

Queensland



**CORRECTIVE SERVICES
LEGISLATION
AMENDMENT ACT 1997**

Act No. 46 of 1997

Queensland



CORRECTIVE SERVICES LEGISLATION AMENDMENT ACT 1997

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**Corrective Services Legislation Amendment
Act 1997**

Act No. 46 of 1997

**An Act to amend the *Corrective Services (Administration) Act 1988* and
the *Corrective Services Act 1988* and for other purposes**

[Assented to 29 August 1997]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Corrective Services Legislation Amendment Act 1997*.

PART 2—AMENDMENT OF THE CORRECTIVE SERVICES (ADMINISTRATION) ACT 1988

Act amended in pt 2

2. This part amends the *Corrective Services (Administration) Act 1988*.

Insertion of new s 7

3. After section 6—

insert—

‘References to various officers and the commission

‘7.(1) In any Act, a reference to a community correctional officer is a reference to—

- (a) a person employed by the commission as a community correctional officer under section 34;¹ or
- (b) a person taken to be a community correctional officer under section 23C(8);² or

¹ Section 34 (Other officers of commission)

² Section 23C (Structure of authorisation and delegation)

- (c) a person appointed under the *Corrective Services Act 1988*, section 200³ as a voluntary community correctional officer.

‘(2) In any Act, a reference to a custodial correctional officer is a reference to—

- (a) a person employed by the commission as a custodial correctional officer under section 34; or
- (b) a person taken to be a custodial correctional officer under section 23C(8).

‘(3) In any Act, a reference to a general manager of a prison is a reference to—

- (a) a person employed by the commission as the general manager of the prison under section 34 or, if there is no person employed as the general manager, the person employed by the commission as the manager of the prison; or
- (b) a person taken to be a general manager of a prison under section 23C(8); or
- (c) a person for the time being performing the duties of the office of general manager.

‘(4) In any Act, a reference to an officer or employee of the commission is a reference to—

- (a) an officer or employee of the commission appointed or employed under section 34; or
- (b) a person taken to be an officer or employee of the commission under section 23C(8).

‘(5) In any Act, a reference to the Queensland Corrective Services Commission is a reference to—

- (a) the Queensland Corrective Services Commission established under section 9;⁴ or

³ *Corrective Services Act 1988*, section 200 (Appointment of voluntary community correctional officers)

⁴ Section 9 (Constitution of Commission)

- (b) a person or body taken to be the commission under section 23C(5).’.

Amendment of s 19 (Powers of Commission)

4.(1) Section 19(2)(f), before ‘engage’—

insert—

‘subject to section 23B(2),’.

(2) Section 19(2)(f), from ‘1992’ to ‘1988’—

omit, insert—

‘1992, the *Penalties and Sentences Act 1992*, the *Corrective Services Act 1988* or another Act’.

(3) Section 19(3) and (4)—

omit.

Amendment of s 20 (Rules)

5. Section 20(7) and (8), ‘the commission’s officers’—

omit, insert—

‘detention centre officers’.

Amendment of s 21 (Delegations)

6.(1) Section 21, heading—

omit, insert—

‘**Delegation by commission**’.

(2) Section 21(c)—

omit.

(3) Section 21—

insert—

‘**(2)** In this section—

“**commission**” does not include a person or body taken to be the commission under section 23C(5).⁵.

Insertion of new pt 2 div 2A

7. Part 2—

insert—

Division 2A—Further provisions about persons or bodies engaged under section 19(2)(f)

‘Definitions for div 2A

‘23A. In this division—

“**juvenile justice operations**” of the commission, means the involvement of the commission under any provision of the *Juvenile Justice Act 1992*.

“**offenders**” means—

- (a) detainees; or
- (b) prisoners; or
- (c) persons who are subject to probation orders, community service orders, fine option orders or intensive correction orders under the *Penalties and Sentences Act 1992*.

‘Engaging persons or bodies to conduct commission’s operations

‘23B.(1) The commission may exercise the power under section 19(2)(f)⁶ to engage a person or body to perform all or any corrective services for all or any offenders.

‘(2) However, the commission may exercise the power under section 19(2)(f) for the commission’s juvenile justice operations only by engaging a GOC.

⁵ Section 23C (Structure of authorisation and delegation)

⁶ Section 19 (Powers of Commission)

‘(3) Other than as provided by subsection (2), this section does not limit section 19(2)(f).

‘Structure of authorisation and delegation

‘23C.(1) The commission may authorise a person or body engaged under section 19(2)(f) to exercise powers and perform functions given under any Act to a commission entity.

‘(2) However, the commission may not authorise the person or body to exercise the commission’s power of authorisation or delegation conferred by this section or section 21.⁷

‘(3) An authorisation under subsection (1) may be given on any condition stated in the authorisation.

‘(4) Without limiting subsection (3), a condition may state—

- (a) that a particular power mentioned in subsection (6) may be delegated to only particular employees of the person or body; or
- (b) particular obligations to be observed by employees of the person or body; or
- (c) that the exercise of a particular power is subject to a decision of the commission.

‘(5) If, under the authorisation, the person or body exercises a power under an Act, or performs a function under an Act, of the commission, the person or body, in exercising the power or performing the function, is taken to be the commission for the Act or for an Act that refers to the commission acting in that capacity.

‘(6) An authorisation under subsection (1) may authorise a person or body engaged under section 19(2)(f) to delegate powers it has under the authorisation to an appropriately qualified employee of the person or body, including the power to do an act or make a decision for the performance of a function it has under the authorisation.

⁷ Section 21 (Delegation by commission)

‘(7) The *Acts Interpretation Act 1954*, section 27A⁸ applies to a delegation under subsection (6).

‘(8) If, under an authorisation, a person or body—

- (a) is authorised to exercise the powers under an Act or perform the functions under an Act, of a defined office holder or an officer or employee of the commission; and
- (b) is authorised to delegate powers of the office holder or officer or employee; and
- (c) delegates to an employee a power that may be exercised under the Act by the defined office holder or officer or employee of the commission;

the employee, in exercising the power, is taken to be the defined office holder or officer or employee of the commission for the Act or for an Act that refers to the office holder or officer or employee acting in that capacity.

‘(9) Subsection (8) does not have the effect of making an employee of a person or body acting under an authorisation an officer or employee of the commission for the purpose of the nature or conditions of their employment.

‘(10) Also, subsection (8) is not affected by the *Acts Interpretation Act 1954*, section 27A(7).

‘(11) A person or body engaged under section 19(2)(f), or an employee of the person or body, may be taken to be a commission entity for an Act, even though the Act provides for the commission entity to delegate, or be delegated, a function or power of a commission entity.

Example—

The *Corrective Services Act 1988*, section 15⁹ allows the general manager of a prison to delegate particular powers to an officer of the commission subject to the directions of the commission. The structure of authorisation and delegation under section 19(2)(f) may result in a person or body acting under the authorisation, or an employee of the person or body acting under a delegation under the authorisation, being taken to be the commission, a general manager of a prison or an officer of the

⁸ Section 27A (Delegation of powers). The full text of section 27A is set out in the explanatory notes to the Bill.

⁹ *Corrective Services Act 1988*, section 15 (Delegation by general manager)

commission.

‘(12) Subsection (11) is subject to subsection (2).

‘(13) In this section—

“Act” includes a provision of an Act.

“**appropriately qualified**” includes having the qualifications, experience or standing appropriate to exercise the power.

Example of standing—

A person’s classification level in the entity in which the person is employed.

“**commission entity**” means the commission, a defined office holder, or an officer or employee of the commission.

“**defined office holder**” means an officer of the commission who holds a following office¹⁰—

- (a) community correctional officer;
- (b) custodial correctional officer;
- (c) general manager of a prison.

‘Directions for detention centres

‘**23D.(1)** This section applies whether or not a condition is imposed under section 23C(3) on a GOC conducting juvenile justice operations under this division.

‘(2) The commission may, at any time, give the GOC the directions the commission considers appropriate for the security and management of a detention centre conducted by the GOC and the safety and wellbeing of children detained in the detention centre.

‘(3) The GOC must comply with the direction.

‘(4) Without limiting subsection (2), a direction may be for anything mentioned in the *Juvenile Justice Act 1992*, section 203(2)(a) to (e) or for any purpose mentioned in section 203(3)(a) to (d) of that Act.

¹⁰ See section 7(1)(a), (2)(a) and (3)(a).

‘(5) A direction may be binding on an employee of, or person engaged by, the GOC, or any person detained in or visiting the detention centre.

‘Commission retains custody and responsibilities

‘23E.(1) An offender in the custody of any person or body under an engagement with the commission under section 19(2)(f) is taken also to be in the custody of the commission.

‘(2) Even though the commission engages a person or body under section 19(2)(f) to discharge a responsibility for the security and management of any prison, community correction centre or detention centre and the safe custody and wellbeing of any offender, the commission also has that responsibility.

‘(3) However, the commission may discharge its responsibility through the exercise of its power under section 19(2)(f) and the engagement made under that section and the exercise of its power under section 23D.

‘Evidentiary provision

‘23F. For any proceeding—

- (a) evidence that any person purports to do or to have done an act under an engagement under section 19(2)(f), or an authorisation or delegation under this division, is evidence that the act is or was lawfully done under a lawful engagement, authorisation or delegation; and
- (b) a document purporting to be a copy of an engagement under section 19(2)(f) or an authorisation or delegation under this division is evidence of the engagement, authorisation or delegation.’

Amendment of s 63 (Commission deemed to be owner of property)

8.(1) Section 63(1)(a)—

omit, insert—

- ‘(a) each prison and detention centre; and

(aa) each community corrections centre; and’.

(2) Section 63(1)(b), after ‘fine option orders’—

insert—

‘administered by the commission’.

(3) Section 63(1), from ‘shall’ to ‘deemed’—

omit, insert—

‘is taken’.

(4) After section 63(1)—

insert—

‘(1A) Subsection (1)(aa) does not apply to a community corrections centre that, if the paragraph did not apply, would belong to an entity other than the State.

‘(1B) Subsection (1)(b) does not apply to anything assigned by law to a person or body engaged by the commission under section 19(2)(f).¹¹’.

(5) Section 63—

insert—

‘(3) In this section—

“**commission**” does not include a person or body taken to be the commission under section 23C(5).¹²’.

Amendment of s 71 (Regulations)

9.(1) Section 71, heading—

omit, insert—

‘Regulation-making power’.

(2) Section 71(2)(b), from ‘and in respect’ to ‘so authorised’—

omit.

¹¹ Section 19 (Powers of Commission)

¹² Section 23C (Structure of authorisation and delegation)

(3) Section 71(2)(d)—
renumber as section 71(2)(e).

(4) After section 71(2)(c)—
insert—

‘(d) penalties not more than 50 penalty units for a contravention of a specified direction under section 23D;’.

Replacement of pt 5A and heading (Transitional on Act No. 22 of 1996)

10.(1) Part 5A, heading—
omit, insert—

‘Division 2—Transitional provision for Act No. 22 of 1996’.

(2) Part 5A, as amended by subsection (1)—
relocate as division 2 of part 6.

Amendment of ss 72A and 72B

11.(1) Section 72A, ‘In this part’—
omit, insert—

‘In this division’.

(2) Sections 72A and 72B—
renumber as sections 75 and 76.

Insertion of new pt 6 div heading

12. In part 6, before section 73—
insert—

‘Division 1—Transitional provisions for Act No. 87 of 1988’.

Insertion of new pt 6, div 3**13. Part 6—***insert—****‘Division 3—Transitional and declaratory provisions for Corrective Services Legislation Amendment Act 1997*****‘Declaratory provision about previous acts**

‘77.(1) All authorisations or delegations purportedly given, before the commencement, under section 19(3) or 21¹³ to an employee of an engaged entity by the commission for the purposes of any Act, in relation to an engagement under section 19(2)(f), are taken to have been validly given.

‘(2) Subsection (3) applies if an act done before the commencement by an engaged entity, or an employee of the entity in the course of the employee’s employment with the entity, for the purpose of providing a corrective service under the engagement, could lawfully have been done by the commission or an officer or employee of the commission in providing the corrective service.

‘(3) The act is taken to have been done lawfully, despite any absence of, or defect in, an authorisation or delegation under section 19(3) or 21.

‘(4) In this section—

“commencement” means the commencement of the *Corrective Services Legislation Amendment Act 1997*, section 7.

“engaged entity” means any of the following entities engaged under section 19(2)(f)—

- (a) Australasian Correctional Management Pty Ltd ACN 051 130 600;
- (b) Corrections Corporation of Australia ACN 010 921 641;
- (c) Shaftesbury Citizenship Centre and Campus, 25 Quarry Street, Spring Hill;

¹³ Section 19 (Powers of Commission) or 21 (Delegation by commission)

- (d) Society of St Vincent de Paul State Council of Queensland
ACN 072 422 925.’.

Amendment of sch (Dictionary)

14. Schedule—

insert—

‘ **“commission entity”** see section 23C.

“community correctional officer” see section 7.

“custodial correctional officer” see section 7.

“detention centre officer” means any member of the staff of any detention centre.

“function” of a commission entity, includes responsibility and anything the commission entity may or must do under an Act, including receive a delegation.

“general manager” see section 7.’.

PART 3—AMENDMENT OF THE CORRECTIVE SERVICES ACT 1988

Act amended in pt 3

15. This part amends the *Corrective Services Act 1988*.

Amendment of s 10 (Definitions)

16.(1) Section 10, definitions **“community correctional officer”**, **“custodial correctional officer”**, **“director of community corrections”**, **“director of custodial corrections”** and **“general manager”**—

omit.

(2) Section 10—

insert—

‘ **“community correctional officer”** see *Corrective Services (Administration) Act 1988*, section 7(1).¹⁴

“custodial correctional officer” see *Corrective Services (Administration) Act 1988*, section 7(2).

“employee” of the commission, see *Corrective Services (Administration) Act 1988*, section 7(4).

“general manager” of a prison, see *Corrective Services (Administration) Act 1988*, section 7(3).

“officer” of the commission, see *Corrective Services (Administration) Act 1988*, section 7(4).’.

(3) Section 10, definition **“commission”**, from ‘Services Commission’—

omit, insert—

‘Services Commission.’¹⁵.

Amendment of s 14 (General manager responsible for prison)

17. Section 14, ‘and the director of custodial corrections’—

omit.

Amendment of s 18 (Certain persons to have powers of general manager)

18. Section 18(1), from ‘, the director-general,’ to ‘corrections’—

omit.

¹⁴ *Corrective Services (Administration) Act 1988*, section 7 (References to various officers and the commission)

¹⁵ See *Corrective Services (Administration) Act 1988*, section 7 for meaning of reference to Queensland Corrective Services Commission.

Amendment of s 29 (Powers of inspector)

19. Section 29(1)(d), from ‘the director’ (first mention) to ‘corrections’ (second mention)—

omit, insert—

‘an officer or employee of the commission, including a community correctional officer, custodial correctional officer and general manager of a prison’.

Amendment of s 45 (Certain persons to have powers of custodial correctional officer)

20. Section 45(1), ‘director-general, the director of custodial corrections’—

omit, insert—

‘director-general’.

Amendment of s 109 (Searching of officers and employees of commission etc.)

21.(1) Section 109(1), ‘and is’—

omit, insert—

‘and is, or purportedly is’.

(2) Section 109(1)(b)—

omit, insert—

‘(b) a person authorised under section 45(2)¹⁶ to perform any function or exercise any power of an officer of the commission;’.

Amendment of s 136 (Meetings of board)

22. Section 136(2), from ‘the director’ (first mention) to ‘corrections’ (second mention)—

¹⁶ Section 45 (Certain persons to have powers of custodial correctional officer)

omit, insert—

‘an officer of the commission’.

Amendment of s 207 (Evidentiary provision)

23. Section 207(a), from ‘or of the director’ to ‘community corrections’—

omit.

PART 4—AMENDMENT OF THE PENALTIES AND SENTENCES ACT 1992

Act amended in pt 4

24. This part amends the *Penalties and Sentences Act 1992*.

Amendment of s 4 (Definitions)

25. Section 4, definition “**authorised commission officer**”—

omit, insert—

‘**authorised commission officer**’ see section 4A.’.

Insertion of new s 4A

26. After section 4—

insert—

‘Meaning of “authorised commission officer”

‘4A.(1) An “**authorised commission officer**” means a person who—

(a) is—

- (i) an officer or employee of the commission appointed or employed under the *Corrective Services (Administration)*

Act 1988, section 34;¹⁷ or

(ii) an employee of a person or body engaged under that Act, section 19(2)(f);¹⁸ and

(b) is authorised by the commission for the relevant purpose.

‘(2) In this section—

“**commission**” does not include a person or body taken to be the commission under the *Corrective Services (Administration) Act 1988*, section 23C(5).’.

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¹⁷ *Corrective Services (Administration) Act 1998*, section 34 (Other officers of commission)

¹⁸ *Corrective Services (Administration) Act 1998*, section 19 (Powers of Commission)