

Queensland



ANNO TRICESIMO QUINTO

ELIZABETHAE SECUNDAE REGINAE

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No. 20 of 1986

An Act to provide with respect to the rehabilitation of persons convicted for offences, to amend the Evidence Act 1977-1984 in a certain particular and for related purposes

[ASSENTED TO 8TH APRIL, 1986]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

**1. Short title.** This Act may be cited as the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

**2. Commencement.** (1) Section 1 and this section shall commence on the date this Act is assented to for and on behalf of Her Majesty.

(2) Except as is provided by subsection (1), the provisions of this Act shall commence on a date appointed by Proclamation.

The date so appointed is referred to as the date of commencement of this Act.

**3. Interpretation.** (1) Except where a contrary intention appears, in this Act—

“charge” means an allegation formally made in court that a person has committed an offence where—

(a) the allegation is not pursued to a final determination in a court;

(b) a conviction is not recorded by a court in respect of the allegation;

or

(c) a conviction recorded by a court in respect of the allegation is to be deemed, pursuant to law, not to be a conviction;

“conviction” means a conviction by or before any court for an offence, whether recorded, in Queensland or elsewhere, before or after the date of commencement of this Act;

“criminal history” means, in relation to any person, the convictions recorded against that person in respect of offences;

“offence” means an act or omission that renders the person doing the act or making the omission liable to punishment;

“person” in relation to an offender whose rehabilitation is sought by this Act, does not include an incorporated person;

“rehabilitation period” means—

(a) in relation to a conviction recorded against a person who in relation to that conviction was not dealt with as a child—

a period of 10 years commencing on the date the conviction is recorded;

or

where an order of a court made in relation to the conviction has not been satisfied within that period of 10 years, a period terminating on the date the order is satisfied,

whichever period is the later to expire;

- (b) in relation to a conviction recorded against a person who in relation to that conviction was dealt with as a child—  
a period of 5 years commencing on the date the conviction is recorded;

or

where an order of a court made in relation to the conviction has not been satisfied within that period of 5 years, a period terminating on the date the order is satisfied,

whichever period is the later to expire;

“revived” means, in relation to a conviction, revived as prescribed by section 11;

“simple offence” means—

- (a) an offence committed in Queensland other than a crime, misdemeanour or regulatory offence;  
and  
(b) an offence committed elsewhere than in Queensland that, if committed in Queensland, would be an offence other than a crime, misdemeanour or regulatory offence.

(2) The only convictions in relation to which a rehabilitation period is capable of running are convictions upon which—

- (a) the offender is not ordered to serve any period in custody;  
or  
(b) the offender is ordered to serve a period not exceeding 30 months in custody (including ordered by way of default), whether or not in the event he is required to actually serve any part of that period in custody,

and the provisions of this Act shall be construed accordingly.

(3) A provision of law or rule of legal practice that requires or authorizes disclosure of convictions or charges made against any person shall be construed as requiring or authorizing disclosure of the criminal history of that person.

**4. Construction of Act.** (1) This Act shall be construed so as not to prejudice any provision of law or rule of legal practice that requires, or is to be construed to require, disclosure of the criminal history of any person.

(2) This Act shall be construed so as not to relieve any person from a responsibility that rests on him to disclose his criminal history in connexion with his seeking admission to or offering himself for selection for any profession, occupation or calling declared by Order in Council.

**5. Matter excluded from criminal history.** (1) It is declared that a conviction that is set aside or quashed and a charge are not part of the criminal history of any person.

(2) A person shall not be required or asked to disclose and, if so required or asked, shall not be obliged to disclose for any purpose a conviction that is not part of his criminal history or of the criminal history of another person or a charge made against him or another person.

**6. Non-disclosure of convictions upon expiration of rehabilitation period.** Where the rehabilitation period has expired in relation to a conviction recorded against any person and the conviction has not been revived in respect of him, neither that person nor any other person, if he knows that the rehabilitation period has expired, shall disclose the conviction unless—

- (a) being the person against whom the conviction is recorded, he wishes to disclose the conviction;
- (b) he makes the disclosure under the authority of a permit granted under section 10 in accordance with the conditions (if any) of the permit;
- or
- (c) he makes the disclosure in circumstances that constitute an exception to the operation of section 9 (1) or that are expressed by section 9 (2) to be a case to which the provisions of section 9 (1) do not apply.

**7. S. 6 not applicable in certain cases.** (1) The provisions of section 6 do not apply in relation to—

- (a) a report of judicial proceedings in a recognized series of law reports;
- (b) a report or commentary upon judicial proceedings made in good faith for educational, scientific or professional purposes or in the course of historical research or a lecture, course or discussion given or held for any such purpose;
- (c) a report or disclosure made by any person who, pursuant to any provision of law, is required to make a report that includes reference to or a disclosure of a conviction referred to in section 6;
- (d) a disclosure made in discharge of a duty prescribed by or under the *Libraries Act 1943-1979*.

(2) The provisions of section 6 do not apply in relation to—

- (a) the dissemination into, in or from Queensland by members of a police force (whether of Queensland or elsewhere) or by any other person in discharge of his duties within a police department (whether of Queensland or elsewhere) of information concerning any person;
- (b) the filing and recording by members of the Police Force of Queensland or any other person in discharge of his duties

within the police department of Queensland of information in the possession of that police force;

- (c) the use in police practice, with a view to the prevention of offences or the detection and punishment of offenders, of information in the possession of the Police Force of Queensland.

**8. Lawful to deny certain convictions.** (1) Where the rehabilitation period has expired in relation to a conviction recorded against any person and the conviction has not been revived in respect of him, it is lawful to claim, upon oath or otherwise, that he has not suffered the conviction, except upon an occasion when, as provided by section 4, this Act is to be construed so as not to prejudice a provision of law or rule of legal practice or to relieve from a responsibility.

(2) Where a person has made a claim declared lawful by subsection (1), evidence shall not be admissible in any proceeding to show the claim to be false.

**9. Duty to disregard certain convictions.** (1) Subject to subsection (2), any person or authority charged with the function of assessing a person's fitness to be admitted to a profession, occupation or calling or for any other purpose shall disregard any conviction that is part of his criminal history in relation to which the rehabilitation period has expired and which has not been revived in respect of him unless—

- (a) the person to be assessed is expressly required by law to make disclosure of his criminal history;
  - (b) the person or authority making the assessment is expressly required by law to have regard to the criminal history of the person to be assessed;
- or
- (c) the person to be assessed is, by reason of section 4, not relieved from responsibility to disclose his criminal history.

(2) The provisions of subsection (1) do not apply where an assessment is to be made of an offender with a view to a court or the Parole Board of Queensland making an appropriate order in relation to him.

**10. Permit to disclose convictions.** On application made to him in the prescribed form and manner the Minister for Justice and Attorney-General, if he is satisfied that the applicant has a legitimate and sufficient purpose for disclosing a conviction such as is referred to in section 6 recorded against any other person, may grant and issue to the applicant a permit to make disclosure of the conviction and may attach to the permit such conditions as he deems appropriate.

**11. Revival of convictions.** (1) Subject to subsection (2), where a person who has incurred a conviction—

- (a) in relation to which the rehabilitation period is running;  
or
- (b) in relation to which the rehabilitation period has expired, is again convicted for an offence whether in Queensland or elsewhere—
- (c) in the case referred to in provision (a), the rehabilitation period in relation to that conviction shall commence again to run on the date the offender is again convicted and any part of the rehabilitation period that elapsed between that conviction and that date shall be disregarded;  
and
- (d) in the case referred to in provision (b), that conviction shall be taken to be revived and the rehabilitation period in relation to that conviction shall commence again to run on the date of the revival of that conviction:

Provided that if the subsequent conviction is quashed on appeal, the provisions of paragraph (c) or (d) (whichever is appropriate) shall be deemed to have had no application and the other provisions of this Act shall have application as if the subsequent conviction had not been incurred.

(2) Subsection (1) shall not apply where the offence for which a person is subsequently convicted is a simple offence or a regulatory offence or an offence that if committed in Queensland would be a simple offence or a regulatory offence or an offence in respect of which the offender could be dealt with in summary proceedings unless the court by which the person is subsequently convicted is satisfied that, having regard to the public interest, previous convictions recorded against the person, or any of them, should be revived and pronounced accordingly in its order.

Where a court pronounces in its order that one or some only of several convictions recorded against a person are to be revived the provisions of subsection (1) shall apply in respect of that conviction or those convictions.

**12. Offence provision.** (1) A person who contravenes any provision of this Act commits an offence against this Act and is liable, on summary conviction, to a penalty not exceeding \$5 000.

(2) A prosecution for a contravention of any provision of this Act shall be upon the complaint of a person authorized in writing in that behalf by the Minister for Justice and Attorney-General and of no other person.

(3) A document purporting to be an authorization referred to in subsection (2) shall, in all proceedings, be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein.

**13. Regulations.** The Governor in Council may make regulations not inconsistent with this Act with respect to—

- (a) all matters required or permitted by this Act to be prescribed and in respect of which no other manner of prescription is provided for;
- (b) fees to be paid for the purposes of this Act and the purposes for which fees are payable;
- (c) all matters that may be convenient for the administration of this Act or that may be necessary or expedient to achieve the objects and purposes of this Act.

**14. Amendment of Evidence Act.** (1) The *Evidence Act 1977-1984* is amended by inserting after section 15 the following section:—

“**15A. Questioning of witness as to certain convictions.** A witness in any criminal or civil proceeding shall not be asked and if asked shall not be required to answer any question tending to show that he has committed or been convicted of or been charged with any offence if, where he has been convicted of the offence—

- (a) the conviction is one in relation to which a rehabilitation period is capable of running pursuant to the *Criminal Law (Rehabilitation of Offenders) Act 1986*;  
and
- (b) in relation to the conviction the rehabilitation period within the meaning of that Act is not running at the time of the criminal or civil proceeding,

unless the permission of the court to ask the question has first been obtained, such permission to be applied for in a trial by jury in the absence of the jury.”

(2) The *Evidence Act 1977-1984* as amended by this section may be cited as the *Evidence Act 1977-1986*.