

Queensland



FAMILY SERVICES AMENDMENT ACT 1999

Act No. 52 of 1999

Queensland



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Queensland



Family Services Amendment Act 1999

Act No. 52 of 1999

An Act to amend the *Family Services Act 1987* and another Act

[Assented to 18 November 1999]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Family Services Amendment Act 1999*.

Commencement

2. This Act commences on a day to be fixed by proclamation.

PART 2—AMENDMENT OF FAMILY SERVICES ACT 1987

Act amended in pt 2

3. This part amends the *Family Services Act 1987*.

Amendment of s 4 (Interpretation)

- 4.(1) Section 4, heading—

omit, insert—

‘Definitions’.

- (2) Section 4—

insert—

‘**approved form**’ see section 61.

‘**charge**’, of an offence, means a charge in any form, including, for example, the following—

- (a) a charge on an arrest;

- (b) a notice to appear served under the *Police Powers and Responsibilities Act 1997*, section 40;¹
- (c) a complaint under the *Justices Act 1886*;
- (d) a charge by a court under the *Justices Act 1886*, section 42(1A)² or another provision of an Act;
- (e) an indictment.

“conviction” includes a finding of guilt by a court, or the acceptance of a plea of guilty by a court, whether or not a conviction is recorded.

“criminal history”, of a person, means—

- (a) every conviction of the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this definition; and
- (b) every charge made against the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this definition.

“engaged by the department” see section 18(2).

“sentence”, of a person, means any penalty or imprisonment ordered to be paid or served, or any other order made, by a court after the person is convicted of an offence.

“serious offence” means—

- (a) an offence against a provision mentioned in the schedule to the *Penalties and Sentences Act 1992*;³ or
- (b) an offence against the *Drugs Misuse Act 1986*, section 9;⁴ or
- (c) an offence against a provision of the Criminal Code mentioned in the schedule; or
- (d) an offence of counselling or procuring the commission of, or

¹ *Police Powers and Responsibilities Act 1997*, section 40 (Notice to appear may be issued for offence)

² *Justices Act 1886*, section 42 (Commencement of proceedings)

³ *Penalties and Sentences Act 1992*, schedule (Serious violent offences)

⁴ *Drugs Misuse Act 1986*, section 9 (Possessing dangerous drugs)

attempting or conspiring to commit, an offence mentioned in paragraphs (a) to (c).’.

Insertion of new pt 4

5. After section 17—

insert—

‘PART 4—CRIMINAL HISTORIES OF PERSONS ENGAGED BY THE DEPARTMENT

‘Division 1—Preliminary

‘Persons engaged by the department

‘18.(1) This part is about the chief executive obtaining the criminal histories of persons engaged by the department and other information about the persons.

‘(2) Each of the following persons is “engaged by the department”—

- (a) a public service employee in the department;
- (b) an honorary officer;
- (c) an agent;
- (d) a person working in the department as a volunteer or as a student on work experience.

‘Purpose

‘19. The purpose of this part is to ensure the chief executive has all the relevant information the chief executive needs to assess a person’s suitability to be, or continue to be, engaged by the department.

‘This part applies despite the Criminal Law (Rehabilitation of Offenders) Act 1986

‘20. This part applies to a person despite anything in the *Criminal Law*

(Rehabilitation of Offenders) Act 1986.

‘Chief executive to advise of duties of disclosure etc.

‘21. Before a person is engaged by the department, the chief executive must tell the person—

- (a) of the person’s duties of disclosure under this part; and
- (b) that the chief executive may obtain the information about the person mentioned in section 26;⁵ and
- (c) that guidelines for dealing with information obtained by the chief executive under this part are available from the chief executive on request.

Division 2—Disclosure of criminal history

‘Persons seeking to be engaged by the department must disclose criminal history

‘22. A person seeking to be engaged by the department must disclose to the chief executive, before being engaged—

- (a) whether or not the person has a criminal history; and
- (b) if the person has a criminal history—the person’s complete criminal history.

‘Persons engaged by the department must disclose changes in criminal history

‘23.(1) If there is a change in the criminal history of a person engaged by the department, the person must immediately disclose to the chief executive the details of the change.

‘(2) For a person who does not have a criminal history, there is taken to

⁵ Section 26 (Chief executive may obtain report from commissioner of police service)

be a change in the person's criminal history if the person acquires a criminal history.

'Requirements for disclosure

'24.(1) To comply with section 22 or 23, a person must give the chief executive a disclosure in the approved form.

'(2) The information disclosed by a person about a conviction or charge of an offence in the person's criminal history must include—

- (a) the existence of the conviction or charge; and
- (b) when the offence was committed or alleged to have been committed; and
- (c) the details of the offence or alleged offence; and
- (d) for a conviction—whether or not a conviction was recorded and the sentence imposed on the person.

'False, misleading or incomplete disclosure or failure to disclose

'25.(1) A person must not—

- (a) give the chief executive a disclosure for the purposes of this division that is false, misleading or incomplete in a material particular; or
- (b) fail to give the chief executive a disclosure as required under section 23, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units or 2 years imprisonment.

'(2) Subsection (1)(a) does not apply to a person in relation to particular information that the person is unable to provide if the person—

- (a) indicates in the disclosure the information that the person is unable to provide; and
- (b) otherwise gives the information in the disclosure to the best of the person's ability.

'(3) In a proceeding for an offence against subsection (1)(a), it is enough

for a charge to state that the disclosure was, without specifying which, ‘false, misleading or incomplete’.

‘Division 3—Chief executive may obtain information from other entities about criminal history and certain investigations

‘Chief executive may obtain report from commissioner of police service

‘26.(1) This section applies to a person who—

- (a) is engaged by the department; or
- (b) seeks to be engaged by the department and has given the chief executive a disclosure for the purposes of division 2.

‘(2) The chief executive may ask the commissioner of the police service to give the chief executive the following information about the person—

- (a) a written report about the person’s criminal history;
- (b) a brief description of the circumstances of a conviction or charge mentioned in the person’s criminal history;
- (c) information about an investigation relating to the possible commission of a serious offence by the person.

‘(3) Subject to subsections (4) and (5), the commissioner of the police service must comply with the request.

‘(4) The duty imposed on the commissioner of the police service to comply with the request—

- (a) applies only to information in the commissioner’s possession or to which the commissioner has access; and
- (b) in relation to information mentioned in subsection (2)(c)—applies only to information recorded on a central electronic database kept by the commissioner.

‘(5) The commissioner of the police service must not give information about an investigation relating to the possible commission of a serious offence by the person if—

- (a) the commissioner is reasonably satisfied that giving the information—

- (i) may prejudice or otherwise hinder an investigation to which the information may be relevant; or
 - (ii) may lead to the identification of an informant; or
 - (iii) may affect the safety of a police officer, complainant or other person; or
- (b) for an investigation that has been completed—the investigation has not led, and the commissioner is reasonably satisfied it is unlikely to lead, to a reasonable suspicion that the person committed a serious offence; or
- (c) for an investigation that has not been completed—the commissioner is reasonably satisfied the investigation is unlikely to lead to a reasonable suspicion that the person committed a serious offence.

‘Prosecuting authority to notify chief executive about committal, conviction etc.

‘**27.(1)** This section applies if a person is charged with an indictable offence and the commissioner of the police service or the director of public prosecutions (a “**prosecuting authority**”) is aware that the person is engaged by the department.

‘**(2)** If the person is committed by a court for trial for an indictable offence, the prosecuting authority must, within 7 days after the committal, give written notice to the chief executive of the following—

- (a) the person’s name;
- (b) the court;
- (c) particulars of the offence;
- (d) the date of the committal;
- (e) the court to which the person was committed.

‘**(3)** If the person is convicted before a court of an indictable offence, the prosecuting authority must, within 7 days after the conviction, give written notice to the chief executive of the following—

- (a) the person’s name;

- (b) the court;
- (c) particulars of the offence;
- (d) the date of the conviction;
- (e) the sentence imposed by the court.

‘(4) If the person is convicted of an indictable offence, and has appealed the conviction, and the appeal is finally decided or has otherwise ended, the prosecuting authority must, within 7 days after the decision or the day the appeal otherwise ends, give written notice to the chief executive of the following—

- (a) the person’s name;
- (b) particulars of the offence;
- (c) the date of the decision or other ending of the appeal;
- (d) if the appeal was decided—
 - (i) the court in which it was decided; and
 - (ii) particulars of the decision.

‘(5) If the prosecution process ends without the person being convicted of an indictable offence, the prosecuting authority must, within 7 days after the end, give written notice to the chief executive about the following—

- (a) the person’s name;
- (b) if relevant—the court in which the prosecution process ended;
- (c) particulars of the offence;
- (d) the date the prosecution process ended.

‘(6) For subsection (5), a prosecution process ends if—

- (a) an indictment is presented against the person and—
 - (i) a nolle prosequi is entered on the indictment; or
 - (ii) the person is acquitted; or
- (b) the prosecution process has otherwise ended.

‘(7) A reference in this section to a conviction of an indictable offence includes a summary conviction of an indictable offence.

Division 4—Controls on use of information about criminal history and certain investigations

‘Use of information obtained under this part

‘28.(1) This section applies to the chief executive in considering information about a person received under this part.

‘(2) The information must not be used for any purpose other than assessing the person’s suitability to be, or continue to be, engaged by the department.

‘(3) When making the assessment, the chief executive must have regard to the following matters relating to information about the commission, or alleged or possible commission, of an offence by the person—

- (a) when the offence was committed, is alleged to have been committed or may possibly have been committed;
- (b) the nature of the offence and its relevance to the person’s proposed duties or duties under the sought engagement or engagement;
- (c) anything else the chief executive considers relevant to the assessment of the person.

‘Person to be advised of information obtained

‘29.(1) This section applies to information obtained by the chief executive about a person, under this part, from the commissioner of the police service.

‘(2) Before using the information to assess the person’s suitability to be, or continue to be, engaged by the department, the chief executive must—

- (a) disclose the information to the person; and
- (b) allow the person a reasonable opportunity to make representations to the chief executive about the information.

‘Confidentiality

‘30.(1) This section applies to a person who—

- (a) is, or has been, a public service employee in the department or a

selection panel member; and

- (b) in that capacity acquired information, or gained access to a document, under this part about someone else's criminal history or about an investigation relating to the possible commission of a serious offence by someone else.

(2) The person must not disclose the information, or give access to the document, to anyone else.

Maximum penalty—100 penalty units or 2 years imprisonment.

(3) Subsection (2) does not apply to the disclosure of information, or giving of access to a document, about a person—

- (a) to a public service employee in the department, or a selection panel member, for the purpose of assessing the person's suitability to be, or continue to be, engaged by the department; or
- (b) with the person's consent; or
- (c) if the disclosure or giving of access is otherwise required under an Act.

(4) In this section—

“selection panel member” means a member of a panel formed to make a recommendation to the chief executive about a person's engagement by the department.

‘Guidelines for dealing with information

31.(1) The chief executive must make guidelines, consistent with this Act, for dealing with information obtained by the chief executive under this part.

(2) The purpose of the guidelines is to ensure—

- (a) natural justice is afforded to the persons about whom the information is obtained; and
- (b) only relevant information is used in assessing the persons' suitability to be, or continue to be, engaged by the department; and
- (c) decisions about the suitability of persons, based on the information, are made consistently.

‘(3) The chief executive must give a copy of the guidelines, on request, to a person seeking to be engaged, or engaged, by the department.’.

Insertion of new ss 61–63

6. Part 6, after section 60—

insert—

‘Approved forms

‘61. The chief executive may approve forms for use under this Act.

‘References to “Minister”

‘62.(1) This section applies if the *Disability Services Act 1992* is administered by a Minister (the “**Disability Services Minister**”) other than the Minister administering this Act.

‘(2) A reference in this Act to the Minister includes the Disability Services Minister.

‘(3) A reference in another Act to the Minister administering this Act, or responsible for this Act, does not include the Disability Services Minister.

‘References to “department” and “chief executive”

‘63.(1) This section applies if the *Disability Services Act 1992* is administered in a department (the “**Disability Services Department**”) other than the department in which this Act is administered.

‘(2) A reference in this Act to the department includes the Disability Services Department.

‘(3) A reference in this Act to the chief executive includes the chief executive of the Disability Services Department.

‘(4) A reference in another Act to the department in which this Act is administered does not include the Disability Services Department.

‘(5) A reference in another Act to the chief executive of the department in which this Act is administered does not include the chief executive of the Disability Services Department.’.

Insertion of new schedule

6A. After part 7—

insert—

‘SCHEDULE**‘OTHER SERIOUS OFFENCE PROVISIONS OF THE
CRIMINAL CODE**

section 4, definition “serious offence”, paragraph (c)

1. Section 211 (Bestiality)
2. Section 219 (Taking child for immoral purposes)
3. Section 221 (Conspiracy to defile)
4. Section 228 (Obscene publications and exhibitions)
5. Section 238 (Contamination of goods)
6. Section 239 (Hoax contamination of goods)
7. Section 240 (Dealing in contaminated goods)
8. Section 300 (Unlawful homicide)
9. Section 307 (Accessory after the fact to murder)
10. Section 308 (Threats to murder in document)
11. Section 309 (Conspiring to murder)
12. Section 311 (Aiding suicide)
13. Section 314 (Concealing the birth of children)
14. Section 324 (Failure to supply necessities)
15. Section 327 (Setting mantraps)
16. Section 355 (Deprivation of liberty)
17. Section 359 (Threats)

18. Section 359E (Punishment of unlawful stalking)
19. Section 363 (Child-stealing)
20. Section 363A (Abduction of child under 16)
21. Section 364 (Cruelty to children under 16)
22. Section 415 (Demanding property, benefit or performance of services with threats)
23. Section 416 (Attempts at extortion by threats)
24. Section 417 (Procuring execution of deeds etc. by threats)
25. Section 417A (Taking control of aircraft).’.

PART 3—AMENDMENT OF CRIMINAL LAW (REHABILITATION OF OFFENDERS) ACT 1986

Act amended in pt 3

7. This part amends the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

Amendment of s 9A (Disclosure of particulars in special cases)

8. Section 9A(1), table, column 1, item 6(2) and (3)—
omit.