

Western Australian Photo Card Bill 2013

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Defined terms

Western Australia

LEGISLATIVE ASSEMBLY

Western Australian Photo Card Bill 2013

A Bill for

An Act to provide for the issue of a document known as a Western Australian Photo Card and for related purposes.

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Western Australian Photo Card Act 2013*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

3. Terms used

In this Act, unless the contrary intention appears —

applicant means a person who makes an application under section 5;

cardholder, in relation to a photo card, means the person to whom the card is issued;

CEO means the chief executive officer of the Department;

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

Department means the department of the Public Service principally assisting in the administration of this Act;

destroyed includes damaged so as to be unusable;

disclose includes to provide, to release and to give access to;

eligible person means a person who is eligible under section 4 for the issue of a Western Australian Photo Card;

expiry day, in relation to a photo card, means the last day of the period for which the photo card is current;

photo card means a Western Australian Photo Card issued to a cardholder by the CEO under this Act and includes, where

- 1 relevant, any replacement or additional card issued to that
2 cardholder in accordance with the regulations;
- 3 ***photo card information*** means information about photo cards,
4 including the information referred to in section 13(1), but does
5 not include photographs and signatures provided to the CEO
6 under this Act;
- 7 ***photograph*** includes a negative or an image stored
8 electronically;
- 9 ***prescribed*** means prescribed by the regulations.

1 **Part 2 — Western Australian Photo Card**

2 **4. Eligibility for photo card**

3 A person is eligible for the issue of a Western Australian Photo
4 Card if the person —

- 5 (a) is ordinarily resident in the State; and
6 (b) has reached 16 years of age; and
7 (c) meets any other requirements prescribed for the
8 purposes of this section.

9 **5. Application for photo card**

- 10 (1) A person may apply in writing to the CEO for the issue of a
11 Western Australian Photo Card.
- 12 (2) The application must be made in a form approved by the CEO.
- 13 (3) The application must be accompanied by —
14 (a) such evidence as the CEO requires to satisfy the CEO of
15 the applicant's eligibility, identity and residential
16 address; and
17 (b) where relevant, a photograph and a signature in
18 accordance with section 6; and
19 (c) the prescribed fee.
- 20 (4) A person who holds a photo card (the *current card*) cannot
21 make an application under subsection (1) for a new photo card
22 earlier than 6 months before the expiry day of the current card.
- 23 (5) Subsection (4) does not apply to an application for a
24 replacement or additional card issued in accordance with the
25 regulations.

26 **6. Provision of photograph and signature**

- 27 (1) An applicant must provide to the CEO, for use on the photo
28 card —
29 (a) unless subsection (3) applies, a photograph of the
30 applicant; and

- 1 (b) unless subsection (4) applies, the applicant's signature.
- 2 (2) The photograph and signature are to be provided in a manner
3 and form approved by the CEO.
- 4 (3) An applicant does not have to provide a photograph under
5 subsection (1) if, within the period of 10 years before the
6 application, the applicant has provided a photograph under this
7 Act.
- 8 (4) An applicant does not have to provide a signature under
9 subsection (1) if —
- 10 (a) the person is unable to sign because of a permanent
11 disability; or
- 12 (b) within the period of 10 years before the application, the
13 applicant has provided a signature under this Act.

14 **7. Issue of photo card**

15 The CEO may issue a Western Australian Photo Card to an
16 applicant if —

- 17 (a) the CEO is satisfied that the applicant is an eligible
18 person; and
- 19 (b) the applicant has —
- 20 (i) provided the evidence referred to in
21 section 5(3)(a); and
- 22 (ii) complied with section 6 in relation to the
23 provision of a photograph and signature; and
- 24 (iii) paid the fee referred to in section 5(3)(c).

25 **8. Form and content of photo card**

- 26 (1) A photo card must be in a form approved by the CEO.
- 27 (2) A photo card must contain the following —
- 28 (a) the cardholder's photograph;
- 29 (b) the cardholder's name;

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- 1 (c) the cardholder's date of birth;
- 2 (d) if the cardholder so chooses, the cardholder's residential
- 3 address;
- 4 (e) the cardholder's signature, unless section 6(4)(a)
- 5 applies;
- 6 (f) the expiry day of the card.

7 **9. Duration of photo card**

8 A photo card is current for the period prescribed, or provided
9 for, by the regulations.

10 **10. Cancellation of photo card**

11 (1) The CEO may, by written notice given to the cardholder, cancel
12 a photo card —

- 13 (a) if the CEO considers that the cardholder is no longer an
- 14 eligible person; or
- 15 (b) if the CEO considers that the cardholder obtained the
- 16 photo card on the basis of incorrect or misleading
- 17 information (whether or not fraud or misrepresentation
- 18 was involved) or in a manner contrary to this Act; or
- 19 (c) if the cardholder obtained the photo card by means of a
- 20 form of payment that was subsequently dishonoured; or
- 21 (d) on such other grounds (if any) as are prescribed.

22 (2) If a photo card is cancelled under subsection (1), the CEO may,
23 by the notice referred to in subsection (1) or by subsequent
24 written notice given to the cardholder, direct the cardholder,
25 within the period specified in the notice —

- 26 (a) to return the photo card to the CEO in the manner
- 27 specified in the notice; or
- 28 (b) to notify the CEO in writing that the photo card has been
- 29 stolen, lost or destroyed.

30 (3) A person must comply with a direction given under
31 subsection (2).

32 Penalty: a fine of \$2 500.

- 1 **11. Other offences relating to photo cards**
- 2 (1) A person must not give information that the person knows to be
- 3 false or misleading in a material particular to a person
- 4 performing a function under this Act.
- 5 (2) A person must not forge or fraudulently alter a photo card.
- 6 (3) A person must not use a forged or fraudulently altered photo
- 7 card, or a photo card to which the person is not entitled.
- 8 (4) A person must not, without lawful excuse, have in the person's
- 9 possession with intent to deceive, a photo card, or an article
- 10 resembling a photo card.
- 11 (5) A person must not lend a photo card to, or allow a photo card to
- 12 be used by, another person.
- 13 Penalty for an offence under this section: a fine of \$2 500.

1 **Part 3 — Information management**

2 **12. Terms used**

3 In this Part —

4 *photograph* means a photograph provided to the CEO under this
5 Act;

6 *signature* means a signature provided to the CEO under this
7 Act.

8 **13. Register**

9 (1) The CEO must keep an accurate and up to date register that
10 records the following information in respect of each photo card
11 issued under this Act —

- 12 (a) the cardholder's name;
- 13 (b) the cardholder's date of birth;
- 14 (c) the cardholder's last known residential address;
- 15 (d) the first day of the period for which the card is current;
- 16 (e) the expiry day of the card;
- 17 (f) if the card has been cancelled under section 10, the date
18 of cancellation;
- 19 (g) whether a replacement or additional card has been
20 issued to the cardholder;
- 21 (h) any other information the CEO considers appropriate.

22 (2) The register may be kept in such form as the CEO thinks fit.

23 **14. Disclosure of photo card information**

24 (1) In this section —

25 *authorised purpose* means —

- 26 (a) the purpose of performing functions under a written law
27 or a law of the Commonwealth, another State or a
28 Territory; or

- 1 (b) a purpose related to the administration or enforcement of
2 a written law or a law of the Commonwealth, another
3 State or a Territory; or
4 (c) a purpose prescribed for the purposes of this definition;
5 **prescribed person** means a person prescribed, or who falls
6 within a class of persons prescribed, for the purposes of this
7 definition.
- 8 (2) The CEO may disclose photo card information to a prescribed
9 person if the CEO considers that the information is required by
10 the person for an authorised purpose.
- 11 (3) The following persons must not use disclosed photo card
12 information for a purpose other than the authorised purpose for
13 which it was disclosed —
14 (a) a person to whom the information is disclosed under
15 subsection (2);
16 (b) a person who is employed or engaged by a person to
17 whom the information is disclosed under subsection (2).
- 18 Penalty: a fine of \$5 000 or imprisonment for 12 months.

19 **15. Disclosure of photographs to police, ASIO and law**
20 **enforcement officials**

- 21 (1) In this section —
22 **ASIO Act** means the *Australian Security Intelligence*
23 *Organisation Act 1979* (Commonwealth);
24 **ASIO official** means —
25 (a) the Director-General of Security; or
26 (b) an officer or employee of the Australian Security
27 Intelligence Organisation (continued under the ASIO
28 Act) who is authorised by the Director-General of
29 Security for the purposes of this section;
30 **Director-General of Security** means the Director-General of
31 Security holding office under the ASIO Act;

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- 1 **law enforcement official** means a person prescribed, or who
2 falls within a class of persons prescribed, for the purposes of
3 this section;
- 4 **police official** means —
- 5 (a) the Commissioner of Police; or
- 6 (b) a police officer who is authorised by the Commissioner
7 of Police for the purposes of this section; or
- 8 (c) a person employed or engaged in the department of the
9 Public Service principally assisting in the administration
10 of the *Police Act 1892* who is authorised by the
11 Commissioner of Police for the purposes of this section.
- 12 (2) The CEO must disclose photographs to a police official for the
13 purposes of the performance of the police official's functions
14 under a written law.
- 15 (3) The CEO must disclose photographs to an ASIO official for the
16 purposes of the performance of the ASIO official's functions
17 under the ASIO Act or another law of the Commonwealth.
- 18 (4) The CEO may, with the prior approval of the Commissioner of
19 Police, disclose photographs to a law enforcement official if the
20 CEO considers that the photographs are required for the
21 purposes of the performance of the law enforcement official's
22 functions under a written law or a law of the Commonwealth,
23 another State or a Territory.
- 24 **16. Disclosure of photographs to executor or administrator**
- 25 If the person shown in a photograph has died, the CEO may
26 disclose the photograph to an executor or administrator of the
27 person's estate.

- 1 **17. Photographs and signatures: possession, reproduction and**
2 **destruction**
- 3 (1) The CEO must ensure that a photograph or signature is
4 destroyed if it, or a copy of it, has not been used on a photo card
5 issued in the preceding 10 years.
- 6 (2) A person must not, other than for the purposes of this Act,
7 possess a photograph or signature that is not on a photo card.
8 Penalty: imprisonment for 2 years.
- 9 (3) Subsection (2) does not apply to a person who possesses a
10 photograph as a result of its disclosure under section 15 or 16.
- 11 (4) A person employed or engaged in connection with any aspect of
12 the production of photo cards or otherwise concerned in the
13 administration of this Act must not, other than for the purposes
14 of this Act —
- 15 (a) reproduce, by any means, a photograph or signature; or
16 (b) cause or permit another person to do so.
- 17 Penalty for an offence under this subsection: imprisonment for
18 2 years.

Part 4 — Administration

18. Delegation of functions of CEO

- (1) The CEO may delegate to a person any power or duty of the CEO under another provision of this Act.
- (2) The delegation must be in writing signed by the CEO.
- (3) If a person is not employed in the Department, a power or duty can only be delegated to the person under this section if the person has been approved by the Minister for the purposes of this section.
- (4) An approval under subsection (3) may be given in respect of —
 - (a) a specified person or persons of a specified class; or
 - (b) the holder or holders for the time being of a specified office or class of office.
- (5) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (6) A person exercising or performing a power or duty that has been delegated to the person under this section, is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (7) Nothing in this section limits the ability of the CEO to perform a function through an officer or agent.

19. Delegation of functions of Commissioner of Police

- (1) The Commissioner of Police may delegate a power or duty of the Commissioner under section 15 to any of the following —
 - (a) a specified police officer;
 - (b) a police officer of a specified class;
 - (c) a person who is employed in the department of the Public Service principally assisting in the administration of the *Police Act 1892*.

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- 1 (2) The delegation must be in writing signed by the Commissioner
2 of Police.
- 3 (3) A person to whom a power or duty is delegated under this
4 section cannot delegate that power or duty.
- 5 (4) A person exercising or performing a power or duty that has been
6 delegated to the person under this section, is to be taken to do so
7 in accordance with the terms of the delegation unless the
8 contrary is shown.
- 9 (5) Nothing in this section limits the ability of the Commissioner of
10 Police to perform a function through an officer or agent.
- 11 **20. Agreements for performance of functions**
- 12 (1) The CEO may enter into an agreement providing for the CEO's
13 functions under this Act that are described in the agreement to
14 be performed on behalf of the CEO.
- 15 (2) The agreement may be with the Commissioner of Police, a local
16 government, or any other person or body, whether or not the
17 person or body has itself functions of a public nature.
- 18 (3) A function described in the agreement may be performed —
19 (a) in accordance with the agreement; and
20 (b) on and subject to terms and conditions in the agreement.
- 21 (4) If the performance of a function is dependent upon the opinion,
22 belief, or state of mind of the CEO it may be performed under
23 the agreement upon the opinion, belief, or state of mind of the
24 person or body with whom the agreement is made or another
25 person provided for in the agreement.
- 26 (5) The CEO may disclose photo card information to the person or
27 body with whom the agreement is made if the CEO considers
28 that the information is required for the purposes of performing a
29 function under the agreement.
- 30 (6) For the purposes of this Act or any other written law, an act or
31 thing done by, to, by reference to, or in relation to, a person or

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1 body in connection with the performance by that person or body
2 under the agreement of a function of the CEO is as effectual as
3 if it had been done by, to, by reference to, or in relation to, the
4 CEO.

Part 5 — Other matters

21. Confidentiality of information

(1) A person who is or has been engaged in the performance of functions under this Act must not, directly or indirectly, record, disclose or make use of information obtained under this Act except —

- (a) for a purpose related to the administration or enforcement of this Act; or
- (b) as required or authorised under this Act or another written law; or
- (c) with the consent of the person to whom the information relates; or
- (d) in circumstances prescribed by the regulations.

Penalty: a fine of \$5 000 or imprisonment for 12 months.

(2) Subsection (1) does not prevent the disclosure of statistical or other information that could not reasonably be expected to lead to the identification of any person to whom it relates.

22. Protection from liability for wrongdoing

(1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act.

(2) The State is also relieved of any liability that it might otherwise have had for a person having done anything as described in subsection (1).

(3) The protection given by this section applies even though the thing done as described in subsection (1) may have been capable of being done whether or not this Act had been enacted.

(4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

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1 **23. Proceedings for offences**

2 (1) Without limiting the functions of the DPP under the *Director of*
3 *Public Prosecutions Act 1991*, a prosecution for an offence
4 under this Act may only be commenced by —

- 5 (a) the CEO; or
6 (b) a person authorised, or a person who falls within a class
7 of persons authorised, in writing by the CEO to do so.

8 (2) A prosecution for an offence under this Act must be
9 commenced within 2 years after the date on which the offence
10 was allegedly committed.

11 **24. Regulations**

12 (1) The Governor may make regulations prescribing all matters that
13 are required or permitted by this Act to be prescribed, or are
14 necessary or convenient to be prescribed for giving effect to the
15 purposes of this Act.

16 (2) Without limiting subsection (1), the regulations may do one or
17 more of the following —

- 18 (a) provide for the replacement of photo cards;
19 (b) provide for the issue of additional photo cards, to enable
20 cardholders to hold a photo card containing the
21 cardholder's residential address and a photo card that
22 does not contain the cardholder's residential address;
23 (c) provide for the provision of photographs and signatures
24 for use on replacement and additional photo cards;
25 (d) provide for the circumstances in which a photo card
26 must be returned to the CEO and the manner in which it
27 is to be returned;
28 (e) provide for a cardholder to be required to notify the
29 CEO if the cardholder's photo card is damaged, stolen,
30 lost or destroyed;

- 1 (f) provide for a cardholder to be required to notify the
2 CEO of a change of residential address or other
3 particulars in respect of the cardholder;
4 (g) prescribe fees payable in relation to any matter under
5 this Act;
6 (h) provide that contravention of a regulation is an offence
7 and, for an offence against the regulations, provide for a
8 penalty not exceeding a fine of \$5 000.

9

Defined terms

Defined terms

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

Defined term	Provision(s)
applicant.....	3
ASIO Act	15(1)
ASIO official	15(1)
authorised purpose	14(1)
cardholder	3
CEO	3
Commissioner of Police.....	3
current card	5(4)
Department	3
destroyed.....	3
Director-General of Security.....	15(1)
disclose	3
eligible person.....	3
expiry day	3
law enforcement official	15(1)
photo card	3
photo card information.....	3
photograph	3, 12
police official	15(1)
prescribed.....	3
prescribed person	14(1)
signature.....	12