schedule (continued)

19 Schedule 2, definitions apply for a suitability notice, disqualified person, negative suitability notice, positive suitability notice and suitability notice—

omit, insert—

‘apply for a prescribed notice means apply under the *Commission for Children and Young People and Child Guardian Act 2000* for a prescribed notice.

disqualified person means a person for whom a negative prescribed notice or a prohibition notice is in force.

negative prescribed notice means a negative notice as defined under the *Commission for Children and Young People and Child Guardian Act 2000*, schedule 4.

positive prescribed notice means a positive notice as defined under the *Commission for Children and Young People and Child Guardian Act 2000*, schedule 4.

prescribed notice means a prescribed notice in force under the *Commission for Children and Young People and Child Guardian Act 2000*.’.

Child Protection Act 1999

1 After section 140—

insert—

‘140A Chief executive may notify Commissioner for Children and Young People and Child Guardian about particular information

- ‘(1) This section applies if, in relation to an approved foster carer, the chief executive amends, suspends or cancel the person’s authority under section 138 or 140 (a *disciplinary action*).

Schedule (continued)

- ‘(2) If the chief executive reasonably believes the disciplinary action may be relevant to the functions or powers of the children’s commissioner under the commissioner’s Act, the chief executive may give written notice about the disciplinary action to the children’s commissioner.
- ‘(3) A notice under subsection (2) must state the following—
- (a) the person’s name and address and date of birth;
 - (b) the form of disciplinary action and the reasons for it;
 - (c) when the conduct happened that was a ground for the disciplinary action;
 - (d) the nature of the conduct.
- ‘(4) However, the notice must not contain information that identifies, or is likely to identify, a particular child.
- ‘(5) In this section—
- children’s commissioner*** means the Commissioner for Children and Young People and Child Guardian under the commissioner’s Act.
- commissioner’s Act*** means the *Commission for Children and Young People and Child Guardian Act 2000*.’.

Education (Accreditation of Non-State Schools) Act 2001

- 1 Sections 146(2) and 168, ‘suitability’—**
omit, insert—
‘prescribed’.

Schedule (continued)

Education (Teacher Registration) Act 1988

1 Section 71B(3), from ‘is relevant’—

omit, insert—

‘is relevant to the functions or powers of the Commissioner for Children and Young People and Child Guardian under the the *Commission for Children and Young People and Child Guardian Act 2000*, part 6.⁵⁰’.

Health Practitioners (Professional Standards) Act 1999

1 After section 384—

insert—

‘384A Board may notify Commissioner for Children and Young People and Child Guardian about particular information

‘(1) Subsection (3) applies if—

- (a) a disciplinary body conducts disciplinary proceedings about a disciplinary matter concerning the conduct of a person; and
- (b) after the disciplinary proceedings, the disciplinary body takes disciplinary action in relation to the person.

‘(2) Subsection (3) also applies if the board decides—

- (a) under the immediate suspension part—to suspend a person’s registration (*immediate suspension*); or
- (b) under section 311—to suspend, cancel, or impose a condition on a person’s registration under section 311 (a

50 *Commission for Children and Young People and Child Guardian Act 2000*, part 6 (Screening for regulated employment or regulated businesses)

Schedule (continued)

section 311 action) because of a similar action under foreign law (the **foreign law action**).

- ‘(3) If the board reasonably believes the action, immediate suspension or section 311 action may be relevant to the children’s commissioner’s functions or powers under part 6 of the commissioner’s Act,⁵¹ the board may give written notice about it to the children’s commissioner.
- ‘(4) A notice under subsection (3) must state the following—
- (a) the person’s name, address and date of birth;
 - (b) the form or duration of the disciplinary action, immediate suspension or section 311 action that was taken in relation to the person;
 - (c) when the disciplinary matter, or ground for the immediate suspension or foreign law action, happened;
 - (d) the nature of the disciplinary matter, ground for the immediate suspension or foreign law action.
- ‘(5) Also, the disciplinary body may give information about a complaint or investigation relevant to the disciplinary matter.
- ‘(6) However, if the disciplinary matter, ground for the immediate suspension or section 311 action relates to a particular child, the notice must not contain information that identifies, or is likely to identify, the child.
- ‘(7) In this section—

children’s commissioner means the Commissioner for Children and Young People and Child Guardian under the commissioner’s Act.

commissioner’s Act means the *Commission for Children and Young People and Child Guardian Act 2000*.’.

51 *Commission for Children and Young People and Child Guardian Act 2000*, part 6 (Screening for regulated employment or regulated businesses)

Schedule (continued)

Nursing Act 1992

1 After section 139—

insert—

‘139A Executive officer or council may notify Commissioner for Children and Young People and Child Guardian about particular information

- ‘(1) Subsection (2) applies if—
- (a) the council, under section 65, grants limited registration or enrolment in relation to a relevant person, including after cancelling the person’s current registration; or
 - (b) the council decides, under section 67, to suspend a relevant person’s registration or enrolment (*immediate suspension*); or
 - (c) the executive officer decides, under section 68, to suspend a relevant person’s registration or enrolment (also *immediate suspension*); or
 - (d) the council, under section 70(1)(c) or (2), cancels or suspends a relevant person’s registration or enrolment; or
 - (e) the council takes action under section 117(2) to give effect to an order of the tribunal under section 116 about a relevant person’s registration or enrolment.
- ‘(2) If the council or executive officer reasonably believes the action may be relevant to the children’s commissioner’s functions or powers under part 6 of the commissioner’s Act,⁵² the council or executive officer may give written notice about the action to the children’s commissioner.
- ‘(3) A notice under subsection (3) must state the following—
- (a) the relevant person’s name, address and date of birth;

⁵² Commission for Children and Young People and Child Guardian Act 2000, part 6 (Screening for regulated employment or regulated businesses)

Schedule (continued)

- (b) what action was taken in relation to the relevant person, including the nature of the action;
 - (c) when the matter that was the reason for the action happened;
 - (d) the nature of the matter mentioned in paragraph (c).
- ‘(4) Also, the council or executive officer may give information about a complaint or investigation relevant to the matter that caused the council or executive officer to take the action.
- ‘(5) However, if the matter mentioned in subsection (3)(c) relates to a particular child, the notice must not contain information that identifies, or is likely to identify, the child.
- ‘(6) In this section—
- children’s commissioner* means the Commissioner for Children and Young People and Child Guardian under the commissioner’s Act.
- commissioner’s Act* means the *Commission for Children and Young People and Child Guardian Act 2000*.
- relevant person* means—
- (a) a nurse; or
 - (b) a person authorised to practise nursing or midwifery under section 77(1), (2), (3) or (4).⁵³.

Transport Operations (Passenger Transport) Act 1994

1 Schedule 3, definition *category B driver disqualifying offence*, paragraph (a)—

omit, insert—

⁵³ Under section 77 (Authorisation to practise), a person may be authorised to practise midwifery, mental health nursing or nursing. Also see section 77(6) for the application of sections 65 to 73.

Schedule (continued)

- ‘(a) an offence listed in the *Commission for Children and Young People and Child Guardian Act 2000*, schedule 2 or 2A;’.