

**WORKING WITH CHILDREN (CRIMINAL RECORD CHECKING)
AMENDMENT BILL 2022
EXPLANATORY MEMORANDUM**

Introduction

The Working with Children (Criminal Record Checking) Amendment Bill 2022 (**Bill**) seeks to amend the *Working with Children (Criminal Record Checking) Act 2004* (**Act**). The Chief Executive Officer (**CEO**) of the Department of Communities (**Communities**) is designated as the decision-maker under the Act.

The Royal Commission into Institutional Responses to Child Sexual Abuse (**Royal Commission**) in its Working with Children Checks Report 2015 (**WWCC Report**) made 36 recommendations to strengthen Working with Children schemes in all jurisdictions. Thirty five of these recommendations are relevant to Western Australia (**WA**). The WA Government in 2018 accepted or accepted in principle all recommendations of the Royal Commission relevant to WA and has annually restated its commitment to implementing these recommendations, to ensure a safer WA for all children and young people.

National Standards for Working with Children Checks (**National Standards**) were developed collaboratively by all jurisdictions in response to the WWCC Report and published in 2019. State and Territory Ministers responsible for Working with Children schemes in all jurisdictions broadly endorsed the National Standards, thereby committing to work towards implementation.

This Bill seeks to address 12 of the 19 Royal Commission WWCC Report recommendations and associated National Standards which require, or are associated with, some legislative change in WA, being WWCC Report:

- recommendation 3(a)(ii) partially, and to the extent possible without further interjurisdictional agreement, to allow disclosure of negative outcomes and any reversal of those outcomes to a centralised database;
- recommendation 14(c) for prohibiting persons denied and subsequently not granted a WWCC from accessing any exemption under the Act;
- recommendation 16(d) for a new offence for applicants or WWCC Cardholders failing to notify the screening agency of relevant changes in circumstances;
- recommendation 19 to accommodate relevant disciplinary and misconduct information under the Act;
- recommendation 20 for pending charges for Class 1 offences to result in an automatic negative notice, and for the inclusion of additional Class 1 offences, under the Act;
- recommendation 21 for additional Class 2 offences under the Act;
- recommendation 25(c) to provide efficiencies regarding employer verifications as part of an improved online application process; and recommendation 25(d) regarding the capacity to impose interim bars;
- recommendation 26 by providing for an improved online WWCC application and processing system;

- recommendation 29 to the extent relevant to WA and consistent with the National Standards, by proposing a broader number and type of criminal offences becoming Class 1, convictions or pending charges for which, if committed or allegedly committed when an adult, will result in the automatic issue of a negative notice. Persons with such convictions or pending charges will only be able to seek external review on the basis that their criminal record does not include that conviction or pending charge;
- recommendation 31(b) partially, by requiring WWCC Cardholders and applicants to notify the CEO of a relevant change of particulars, including the person starting or ceasing child-related work;
- recommendation 32 by inserting contemporary compliance monitoring provisions into the Act; and
- recommendation 33 by inserting powers to compel the production of relevant information for the purposes of compliance monitoring.

The Office of the Auditor General in 2014 published its *Working with Children Checks* (Report 15: June 2014), and in 2019 published its *Working with Children Checks – Follow-up* (Report 10: 2019-2020). Key concerns raised by the Office of the Auditor General regarding the issue of interim negative notices, information sharing between the Western Australia Police (**WA Police**) and Communities, and the monitoring and enforcement of compliance, are sought to be addressed by this Bill.

The *Review of the Working with Children (Criminal Record Checking) Act 2004 (Statutory Review)* was tabled in the Legislative Assembly on 13 September 2012 and made 23 recommendations, 15 of which were for legislative change. The Statutory Review examined the operation and effectiveness of the Act. Its recommendations for legislative change are largely consistent with, and overlap with, those of the WWCC Report and the National Standards, or are to strengthen information gathering and sharing provisions in the Act. This Bill seeks to address eight of the 15 legislative recommendations of the Statutory Review, being:

- recommendation 2(a) for prohibiting persons with a negative notice from accessing the parent volunteer exemptions under the Act;
- recommendation 7 to allow the CEO to request and receive any information needed for functions under the Act and to provide protection from liability for persons providing such information in good faith;
- recommendation 8 partially, by inserting new provisions to improve capacities to contact an applicant:
 - for various options (including electronic) for service of documents with the regulations able to make provision for the time at which a document given by a particular method is taken to have been given; and
 - a new requirement that WWCC Cardholders and applicants notify the CEO of a relevant change of particulars, including a change in their name, residential address or contact details, and their ceasing or commencing new child-related work;
- recommendation 11 to allow relevant disciplinary findings to be a trigger for consideration under section 12 of the Act;

- recommendation 15 to remove barriers to the provision of information to WA Police where this is necessary to perform functions under the Act or to support WA Police (and where appropriate other law enforcement agencies) to investigate possible offences against children;
- recommendation 16 to explicitly enable the Working with Children Screening Unit to provide information to law enforcement agencies about an applicant or compliance activity where this is in the public interest, including the investigation of possible offences against a child;
- recommendation 17 by including in the definition of **public authority** in amended section 4, an entity established by or under the *Health Practitioner Regulation National Law (Western Australia)*, to enable relevant regulatory boards or bodies as well as relevant public authorities to be specified in regulations, in the proposed new section 34F replacement to section 38 of the Act; and
- recommendation 19 to ensure that officers who are investigating compliance with the Act have clear authorisation to do so and can enter relevant premises and obtain relevant information and records.

This Bill also proposes:

- amendments to improve the functionality and effectiveness of the Act; and
- consequential amendments to the *National Disability Insurance Scheme (Worker Screening) Act 2020* and the *Spent Convictions Act 1988*, as well as a number of other Acts, as a result of the amendments proposed in the Bill.

Provisions in the Bill

Part 1 – Preliminary

Clause 1 Short title

Once enacted, the short title of the Bill will be the *Working with Children (Criminal Record Checking) Amendment Act 2022* (**Amendment Act**).

Clause 2 Commencement

Clause 2 provides that Part 1 comes into operation on the day on which the Amendment Act receives Royal Assent and the rest of the Amendment Act on a day fixed by proclamation.

Part 2 – *Working with Children (Criminal Record Checking) Act 2004* amended

Clause 3 Act amended

Clause 3 provides that Part 2 of the Amendment Act amends the Act.

Clause 4 Section 1 amended

Clause 4 amends the short title of the Act by deleting the words “(Criminal Record Checking)” and inserting the word “(Screening)”.

The proposed amendment to the short title of the Act is a more accurate descriptor of the object of the Act.

Clause 5 Section 4 amended

Clause 5 amends section 4 of the Act by making amendments to certain current definitions as well as inserting definitions for terms relevant to both amendments to current provisions in the Act and to new provisions being introduced by the Bill.

The definition of ***criminal records agency*** has been relocated to section 4 from section 34 of the Act and amended to include reference to the Commissioner of Police. The term will now capture all police forces in any jurisdiction for the purposes of the requesting, obtaining, and disclosing of information for assessment and compliance purposes. The amendment is made so this term applies not only in section 34 but also in other new sections in the Bill (sections 34A, 34F, 34Z and 34ZA).

The definition of ***corresponding authority*** has been relocated from section 37 (which is to be repealed and replaced by section 34D) and amended to insert reference to the term ***corresponding law***. The substantive meaning of the term has not changed. This definition will continue to capture equivalent working with children screening agencies in other jurisdictions that administer a corresponding law and exercise functions that substantially correspond with the functions of the CEO under the Act. The amendment is made so the term applies not only in new section 34D but also in other new sections introduced by the Bill (sections 34I, 34Z and 34ZA).

The definition of ***external government agency*** is relocated from section 39A to section 4 without changing its substantive meaning. This amendment is relevant to the information gathering and sharing provisions in new Part 3A and Division 5 of new Part 3B.

The term ***public authority*** has been relocated from section 38 (which is to be repealed and replaced by section 34F) and amended to include an entity established under the *Health Practitioner Regulation National Law (Western Australia)* and any further persons or bodies prescribed by regulation. The amendment is made so the term applies not only in section 34F but also in other new sections introduced by the Bill for the purposes of information gathering and sharing (sections 34H, 34Z and 34ZA) and the power to delegate the disclosure of information by the principal officers of other agencies (new section 45A).

New terms are inserted into section 4, these being ***authorised officer***, ***conduct review authority***, ***conduct review finding or outcome***, ***government agency***, ***outcome***, ***relevant conduct*** and ***WWC purpose***.

The definition of ***authorised officer*** is relevant for the purposes of clause 29 which inserts new Part 3B to provide contemporary compliance and enforcement provisions in the Act. The term is also relevant to the amendment to the offence of giving false or misleading information (section 35) and the new offences in section 35A of obstructing an authorised officer and section 35B of impersonating an authorised officer.

The definitions of ***conduct review authority***, ***conduct review finding or outcome***, ***outcome*** and ***relevant conduct*** are relevant to the proposed new sections 17A, 17B and 17C. These proposed sections provide:

- for a designated conduct review authority, prescribed in the regulations, to give a notice to the CEO of a prescribed conduct review finding or outcome and related amendments;
- that such notices may trigger the power of the CEO to consider and determine whether a person should be permitted to carry out child-related work; and
- obtaining further information about the conduct review finding or outcome, of which the notice relates, when conducting an assessment or reassessment.

The terms conduct review authority and conduct review finding or outcome will enable the addition of further bodies and findings or outcomes by regulation incrementally.

The terms **government agency** and **WWC purpose** are relevant to the information gathering and sharing provisions in new Part 3A and Division 5 of new Part 3B. The term WWC purpose captures the relevant purposes for the CEO to request, use and disclose information under certain provisions introduced by the Bill.

Clause 5 amends the definition of **another jurisdiction** and **criminal record** to reflect changes in drafting practice. An amendment is also made to the definition of **interim negative notice** to reflect the Bill's changes to relevant provisions giving the CEO power to issue an interim negative notice.

Clause 5 amends the definition of **Class 3 offence** by inserting "(including an offence under a law of another jurisdiction)". This amendment is intended to clarify that Class 3 offences include offences committed or allegedly committed in another jurisdiction.

Clause 6 Section 6 amended

This clause amends section 6 of the Act – *Terms used: child-related work*.

Section 6 of the Act defines child-related work. An exemption for child volunteers is currently contained in section 6(3)(a) of the Act, and exemptions for work carried out in circumstances or by a person may be prescribed by the *Working with Children (Criminal Record Checking) Regulations 2005 (Regulations)* made under section 6(3)(b) of the Act.

Clause 6 deletes the current subsections (3) and (4) and inserts new subsections (3), (4) and (5).

The new subsection (3) maintains the current exemption from child-related work for child volunteers, and additionally allows the Regulations to prescribe work carried out in circumstances, or by a child of a class of children, to which the child volunteer exemption does not apply so that it becomes child-related work.

The new subsection (4) maintains and clarifies the current capacity for the Regulations to prescribe work carried out in circumstances or by persons of a class of persons, as exempt from child-related work.

The new subsection (5) provides that regulations made under subsections (3) and (4) may exempt a class of children or persons by reference to a criminal record check or other forms of screening under another Act. This does not limit the regulation-making power under new subsections (3) and (4).

New subsections (3) and (4) are Henry VIII clauses as they empower the Executive, by regulation, to qualify the operation of the Act under which they are made. Currently,

the Act provides power to prescribe exemptions from child-related work in the Regulations, which includes the parent volunteer exemptions, among others. Initially, the intention is to preclude persons with a current interim negative notice or negative notice from accessing the child volunteer and parent volunteer exemptions. The regulation-making power will allow sufficient flexibility to further qualify access to exemptions from child-related work following consideration of the categories of child-related work and the appropriate exemptions from that work, which are aimed to address remaining WWCC Report and Statutory Review recommendations as part of a future phase or phases of reforms.

Clause 7 Section 7 replaced

Clause 7 replaces section 7 of the Act – *Terms used: Class 1 offence, Class 2 offence.*

New sections 7(1)(a) and 7(2)(a) provide that offences against a provision listed in Schedule 1 or Schedule 2 are Class 1 and Class 2 offences respectively, if the offence complies with any condition specified in that Schedule or prescribed by the regulations.

Sections 7(1)(a) and 7(2)(a) in the Bill are Henry VIII clauses as they permit regulations to prescribe ‘any condition’ that must be complied with for an offence to be a Class 1 offence or a Class 2 offence. They empower the Executive, by regulation, to qualify the operation of the Act under which they are made. In relation to relevant new WA offences, reliance will continue to be placed on the process for consequential amendments to be made to the Schedules of the Act by the preparation and passage through the Parliament of formal amendment Bills. However, this amendment will provide capacity to ensure that if such consequential amendments are made, but inadvertently overlook the imposition of an appropriate condition, necessary regulations may be made to impose a condition, consistent with the categorisation of offences as Class 1 or Class 2 offences. New sections 7(1)(a) and 7(2)(a), by referring to ‘any condition’ remove the restriction in the current Act’s sections 7(1)(a) and 7(2)(a) that conditions may only be specified in relation to the age of the victim and allow conditions to be specified more broadly.

New sections 7(1)(b) and 7(2)(b) enable the addition of Class 1 and 2 offences, through regulations, where the offence is under the law of another jurisdiction or a law of WA. Currently, laws of another jurisdiction are prescribed by regulation under current sections 7(1)(c) and 7(2)(c). This power provides flexibility to amend Schedules 1 and 2 where a relevant offence exists under the law of another jurisdiction, but there is no equivalent offence under a law of WA.

Sections 7(1)(b) and 7(2)(b) in the Bill are Henry VIII clauses as they permit regulations to prescribe additional Class 1 or Class 2 offences. They empower the Executive, by regulation, to qualify the operation of the Act under which they are made. In relation to new WA offences, reliance will continue to be placed on the process for consequential amendments to be made to the Schedules of the Act by the preparation and passage through the Parliament of formal amendment Bills. However, this amendment will provide capacity to ensure that if such consequential amendments are inadvertently overlooked, appropriate and necessary regulations referencing the relevant new WA offences as Class 1 or Class 2 offences may be proposed, in the best interests of children, by quickly reflecting such offences in the CEO’s decision-making framework as appropriate.

New sections 7(1)(c) and (2)(c) maintain the current sections 7(1)(b) and 7(2)(b) and remain substantively unchanged.

New sections 7(1)(d) and (2)(d) provide that offences of a kind to those referred to in the respective subsections, committed before the commencement of the Act on 1 January 2006, are to be treated as a Class 1 or Class 2 offence, as appropriate. These clauses are intended to capture repealed offences under laws of WA or the laws of another jurisdiction which have never been scheduled in the Act or Regulations and are of a kind to the offences intended to be captured as Class 1 or Class 2.

New sections 7(1)(e) and (2)(e) provide that an offence of attempting, or of conspiracy or incitement to commit a Class 1 offence or Class 2 offence, will constitute Class 1 or Class 2 offences respectively.

Clause 7 inserts new section 7(3) providing that if a condition is specified in relation to offences listed in Schedules 1 and 2, this will determine whether they are to be considered as a Class 1 or Class 2 offence. An offence will fall within the ambit of the subsection if the victim of the offence is a child who has reached 14 years of age and the age difference between the victim and the offender does not exceed 5 years. The condition applies to certain sexual offences involving children and child exploitation related offences.

If the offence falls within the ambit of section 7(3), this will allow the CEO to undertake an assessment of risk. The intention is to allow the CEO to exercise discretion in appropriate circumstances where exceptional circumstances may exist in situations where persons of a similar age cohort engage in sexual behaviour when one of the persons is under the age of consent.

If the offence does not fall within the ambit of section 7(3), (that is, the victim is under 14, or the age gap between the victim and the offender is more than 5 years), the offence will be considered a Class 1 offence and the person will receive an automatic negative notice.

Clause 8 Section 8 amended

Clause 8 amends section 8 of the Act – *Term used: conviction*.

Clause 8 deletes “he or she” and inserts “the person”. This reflects a change in drafting practice and is gender-free.

Clause 9 Section 9A amended

Clause 9 amends section 9A of the Act – *Students, application of certain provisions to*.

Clause 9 amends section 9A(2)(a) by deleting the current paragraph and inserting a new paragraph (a). This will provide that the approved form for an application for an assessment notice may include provision for information about the student’s education provider or the person who employs, or proposes to employ, the student in child-related employment. This amendment is intended to reflect those made to section 9 of the Act for online applications while still accommodating hard copy forms where required. This will provide flexibility for students on placement to include either, or both if known, information about their education provider or the person employing them in child-related employment.

Clause 9 amends section 9A(2) by inserting new paragraph (aa) to provide that new section 11(3A) applies to students on placement, so an application is deemed withdrawn where an education provider or employer fails to verify the student's employment in child-related employment. This amendment is intended to reflect changes to section 11 which address the deemed withdrawal of applications where an employer fails to verify an applicant is employed or proposed to be employed in child-related employment.

Clause 9 amends section 9A(2)(c) deleting reference to section 13(3) and inserting reference to section 13AA(4). This amendment is intended to reflect amendments made by clause 15 of the Bill which includes the removal of the current section 13 and insertion of the new section 13AA, the latter of which confers power for the CEO to issue interim negative notices and give copies to employers. This will continue to enable the CEO to give copies of interim negative notices to an education provider for a student on placement.

Clause 9 amends sections 9A(2)(f) and 9A(2)(h) by deleting "his or her" and inserting "the student's". This reflects a change in drafting practice and is gender-free.

Clause 9 amends section 9A(2) by inserting new paragraph (i) to provide that new section 34B applies as if reference to an employer or proposed employer includes reference to the student's education provider and reference to employ, or propose to employ, a person in child-related employment included a reference to the student being employed or proposed to be employed in child-related employment as part of a course with an education provider. This amendment is intended to allow disclosure of information to an education provider including for the purposes of online verification.

Clause 10 Section 9 amended

Clause 10 amends section 9 of the Act – *Assessment notice (child-related employment), application for*.

Clause 10 replaces section 9(3) to provide that the approved form must include provision for identifying information to be given about the applicant and information identifying an employer who employs or intends to employ the applicant in child-related employment. The requirement for the approved form to include provision for certification by an employer is to be removed. This amendment is intended to provide greater flexibility in progressing to a fully online application process and so verification of child-related employment is not confined to the approved form but built into the online application process.

Clause 10 inserts new section 9(3A), which provides that the approved form may require the provision of any other information the CEO thinks fit. This amendment is intended to provide the flexibility for the provision of information to the CEO for the proper processing and consideration of the application.

Clause 10 inserts a new section 9(5), which provides that the Regulations may prescribe other requirements that apply in relation to an application or consideration of the application. This is intended to allow for other processes that may be required, for example, with the proposal for fully online applications and the need for identity verification, if this is required.

Clause 11 Section 10 amended

Clause 11 amends section 10 of the Act – *Assessment notice (child-related business), application for*.

Clause 11 inserts new section 10(3A), which provides that the approved form may require the provision of any other information the CEO thinks fit. This amendment is intended to provide the flexibility for the provision of information to the CEO for the proper processing and consideration of the application.

Clause 11 inserts a new section 10(5), which provides that the Regulations may prescribe other requirements that apply in relation to an application or consideration of the application. This is intended to allow for other processes that may be required, for example, with the proposal for fully online applications and the need for identity verification if this is required.

Clause 12 Section 11 amended

Clause 12 amends section 11 of the Act – *Withdrawal of application for assessment notice*.

Clause 12 inserts new section 11(3A), which provides an additional mechanism for applications for an assessment notice to be deemed withdrawn if child-related employment is not verified by an employer or proposed employer. This amendment reflects the changes to section 9 to remove the certification by an employer or proposed employer and enable the withdrawal of the relevant applications.

Clause 12 amends section 11(3)(b) of the Act by deleting “subsection (2)(d)” and inserting “subsection (2)(d) or (3A)(d)”. This amendment ensures consistency in the giving of notices to an employer of an application that is deemed withdrawn.

Clause 12 amends section 11(4) of the Act by deleting “section 17(3)(d)(i)” and inserting “section 17(3)(d)(i) or 17B(2)(b)(i)”. This amendment is intended to reflect the amendment to introduce conduct review findings or outcomes as a trigger for an assessment or reassessment.

Clause 13 Section 12 amended

Clause 13 amends section 12 of the Act – *Deciding applications for assessment notice*.

Clause 13 deletes the current section 12(2) and inserts a new section 12(2). This new subsection will require the CEO to conduct both a criminal record check and check whether notice of a conduct review finding or outcome has been received under new section 17A(3) before deciding an application. This amendment reflects changes to introduce conduct review findings or outcomes as a trigger for an assessment or reassessment.

The Table in section 12(3) classifies the thresholds by which the CEO must decide applications and reassessments.

Clause 13 amends the Table in section 12(3) by:

- inserting a new paragraph (c) in item 1 requiring the issuing of an assessment notice, there being no discretion, if the CEO is not aware of any conduct review

finding or outcome, or any conviction for an offence or charge of an offence against the applicant (the applicable provision is section 12(4));

- inserting new item 2A requiring the issue of an assessment notice, there being no discretion, if the CEO is aware that the applicant is, or has been, the subject of a conduct review finding or outcome other than as a result of a notice under section 17A(3) (the applicable provision is section 12(4));
- deleting current item 3 and inserting new item 3 requiring the issue of an assessment notice, there being no discretion, if the CEO is aware of a pending charge against the applicant for a Class 3 offence other than as a result of a notice under section 16(1) or 17(1) or as a result of designated information under new section 17(1A) (the applicable provision is section 12(4));
- inserting new item 3A requiring the issue of an assessment notice unless the CEO is satisfied that because of the particular circumstances of the case a negative notice should issue, if the CEO is aware that the applicant is, or has been, the subject of a conduct review finding or outcome as a result of a notice under section 17A(3) (the applicable provision is section 12(5));
- deleting current item 4 and inserting new item 4 requiring the issue of an assessment notice unless the CEO is satisfied that because of the particular circumstances of the case a negative notice should issue, if the CEO is aware of a pending charge against the applicant for a Class 3 offence as a result of a notice under section 16(1) or 17(1) or as a result of designated information under section 17(1A) (the applicable provision is section 12(5));
- deleting reference to “a Class 1 offence” from item 8, so the item will no longer apply if the CEO is aware of a pending charge for a Class 1 offence which is to be addressed in new items 9A and 10B;
- inserting new item 9A requiring the issue of a negative notice unless the CEO is satisfied that because of the exceptional circumstances of the case an assessment notice should issue, if the CEO is aware of a pending charge against the applicant for a Class 1 offence that was allegedly committed by the applicant when a child (the applicable provision is section 12(6));
- inserting new item 10A requiring the issue of a negative notice unless the CEO is satisfied that because of the exceptional circumstances of the case an assessment notice should issue, if the CEO is aware of a Class 1 offence of which the applicant has been convicted and the person has been granted a pardon in respect of that offence (the applicable provision is section 12(6));
- inserting new item 10B requiring the issue of a negative notice, there being no discretion, if the CEO is aware of a pending charge against the applicant for a Class 1 offence allegedly committed when an adult (the applicable provision is section 12(7));
- inserting in item 11 “other than where the applicant has been granted a pardon in respect of that offence” so the item does not apply if the CEO is aware of a conviction for a Class 1 offence committed when an adult where a pardon has been granted for that offence.

The amendment to item 1 and the insertion of new items 2A and 3A are intended to reflect amendments to other parts of the Act that introduce conduct review findings or

outcomes as triggers for an assessment or reassessment. Reference in item 3A to the CEO being “aware that the applicant is, or has been, the subject of a conduct review finding or outcome as a result of a notice under section 17A(3)” will cause an assessment or reassessment in circumstances where notice under section 17A(3) was received including in relation to:

- a person who is currently the subject of a conduct review finding or outcome (e.g., cancellation of registration is still in place as it was for 2 years and only 6 months has passed);
- a person who was the subject of a conduct review finding or outcome (e.g., the period for which registration was cancelled has expired (including where they have re-registered));
- a person who has had the conduct review finding or outcome to which the notice relates subsequently quashed, set aside or withdrawn expressly or impliedly, or found to be unsubstantiated or incorrect.

The deletion of current items 3 and 4 and insertion of new items 3 and 4, are intended to reflect amendments to other parts of the Act, specifically section 17 to enable the CEO to act on information from police in another jurisdiction and the proposed new ongoing monitoring process inserted in new section 33A.

The amendment to item 8 and insertion of new item 9A is required as a result of the insertion of new item 10B. The current decision-making framework will apply where a person has a pending charge for a Class 2 offence or a pending charge for a Class 1 offence allegedly committed when a child. The insertion of new item 10B is intended to remove discretion and require the automatic issue of a negative notice for a pending charge for a Class 1 offence allegedly committed when an adult. However, if item 10B applies to a person, they will have a right to apply to cancel their negative notice if the pending charge is subsequently withdrawn or they are acquitted and may do so sooner than three years after it is issued.

The amendment to item 11 is essential to ensure that item 10A will apply if the person has been granted a pardon in respect of that Class 1 offence. The insertion of item 10A is intended to give discretion to the CEO to conduct an assessment or reassessment.

Clause 13 amends section 12(8) to reflect the amendment to introduce conduct review findings or outcomes as a trigger for an assessment or reassessment and the amendments made to the decision-making framework in the Table in section 12(3).

Clause 13 also amends the paragraphs in section 12(8), which are the factors that the CEO must consider when deciding whether the CEO is satisfied in relation to the particular or exceptional circumstances of the case. The proposed amendments include amending the wording in:

- paragraphs (b), (c), and (d) to include reference to relevant conduct, as that term is defined in section 4, that occurred or is alleged to have occurred, and
- paragraph (e) to insert a new subparagraph (iii), so regard is given to the effect of future conduct in relation to a child were the applicant to behave in a similar or like manner to not only an offence or charge contained in the applicant’s criminal record, but also any conduct review finding or outcome in relation to the applicant.

These amendments are intended to accommodate the introduction of conduct review findings or outcomes as triggers for an assessment or reassessment.

Clause 14 Section 13A amended

Clause 14 amends section 13A of the Act – *Issue of assessment notices and negative notices*.

Clause 14 amends section 13A(1)(b), to delete the wording for the CEO to give a copy of the notice to the other person (this being the person who employs or proposes to employ the applicant in child-related employment) and to insert that the CEO must:

- if an assessment notice is issued – give details contained in the assessment notice to the other person in a manner or form the CEO thinks fit (this can include giving a copy of the assessment notice); and
- if a negative notice is issued – give a copy of the negative notice to the other person.

This amendment is intended to provide flexibility as applications become processed predominantly online, with other aspects also to be undertaken electronically (such as the giving of notices).

Clause 15 Section 13 replaced

Clause 15 deletes the current section 13 – *Intended issue of negative notice, CEO to notify applicant of etc; interim negative notices, issue of* and inserts in its place, new section 13, which requires the giving of notice of the intention to issue a negative notice and invite a submission and new section 13AA giving power to issue an interim negative notice.

Presently, an interim negative notice cannot be issued independently of the requirement to give written notice advising of the proposal or requirement to issue a negative notice. This amendment is intended to separate the written notice informing the person of the proposal to issue a negative notice and inviting them to make a submission, from the circumstances in which an interim negative notice may or must be issued.

Section 13 CEO to give notice of intention to issue negative notice

New section 13 largely replicates the current section 13 regarding the disclosing of adverse information to an applicant and inviting of a submission within a reasonable time, and circumstances in which a submission is limited where an automatic negative notice is required to be issued. This amendment modifies section 13 to capture the introduction of conduct review findings or outcomes as triggers for an assessment or reassessment and pending charges for Class 1 offences allegedly committed when an adult, resulting in the automatic issue of a negative notice.

New section 13(1) provides that where the CEO proposes or is required to decide an application under section 12 by issuing a negative notice to the applicant the CEO, is required to give the applicant written notice which:

- informs the applicant of the proposed decision;

- states the information about the applicant's criminal record and any conduct review finding or outcome as a result of a notice under section 17A(3) of which the CEO is aware; and
- invites the applicant to make a submission to the CEO, within a specified time, about their criminal record and their suitability to be issued with an assessment notice.

New section 13(3) provides that the CEO must allow a reasonable time for the applicant to make their submission, and in any case, this must be at least 28 days from the date of the notice.

New section 13(2) provides that where the CEO is aware that an applicant's criminal record includes a conviction or pending charge for a Class 1 offence, committed, or allegedly committed when an adult, the applicant is only permitted to make a submission if they reasonably believe that their record does not include that conviction or pending charge. This may either be because:

- the offence on the person's criminal record does not constitute a conviction or pending charge for a "Class 1 offence" as that term is defined following commencement of the Bill; or
- there has been a mistake of identity (for example, it relates to another person with the same name).

New section 13(4) provides that new section 13(2) does not apply to a person who has been granted a pardon in relation to a Class 1 offence. This amendment is intended to reflect amendments to other parts of the Act, which give discretion to the CEO to conduct an assessment or reassessment where a pardon has been granted in respect of a Class 1 offence.

New section 13(5) provides that if the applicant makes a submission within the specified time, the CEO must consider that submission before making a final decision on the application.

Section 13AA Interim negative notices

New section 13AA(1) provides that the CEO may issue an interim negative notice to a person if the CEO:

- has received an application for an assessment notice and the application is pending;
- has decided to act by making a decision under section 12 where a notice of a conduct review finding or outcome has been received, or information or a notice has been received under section 17 (this is specific to a person who has a current assessment notice);
- is acting under section 20, because of wrong or incomplete information and the correct notice that would be substituted is a negative notice (this is specific to a person who has a current assessment notice);
- is given a notice of a relevant change in a person's criminal record (charge or conviction for a Class 1 or Class 2 offence) that the CEO must treat as an application by the person for an assessment notice (can include a person with a current assessment notice).

This amendment is intended to provide clarity as to when the power to issue an interim negative notice can be exercised.

New section 13AA(2) provides that the CEO may issue an interim negative notice if the CEO is of the opinion that there is a reasonable likelihood that the circumstances will result in a negative notice being issued to the person.

New section 13AA(3) provides that the CEO must issue an interim negative notice to a person if the CEO is aware the person has a conviction (other than where the person has received a pardon for that offence) or pending charge for a Class 1 offence committed or allegedly committed when an adult. This new subsection extends the current requirement to issue an interim negative notice to a person with a conviction for a Class 1 offence committed when an adult, by also capturing persons with a pending charge for a Class 1 offence allegedly committed when an adult. It also carves out those persons who have been issued a pardon for a Class 1 offence. Both changes are consistent with the treatment of pardons and pending charges for Class 1 offences in other parts of the Act.

New section 13AA(4) provides that where the CEO issues an interim negative notice to a person, and the CEO is aware that the person is or proposes to be employed in child-related employment by another person, the CEO must give a copy of the interim negative notice to the other person. This amendment restates the current requirement to give a copy of an interim negative notice to a child-related employer.

New section 13AA(5) provides that an interim negative notice has effect until an assessment notice or negative notice is issued to a person. This is consistent with section 21 of the Act that provides that an assessment notice or negative notice cancels an interim negative notice.

Clause 16 Section 17 amended

Clause 16 amends section 17 of the Act – *CEO may require certain people to apply for assessment notice*.

Currently, section 17 is limited in authorising only WA Police to give notice to the CEO of a charge or conviction and for the CEO to act on notices and information received from WA Police.

Clause 16 inserts a new section 17(1A) to insert the definitions of:

- ***designated authority*** which means the WA Police Commissioner; a department of the Public Service; a body or holder of an office, post or position established, constituted or continued for a public purpose under a written law which performs a statutory function on behalf of the State under that written law; and any person or body or class of person or body prescribed by regulation; and
- ***designated information*** means information given to the CEO by the Commissioner of the Australian Federal Police or the Commissioner of the police force of another jurisdiction or any person or body or class of person or body prescribed by regulation.

This amendment expands the types of entities from whom notices can be received and to enable the CEO to act on such notices and information that may be received from police from any other jurisdiction. If the CEO is satisfied of the criteria in

section 17(3), this may result in the CEO requesting a person to apply for an assessment notice if in child-related work without a current assessment notice or if the person holds a current assessment notice, the CEO may proceed to make a decision under section 12.

Clause 16 amends section 17(1) by deleting “the Commissioner” and inserting “a designated authority”. This amendment establishes that persons or bodies, not just the Commissioner, may give notice to the CEO.

Clause 16 also amends section 17(1) to expand on the types of information that can be provided to the CEO pursuant to a notice to include:

- not just a person’s name but also any former name or alias;
- the person’s address and other contact details;
- without limiting the details of the offence to be provided, whether the victim of the offence was a child at the time when the offence or alleged offence was committed or allegedly committed and if so, the age of the victim; and
- any other information that the designated authority thinks fit.

The amendment is intended to assist in identifying a person for the purposes of the request for a criminal record check, aid in circumstances where a notice to apply is to be sent to a person and initial classification of an offence.

Clause 16 amends section 17(2) by deleting “the Commissioner” and inserting “a designated authority”. This amendment clarifies that a designated authority may give notice despite another Act or law.

Clause 16 amends section 17(3) by deleting “or information under section 34” and inserting “information under section 33A or 34 or designated information”. Currently, the CEO must be satisfied there are reasonable grounds for believing that a person in respect of whom notice has been given under section 17(1) or information under section 34, carries out child-related work or has an assessment notice, and the charge or conviction makes it inappropriate for the person to continue to carry out child-related work or hold an assessment notice, before the CEO may require a person to apply for an assessment notice or make a decision under section 12.

The amendment expands the information that may inform the CEO’s satisfaction of the criteria in section 17(3) to include information received under the new section 33A, for ongoing monitoring of criminal records of person in WA, and information received from police in any jurisdiction.

Clause 16 also amends section 17(3)(b) by deleting “offence, being a charge or conviction of which the CEO was not previously aware, and the charge or conviction makes” and inserting “offence that may make”.

Clause 16 inserts new section 17(3A). This amendment is intended to ensure that the CEO may not proceed to act under section 17(3) regarding information about a conviction or charge if the CEO was previously aware of that charge or conviction and despite that knowledge issued an assessment notice under sections 12(5) or (6).

Clause 17 Sections 17A to 17C inserted

Clause 17 inserts new sections 17A, 17B and 17C.

The new sections 17A, 17B and 17C establish a structure for the giving and receipt of notices from a conduct review authority of conduct review findings or outcomes, actions to be taken on those notices and for obtaining further information about the conduct review finding or outcome when conducting an assessment or reassessment.

Section 17A Provision of information by conduct review authority

Section 17A(1) defines a **designated conduct review authority**. The intention of this subsection is to connect certain conduct review authorities with the conduct review finding or outcome for which they may give notice to the CEO. The intention is to initially prescribe:

- the Teacher Registration Board of Western Australia and outcomes such as the cancellation or suspension of teacher registration under the *Teacher Registration Act 2012*, and
- the Parliamentary Commissioner and findings of relevant reportable conduct subject to the commencement of the Reportable Conduct Scheme.

Section 17A(2) provides that the section applies if the person is, or has been, the subject of a conduct review finding or outcome and the conduct review authority designated for that conduct review finding or outcome, knows or reasonably believes the finding or outcome is relevant to the performance of a function of the CEO under the Act.

Section 17A(3) sets out the information that may be included in the notice to the CEO. The information to be included in the notice is similar to the information to be provided in a notice under section 17(1).

Section 17A(4) provides that if notice has been given to the CEO of a conduct review finding or outcome and subsequently that finding or outcome is quashed, set aside or withdrawn expressly or impliedly, or found to be unsubstantiated or incorrect, the conduct review authority must give the CEO notice of this change in circumstances. The intention is for the CEO to have the most up to date information if the CEO acts, or may act on, a notice and to verify an application to cancel a negative notice earlier than three years, if the negative notice was issued on the basis of a conduct review finding or outcome which has been subsequently quashed, set aside or withdrawn expressly or impliedly, or found to be unsubstantiated or incorrect.

Section 17A(5) provides that a conduct review authority may give notice of a conduct review finding or outcome or notice that the finding or outcome is quashed, set aside or withdrawn expressly or impliedly, or found to be unsubstantiated or incorrect, despite another Act or law.

Sections 17A(6) and (7) provide that the CEO may request further information from a conduct review authority about a notice given to the CEO that is reasonably required, and the conduct review authority is authorised to disclose this information. Circumstances may arise where there is information not included in the notice required to assist the CEO form the satisfaction in section 17B(1).

Section 17A(8) clarifies that information given by a conduct review authority may be given about a conduct review finding or outcome made before it was prescribed or before the conduct review authority was prescribed. It is intended to permit conduct review authorities to give notices about findings or outcomes made before the

commencement of the Amendment Act and , if a finding or outcome or conduct review authority are prescribed in the future, before their prescribing.

Section 17A(9) provides that the section does not limit the powers of the CEO to request or obtain information under another provision of the Act.

Section 17B Action based on information received in relation to conduct review finding or outcome

Sections 17B(1) and (2) are similar in structure to section 17(3). Subsection (1) requires the CEO to be satisfied on the basis of a notice given under section 17A that there are reasonable grounds for believing the person to whom the notice relates:

- carries out child-related work or has a current assessment notice; and
- is or has been the subject of a conduct review finding or outcome that may make it inappropriate for the person to continue to carry out child-related work or have an assessment notice.

Subsection (2) provides that if the CEO is so satisfied, the CEO may require a person to apply for an assessment notice if they do not have one or make a decision under section 12 if the person has a current assessment notice.

Subsections (3) and (4) are equivalent to sections 17(4) and (5) and sections 16(5) and (6) making it an offence for a person to not comply with a request to apply for an assessment notice and providing a defence.

Section 17C CEO may obtain further information about conduct review finding or outcome

Section 17C empowers the CEO to seek further information from the conduct review authority or a related authority about a conduct review finding or outcome for which notice has been received where an assessment or reassessment are being conducted, or there are review or appeal proceedings. The intention is to enable the CEO to request all information relevant to determining the ultimate question of whether, on all of the information and other material properly before the decision-maker, there is an unacceptable risk that the person might in the future cause sexual or physical harm to children in the course of carrying out child-related work.

Section 17C(1) defines the term **related authority** to mean a person or body (other than a conduct review authority) who made a finding, determination or decision that resulted in, led to, or comprised the conduct review finding or outcome, or a person or body or class of persons or bodies prescribed in the Regulations that has been involved in any step or process connected, or otherwise related to, the conduct review finding or outcome. While it is the intention to prescribe the Parliamentary Commissioner in connection with findings of relevant reportable conduct, relevant entities to whom the reportable conduct scheme will apply, and who will handle and investigate reportable conduct may hold information relevant to the conduct review finding or outcome.

Section 17C(2) provides that this section applies to a person:

- who has a current assessment notice;
- has applied for an assessment notice or to cancel a negative notice;

- in relation to whom the CEO has decided to act where a notice of a conduct review finding or outcome has been received or information or a notice has been received under section 17;
- in relation to whom the CEO is acting under section 20, because of wrong or incomplete information;
- who has given notice of a relevant change in their criminal record (charge or conviction for a Class 1 or Class 2 offence) that the CEO must treat as an application by the person for an assessment notice; or
- who has applied to the State Administrative Tribunal for review of the CEO's decision or is the subject of an appeal from a decision of the Tribunal.

Section 17C(3) provides that the CEO may request any information from the conduct review authority that gave the notice under section 17A, or a related authority, that is in its possession and is connected with or otherwise related to the conduct review finding or outcome. Section 17C(4) provides that the conduct review authority or related authority is authorised to disclose the information requested by the CEO.

Section 17C(5) provides that the section does not limit the powers of the CEO to request or obtain information under another provision of the Act.

Clause 18 Section 18 amended

Clause 18 amends section 18 – *CEO may issue negative notice if notice issued under s. 16 or 17 not obeyed*.

Clause 18 amends section 18(1) by deleting “section 16(3) or 17(3)(c)” and inserting “section 16(3), 17(3)(c) and 17B(2)(a)”. This amendment is intended to reflect amendments to other parts of the Act as a result of the introduction of notices from conduct review authorities of conduct review findings or outcomes.

Clause 19 Section 19 amended

Clause 19 amends section 19 – *Negative notice, application for cancellation of*.

Clause 19 amends section 19(2)(b) by deleting “the most recent previous application” and inserting “the date of the CEO's notice under subsection (10); or”. The amendment clarifies that a person who has previously applied to cancel their negative notice cannot apply sooner than three years from the date of the CEO's notice of the decision refusing that application.

Clause 19 inserts a new section 19(2)(c) to provide that a person who applied to the State Administrative Tribunal to review the CEO's decision and was unsuccessful, cannot apply to cancel their negative notice sooner than three years after the date of the Tribunal's decision. The amendment is intended to remedy potential situations where an applicant may apply to the CEO to cancel a negative notice within a very short period of time following proceedings ultimately affirming the CEO's decision.

Section 19(3) provides for the circumstances when a person may apply sooner than three years to cancel their negative notice. Clause 19 amends section 19(3) as follows:

- amendments to paragraphs (a) and (b) by deleting “or the previous application was made,” and inserting “the previous application was made, or the CEO's

decision was affirmed,” consistent with the amendments made to subsection (2);

- inserting new paragraph (ba) to include a person who is granted a pardon for a conviction for a Class 1 offence when the negative notice was issued, the previous application made or the CEO’s decision affirmed, consistent with the amendments to section 12(3) regarding the granting of a pardon for a Class 1 offence;
- inserting new paragraph (d) to include a person the subject of a notice given under section 17A(3) which was taken into account when the negative notice was issued, the previous application made or the CEO’s decision affirmed, and the conduct review finding or outcome is later quashed, set aside or withdrawn expressly or impliedly, or found to be unsubstantiated or incorrect, consistent with the amendments to section 12(3) regarding conduct review findings or outcomes.

Clause 19 inserts new section 19(4A) to provide that section 19(3)(d) does not apply if the conduct review finding or outcome is replaced by another conduct review finding or outcome. The amendment is intended to ensure that a right to apply to cancel a negative notice is not triggered where, despite a change in the initial finding or outcome, the person remains the subject of a prescribed conduct review finding or outcome. For example, where the outcome has changed from cancellation of registration to suspension of registration and both outcomes are prescribed.

Clause 20 Section 21A amended

Clause 20 amends section 21A of the Act – *Assessment notices of certain people not involved in child-related work, cancellation of*.

Clause 20 amends section 21A(1) by inserting “or 17A(3)”. This amendment is intended to reflect the amendment to introduce conduct review findings or outcomes as a trigger for an assessment or reassessment, so a current assessment notice is cancelled if written notice is given by the person that they are no longer employed in child-related employment or carrying out a child-related business where a notice is given by a conduct review authority.

Clause 20 amends section 21A(2) by inserting “or 17B(2)(b)”. This amendment is intended to reflect the amendment to introduce conduct review findings or outcomes as a trigger for an assessment or reassessment, so where the CEO is proceeding to make a decision under section 12 and notice is given by the person they no longer are employed in child-related employment or carrying out a child-related business, the CEO may cancel the persons assessment notice and not make a decision under section 12.

Clause 21 Section 21C amended

Clause 21 amends section 21C of the Act – *Assessment notices of certain people to whom s. 32 applies, cancellation of*.

Clause 21 deletes “he or she” in section 21C(1)(b) and inserts “the person”. This reflects a change in drafting practice and is gender-free.

Clause 21 also amends section 21C(1)(b) by deleting “work” in reference to “child-related work” and inserting “employment”. The reference to employed in child-related work in section 21C(1)(b) is inconsistent with the terminology used throughout the Act. This amendment is intended to clarify that reference to employed is to child-related employment as that term is defined in section 4 of the Act.

Clause 22 Section 25 amended

Clause 22 amends section 25 of the Act – *Defences for s. 24*.

Section 25(1) provides a defence to being employed in child-related employment or carrying on a child-related business without a current assessment notice if the person has a pending application for an assessment notice. However, by reason of section 25(2) this defence does not apply to a person convicted of a Class 1 offence committed when an adult.

Clause 22 replaces section 25(2) to maintain the current exception to the defence in subsection (1), and to provide:

- the defence in subsection (1) is also not to apply to a person with pending charge for a Class 1 offence committed when an adult, consistent with how pending charges for Class 1 offences are being addressed in other parts of the Bill;
- a qualification to the exception to the defence, so persons with a conviction for a Class 1 offence for which a pardon has been granted can access the defence in subsection (1), consistent with how persons granted a pardon for a Class 1 offence are being addressed in other parts of the Bill.

Section 25(3) provides a defence to being employed in child-related employment or carrying on a child-related business without a current assessment notice if the person can prove they did so on no more than 5 days during the calendar year.

Clause 22 amends section 25(4) to provide that the defence in subsection (3) will also not apply to a person with a pending charge for a Class 1 offence allegedly committed when an adult. The intention of the amendment is to ensure consistency with how pending charges for Class 1 offences are being addressed in other parts of the Bill.

Clause 22 amends section 25(6)(a) to provide that the 5 day defence in subsection (3) also does not apply to persons who are required by the CEO to apply for an assessment notice after receiving a notice under the new section 17A and subsequently withdraw their application. The amendment is intended to ensure consistency regarding persons who are requested to apply for an assessment notice under the Act.

Clause 23 Section 26 amended

Clause 23 amends section 26 of the Act – *Reviewable decisions*.

Clause 23 amends sections 26(3A) and (3B)(b) to replace the reference to section 13(1)(a)(ii) and (iii) which is to be repealed and insert reference to the new section 13(1)(c) being inserted by the Bill.

Clause 23 inserts new section 26(4) to provide that if an assessment notice is issued pursuant to an order of the State Administrative Tribunal it has effect from the date of

the Tribunal's decision and does not affect the operation of any provision of the Act as it applies before the date of the Tribunal's decision.

Section 29(5) of the *State Administrative Tribunal Act 2004* provides that when the Tribunal affirms, varies, or substitutes the CEO's decision, this reviewed decision is regarded and given effect as a decision of the CEO. The reviewed decision has effect from the time of the original CEO's decision unless the Act states or the Tribunal orders otherwise. This amendment is intended to remedy potential situations where an applicant may be required to apply for a further assessment notice within a very short period of time following legal proceedings (including appeals) notwithstanding those proceedings determined that the applicant should have been issued an assessment notice.

Clause 24 Section 29 amended

Clause 24 amends section 29 of the Act – *People employed in child-related employment to notify CEO of relevant change in criminal record*.

Clause 24 deletes the penalty provision in section 29(2). The penalty is not applicable to the current wording in section 29(2).

Clause 25 Section 32A amended

Clause 25 amends section 32A of the Act – *Certain applicants for assessment notice to notify proposed employer of relevant change in criminal record*.

Clause 25 amends section 32A(b) by deleting “he or she” and inserting “the person”. This reflects a change in drafting practice and is gender-free.

Clause 25 amends section 32A as follows:

- by deleting “If a person who has had his or her assessment notice cancelled (the **cancelled assessment notice**) under section 31(5) – ” and inserting “If”
- in paragraph (a) by inserting “a person whose assessment notice has been cancelled (the **cancelled assessment notice**) under section 31(5)”.

This amendment reflects current drafting practice.

Clause 26 Section 33 replaced

Clause 26 replaces section 33 of the Act – *People convicted of Class 1 offence not to start or continue child-related work*.

Section 33 provides that it is an offence for a person to be employed in child-related employment or carrying out a child-related business if the relevant change in a person's criminal record is that the person is charged with or convicted of a Class 1 offence (committed or allegedly committed when an adult). The penalty remains imprisonment for 5 years and a fine of \$60,000.

The replaced section is intended to ensure consistency in the treatment of persons with a conviction or pending charge for a Class 1 offence committed or allegedly committed when an adult which are addressed in other parts of the Bill.

Clause 27 Part 3 Division 1A inserted

Clause 27 inserts new Division 1A – *Designated changes in criminal record* as well as a new section 33A – *Commissioner may give information about change in criminal record*.

The intention of the amendment is to introduce a new process for ongoing monitoring of criminal records of persons with pending applications and current assessment notices. The current process, supported by section 34 of the Act, is not sustainable and relies on requests from the CEO to WA Police. The new process for ongoing monitoring of criminal records in WA, supported principally by new section 33A and also by section 34I, will be more proactive and timely in the advising of new charges or convictions and is expected to reduce costs and streamline efficiencies for both Communities and WA Police.

Section 33A Commissioner may give information about change in criminal record

Clause 27 inserts new section 33A – *Commissioner may give information about change in criminal record*.

Section 33A(1) provides that the section applies to a person:

- with a current assessment notice;
- who has applied for an assessment notice or to cancel a negative notice and the application is pending;
- in relation to whom the CEO has decided to act where a notice of a conduct review finding or outcome has been received or information or a notice has been received under section 17;
- in relation to whom the CEO is acting under section 20, because of wrong or incomplete information;
- who has given notice of a relevant change in their criminal record (charge or conviction for a Class 1 or Class 2 offence) that the CEO must treat as an application by the person for an assessment notice.

The intention is that a person is to continue to be subject to ongoing monitoring of their criminal record for changes in their criminal record in WA while a person has any pending application or for the duration of the assessment notice issued to the person, including where they are being reassessed and may be issued with an interim negative notice.

Section 33A(2) provides that there is a ***designated change*** in a person's criminal record if:

- the person is charged with or convicted of an offence;
- the person becomes subject of a non-conviction charge; or
- there is a change in any other information mentioned in the person's criminal record.

Section 33A(3) provides that the Commissioner may give the CEO the following information in connection with a designated change in the person's criminal record:

- details of the change in the person's criminal record;
- information that is connected with, or otherwise related to, the change in the person's criminal record;
- any other information the Commissioner thinks fit.

The giving of this information to the CEO will allow:

- it to be considered and further information sought where there is a pending application, or
- the CEO to proceed to make a decision under section 12 if satisfied of the criteria in section 17(3).

Section 33A(4) provides that the CEO may give the Commissioner any information that is reasonably required in connection with the exercise of the Commissioner's powers under the section. To facilitate the Commissioner giving information about changes in the criminal records of persons, the CEO will need to disclose information about applicants and persons with a current assessment notice. This will also permit disclosure of the details of persons to be removed from the ongoing monitoring process, for example, if a person withdraws their application for an assessment notice.

Section 33A(5) provides that the section does not limit the powers of the Commissioner to disclose information under another provision of this Act or any other Act.

Clause 28 Section 34 amended

Clause 28 amends section 34 of the Act – *CEO may carry out criminal record check*.

Clause 28 amends section 34(1) by deleting the definitions of **authorised person** and **criminal records agency** and inserting a new definition for the term **DPP**.

The term **criminal records agency** has been relocated to section 4 and amended to include the Commissioner of WA Police.

The term **authorised person** has been removed, as a consequence of:

- the Commissioner of Police being included in the definition of **criminal records agency**;
- the requesting of information from the Chief Executive Officer of the Department of Justice addressed in new sections 34A and 34C; and
- introducing a definition of **DPP** to capture the WA Director of Public Prosecutions as well as equivalents in another jurisdiction.

Clause 28 amends section 34(2) to insert additional circumstances when requests for a criminal record check and information relating to a conviction or charge may be made. The following amendments are proposed:

- Relocating current paragraph (d) to new paragraph (g) for drafting purposes to reflect the sequence of where the relevant section appears in the Act.
- Inserting new paragraph (d) to capture a person in relation to whom the CEO has decided to act where a notice of a conduct review finding or outcome has been received or information or a notice has been received under section 17.

- Inserting new paragraph (e) to capture a person in relation to whom the CEO is acting under section 20 because of wrong or incomplete information.
- Inserting new paragraph (f) to capture a person who has applied to the State Administrative Tribunal under section 26 for a review of the CEO's decision or a person who is the subject of an appeal from review proceedings.

The amendments to insert new paragraphs (d) and (e) are intended to ensure consistency with other proposed amendments and provides certainty that a criminal record check and information about a charge or conviction may be obtained where a person who has a current assessment notice is being reassessed. The amendment to insert new paragraph (f) is intended to provide clear authority to request a criminal record check and information about a conviction or charge when there are review or appeal proceedings, as required. A copy of an applicant's most recent criminal record and information about a charge or conviction is vital to child protection considerations.

Clause 28 amends section 34(3) by deleting "the Commissioner or a criminal records agency for information or access to the respective records of the Commissioner or" and inserting "a criminal records agency for information or access to the records of". This amendment is intended to reflect the amended definition of **criminal records agency** which includes reference to the Commissioner.

Clause 28 amends section 34(4) by deleting "an authorised person or a criminal records agency for information about the circumstances of" and inserting "a criminal records agency or the DPP for any information relating to the person in their possession that is connected with, or otherwise related to,". This amendment is intended to:

- reflect the amended definition of **criminal records agency** which includes reference to the Commissioner and the new definition of **DPP**;
- broaden the information that may be disclosed regarding a charge or conviction.

Clause 28 deletes section 34(5) and replaces with new sections 34(5) and (6).

Clause 29 Parts 3A and 3B inserted

Clause 29 inserts a new Part 3A – *Information gathering and sharing* and Part 3B – *Compliance and enforcement to the Act*.

Part 3A – Information gathering and sharing

Part 3A consists of new sections 34A to 34I and all introduce provisions to create new powers or strengthen existing powers for information gathering and sharing. Information gathering and sharing is essential to child protection and risk prevention.

Section 34A General power to obtain, use and disclose information

Clause 29 creates a new section 34A of the Act and sets out provisions for the requesting, use and disclosure of information essential to assessments conducted under the Act.

Section 34A(1) inserts definitions for the purposes of the section. The definitions of **CEO (Education)** and **CEO (Health)** are intended to capture the Departments of

Education and Health respectively for the compelling of information under subsection (3). The definition of **relevant information** is intended to be a broad definition to capture an extensive range of information that is essential to the conducting of an assessment or review proceedings, and relevant to the assessment of risk or mitigation of identified risk.

Sections 34A(2) and (3) provide that the CEO may request relevant information for a WWC purpose from any person or body that in the opinion of the CEO may possess relevant information and a person or body in the State is authorised to disclose requested relevant information. The subsections are intended to allow the requesting and disclosure of information that may be held by a range of persons or bodies, such as Government Departments, public authorities, other agencies, non-government agencies and employers, who will hold information relevant to an assessment of risk or mitigation of that risk.

Section 34A(4) provides that the CEO (Education), CEO (Health) and health service provider (as defined in section 6 of the *Health Services Act 2016*) must comply with a request for relevant information made by the CEO under subsection (2). There was consultation with the Departments of Education and Health that informed this compulsion power.

Section 34A(5) provides that the CEO may use relevant information obtained from any source for a WWC purpose. This is intended to support the various function including the need to establish a person's identity, deciding an application under any relevant provision of the Act, ongoing monitoring of a person's criminal record and in connection with any matter before the Tribunal or Courts.

Section 34A(6) provides that the CEO can disclose relevant information for a WWC purpose to either a government agency or a criminal records agency. This is intended to support such processes as:

- requirements to confirm a person's identity where there may be a mistake in a person's criminal record, or
- verifying identity documents issued by other government departments.

While the law as interpreted by the courts provides that the CEO may properly consider any information relevant to the analysis of risk of harm to children (including mitigation of that risk) under section 12, once an assessment or reassessment is triggered, it does not provide sufficient support for persons to provide it. The section is intended to provide the CEO with an express, broad power to obtain information relevant to the assessment of applications under Part 2 of the Act and review proceedings, to overcome obstacles to evidence based decision-making and effective child protection.

Section 34B Disclosure of information to employer or proposed employer

Clause 29 creates a new section 34B of the Act and sets out provisions for the disclosure of information to an employer or proposed employer of a person in child-related employment.

Section 34B(1) provides that the CEO may disclose information to an employer or proposed employer of a person who has applied for or has an assessment notice. The following information may be disclosed:

- information is relevant to the identity of the person;

- information relevant to the employer or proposed employer verifying the person's child-related employment;
- any other information prescribed by the Regulations.

Section 34B(2) provides that the section does not limit the powers of the CEO to disclose information under another provision of the Act.

Section 34C Power to require reports from CEO (Justice)

Clause 29 creates a new section 34C of the Act and sets out provisions to compel "prescribed reports" from the CEO of the Department of Justice. This provision is similar to section 24A of the *Children and Community Services Act 2004* and section 39 of the *National Disability Insurance Scheme (Worker Screening) Act 2020*.

Section 34C(1) defines the term **prescribed reports**. The types of reports captured by this section are, by their nature, likely to contain very sensitive and confidential material and are often subject to prohibitions or restrictions on their disclosure. However, the information contained in prescribed reports will likely be highly relevant to the assessment of risk required to be undertaken under the Act including the mitigation of that risk.

Sections 34C(2), (3), (4) and (5) provide that:

- the CEO may request by written notice, a copy of a prescribed report from the CEO of the Department of Justice for a WWC purpose;
- the request may only relate to a report about an offender or alleged offender; and
- the CEO of the Department of Justice must comply with a request within a reasonable period after the request is received and is authorised to provide the requested report.

Section 34C(6) provides that this section does not limit the operation of section 34A. The Department of Justice may hold other information relevant to an assessment of risk that is not captured by the definition of **prescribed report** and such information will be requested by the CEO under section 34A.

Section 34D Exchange of information with corresponding authorities

Clause 29 creates a new section 34D of the Act and sets out provisions for the disclosing and requesting of information from a corresponding authority.

Section 34D is replacing the current section 37 in the Act. Principally, it is moving the section into Part 3A so that all information sharing and gathering provisions for assessments and reassessments are in the one Part. The definition of **corresponding authority** has been relocated to section 4.

Section 34D(1) provides that the CEO may disclose any information obtained or created under the Act to a corresponding authority, provided that information:

- relates to a person's criminal record;
- relates to a conduct review finding or outcome;
- relates to an application made by a person under the Act;

- relates to a decision to issue an assessment notice, a further assessment notice a negative notice or interim negative notice; or
- is otherwise relevant to the performance of a function of the corresponding authority where the performance of that function substantially corresponds to a function of the CEO under the Act.

Section 34D(2) provides that the CEO may request from a corresponding authority information that substantially corresponds to that which the CEO is able to disclose under section 34D(1).

The current section 37 already permits the CEO to request and disclose information to a corresponding authority, being equivalent WWC Screening Units in another jurisdiction. The new section 34D retains the power set out in current section 37 while providing greater certainty as to the information that may be shared. This section will continue to be integral to achieving national consistency and is consistent with provisions in, or proposed amendments to, equivalent WWC legislation in other jurisdictions.

Section 34E Exchange of information under the *National Disability Insurance Scheme (Worker Screening) Act 2020*

Clause 29 creates a new section 34E of the Act and sets out provisions for the disclosing and requesting of information from the CEO acting under the *National Disability Insurance Scheme (Worker Screening) Act 2020* and interstate screening agencies.

Section 34E is replacing the current section 37A in the Act. Principally, it is moving the section into Part 3A so that all information sharing and gathering provisions for assessments and reassessments are in the one Part.

Section 34E(2) provides that the power the CEO may disclose any information obtained or created under the Act to the CEO acting under the *National Disability Insurance Scheme (Worker Screening) Act 2020* (**CEO (NDIS)**) or an equivalent NDIS screening unit in another jurisdiction (**interstate screening agency**), provided that information:

- relates to a person's criminal record;
- relates to a conduct review finding or outcome;
- relates to an application made by a person under the Act;
- relates to a decision to issue an assessment notice, a further assessment notice a negative notice or interim negative notice; or
- is otherwise relevant to the performance of a function of the CEO (NDIS) or an interstate screening agency.

Section 34E(3) provides that the CEO may request from the CEO (NDIS) or an interstate screening agency, information that substantially corresponds to that which the CEO is able to disclose under section 34E(1).

Section 34E(4) provides that the CEO cannot disclose a **prescribed report** obtained from the Department of Justice under new section 34C to the CEO (NDIS) or an interstate screening agency without the approval of the CEO of the Department of

Justice. This is consistent with a similar requirement in section 34(6) of the *National Disability Insurance Scheme (Worker Screening) Act 2020*.

The current section 37A currently permits the CEO to request and disclose information to the CEO (NDIS) and an interstate screening agency. The new section 34E retains the power in current section 37A while providing greater certainty as to the information that may be shared, including the new compulsion power to obtain prescribed reports.

Section 34F Disclosure of information to authorised entities

Clause 29 creates a new section 34F of the Act and sets out provisions for the disclosing of specified outcomes to a public authority prescribed in the Regulations and a criminal records agency.

Section 34F is replacing the current section 38 in the Act. Principally, it is moving the section into Part 3A so that all information sharing provisions are in the one part.

Section 34F(1) inserts a definition of **authorised entity** to mean a public authority, as that term is defined in section 4 of the Act, which is prescribed in the Regulations and criminal records agencies.

Section 34F(2) will continue to permit the CEO to disclose specified information, listed in the subsection, to an authorised entity if the CEO considers it in the public interest to do so.

Section 34F(3) and (4) provide respectively that:

- if a notice is given to an authorised entity under subsection (2) about a person and an assessment notice is subsequently issued to the person, the CEO must give notice of the issuing of the assessment notice to the authorised entity;
- if a notice is given to an authorised entity under subsection (2)(d) about a person and the negative notice is subsequently cancelled without an assessment notice issuing, the CEO must give notice of the cancellation of the negative notice to the authorised entity.

These subsections retain and expand on the equivalent requirements contained in current section 38(4).

The intention of this section is to:

- expand the scope of the information which the CEO may disclose to include the cancellation of assessment notices under sections 21A and 21C;
- simplify the sections operation in relation to education and care services by not including the definition of **Department** in section 38(1) and not replicating the current section 38(3);
- continue to capture the current bodies prescribed in the Regulations but expand the bodies to whom information may be disclosed to ensure entities established under the *Health Practitioner Regulation National Law (Western Australia)* and police in other jurisdictions may also be given notices under the section;
- rely on the new information sharing powers in Part 3B for compliance purposes removing the need to replicate section 38(5) to provide employment details to WA Police.

The intention of the section, like the current section 38, is to improve the protection of children from persons who may pose a risk to them. It may be appropriate, in particular cases, for this power to be used to provide such information to a public authority prescribed in the Regulations which is responsible for ensuring standards, licensing or registration of people working in sectors which work with children.

Section 34G Disclosure of information to Australian Crime Commission

Clause 29 creates a new section 34G of the Act and sets out provisions for the disclosing of information for the purposes of inserting interim negative notice and negative notice on the Working with Children National Referencing System.

The Australian Criminal Intelligence Commission (ACIC) has established and maintains the Working with Children National Referencing System which holds negative outcomes for Working with Children Schemes nationally.

Section 34G(2) provides that the CEO may disclose to ACIC, the following information for inclusion on the Working with Children National Referencing System:

- That a negative notice or interim negative notice has been issued.
- Any other information relating to the negative notice or interim negative notice prescribed in the Regulations.
- The name, address, date of birth and any other identifying information the CEO considers relevant, in relation to the person the subject of the disclosure.

Sections 34G(3) and (4) provide respectively that:

- if information is disclosed that a negative notice or interim negative notice has been issued and is subsequently cancelled, the CEO must provide information to the ACIC about that cancellation; and
- if other information disclosed to the ACIC is no longer correct or current, the CEO may disclose new or revised information to the ACIC.

Section 34H Disclosure of information relevant to protection of children or other persons

Clause 29 creates a new section 34H of the Act and sets out provisions for the disclosing of information to a prescribed authority relevant to the protection of children and other persons.

Section 34H introduces a new power for the CEO to disclose certain information to:

- a public authority;
- the CEO acting under the *Children and Community Services Act 2004* (**CEO (Children and Community Services)**);
- Commissioner of WA Police;
- Commissioner of the Australian Federal Police;
- Commissioner of the police force in another jurisdiction; and
- external government agencies or any other person or body (or class of person or body) prescribed by the Regulations.

Section 34H(2)(a) and (c) provides that the CEO may disclose to a prescribed authority information obtained or created under the Act that, in the opinion of the CEO, is, or is likely to be, relevant to the wellbeing of a child or a class or group of children or information that is prescribed by the Regulations.

Section 34H(2)(b) provides that the CEO may disclose additional information to the CEO (Children and Community Services) that, in the opinion of the CEO, is, or is likely to be, relevant to:

- the wellbeing of a person who qualifies for assistance under section 96 of the *Children and Community Services Act 2004* – which relates to persons leaving the CEO's care;
- the safety of a person who has been subjected to, or exposed to, family violence;
- the administration of the *Children and Community Services Act 2004*.

Section 34H(3) provides that CEO must obtain the approval of the CEO of the Department of Justice prior to disclosing prescribed reports to a prescribed authority.

The section is intended to provide a broad information sharing power to allow the CEO to act in a timely manner where there is concern for the safety and wellbeing of children or other identified vulnerable cohorts. The CEO must be able to share relevant information, particularly with the CEO (Children and Community Services) and police, where immediate action needs to occur for the protection of those in the care of, or otherwise known to, Communities.

Section 34I Sharing of police information

Clause 29 creates a new section 34I of the Act and sets out provisions for the disclosing of information by the Commissioner of WA Police to the CEO, a corresponding authority, or police in another jurisdiction, of information relating to a person's criminal record or the investigation or circumstances of conduct or alleged conduct.

Section 34I(1) defines a **relevant purpose** to mean a WWC purpose or a purpose that is connected with the operation, administration or compliance with, a corresponding law.

Sections 34I(2) and (3) provides a power to the Commissioner of WA Police to provide information relating to a person's criminal record, a charge or conviction on that record or any investigation into uncharged allegations to the following for a relevant purpose:

- the CEO;
- a corresponding authority;
- Commissioner of the Australian Federal Police;
- Commissioner of the police force in another jurisdiction;
- a person or body established or constituted under a law of another jurisdiction prescribed by the regulations.

The intention of new section 34I is to provide clarity and consistency in provisions for WA Police to disclose criminal record information and investigation or circumstances information to the entities set out in new s.34I.

Part 3B – Compliance and enforcement

Part 3B consists of new sections 34J to 34ZA and are provisions related to compliance with, and enforcement of, the Act and significantly enhance the Act's limited compliance and enforcement power in section 42.

Section 42 is deleted by clause 36, and Part 3B is inserted to increase and broaden the powers for the purpose of determining whether a person has complied with the Act or investigating a suspected offence under the Act.

Divisions 1 to 4 of Part 3B relate to the designation of, and powers available to, authorised officers under the Act.

The powers provided are consistent with those under Part 5 of the *National Disability Insurance Scheme (Worker Screening) Act 2020* and Part 10A in the *Children and Community Services Act 2004*.

The following sections are inserted under Divisions 1 to 4 of Part 3B:

Section 34J – Terms used

Section 34K – Designation of authorised officers

Section 34L – Identity cards

Section 34M – Entry to places

Section 34N – Powers after entering place

Section 34O – Directions to provide information or documents

Section 34P – Additional powers for relevant records

Section 34Q – Offence to contravene direction

Section 34R – Exercise of power may be recorded

Section 34S – Assistance and use of force to exercise power

Section 34T – Procedure for seizing things

Section 34U – Application of Criminal and Found Property Disposal Act 2006

Section 34V – Application of entry warrant

Section 34W – Issue and content of entry warrant

Section 34X – Refusal of entry warrant

Section 34Y – Effect of entry warrant

Division 5 – Additional power to request or provide information

Division 5 of Part 3B inserts information gathering and disclosure powers for compliance and enforcement purposes.

Section 34Z Additional power to request information

Section 34Z(1) defines a ***prescribed entity*** to mean:

- a public authority, a criminal records agency, a corresponding authority (as those terms are defined in section 4); or

- a Commonwealth agency or instrumentality or a person or body or class of person or body prescribed by the regulations.

Section 34Z(2) provides that the CEO may request information from a **prescribed entity** that is relevant to determining whether a person has complied with the Act or the safety of an officer of Communities performing or exercising a power under the Act.

Section 34ZA Provision of information to justice authorities

Section 34ZA(1) defines a **justice authority** for the purposes of disclosing information under this section and means:

- public authority, government agency, a criminal records agency, corresponding authority (as those terms are defined in section 4);
- a person or body that performs a function connection with the administration or operation of a law in WA or another jurisdiction that imposes a penalty or sanction; or
- a person or body or class of person or body, prescribed by the Regulations.

Section 34ZA(2) provides that the CEO may give notice to a **justice authority** in relation to a particular person if the CEO considers it relevant to determining or ensuring compliance with any law, including the law of another jurisdiction or the investigation of a contravention of any law, including the law of another jurisdiction or any other matter prescribed by the regulations.

Section 34ZA(3) provides that the notice may include:

- contact details, employment details or other identifying information about a person who has made an application under the Act;
- information about the activities of a person in child-related work;
- any other information prescribed by the regulations.

Sufficient flexibility is required to ensure that, should information be identified in the future, this can be prescribed to ensure the timely provision of information to police or other law enforcement bodies for the investigation of compliance with other laws and the protection of children.

Clause 30 Section 35 amended

Clause 30 amends section 35 of the Act – *False or misleading information, offence*.

Clause 30 amends section 35 to insert a new paragraph (ba) so the offence of providing false or misleading information in a material particular is expanded to capture where that information is provided to an authorised officer.

Clause 31 Sections 35A to 35C inserted

Clause 31 inserts new offences into the Act being obstructing and impersonating an authorised officer and a requirement for applicants and persons with a current assessment notice (including where subject to a reassessment) to give notice of a change in personal and child-related work particulars.

Section 35A Obstruction of authorised officer

Section 35A makes it an offence to obstruct or hinder an authorised officer who is performing a function or attempting to perform a function under the Act with the penalty for this offence of 12 months imprisonment and a fine of \$12,000.

The section is intended to provide a deterrent to persons who may seek to obstruct or hinder an authorised officer investigating compliance with the Act or a suspected offence.

Section 35B Impersonation of authorised officer

Section 35B makes it an offence to impersonate an authorised officer with a penalty for this offence of 12 months imprisonment and a fine of \$12,000.

The introduction of Part 3B gives very broad powers of investigation to authorised officers including for the entry of premises and actions that may be taken after entry. The section is intended to deter persons impersonating an authorised officer for the purpose of executing such powers for personal gain or benefit.

Section 35C Change in particulars

Section 35C will create a requirement for all applicants and persons who have a current assessment notice (including where subject to a reassessment) to provide to the CEO, notice of any change in their personal information and when they commence or cease child-related employment or a child-related business. In addition, if the person is a student on placement where child-related work is undertaken as part of their course of study with an education provider, they must also advise of completing or ceasing their relevant course of study or if they change their education provider.

This provision is required to ensure that the CEO has the most up to date information regarding a person's particulars (for example, their current contact details) and their current child-related work (for example, where they have commenced or ceased with a new employer) to ensure notices are sent to the correct contact address and current child-related employer. The notice must be provided to the CEO as soon practicable after the change occurs. The penalty for this offence is a fine of \$5,000.

Clause 32 Section 36 amended

Clause 32 amends section 36 of the Act – *Assessment notice to be returned to CEO in certain cases*.

Clause 32 amends section 36(a) to include an additional circumstance when a person must return an assessment notice issued to the person, being as soon as practicable after the person is charged with a Class 1 offence allegedly committed when an adult.

This amendment is consistent with other amendments to be made to the Act to ensure persons with a conviction or pending charge for a Class 1 offence, committed, or allegedly committed when an adult, are treated the same.

Clause 33 Sections 37, 37A and 38 deleted

Clause 33 deletes the following:

- Section 37 – *Exchange of information with corresponding authorities;*

- Section 37A – *Exchange of information under National Disability Insurance Scheme (Worker Screening) Act 2020*; and
- Section 38 – *Disclosure of information by CEO to certain bodies*.

These sections are deleted as a result of the insertion of new sections 34D, 34E and 34F respectively.

Clause 34 Section 39 amended

Clause 34 amends section 39 of the Act – *Information obtained officially, use and disclosure of*.

Clause 34 amends section 39 of the Act by inserting the words “or created”. This amendment ensures that it is not only information obtained in the course of performing a function under the Act, such as information provided to the CEO by an applicant or third party, but also information created in the course of performing a function under the Act, such as a notice or other correspondence sent to an applicant by the CEO, that must not be disclosed or otherwise made use of other than in the situations identified in section 39(a) to (d).

Clause 34 inserts new section 39(ca) and (cb) to include additional exemptions to allow information that has been obtained or created in the course of performing a function under the Act to be used or disclosed if:

- the information relates to proceedings before a court or tribunal and those proceedings were open to the public; or
- the disclosure or use involves the provision of statistical information that could not reasonably be expected to identify a specific person.

This amendment is intended to allow publication of certain prosecutorial outcomes to improve public awareness, to act as an educational tool and a deterrent and to enable disclosure of statistical information.

Clause 35 Section 39A amended

Clause 35 amends section 39A of the Act – *Ability to provide information and protection from liability*.

Clause 35 amends section 39A by:

- deleting the term **external government agency** from section 39A(1), as this term is now defined in section 4;
- deleting section 39A(2)(c), as information disclosed to the CEO acting under the *National Disability Insurance Scheme (Worker Screening) Act 2020* or to an interstate screening agency is addressed in section 39A(2)(a);
- deleting section 39A(4)(a) as a result of deleting section 37A and introducing new sections 34E and 34H both of which contain provisions requiring approval from the CEO of the Department of Justice before prescribed reports may be shared. This is to ensure that despite section 39A(3) providing that information may be disclosed despite any other enactment, compelled prescribed reports obtained from the Department of Justice cannot be disclosed by the CEO under

sections 34E and 34H, without the approval of the CEO of the Department of Justice.

Clause 36 Section 42 deleted

Clause 36 deletes section 42 of the Act – *CEO may require information to confirm compliance with Act*.

Clause 36 deletes section 42 as a result of the insertion of Part 3B into the Act, which sets out new compliance and enforcement powers.

Clause 37 Section 43A inserted

Clause 37 inserts a new section 43A of the Act – *Protection of legal professional privilege*.

Section 43A clarifies that it is not the intention of the Act to require any party to disclose information that is the subject of legal professional privilege.

Clause 38 Sections 45A to 45D inserted

Clause 38 inserts new sections 45A to 45D into the Act.

Section 45A Delegation by public authority or other body

Section 45A provides that the **chief executive officer** of a **relevant authority** (as those terms are defined in the section), may delegate any power or duty under the Act to an officer or employee of the relevant authority.

This amendment is intended to assist government departments, other agencies and bodies to whom requests for information for assessments are made, to allow timely responses to those requests by permitting chief executive officers to delegate that power or duty to officers to respond to those requests.

Section 45B Commencement of proceedings

Section 45B provides that proceedings under the Act for an offence or in respect of any other matter may be commenced in the name of the CEO, either by the CEO or by a person authorised to do so by the CEO.

The amendment is intended to provide clear authority regarding the commencement of prosecutions rather than relying on section 20(3)(a)(i) of the *Criminal Procedure Act 2004* which provides that a prosecution may be commenced by an authorised person acting in the course of their duties in relation to the offence.

Section 45C Time for commencement of prosecutions

Section 45C of the Act provides that proceedings for an offence under the Act must be commenced:

- within 5 years after the day on which the offence is alleged to have been committed, if the penalty includes a term of imprisonment for 5 years or is an offence against sections 9B(1) or (2), or

- within 2 years after the day on which the offence is alleged to have been committed, in any other case.

Presently, all offences against the Act are simple offences and must be commenced within 12 months after the date on which the offence was allegedly committed pursuant to section 21 of the *Criminal Procedure Act 2004*. The amendment is intended to address the 12 months' timeframe for commencing prosecutions which is too restrictive and limits the ability to adequately investigate alleged breaches, which may involve obtaining witness statements and gathering evidence to support a prima facie case.

Section 45D Service of documents

Section 45D(1) defines the terms **document** to include any written notice or decision under the Act and **give** to include service, send, issue and notify.

Section 45D(2) provides methods for the giving of a document that is required or authorised to be given to a person under the Act. This includes delivering the document personally, leaving at the last known place of residence, sending the document by post, sending the document by email to an email address specified by the person, any method agreed by the person, or any method specified in the regulations.

Section 45D(3) provides that the Regulations may make provision for the time at which a document given by a particular method is taken to have been given.

The amendment is intended to accommodate and provide flexibility for the giving of documents to persons, including electronic options.

Clause 39 Section 46 amended

Clause 39 amends section 46 of the Act – *Regulations*.

Clause 39 amends section 46(2)(a) by inserting “or created” so the Regulations may provide for the receipt and storage of information obtained or created under this Act that relates to a person’s criminal record and the restriction of access to that information.

This amendment is intended to provide clarity regarding the regulation making power and is consistent with other amendments referring to information obtained or created.

Clause 40 Section 47 replaced

Clause 40 replaces section 47 of the Act – *Review of Act*.

Clause 40 deletes the current section 47 which sets out that a review of the Act was to be carried out as soon as practicable after the fifth anniversary of the commencement of that section and replaces it with a new section 47 which sets out that a review of the Act is to occur five years after the commencement of this section and then every five years hence.

The current section 47 commenced in 2004 and, as such, the period for review indicated has already lapsed. The new section 47 will not only ensure that another review will take place within five years after the commencement of the Amendment Act, but also ensure that a review occurs at regular intervals moving forward.

Clause 41 Part 6 Division 1 heading inserted

Clause 41 inserts at the beginning of Part 6 a new heading “Division 1 – Transitional provisions for this Act”.

This amendment is required to separate transitional provisions:

- required for the phasing-in of different groups of persons in child-related work between 1 January 2006 and 31 December 2010, and the treatment of the repealed offence of wilful murder in section 60A of the Act, and
- to be inserted in a new Division 2, for the purposes of the application of the Bill.

Clause 42 Section 56 amended

Clause 42 amends section 56 of the Act – *Term used: commencement day*.

Clause 42 amends section 56 by deleting “Part” and inserting “Division”, as a result of the insertion of a new Division 1 heading by clause 41. This amendment is intended to ensure that the term used in section 56 does not apply to the new transitional provisions introduced by the Bill.

Clause 43 Section 61 amended

Clause 43 amends section 61 of the Act – *Transitional regulations*

Clause 43 amends section 61(1) by deleting “Part” and inserting “Division”, as a result of the insertion of a new Division 1 heading by clause 41.

Clause 44 Part 6 Division 2 inserted

Clause 44 inserts into Part 6 of the Act a new Division 2 – *Transitional provisions for Working with Children (Criminal Record Checking) Amendment Act 2022*.

Part 6, Division 2 of the Act is comprised of three subdivisions:

- Subdivision 1 – Preliminary
- Subdivision 2 – Classification of offences
- Subdivision 3 – Other provisions

As a result of the Bill, transitional and saving provisions are required to be inserted to address how the Act, as amended, is to apply to applicants, persons who have a current assessment notice and for the purpose of review and appeal proceedings.

The Bill introduces amendments to both section 7 and Schedules 1 and 2 of the Act, making extensive amendments to offence categorisation. As a result of the amendments to the Act, the number and scope of criminal offences that will constitute a Class 1 or Class 2 offence will change significantly.

The changes in offence categorisation will impact how the decision-making framework in section 12 will apply, including:

- circumstances where previously discretion was exercised by the CEO (and the State Administrative Tribunal on review) in an assessment or reassessment of a person under section 12 of the Act, or

- changing whether the CEO is to be satisfied of the exceptional or particular circumstances of the case in deciding whether to issue an assessment notice or negative notice, or
- requiring an exercise of discretion by undertaking an assessment where previously there was no discretion.

The proposed amendments to change the classification of offences, and how section 12 applies to that change, has the potential to impact not only persons with pending applications on commencement day, but also those with current assessment notices, those applying to cancel a negative notice and those who have yet to exhaust their review and appeal rights in relation to a negative notice.

Transitional provisions are necessary to ensure the offence classification provisions in the pre-amendment Act apply to people who have already been assessed as not being an unacceptable risk to children or who have a reasonable expectation that their pending application or review proceedings will be determined on the basis of the offence classification provisions in the pre-amendment Act. Provisions are required to address how and when the Act as amended will apply.

Subdivision 1 – Preliminary

Section 62 Terms used

Clause 44 creates a new Subdivision 1 comprising a new section 62, which contains terms used for the purpose of this new Division 2.

Section 62 includes the following terms:

- ***commencement day*** being the day section 44 of the Amendment Act, which inserts the new transitional provisions, comes into operation;
- ***former classification provisions*** means section 7, and Schedules 1 and 2, as in force immediately before commencement day; and
- ***new classification provisions*** means section 7, and Schedules 1 and 2, as in force on and after commencement day.

Subdivision 2 – Classification of offences

Clause 44 creates a new Subdivision 2 comprising new sections 63 to 74 which provide for the circumstances where the former classification provisions apply to certain persons, and when they cease to apply and the new classification provisions apply.

Broadly, the Bill's transitional and saving arrangements mean that a person who:

- immediately before commencement day, has an assessment notice or pending application for one (and is issued an assessment notice after commencement day in response to that application), will remain subject to the former classification provisions unless they:
 - let their assessment notice expire by failing to apply for a further assessment notice (renewal) prior to expiry at any time in the future; or
 - are newly charged with or convicted of a Class 1 or Class 2 offence (as those terms are defined in the Bill) on or after commencement day;

- immediately before commencement day has a negative notice, or is issued or retains a negative notice after commencement day in response to:
 - an application pending on commencement day; or
 - review or appeal proceedings pending on commencement day; or
 - review of appeal proceedings commenced after commencement day by a person who is otherwise covered by the transitional arrangements

will remain subject to the former classification provisions until they exhaust their review and appeal rights in relation to that negative notice and are unsuccessful or are newly charged with or convicted of a Class 1 or Class 2 offence (as those terms are defined in the Bill) on or after commencement day.

In relation to all of sections 63 to 74 below:

- If a person captured by Subdivision 2 at any stage is charged with or convicted of a Class 1 or Class 2 offence (as those terms are defined in the Bill) on or after commencement day, the new classification provisions apply immediately to the person's entire criminal record and not just the new charge or conviction.
- The former classification provisions apply despite an interim negative notice having been issued prior to, or on or after commencement day, for other than a charge or conviction for a Class 1 or Class 2 offence (as those terms are defined in the Bill) on or after commencement day.
- The former classification provisions cease to apply when any person applies to the CEO to cancel their negative notice after commencement day.

Section 63 Current assessment notices

Clause 44 creates a new section 63 which provides that the former classification provisions apply to a person who has a current assessment notice immediately before commencement day until that person ceases to have a current assessment notice within the meaning of the Subdivision, and subject to the Subdivision.

This section must also be read with sections 69 to 74.

Section 64 Pre-commencement assessment applications

Clause 44 creates a new section 64.

Section 64(1) provides that the section applies to a person who has a pre-commencement assessment application, as defined in section 62. The section applies to a person who applied for an assessment notice prior to commencement day, but whose application was not finally determined before commencement day.

This section must also be read with sections 69 to 74.

This section is intended to apply where an interim negative notice has been issued prior to, or on or after commencement day except where the application is a "renewal" which has not been determined prior to commencement day and the person still holds a current assessment notice (as section 70(3) would apply). However, if the interim negative notice is issued after commencement day because of a new charge or conviction for a Class 1 or Class 2 offence, this section will no longer apply because of section 74.

Section 64(2) provides that the former classification provisions apply and continue to apply until a decision is made under section 12 on the application. If that decision is that an assessment notice is to be issued, then the former classification provisions are to continue to apply to that person in perpetuity until they cease to have a current assessment notice within the meaning of the Subdivision, and subject to the Subdivision. If the decision is to issue a negative notice, then the former classification provisions are to apply until all rights of review and appeal have been exhausted and if as a result of the review or appeal proceedings, an assessment notice is issued, the former classification provisions are to continue to apply to that person in perpetuity until they cease to have a current assessment notice within the meaning of the Subdivision, and subject to the Subdivision.

Section 65 Pre-commencement cancellation applications

Clause 44 creates a new section 65.

Section 65(1) provides that the section applies to a person who has a pre-commencement cancellation application, as defined in section 62. The section applies to a person who applied to the CEO under section 19 of the Act for cancellation of their negative notice prior to commencement day, but whose application was not determined immediately before commencement day.

Section 65(2) provides that the former classification provisions apply until a decision is made on that application to cancel the negative notice. If that decision is that the negative notice is cancelled and an assessment notice is issued, then the former classification provisions continue to apply to that person in perpetuity until they cease to have a current assessment notice within the meaning of the Subdivision, and subject to the Subdivision. If the decision is to refuse the application to cancel the negative notice, so the negative notice remains current, the former classification provisions apply until all rights of review and appeal have been exhausted and if, as a result of the review or appeal proceedings, an assessment notice is issued, the former classification provisions are to continue to apply to that person in perpetuity until they cease to have a current assessment notice within the meaning of the Subdivision, and subject to the Subdivision.

This section must also be read with sections 69 to 74.

Section 66 Decision to act under s.17(3)(d)

Clause 44 creates a new section 66.

Section 66 addresses situations where the CEO has made a decision to act under section 17(3)(d) of the Act and a decision has not yet been made under section 12 before commencement day. These are circumstances where a notice from WA Police or information under section 34 about a charge or conviction has been received and the CEO has decided, before commencement day, to proceed to conduct a reassessment having been satisfied that the person has a current assessment notice, and the charge or conviction makes it inappropriate for the person to continue to hold an assessment notice.

This is intended to apply even where an interim negative notice has been issued prior to commencement day.

Section 66(2) provides that the former classification provisions continue to apply to that person until a decision is made under section 12. If that decision is that an assessment notice is to be issued, the former classification provisions are to continue to apply to that person in perpetuity until they cease to have a current assessment notice within the meaning of the Subdivision, and subject to the Subdivision. If the decision is to issue a negative notice, the former classification provisions are to apply until all rights of review and appeal have been exhausted and if as a result of the review or appeal proceedings, an assessment notice is issued, the former classification provisions continue to apply to that person in perpetuity until they cease to have a current assessment notice within the meaning of the Subdivision, and subject to the Subdivision.

This section must also be read with sections 69 to 74.

Section 67 Decision to act under s.20

Clause 44 creates a new section 67.

Section 67(1) provides that the section applies if the person is the subject of a decision of the CEO to act under section 20 of the Act and the processes provided for in section 20 have not been completed immediately before commencement day.

Section 67(2) provides that the former classification provisions continue to apply to that person until the relevant processes have been completed. If this results in a decision to issue an assessment notice, the former classification provisions continue to apply to that person in perpetuity until they cease to have a current assessment notice within the meaning of the Subdivision, and subject to the Subdivision. If the process results in a decision either to issue or refuse to cancel a negative notice, the former classification provisions are to apply until all rights of review and appeal have been exhausted and if as a result of the review or appeal proceedings, an assessment notice is issued, the former classification provisions are to continue to apply to that person in perpetuity until they cease to have a current assessment notice within the meaning of the Subdivision, and subject to the Subdivision.

This is intended to apply where an interim negative notice has been issued prior to commencement day and where the correct notice to be issued under section 20 is a negative notice.

This section must also be read with sections 69 to 74.

Section 68 Processes associated with s.32

Clause 44 creates a new section 68.

Section 68(1) provides that the section applies if the person gave notice before commencement day of a relevant change in their criminal record and that notice was treated as an application for an assessment notice and a decision has not been made under section 12 before commencement day.

Section 68(2) provides that the former classification provisions continue to apply to that person until the CEO makes such a decision under section 12. If that decision is to issue an assessment notice, the former classification provisions are to continue to apply to that person in perpetuity until they cease to have a current assessment notice within the meaning of the Subdivision, and subject to the Subdivision. If the decision is to issue a negative notice, the former classification provisions are to apply until all

rights of review and appeal have been exhausted and if as a result of the review or appeal proceedings, an assessment notice is issued, the former classification provisions are to continue to apply to that person in perpetuity until they cease to have a current assessment notice within the meaning of the Subdivision, and subject to the Subdivision.

This is intended to apply even where an interim negative notice has been issued prior to commencement day.

This section must also be read with sections 69 to 74.

Section 69 Assessment notice taken to be held while application pending

Clause 44 creates a new section 69.

Section 69 provides that for the purposes of Subdivision 2, a person is not taken to cease to have a current assessment notice if:

- they have a current assessment notice at any time on or after commencement day, including if issued after commencement day, and
- applies for a further assessment notice (renewal) within the period of 3 months prior to its expiry, and
- the former classification provisions apply to the person under another section of Subdivision 2 at the time of the application, and
- their assessment notice expires while their renewal application for a further assessment notice is pending.

It is intended that a person is not taken to cease to have a current assessment notice for the purposes of Subdivision 2 if their assessment notice expires after they have made an application for a further assessment notice and that application is pending. The former classification provisions will continue to apply to such persons until a decision is made under section 12 on that renewal application.

If that decision is to issue an assessment notice, the former classification provisions continue to apply to the person in perpetuity until they cease to have a current assessment notice within the meaning of the Subdivision, and subject to the Subdivision. If the decision is to issue a negative notice, the former classification provisions continue to apply until all rights of review and appeal have been exhausted and if as a result of the review or appeal proceedings, an assessment notice is issued, the former classification provisions continue to apply to that person in perpetuity until they cease to have a current assessment notice within the meaning of the Subdivision, and subject to the Subdivision.

This section must also be read with sections 63 to 74.

Circumstances may arise, where a person's current assessment notice expires while their "renewal" application is still being processed. The intention is to ensure that the former classification provisions continue to apply to such persons, subject to other provisions in Subdivision 2, until there is a decision on their application for a further assessment notice to issue an assessment notice or negative notice. If a person covered by Subdivision 2 fails to apply for a further assessment notice before the expiry of their current assessment notice, at any time in the future, the new classification provisions will apply to the person.

Section 70 Subsequent issue of negative notice or interim negative notice

Clause 44 creates a new section 70.

Section 70 seeks to address what is to occur when a person to whom Subdivision 2 applies ceases to have a current assessment notice on or after commencement day because of the issue of an interim negative notice or negative notice.

Section 70(1) provides that this section applies to a person to whom sections 71(4) or 63 to 69 applies.

Section 70(2) provides that if the person ceases to have a current assessment notice because they are issued with a negative notice on or after commencement day, the former classification provisions continue to apply to them until all rights of review and appeal have been exhausted and if as a result of the review or appeal proceedings, an assessment notice is issued, the former classification provisions are to continue to apply to that person in perpetuity until they cease to have a current assessment notice within the meaning of the Subdivision, and subject to the Subdivision.

Section 70(3) provides that if the person ceases to have a current assessment notice because they are issued with an interim negative notice on or after commencement day, the former classification provisions continue to apply to them until a decision to issue an assessment notice or negative notice has been made. If an assessment notice is issued, the former classification provisions continue to apply to the person until they cease to have a current assessment notice within the meaning of the Subdivision, and subject to the Subdivision. If a negative notice is issued, the former classification provisions continue to apply until all rights of review and appeal have been exhausted, and if as a result of the review or appeal proceedings an assessment notice is issued, the former classification provisions are to continue to apply to that person in perpetuity until they cease to have a current assessment notice within the meaning of the Subdivision, and subject to the Subdivision.

Section 70(4) provides that subsections (2) and (3) continue to apply to all subsequent assessment notices issued to the person if that current assessment notice can be traced back to the first assessment notice.

This section must also be read with sections 63 to 74.

The section is intended to address circumstances where an interim negative notice or negative notice is issued on or after commencement day in circumstances other than where the person is charged with a Class 1 or Class 2 offence on or after commencement day. For example, notice may be received of a conduct review finding or outcome, resulting in a reassessment and a final decision to issue a negative notice.

Section 71 Proceedings before State Administrative Tribunal or court

Clause 44 creates a new section 71.

Section 71 provides for how the former classification provisions are to apply for the purposes of proceedings in the State Administrative Tribunal or a court, to appeal a decision of the Tribunal.

Section 71(1) provides that the former classification provisions apply to a person the subject of proceedings in either the Tribunal or a court that were commenced:

- before commencement day;

- on or after commencement day, if the proceedings relate to any proceedings commenced before commencement day (this would capture for example an appeal commenced after commencement day of a Tribunal decision made before commencement day);
- on or after commencement day, if the proceedings relate to any matter where the right to commence those proceedings arose before commencement day and the period for commencing the proceedings had not expired before commencement day (this would capture, for example, circumstances where the CEO's decision to issue a negative notice was made 10 days before commencement day and the person applies to the Tribunal 10 days after commencement day, being within the timeframe allowed under section 26 of the Act to commence such proceedings);
- on or after commencement day, if the proceedings relate to any matter where the right to commence those review or appeal proceedings expired before commencement day but the Tribunal or a court grants an extension of time to commence those proceedings; or
- on or after commencement day, if the proceedings relate to any matter covered by section 71(4) or sections 63 to 70 (this would capture, for example, a person whose pre-commencement assessment application is determined after commencement day, with a negative notice issued and the person applies for review to the Tribunal after commencement day).

Section 71(2) provides that the former classification provisions apply to a person if the Tribunal or a court grants an extension of time to commence proceedings on or after commencement day and:

- the proceedings relate to any proceedings commenced before commencement day, or
- to any matter where the right to commence those proceedings arose before commencement day and the period for commencing the proceedings had not expired before commencement day.

This section is required to ensure consistent application of the former classification provisions to a person if the Tribunal or a court grants an extension of time to commence proceedings.

Section 71(3) provides that the former classification provisions continue to apply pending the outcome of any of the above-mentioned proceedings, subject to section 71(4) and other provisions in the Subdivision, for example, section 74 which provides that if the person is charged with or convicted of a Class 1 or Class 2 offence (as those terms are defined in the Bill) then despite this section, the new classification provisions would apply.

Section 71(4) provides that if, as a result of any of the above proceedings, an assessment notice is issued to the person, the former classification provisions continue to apply until that person ceases to have a current assessment notice within the meaning of the Subdivision, and subject to the Subdivision. If, as a result of any of the above proceedings, a negative notice is issued or upheld, the former classification provisions continue to apply until all rights of review and appeal have been exhausted and if as a result of the review or appeal proceedings, an assessment notice is issued, the former classification provisions are to continue to apply to that

person in perpetuity until they cease to have a current assessment notice within the meaning of the Subdivision, and subject to the Subdivision.

This section must also be read with sections 63 to 74.

Section 72 Rights of review and appeal: related provision

Clause 44 creates a new section 72.

Section 72(1) provides that the section applies if a provision in the Subdivision states that the former classification provisions apply to a person until all rights of review or appeal have been exhausted.

Section 72(2) provides that if the State Administrative Tribunal or a court grants an extension of time to commence review or appeal proceedings, the former classification provisions continue to apply pending the outcome of the review or appeal proceedings.

The intention of the section is to clarify that a person has not exhausted all their review and appeal rights if an extension of time to commence those proceedings is granted by the Tribunal or a court. In such cases, the former classification provisions will continue to apply until the person has exhausted their review and appeal rights.

Section 73 Rights of review and appeal no longer apply of application made under s.19 or s.20

Clause 44 creates a new section 73.

Section 73 provides that where a person applies to the CEO on or after commencement day for their negative notice to be cancelled under either section 19 or 20 of the Act, all rights of review and appeal in relation to the negative notice are taken to have been exhausted for the purposes of Subdivision 2 and the former classification provisions cease to apply to the person.

The intention of the section is to clarify that the new classification provisions will apply to a person on or after commencement day once they apply to the CEO to cancel their negative notice under section 19 or 20 and in perpetuity thereafter.

Section 74 Application of new classification provisions

Clause 44 creates a new section 74.

Section 74(1) provides that, despite any other section of Subdivision 2, if a person is charged with or convicted of a Class 1 or Class 2 offence (as those terms are defined in the Bill), on or after commencement day, the new classification provisions apply to that person immediately and in perpetuity thereafter.

Section 74(2) provides that the new classification provisions apply even if the offence was not a Class 1 or Class 2 offence when the offence was committed or allegedly committed. The intention of this subsection is to clarify that it is the date of the charge or conviction for the Class 1 or 2 offence rather than the date of the commission or alleged commission of the offence which determines if the new classification provisions apply.

Subdivision 3 – Other provisions

Clause 44 creates a new Subdivision 3 comprising new sections 75 to 79, which provide for transitional and saving provisions not related specifically to the application of the former or new classification provisions.

Section 75 Application of amended s. 12

Clause 44 creates a new section 75.

Section 75 provides that section 12, as amended by the Bill, applies to and in relation to any person the subject of Subdivision 2 of Division 2 of Part 6.

The intention of the section is to clarify that on commencement day, the amended section 12 immediately applies to all persons covered by the transitional provisions in Subdivision 2. For example, this will allow conduct review findings or outcomes for which notice is received to be acted upon and for pending charges for a Class 1 offence (as defined under the current Act) committed when an adult to result in an automatic negative notice.

Section 76 Processes associated with interim negative notice

Clause 44 creates a new section 76.

Section 76(1) provides that the current section 13 continues to apply to an interim negative notice issued before commencement day.

Section 76(2) provides that new section 13AA applies to any pending application for an assessment notice and any reassessment which has not been determined before commencement day and where an interim negative notice was not issued prior to commencement day.

The intention of the section is to clarify how the provisions regarding interim negative notices apply after commencement day as a result of the amendments to introduce new sections 13 and 13AA.

Section 77 Application of Part 3B

Clause 44 creates a new section 77.

Section 77 provides that the compliance and enforcement provisions in Part 3B may be exercised in relation to a suspected offence under the Act or any other conduct regardless of whether that offence or conduct occurred before, on or after commencement day.

Section 78 Disclosure of information by CEO

Clause 44 creates a new section 78.

Section 78(1) provides that the section applies if a notice was given by the CEO under the current sections 38(2) or (3) before the commencement of the Amendment Act.

Section 78(2) provides the CEO must comply with current section 38(4) on or after commencement day if notice was given by the CEO under sections 38(2) or (3) before commencement day, and subsequently:

- an assessment notice is issued to the person; or
- a negative notice is cancelled.

Section 38 is being repealed by clause 33. The intention of section 78 is to ensure that the obligation on the CEO to correct the initial notice given in the public interest under sections 38(2) or (3) prior to commencement day continues to apply to the CEO on or after commencement day.

Section 79 Transitional regulations

Clause 44 creates a new section 79.

Section 79 is a standard provision which enables the making of regulations prescribing any matters relating to transitional issues which have not already been sufficiently provided for in Division 2 of Part 6.

Clause 45 Schedules 1 and 2 replaced

Clause 45 deletes Schedule 1 of the Act – *Class 1 offences* and Schedule 2 of the Act – *Class 2 offences* and inserts new Schedules.

Clause 45 deletes the current Schedules 1 and 2 of the Act, which list Class 1 and Class 2 offences respectively, and inserts new Schedules. Together with the amendments proposed at Clause 7, this will result in a broader number and type of criminal offences becoming Class 1 and Class 2 under the Act.

Schedules 1 and 2 of the Act have been amended to address Royal Commission recommendations and the associated National Standards, though neither have been adopted in their entirety. Rather, the new Schedules 1 and 2 raise protections for children while maintaining discretion in assessing risk, where appropriate.

The offences against Commonwealth legislation listed in Schedules 1 and 2 are not being reinserted into the new Schedules. Instead, it is intended that relevant Commonwealth offences will be prescribed in regulations pursuant to sections 7(1)(b) and 7(2)(b) so that any future amendments to Commonwealth legislation can be appropriately responded to in a timely manner.

Schedule 1 – Class 1 offences

Currently, Schedule 1 contains only sexual offences against a child under the age of 13. Both the Royal Commission and the National Standards each set out their own lists of broad offence groups that should trigger an automatic negative notice if a person was convicted for committing the offence when an adult.

WA has taken the position that a more bespoke, but equally risk averse, list of offence groups was appropriate to ensure all relevant offences in WA were suitably captured. As such, the following broad groups of WA criminal offences have been included in Schedule 1:

- Sexual offences committed against children, regardless of whether the child was under the age of 13;
- Child exploitation material offences;

- Homicide offences committed against a child where an intent to kill is an element of the offence;
- Assault based offences that involve an intent to cause bodily injury of such a nature as to endanger, or be likely to endanger life, or to cause, or be likely to cause permanent injury to health and the victim is a child;
- Abduction offences where the victim is a child and the offender is not a relative of the victim;
- Certain sexual offences against an incapable person; and
- Carnal knowledge of an animal.

Conditions have been specified for a number of offences listed in Schedule 1 to ensure their capture in the broad groups of offences listed above. Such conditions may include:

- that the victim or intended victim is a child – relevant to a range of offences;
- that the material referenced in the offence is child exploitation material – relevant to offences involving offensive, indecent or obscene articles;
- that the offence is committed by a person other than a relative of the child – relevant to abduction offences.

Clause 7 inserts a new section 7(3) of the Act which creates a condition for attachment to certain Class 1 offences. This condition is attached to a number of sexual offences and child exploitation material offences requiring that the victim has reached the age of 14 years and the offender was not more than five years older than the victim. Where two young people are of a similar age cohort and have decided to engage in sexual behaviour, it is intended that the CEO retain some discretion as to whether exceptional circumstances may exist such that the CEO is not satisfied that there would be an unacceptable risk to children in child-related work.

Generally, where offences listed in Schedule 1 have a condition, or multiple conditions attached, that same offence will be captured in Schedule 2 where the condition, or conditions, are not met. For example, the offence of Murder (section 279 of the *WA Criminal Code*) is listed in Schedule 1 with an attached condition that the victim is a child. That same offence is also listed in Schedule 2 with an attached condition that the victim is a person other than a child. Similarly, the offence of Indecent Assault (section 323 of the *WA Criminal Code*) is listed in Schedule 1 with the attached conditions that both the victim was a child and that the offence does not fall within the ambit of section 7(3). That same offence is also listed in Schedule 2 with the attached conditions that either the victim was a person other than a child, or the offence does fall within the ambit of section 7(3).

The only exceptions to this are section 191 of the *WA Criminal Code* – *Procuring person to be prostitute* and those offences listed with an attached condition that the material referenced in the offence is child exploitation material. It is intended that those offences are to be considered Class 3 offences if they do not meet the attached condition.

Schedule 2 – Class 2 offences

Apart from capturing the majority of offences listed in Class 1 with a specified condition, where that condition is not met, there are also other types of criminal offending that have been identified as warranting the issue of a negative notice unless exceptional circumstances can be identified to mitigate the presumed unacceptable risk to children.

The following broad groups of WA criminal offences have been included in Schedule 2:

- Homicide offences either committed against an adult or where an intent to kill is not an element of the offence;
- Assault based offences that result in a bodily injury of such a nature as to endanger, or be likely to endanger life, or to cause, or be likely to cause permanent injury to health, but do not involve an element of intent to cause such injury;
- Assault based offences that involve an intent to cause a bodily injury and that injury has otherwise been identified as serious;
- Offences of neglect or ill-treatment of a child or incapable person;
- Cruelty to animals; and
- Drug related offences where it is a requirement of the offence that children were involved.

Clause 46 Various penalties amended

Clause 46 amends various penalties throughout the Act in accordance with current drafting practice. “Penalty” is deleted and replaced with the wording “Penalty for this subsection”. The sections amended are listed in a Table.

Part 3 – Consequential amendments to other Acts

Division 1 – National Disability Insurance Scheme (Worker Screening) Act 2020 amended

Clause 47 Act amended

Clause 47 provides that Division 1 amends the *National Disability Insurance Scheme (Worker Screening) Act 2020* (NDIS WS Act).

Clause 48 Section 34 amended

Clause 48 amends reference in section 34(5)(b) of the NDIS WS Act to reflect the amendment made in Clause 4 amending the Short Title of the Act.

Clause 49 Section 51 amended

Clause 49 amends reference in section 51(8)(d) of the NDIS WS Act to reflect the amendment made in Clause 4 amending the Short Title of the Act.

Clause 50 Section 72 amended

Clause 50 deletes the current section 72(4) of the NDIS WS Act and inserts a new section 72(4) to provide that 72(3) does not derogate from the operation of section 34(6) of the NDIS WS Act or section 34E(4) of the Act. The amendment is intended to ensure that, despite section 72(2) providing that information may be disclosed despite any other enactment, compelled prescribed reports obtained from the Department of Justice cannot be disclosed to the CEO acting under the Act without the approval of the CEO of the Department of Justice.

Division 2 – Spent Convictions Act 1988 amended

Clause 51 Act amended

Clause 51 provides that Division 2 amends the *Spent Convictions Act 1988*.

Clause 52 Schedule 3 amended

Clause 52 amends Schedule 3 of the *Spent Convictions Act 1988 – Exceptions to Part 3*.

Clause 52(1) amends the Table in clause 2(6) of Schedule 3 of the *Spent Convictions Act 1988* which sets out persons who are excepted from the provisions of sections 27 and 28 of the *Spent Convictions Act 1988* in respect of all spent convictions. Clause 51(1) makes the following amendments to the Table:

- inserts a new item 2A to include a person making, or giving effect to, a request for report, documents or information under section 9, 10, 13, 33A, 34A, 34C, 34E, or 34I of the Act;
- amends item 3 to insert sections 33A and 34I of the Act.

The amendments are intended to ensure that requests for and disclosure of reports, information or documents are permitted in respect of all spent convictions.

Clauses 52(2) and (3) amend clauses 2(7) and 2(8) of Schedule 3 of the *Spent Convictions Act 1988* to delete reference to the proposed repealed section 37 of the Act and the definition of corresponding authority in that section and insert reference to the new section 34D of the Act and the new definition of corresponding authority in section 4 of the Act. The amendments are intended to ensure that spent convictions information can continue to be disclosed to a corresponding authority.

Clause 52(4) amends clause 3(3) of Schedule 3 of the *Spent Convictions Act 1988* to delete reference to proposed repealed section 37A of the Act and insert reference to the new section 34E of the Act. The amendment is intended to ensure that spent conviction information can be disclosed by the CEO acting under the Act to the CEO acting under the *National Disability Insurance Scheme (Worker Screening) Act 2020* or an interstate screening agency.

Clause 52(5) includes a Table of relevant clauses in Schedule 3 of the *Spent Convictions Act 1988* that are to be amended by deleting “(Criminal Record Checking)” and inserting “(Screening)”. This amendment is intended to reflect the amendment in clause 4 to amend the Short Title of the Act.

Division 3 – Other Acts amended

Clause 53 Various references to short title of Act amended

Clause 53 includes a Table of relevant Acts that requirement amendment to reflect the amendment made in Clause 4 to amend the Short Title of the Act.