

Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2018

Amendments during consideration in detail to be moved by
The Honourable the Attorney-General and Minister for Justice

1 Clause 17 (Replacement of ch 7, pt 4, hdg and div 1)

Page 25, line 3, after ‘who is’—

insert—

a

2 Clause 23 (Amendment of s 181 (Eligibility declaration taken to have been issued))

Page 30, line 26—

omit, insert—

omit, insert—

3 After clause 26

Page 32, after line 11—

insert—

26A Amendment of s 208 (Deemed withdrawal of consent to employment screening if charged with disqualifying offence etc.)

Section 208, before ‘disqualifying offence’—

insert—

serious offence or

26B Amendment of s 217 (Deemed withdrawal of application if person charged with disqualifying offence etc.)

Section 217, before ‘disqualifying offence’—

insert—

serious offence or

4 Clause 28 (Insertion of new ch 8, pts 2 and 3)

Page 38, lines 13 and 16, before ‘disqualifying offence’—

insert—

serious offence or

5 After clause 37

Page 43, after line 8—

insert—

37A Amendment of s 240 (Suspension of a positive notice if charged with disqualifying offence or subject to temporary or interim order)

Section 240, before ‘disqualifying offence’—

insert—

serious offence or

37B Amendment of s 241 (Ending of suspension under s 240 and issue of further prescribed notice)

Section 241(9), before ‘disqualifying offence’—

insert—

serious offence or

6 After clause 39

Page 43, after line 16—

insert—

39A Amendment of s 269 (Deemed withdrawal of consent to employment screening if charged with disqualifying offence etc.)

Section 269, before ‘disqualifying offence’—

insert—

serious offence or

39B Amendment of s 279 (Deemed withdrawal of application if charged with disqualifying offence etc.)

Section 279, before ‘disqualifying offence’—

insert—

serious offence or

7 After clause 46

Page 47, after line 1—

insert—

46A Amendment of s 298 (Suspension of a positive exemption notice if charged with disqualifying offence or subject to temporary or interim order)

Section 298, before ‘disqualifying offence’—

insert—

serious offence or

46B Amendment of s 299 (Ending of suspension and issue of further exemption notice)

Section 299(9), before ‘disqualifying offence’—

insert—

serious offence or

8 Clause 48 (Insertion of new ch 8, pt 5A)

Page 48, line 30, before ‘disqualifying offence’—

insert—

serious offence or

9 Clause 48 (Insertion of new ch 8, pt 5A)

Page 50, line 23, ‘see’—

omit.

10 Clause 48 (Insertion of new ch 8, pt 5A)

Page 52, lines 9 and 12, before ‘disqualifying offence’—
insert—

serious offence or

11 Clause 53 (Insertion of new ss 344A and 344B)

Page 70, lines 4 and 6, after ‘;’—
insert—

or

12 Clause 53 (Insertion of new ss 344A and 344B)

Page 71, line 16 to page 72, line 3—
omit, insert—

- (e) is required to lessen or prevent a serious threat to the life, health, safety or welfare of an individual, or the health, safety or welfare of the public; or
- (f) is required by a law enforcement agency to prevent, detect, investigate, prosecute or punish an offence; or
- (g) is required for a proceeding in a court or a tribunal; or
- (h) is authorised under a regulation or another law.

(4) In this section—

law enforcement agency means—

- (a) an entity mentioned in the *Information Privacy Act 2009*, schedule 5, definition ***law enforcement agency***, paragraph (b); or

- (b) an enforcement body within the meaning of the *Privacy Act 1988* (Cwlth).

13 Clause 55 (Replacement of ch 8, pt 7, div 1 (Replacement notice))

Page 78, line 34, ‘section 220(2)’—

omit, insert—

section 220(3)

14 Clause 60 (Replacement of ch 8A (Criminal history checks, and assessing suitability, of persons employed in the department))

Page 84, lines 28 and 29, after ‘;’—

insert—

and

15 Clause 66 (Insertion of new ch 11, pt 19)

Page 93, after line 16—

insert—

552A Effect of pre-commencement charge for serious offence

For applying this Act in relation to a person the subject of a charge for a serious offence that has not been dealt with on the commencement, the person is taken to have been charged with the offence on the commencement.

552B Applicant in paid employment convicted of serious offence

- (1) This section applies if—

- (a) before the commencement of the amendment Act, section 28, a prescribed

- notice application was made about a person under section 199; and
- (b) the application relates to the person's employment, or proposed employment, in regulated employment other than as a volunteer; and
 - (c) the application has not been decided or withdrawn; and
 - (d) the chief executive becomes aware that the person was convicted of a serious offence—
 - (i) if the person held a positive notice when the application was made—after the application was made; or
 - (ii) if the person held a positive notice that expired before the application was made—after the person's notice expired; or
 - (iii) otherwise—before or after the application was made.
- (2) The chief executive must give the person a written notice that states—
- (a) the person is not allowed to perform work that is regulated employment before the person's application is decided; and
 - (b) it is an offence for the person to perform work that is regulated employment, or to start in regulated employment, unless the person is issued a positive notice.
- (3) If the chief executive gives the person a notice under subsection (2), the person must not, unless the person is issued a positive notice—
- (a) if the employee is employed in regulated employment when given the notice under subsection (2)—perform work that is regulated employment; or

- (b) otherwise—start in regulated employment.
- Maximum penalty—500 penalty units or 5 years imprisonment.
- (4) If the chief executive gives the person a notice under subsection (2), the chief executive must also give each notifiable person for the person a written notice that states—
- (a) the person is not allowed to perform work that is regulated employment before the person's application is decided; and
 - (b) it is an offence for an employer to allow the person to start or continue to perform work that is regulated employment unless the person is issued a positive notice.
- (5) If the chief executive gives a person (an *employer*) a notice about another person (the *employee*) under subsection (4), the employer must not allow the employee to start or continue to perform work that is regulated employment unless the employee is issued a positive notice.
- Maximum penalty—200 penalty units or 2 years imprisonment.
- (6) An employer may not dismiss the employee solely or mainly because the employer is given a notice under subsection (4).
- (7) Section 356 applies in relation to the employer as if a reference in that section to this chapter includes a reference to this section.
- (8) This section applies despite chapter 8, part 4, division 4.

16 Clause 66 (Insertion of new ch 11, pt 19)

Page 93, line 17, after 'New'—

insert—

serious offences and

17 Clause 66 (Insertion of new ch 11, pt 19)

Page 94, after line 11—

insert—

new serious offence means an offence that—

- (a) is a serious offence; but
- (b) was not a serious offence immediately before the commencement.

553A Effect of conviction or charge for new serious offence

- (1) For applying this Act in relation to a person convicted of a new serious offence, it is immaterial as to when the offence was committed or when the person was convicted of the offence.
- (2) This Act applies in relation to a person who is charged with a new serious offence even if the charge, or the acts or omissions constituting the alleged offence, happened before the commencement.
- (3) For applying this Act to a current positive notice or current positive exemption notice held by a person immediately before the commencement—
 - (a) a person convicted of a new serious offence before the commencement is taken to have been convicted of the offence on the commencement; and
 - (b) a person the subject of a charge for a new serious offence that has not been dealt with on the commencement is taken to have been charged with the offence on the commencement.

18 Clause 66 (Insertion of new ch 11, pt 19)

Page 94, line 24 to page 95, line 2—

omit, insert—

- (3) For applying this Act to a current positive notice or current positive exemption notice held by a person immediately before the commencement, a person the subject of a charge for a new disqualifying offence that has not been dealt with on the commencement is taken to have been charged with the offence on the commencement.

554A Effect of conviction for new disqualifying offence on existing positive notice or positive exemption notice

- (1) This section applies if—
 - (a) a person held a current positive notice or current positive exemption notice immediately before the commencement; and
 - (b) the person was convicted of a new disqualifying offence before the commencement.
- (2) For applying this Act to the person's positive notice or positive exemption notice, the offence is taken to be, or to continue to be, a serious offence despite the enactment of the amending Act.
- (3) Without limiting subsection (2), if the person applies for another positive notice or positive exemption notice after the commencement, or section 557 or 558 applies in relation to the person—
 - (a) the person's conviction for the offence is taken to be, or to continue to be, a conviction for a serious offence; and
 - (b) the person is taken not to be a disqualified person or relevant disqualified person in

relation to the person's conviction for the offence.

19 Clause 66 (Insertion of new ch 11, pt 19)

Page 96, line 15, 'governing board'—

omit, insert—

governing body

20 Clause 66 (Insertion of new ch 11, pt 19)

Page 96, lines 16 to 25—

omit, insert—

558 Existing positive notice or positive exemption notice held by person convicted of new serious offence or new disqualifying offence

(1) This section applies if—

- (a) immediately before the commencement, a person held a current positive notice or current positive exemption notice; and
- (b) before the commencement, the person was convicted of—
 - (i) a new serious offence; or
 - (ii) a new disqualifying offence that is taken to be a serious offence under section 554A(2).

(1A) Section 322 does not apply to the person in relation to the person's conviction for the offence.

(1B) The chief executive must—

- (a) consider whether it is appropriate to cancel the person's positive notice or positive exemption notice under this section because of the person's conviction for the offence; and

- (b) give the person, and each notifiable person for the person, a notice stating that, because of the enactment of the amending Act, the chief executive is considering under this section whether the person should continue to hold the person's positive notice or positive exemption notice.

21 Clause 66 (Insertion of new ch 11, pt 19)

Page 97, after line 11—

insert—

- (6) If the chief executive decides not to cancel the person's positive notice or positive exemption notice under this section, the chief executive must give the person, and each notifiable person for the person, a notice stating that the chief executive is satisfied, having considered the enactment of the amending Act, the person should continue to hold the person's positive notice or positive exemption notice.

22 Clause 66 (Insertion of new ch 11, pt 19)

Page 101, after line 22—

insert—

exemption card, for a person's positive exemption notice, means a card issued to the person by the chief executive as evidence of the person's positive exemption notice.

23 Clause 66 (Insertion of new ch 11, pt 19)

Page 103, line 22 and page 104, line 6, 'part 2, division 1'—

omit, insert—

part 4, division 2

24 Clause 66 (Insertion of new ch 11, pt 19)

Page 104, after line 12—

insert—

568A Transitioning to issuing working with children card for clearance that includes holder's photograph

- (1) This section applies if the chief executive approves an application for a person to which section 568 applies.
- (2) The chief executive may comply with section 232A for the person's working with children clearance by issuing the person a positive notice blue card that the chief executive would have issued before the commencement to a person who holds a positive notice.
- (3) The document mentioned in subsection (2) is taken to be a working with children card issued to the person under section 232A for the person's working with children clearance.
- (4) Despite schedule 7, definition *working with children card*, it does not matter that a document issued under subsection (2) does not include a photograph of the person.

25 Clause 66 (Insertion of new ch 11, pt 19)

Page 105, after line 21—

insert—

571A Transitioning to issuing working with children card for exemption that includes holder's photograph

- (1) This section applies if, within 6 months after the commencement, the chief executive approves an application for a person to which section 571 applies.
- (2) Despite section 289, a working with children

exemption is issued to the person for the term that ends 3 years after the commencement.

- (3) The chief executive may comply with section 290A for the person's working with children exemption by issuing the person an exemption card that the chief executive would have issued before the commencement to a person who holds a positive exemption notice.
- (4) The document mentioned in subsection (3) is taken to be a working with children card issued to the person under section 290A for the person's working with children exemption.
- (5) Despite schedule 7, definition *working with children card*, it does not matter that a document issued under subsection (3) does not include—
 - (a) a photograph of the person; or
 - (b) the expiry date of the person's working with children exemption.

26 Clause 66 (Insertion of new ch 11, pt 19)

Page 106, lines 23 to 27—

omit.

27 Clause 66 (Insertion of new ch 11, pt 19)

Page 109, line 14, 'section 300(b)'—

omit, insert—

section 300(1)(b)

28 Clause 66 (Insertion of new ch 11, pt 19)

Page 111, line 3, 'Definition'—

omit, insert—

Definitions

29 Clause 66 (Insertion of new ch 11, pt 19)

Page 114, line 30, ‘this Act or a’—

omit, insert—

Act or

30 After clause 69

Page 120, after line 9—

insert—

69A Amendment of sch 2 (Current serious offences)

(1) Schedule 2, entry for the Criminal Code—

insert—

315A Choking, suffocation or strangulation in a domestic setting

(2) Schedule 2, entry for the Criminal Code, section 300, all the words in column 3—

omit.

(3) Schedule 2, entry for the Criminal Code (Cwlth), section 270.6 Sexual servitude offences—

omit.

(4) Schedule 2, entry for the Criminal Code (Cwlth)—

insert—

270.5 Servitude offences

271.4 Offence of trafficking in children

271.7 Offence of domestic trafficking in children

69B Amendment of sch 3 (Repealed or expired serious offences)

Schedule 3—

insert—

3 Criminal Code (Cwlth)

Provision of Act	Relevant heading	Qualification relating to the provision of the Act
270.6	Sexual servitude offences	only if an offender was or could have been liable as mentioned in section 270.8, as the provisions were in force from time to time before their repeal by the <i>Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013</i> (Cwlth)

31 Clause 70 (Amendment of sch 4 (Current disqualifying offences))

Page 120, line 12, after entry for section 211 Bestiality—
insert—

306	Attempt to murder	
309	Conspiring to murder	
315A	Choking, suffocation or strangulation in a domestic setting	
320A	Torture	if the offence was committed against a child

32 Clause 70 (Amendment of sch 4 (Current disqualifying offences))

Page 120, line 12, after entry for section 363A Abduction of child under 16—

insert—

364 Cruelty to children under 16

33 Clause 70 (Amendment of sch 4 (Current disqualifying offences))

Page 120, line 16, ‘entry for the Criminal Code, section 349’—

omit, insert—

entries for the Criminal Code, sections 349, 350 and 351

34 Clause 70 (Amendment of sch 4 (Current disqualifying offences))

Page 120, after line 18—

insert—

(4) Schedule 4, entry for the Criminal Code (Cwlth), section 270.6 Sexual servitude offences—

omit.

(5) Schedule 4, entry for the Criminal Code (Cwlth)—

insert—

270.5 Servitude offences if the offence was committed against a child

271.4 Offence of trafficking in children

271.7 Offence of domestic trafficking in children

35 After clause 70

Page 121, before line 1—

insert—

70A Amendment of sch 5 (Repealed or expired disqualifying offences)

Schedule 5—

insert—

3 Criminal Code (Cwlth)

Provision of Act	Relevant heading	Qualification relating to the provision of the Act
270.6	Sexual servitude offences	only if an offender was or could have been liable as mentioned in section 270.8, as the provisions were in force from time to time before their repeal by the <i>Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013</i> (Cwlth)

36 Clause 71 (Amendment of sch 7 (Dictionary))

Page 123, line 22, ‘issue’—

omit.

37 Clause 85 (Amendment of sch 4 (Dictionary))

Page 133, lines 28 and 29—

omit.

38 Schedule 1 (Amendment of Working with Children (Risk Management and Screening) Act 2000)

Page 145, line 14, ‘chapter 8,’—

omit.

39 Schedule 1 (Amendment of Working with Children (Risk Management and Screening) Act 2000)

Page 150, after line 24—

insert—

76A Section 356(1), after ‘provision of’—

insert—

chapter 7 or

40 Schedule 2 (Acts amended)

Page 161, line 23, ‘of’—

omit, insert—

for

41 Schedule 2 (Acts amended)

Page 162, line 17, ‘application for prescribed notice’—

omit, insert—

working with children check application

42 Schedule 2 (Acts amended)

Page 162, line 27, ‘section 175 does’—

omit, insert—

sections 175 and 176A do

43 Schedule 2 (Acts amended)

Page 163, lines 16 to 20—

omit, insert—

Note—

See section 148C of this Act and the Working with Children Act, section 14 and schedule 1, section 24 in relation to a nominee or director of a corporation carrying on the business of a licensed care service being taken to be carrying on a regulated business under the Working with Children Act.

44 Schedule 2 (Acts amended)

Page 178, lines 23 to 26—

omit.

45 Schedule 2 (Acts amended)

Page 179, after line 15—

insert—

14 Section 26(5)—

insert—

working with children clearance see the Working with Children Act, section 220(2).

working with children exemption see the Working with Children Act, section 282(2).

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