



Queensland

Disability Services Act 2006

Act No. 12 of 2006



Queensland

Disability Services Act 2006

Contents

		Page
Part 1	Preliminary	
Division 1	Introduction	
1	Short title	14
2	Commencement	14
3	Act binds all persons	14
4	Contravention of this Act does not create civil cause of action	14
5	Act does not affect other rights or remedies	14
Division 2	Objects	
6	Objects of Act	15
7	How objects are mainly achieved	15
8	Finite resources available	15
Division 3	Interpretation	
9	Definitions	16
10	Notes in text	16
11	What is a disability	16
12	What are disability services	16
13	Meaning of service provider	17
14	Meaning of funded service provider	17
15	Meaning of non-government service provider	17
16	Meaning of approved non-government service provider	17
17	Meaning of funded non-government service provider	18
Part 2	Disability rights	
Division 1	Human rights principle	
18	Persons encouraged to have regard to human rights principle	18
19	Principle that people with a disability have the same human rights as others	18

Division 2	Service delivery principles	
20	Service delivery principles to be promoted by service providers	19
21	Focus on the development of the individual	20
22	Participation in planning and operation of services	20
23	Focus on a lifestyle the same as other people and appropriate for age	20
24	Coordination and integration of services with general services	20
25	Services to be tailored to meet individual needs and goals	21
26	People with a disability experiencing additional barriers	21
27	Promotion of competency, positive image and self-esteem	21
28	Inclusion in the community	21
29	No single service provider to exercise control over life of person with disability	22
30	Consideration for others involved with people with a disability	22
31	Service providers to make information available	22
32	Raising and resolving grievances	22
33	Access to advocacy support	22
Part 3	Disability service standards	
34	Minister may make disability service standards	23
35	When service standard takes effect	23
36	Notice and availability of service standards	23
Part 4	Process for certifying whether service providers meet service standards	
37	Minister may approve process	24
38	Minister may approve entity as suitable to accredit external certification body	24
39	Minister must publish approvals given under pt 4	24
40	Documents relating to process approved must be published	24
Part 5	Complaints about the delivery of disability services by funded service providers	
41	Complaints by consumers	25
42	Chief executive may refer matters to complaints agency	25
43	Complaints agency to inform chief executive about actions taken for complaint	25
Part 6	Approved non-government service providers	
44	Explanation	26
45	No entitlement to funding	26
46	Application for approval	26
47	Approval remains in force unless cancelled	27

48	Application for cancellation of approval	28
49	Cancellation of approval without application	28
50	Cancellation of approval if funded non-government service provider no longer exists	29
Part 7	Funding of non-government service providers	
51	Purpose of giving funding	29
52	When funding may be given	29
53	Types of funding	30
54	Recurrent funding for non-government service providers	30
55	Who may receive approval for one-off funding	30
56	No funding without agreement	31
57	Insurance for service outlets	31
58	What funding agreement is to contain	32
Part 8	Prescribed requirements for funded non-government service providers	
59	Prescribed requirements	33
60	Funded non-government service provider must comply with prescribed requirements.	34
Part 9	Screening of persons engaged by the department	
Division 1	Preliminary	
61	Main purpose of pt 9	34
62	Safety of people with a disability to be paramount consideration.	35
63	Persons engaged by the department	35
64	This part applies despite the Criminal Law (Rehabilitation of Offenders) Act 1986	35
65	Chief executive to advise of duties of disclosure etc.	35
Division 2	Disclosure of criminal history	
66	Persons seeking to be engaged by the department must disclose criminal history	36
67	Persons engaged by the department must disclose changes in criminal history	36
68	Requirements for disclosure.	36
69	False, misleading or incomplete disclosure or failure to disclose.	37
Division 3	Chief executive may obtain information from other entities about criminal history and certain investigations	
70	Chief executive may obtain report from commissioner of the police service	37
71	Prosecuting authority to notify chief executive about committal, conviction etc.	39

Division 4	Controls on use of information about criminal history and certain investigations	
72	Use of information obtained under this part	40
73	Person to be advised of information obtained	41
74	Guidelines for dealing with information.	41
Part 10	Screening of persons engaged by funded non-government service providers	
Division 1	Preliminary	
75	Main purpose of pt 10	42
76	Safety of people with a disability to be paramount consideration.	42
77	This part applies despite the Criminal Law (Rehabilitation of Offenders) Act 1986	42
Division 2	Interpretation	
78	What is engagement	42
79	What is a serious offence	44
80	What is a serious sexual or violent offence	45
81	What is an excluding offence	46
Division 3	Risk management strategies	
82	Risk management strategies about persons engaged by funded non-government service providers	46
Division 4	Issue of prescribed notices for funded non-government service providers	
83	Application for notice	47
84	Notice of change of engagement, or name and contact details in application under s 83	48
85	Decision on application	48
86	Decision-making under s 85 in relation to discretionary matters	50
87	Actions of chief executive after making decision on application	51
88	Chief executive to invite submissions from engaged person about particular information	52
89	Currency of prescribed notice and positive notice card	53
Division 5	Obligations and offences relating to prescribed notices	
Subdivision 1	Engagement of persons by funded non-government service provider	
90	When person without current positive notice may be engaged	53
91	Prohibited engagement	54

Subdivision 2	Obligations if holder of negative notice or application for prescribed notice is withdrawn	
92	Person holding negative notice, or who has withdrawn consent to screening, not to apply for, or start or continue in, engagement by funded non-government service provider	55
Subdivision 3	Changes in criminal history	
93	Acquiring a criminal history	56
94	Effect of conviction for serious offence or charge for excluding offence	56
95	Change in criminal history of engaged person	56
96	Change in criminal history of other persons	57
Subdivision 4	General	
97	False or misleading disclosure	58
98	False or misleading documents	58
99	Return of positive notice and positive notice card to chief executive	59
Division 6	Cancellation and replacement of prescribed notices	
100	Cancellation of negative notice and issuing of positive notice . . .	59
101	Chief executive may cancel a prescribed notice and substitute another prescribed notice	60
102	Cancellation if conviction for excluding offence and imprisonment or disqualification order	62
103	Cancellation if conviction for excluding offence but no imprisonment or disqualification order	63
104	Effect of charge for excluding offence pending charge being dealt with	64
105	Cancellation of suspension and issue of further prescribed notice	66
106	Replacement of positive notice or positive notice card	67
107	Change of details for prescribed notice or positive notice card . .	68
Division 7	Miscellaneous	
108	Person may apply for review of decision	68
109	Police commissioner may decide that information about a person is investigative information	69
110	Delegation by police commissioner of power under s 109 restricted	70
111	Decision by police commissioner that information is investigative information	70
112	Court to decide matters afresh	71
113	Consequence of decision on appeal	72

114	Chief executive may obtain information from police commissioner	72
115	Notice of change in police information about a person	74
116	Chief executive to give notice to funded non-government service provider about making screening decision about engaged person	76
117	Withdrawal of engaged person's consent to screening	76
118	Compliance with requirement to end, or not start, a person's engagement	78
119	Guidelines for dealing with information.	79
120	Use of information obtained under this part about a person	79
121	Chief executive must give police commissioner a person's current address	80
122	Disqualification order	80
123	Register of persons engaged by funded non-government entities	81
Part 11	Monitoring and enforcement	
Division 1	Authorised officers	
124	Powers generally	82
125	Appointment	82
126	Qualifications for appointment	82
127	Appointment conditions and limit on powers	82
128	Issue of identity card	83
129	Production or display of identity card	83
130	When authorised officer ceases to hold office	84
131	Resignation	84
132	Return of identity card	84
Division 2	Powers of authorised officers	
Subdivision 1	Entry of places	
133	Power to enter places.	85
134	Power to enter place where funded non-government service provider provides disability services.	85
Subdivision 2	Procedure for entry	
135	Entry with consent	86
136	Application for warrant	87
137	Issue of warrant	87
138	Application by electronic communication and duplicate warrant . .	89
139	Defect in relation to a warrant.	91
140	Warrants—procedure before entry.	91

141	Entering a home and preserving privacy	92
Subdivision 3	Powers after entry	
142	General powers after entering a place	92
143	Failure to help authorised officer	93
144	Failure to answer questions	94
Subdivision 4	Power to seize evidence	
145	Seizing evidence after entry without consent or warrant	94
146	Seizing evidence after entry with consent or warrant.	94
Subdivision 5	Dealing with seized things	
147	Definition for sdiv 5.	95
148	Securing a seized thing	95
149	Tampering with a seized thing	96
150	Powers to support seizure	96
151	Authorised officer may require thing's return	97
152	Receipts for seized thing	97
153	Forfeiture of seized thing	97
154	Return of seized thing	98
155	Access to seized thing	99
Subdivision 6	Power to obtain information	
156	Power to require name and address	99
157	Failure to give name or address	99
158	Power to require production of documents.	100
159	Failure to produce document	100
160	Failure to certify copy of document.	101
Subdivision 7	Other compliance matters	
161	Compliance notice	101
Division 3	General enforcement matters	
162	Notice of damage	103
163	Compensation	103
164	False or misleading statements	104
165	False or misleading documents	104
166	Obstructing an authorised officer	105
167	Impersonation of an authorised officer	105
168	Chief executive may advise people with a disability and others of action taken in relation to funded non-government service providers	105

Part 12	Appointment of interim manager	
Division 1	Appointment	
169	Appointment	106
170	Basis for appointment.	106
171	Suitability of proposed appointee	107
172	Terms of appointment.	108
173	Notice to funded non-government service provider about appointment	109
174	Informing consumers about appointment	109
175	Initial period of appointment.	109
176	Variation of appointment.	109
177	Ending of appointment	110
Division 2	Function and powers	
178	Application of div 2	111
179	Interim manager's function	111
180	Interim manager's powers	111
181	Direction by chief executive	112
182	Other powers	112
183	Limitation on powers under instrument of appointment	112
184	Production of instrument of appointment for inspection	112
185	Obstruction	112
Division 3	Other matters	
186	Access to information or documents	113
187	Confidentiality.	113
188	Remuneration.	114
189	Funded non-government service provider liable for remuneration and other costs.	114
190	Accounts and reports	114
191	Compensation	115
Part 13	Legal proceedings	
Division 1	Application	
192	Application of pt 13.	115
Division 2	Evidence	
193	Appointments and authority	115
194	Signatures	116
195	Evidentiary provisions	116
196	Positive notice card is evidence of holding positive notice	117

Division 3	Proceedings	
197	Indictable and summary offences	117
198	Proceedings for indictable offences	117
199	Limitation on who may summarily hear indictable offence proceedings	118
200	Proceeding for offences	118
201	When proceeding may start	118
202	Allegations of false or misleading information or document	119
203	Forfeiture on conviction	119
204	Dealing with forfeited thing	119
205	Responsibility for acts or omissions of representative	120
206	Executive officers must ensure corporation complies with Act	120
Part 14	Reviews and appeals	
Division 1	Reviewable decisions	
207	Reviewable decisions	121
208	Chief executive must give notice after making reviewable decision	122
Division 2	Review of decision	
209	Application for review	122
210	Stay of operation of original decision	123
211	Review decision	123
Division 3	Appeal against decision	
212	Appeal against review decision	124
213	Appeal is by way of rehearing	125
Part 15	Miscellaneous	
Division 1	Records	
214	Funded non-government service provider must keep records	125
Division 2	Other matters	
215	Disability service plans for departments	125
216	Establishment of Ministerial advisory committees	126
217	Membership of advisory committee	127
218	Dissolution	127
219	Other matters	127
220	Person with a disability must advise chief executive about compensation	127
221	Confidentiality of information about criminal history and related information	129
222	Confidentiality of other information	130

223	Power to require information or documents	131
224	Protection from liability for giving information	131
225	Chief executive to advise on-disclosure	132
226	Chief executive may enter into arrangement about giving and receiving information with police commissioner	132
227	Delegation by Minister	133
228	Delegation by chief executive	133
229	Protecting officials from liability	134
230	Approval of forms	134
231	Service of documents	134
232	Regulation-making power	135
233	Review of Act	135
Part 16	Repeal and transitional provisions	
Division 1	Repeal	
234	Repeal of Disability Services Act 1992	135
Division 2	Transitional provisions	
235	Definitions for div 2	136
236	Screening of persons engaged by funded non-government service providers at the commencement	136
237	Certain non-government service providers taken to be approved under part 6 and to be funded non-government service providers	137
238	When grants of financial assistance under the repealed Act continue	137
239	Queensland disability service standards to continue in force	138
240	Disability sector quality system to continue in force	138
Part 17	Consequential amendments	
241	Acts amended	139
Schedule 1	Consequential amendments	140
	Charitable and Non-Profit Gaming Act 1999	140
	Child Protection (Offender Reporting) Act 2004	140
	Commercial and Consumer Tribunal Act 2003	140
	Coroners Act 2003	141
	Education (Work Experience) Act 1996	141
	Family Services Act 1987	141
	Guardianship and Administration Act 2000	142
	Residential Services (Accreditation) Act 2002	142
	Terrorism (Preventative Detention) Act 2005	142

	Whistleblowers Protection Act 1994	143
Schedule 2	Reviewable decisions	144
Schedule 3	Current serious offences	145
Schedule 4	Repealed or expired serious offences	
Schedule 5	Current serious sexual or violent offences	154
Schedule 6	Repealed or expired serious sexual or violent offences	155
Schedule 7	Dictionary	156



Queensland

Disability Services Act 2006

Act No. 12 of 2006

An Act to protect and promote the rights of people with a disability, and for other purposes

[Assented to 4 April 2006]

The Parliament of Queensland enacts—**Part 1 Preliminary****Division 1 Introduction****1 Short title**

This Act may be cited as the *Disability Services Act 2006*.

2 Commencement

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

3 Act binds all persons

- (1) This Act binds all persons, including the State and, so far as the legislative power of the Parliament permits, the Commonwealth and the other States.
- (2) Nothing in this Act makes the Commonwealth or a State liable to be prosecuted for an offence.

4 Contravention of this Act does not create civil cause of action

No provision of this Act creates a civil cause of action based on a contravention of the provision.

5 Act does not affect other rights or remedies

- (1) This Act does not affect or limit a civil right or remedy that exists apart from this Act, whether at common law or otherwise.
- (2) Without limiting subsection (1), compliance with this Act does not necessarily show that a civil obligation that exists

apart from this Act has been satisfied or has not been breached.

Division 2 Objects

6 Objects of Act

The objects of this Act are—

- (a) to acknowledge the rights of people with a disability including by promoting their inclusion in the life of the community generally; and
- (b) to ensure that disability services funded by the department are safe, accountable and respond to the needs of people with a disability.

7 How objects are mainly achieved

The objects are mainly achieved by—

- (a) stating the human rights principle and supporting rights applying to people with a disability; and
- (b) stating the principles for service delivery to people with a disability to be promoted by service providers; and
- (c) regulating disability services funded by the department to ensure the quality, safety, responsiveness and accountability of the services; and
- (d) helping to protect people with a disability using services funded by the department from abuse, neglect and exploitation.

8 Finite resources available

In administering this Act, regard must be had to the following—

- (a) the State has finite resources available to provide services to people with a disability;
- (b) there is a need to distribute the resources fairly having regard to the State's priorities.

Division 3 Interpretation

9 Definitions

The dictionary in schedule 7 defines particular words used in this Act.

10 Notes in text

A note in the text of this Act is part of the Act.

11 What is a disability

- (1) A *disability* is a person's condition that—
 - (a) is attributable to—
 - (i) an intellectual, psychiatric, cognitive, neurological, sensory or physical impairment; or
 - (ii) a combination of impairments mentioned in subparagraph (i); and
 - (b) results in—
 - (i) a substantial reduction of the person's capacity for communication, social interaction, learning, mobility or self care or management; and
 - (ii) the person needing support.
- (2) For subsection (1), the impairment may result from an acquired brain injury.
- (3) The disability must be permanent or likely to be permanent.
- (4) The disability may be, but need not be, of a chronic episodic nature.

12 What are disability services

Disability services, for people with a disability, means 1 or more of the following—

- (a) accommodation support services;
- (b) respite services;

- (c) community support services;
- (d) community access;
- (e) advocacy or information services or services that provide alternative forms of communication;
- (f) research, training or development services.

13 Meaning of *service provider*

- (1) A *service provider* is a person providing services for people with a disability.
- (2) The service provider may provide the services—
 - (a) specifically to people with a disability; or
 - (b) generally to people in the community, including people with a disability.
- (3) The service provider may provide the services with the intention of making a profit.

14 Meaning of *funded service provider*

- (1) A *funded service provider* is a service provider that receives funds from the department to provide disability services.
- (2) A funded service provider includes the department to the extent it provides disability services.
- (3) However, a funded service provider does not include another department receiving funds from the department.

15 Meaning of *non-government service provider*

- (1) A *non-government service provider* is a service provider, other than the State, providing disability services.
- (2) A non-government service provider may be a local government.

16 Meaning of *approved non-government service provider*

An *approved non-government service provider* is a non-government service provider that is a corporation

approved by the chief executive under part 6 as eligible to receive recurrent funding under part 7.

17 Meaning of *funded non-government service provider*

- (1) A *funded non-government service provider* is a non-government service provider receiving recurrent or one-off funds from the department to provide disability services.
- (2) It is immaterial whether other funds or resources are also used by the non-government service provider to provide disability services.

Part 2 Disability rights

Division 1 Human rights principle

18 Persons encouraged to have regard to human rights principle

Persons are encouraged to have regard to the human rights principle in matters relating to people with a disability.

19 Principle that people with a disability have the same human rights as others

- (1) People with a disability have the same human rights as other members of society and should be empowered to exercise their rights.
- (2) People with a disability have the right to—
 - (a) respect for their human worth and dignity as individuals; and
 - (b) realise their individual capacities for physical, social, emotional, cultural, religious and intellectual development; and

- (c) live lives free from abuse, neglect or exploitation; and
 - (d) participate actively in decisions affecting their lives, including the development of disability policies, programs and services.
- (3) When using disability services people with a disability have the right to—
- (a) services supporting their achieving quality of life in a way that supports their family unit and their full participation in society; and
 - (b) receive services in a way that results in the minimum restriction of their rights and opportunities; and
 - (c) receive services in a way that respects the confidentiality of their information; and
 - (d) receive services in a safe, accessible built environment appropriate to their needs; and
 - (e) pursue grievances about services without fear of the services being discontinued or recrimination from service providers; and
 - (f) support to enable them to pursue grievances about services; and
 - (g) support, and access to information, to enable them to participate in decisions affecting their lives.
- (4) People with a disability have the right to receive services, and information necessary to support rights, in ways that are appropriate having regard to their disabilities and cultural backgrounds.
- (5) Subsections (2), (3) and (4) do not limit subsection (1).

Division 2 Service delivery principles

20 Service delivery principles to be promoted by service providers

- (1) This division sets out the principles that service providers are encouraged to apply and promote in the development and implementation of services for people with a disability.

- (2) For subsection (1), the application and promotion of the principles is encouraged to the extent they reasonably apply to a service provider.

21 Focus on the development of the individual

Services should be designed and implemented so that their focus is on developing the individual and on enhancing the individual's opportunity to establish a quality life.

22 Participation in planning and operation of services

- (1) Services should be designed and implemented so that people with a disability are encouraged, and able, to participate continually in the planning and operation of the services they receive.
- (2) Services provided to people with a disability should provide opportunities for consultation in relation to the development of major policy changes.

23 Focus on a lifestyle the same as other people and appropriate for age

Services should be designed and implemented to ensure that the conditions of everyday life of people with a disability are—

- (a) the same as, or as close as possible to, the conditions of everyday life valued by the general community; and
- (b) appropriate to their chronological age.

24 Coordination and integration of services with general services

Services should be designed and implemented as part of local coordinated service systems and integrated with services generally available to members of the community.

25 Services to be tailored to meet individual needs and goals

- (1) Services should be tailored to meet the individual needs and goals of people with a disability.
- (2) To be responsive to the needs and goals of people with a disability, innovation and flexibility are encouraged when designing services.

26 People with a disability experiencing additional barriers

Services should be designed and implemented to meet the needs of people with a disability who may experience additional barriers—

- (a) because they are Aborigines or Torres Strait Islanders;
or
- (b) because of their age, gender or culturally or linguistically diverse backgrounds; or
- (c) because of their rural or remote location.

27 Promotion of competency, positive image and self-esteem

Services should be designed and implemented to—

- (a) promote recognition of the competence of people with a disability; and
- (b) promote a positive image of people with a disability;
and
- (c) enhance the self-esteem of people with a disability.

28 Inclusion in the community

Services should be designed and implemented to promote the inclusion of people with a disability in the life of the community.

29 No single service provider to exercise control over life of person with disability

Services should be designed and implemented to ensure that no single service provider exercises control over all or most aspects of the life of a person with a disability.

30 Consideration for others involved with people with a disability

Services should be designed and implemented to—

- (a) have sufficient regard to the needs of families, carers and advocates of people with a disability; and
- (b) recognise the demands on the families of people with a disability; and
- (c) take into account the implications for, and demands on, the families of people with a disability.

31 Service providers to make information available

- (1) Service providers should make available information that allows the quality of their services to be judged.
- (2) The information should be available to the people using the services, their families, carers and advocates, people giving financial assistance for the services and the community generally.

32 Raising and resolving grievances

Services should be designed and implemented to ensure that appropriate ways exist for people with a disability and their advocates to raise grievances about services and have them resolved.

33 Access to advocacy support

Services should be designed and implemented to ensure people with a disability have access to necessary independent advocacy support so they can participate adequately in decision-making about the services they receive.

Part 3 Disability service standards

34 Minister may make disability service standards

- (1) The Minister may make disability service standards (the *service standards*) for improving the quality of disability services provided by funded service providers.
- (2) The service standards must detail the way in which disability services are to be provided by funded service providers.
- (3) The service standards must include indicators to measure whether funded service providers have met the standards.
- (4) A standard is a statutory instrument within the meaning of the *Statutory Instruments Act 1992*.

35 When service standard takes effect

- (1) The Minister must notify the making of a service standard.
- (2) A service standard takes effect—
 - (a) on the day the Minister’s notice is notified or published in the gazette; or
 - (b) if a later day is stated in the Minister’s notice or the service standard—on that day.
- (3) A notice mentioned in subsection (2) is subordinate legislation.

36 Notice and availability of service standards

- (1) The chief executive must keep a copy of the service standards, as in force from time to time, available for inspection free of charge by funded service providers, people with a disability and members of the public at—
 - (a) the department’s head office and regional offices; and
 - (b) other places the chief executive considers appropriate.
- (2) Also, the chief executive must publish the service standards, as in force from time to time, on the department’s web site on the internet.

Part 5

Complaints about the delivery of disability services by funded service providers

41 Complaints by consumers

- (1) The following may make a complaint to the chief executive about the delivery of disability services by a funded service provider—
 - (a) a consumer;
 - (b) a family member, carer or advocate of a consumer;
 - (c) another person on behalf of a consumer.
- (2) The chief executive must maintain a system that deals effectively with complaints received.

Note—

A complaint received by the chief executive may result in action under part 11. Part 11 sets out powers for monitoring and enforcing compliance with this Act.

42 Chief executive may refer matters to complaints agency

The chief executive may—

- (a) liaise with a complaints agency about matters relating to people with a disability; and
- (b) refer matters relating to people with a disability to a complaints agency; and
- (c) enter into an arrangement with a complaints agency aimed at avoiding inappropriate duplication of activities.

43 Complaints agency to inform chief executive about actions taken for complaint

- (1) This section applies if—
 - (a) the chief executive refers a matter about a person with a disability to a complaints agency; and

- (b) the chief executive, by notice to the agency, asks for information about the way in which the agency is dealing or has dealt with the matter.
- (2) The agency must inform the chief executive about any action taken for dealing with the matter or, if it is resolved, the resolution of the matter.
- (3) Subsection (2) applies despite any express provision in an Act establishing a complaints agency that makes it an offence for anyone involved with administration of the Act to disclose the information.

Part 6 **Approved non-government service providers**

44 **Explanation**

This part establishes a system under which the chief executive may approve non-government service providers that are corporations as being eligible to receive recurrent funding for disability services.

45 **No entitlement to funding**

The Minister is not required to approve funding for an approved non-government service provider.

46 **Application for approval**

- (1) A corporation may apply to the chief executive for approval as an approved non-government service provider.
- (2) The application must be in the approved form.
- (3) Within 60 days after receiving the application, the chief executive must decide the application and give the corporation notice of the decision.
- (4) The chief executive may approve a corporation as an approved non-government service provider only if the corporation—

- (a) is either—
 - (i) certified under the disability sector quality system; or
 - (ii) has started the process for certification under the disability sector quality system or agreed to start the process; and
 - (b) provides or intends to provide 1 or more disability services.
- (5) However, subsection (4)(a) does not apply to a corporation if the only consumer of disability services provided by the corporation is a director of the corporation.
- (6) In deciding the application, the chief executive may have regard to the following—
- (a) the corporation's business plan;
 - (b) the corporation's record of financial management;
 - (c) how the corporation conducts, or proposes to conduct, its operations;
 - (d) whether the corporation has appropriate corporate governance;
 - (e) how the corporation intends to promote the human rights principle;
 - (f) how the corporation intends to receive and deal with complaints about the delivery of disability services by the corporation;
 - (g) whether the corporation is receiving funding from another department;
 - (h) another matter prescribed under a regulation.

47 Approval remains in force unless cancelled

The approval of a corporation remains in force unless it is cancelled under this part.

48 Application for cancellation of approval

- (1) A corporation may apply to the chief executive for cancellation of its approval as an approved non-government service provider.
- (2) The application must be in the approved form.
- (3) Within 45 days after receiving the application, the chief executive must decide the application and give the service provider notice of the decision.
- (4) The chief executive must, and may only, grant the application if—
 - (a) there is no funding agreement in force with the provider; and
 - (b) the chief executive is satisfied it is unlikely the chief executive will want to take action to enforce compliance by the service provider with this Act.
- (5) The chief executive may require the service provider to take stated action before the chief executive grants the application including, for example, returning unspent funds to the chief executive.

49 Cancellation of approval without application

- (1) The chief executive may cancel the approval of an approved non-government service provider, even though no application has been made under section 48, if—
 - (a) there is no funding agreement in force with the service provider; and
 - (b) the chief executive is satisfied it is unlikely either of the following will happen—
 - (i) action will be taken to enforce compliance by the service provider with this Act;
 - (ii) funding, or further funding, will be given to the service provider under this Act.
- (2) Before cancelling the approval, the chief executive must give the service provider a notice—

- (a) stating that the chief executive proposes to cancel the approval; and
 - (b) stating the reasons for the proposed cancellation; and
 - (c) inviting the service provider to give a written response within a stated time of at least 30 days.
- (3) The chief executive must consider any written response received from the service provider within the stated time before deciding whether to cancel the approval.
- (4) Immediately after deciding whether or not to cancel the approval, the chief executive must give the service provider notice of the decision.
- (5) The chief executive may cancel the approval of an approved non-government service provider, without complying with subsections (2) to (4), if the service provider agrees.

50 Cancellation of approval if funded non-government service provider no longer exists

The chief executive must cancel the approval of an approved non-government service provider if it no longer exists.

Part 7 Funding of non-government service providers

51 Purpose of giving funding

The purpose of giving funding to non-government service providers is to enable them to provide disability services in ways that best achieve the objects of this Act.

52 When funding may be given

To achieve the objects of this Act the Minister may approve funding for disability services to a non-government service provider.

53 Types of funding

The Minister may approve funding for disability services as recurrent funding or one-off funding.

54 Recurrent funding for non-government service providers

- (1) The Minister may approve recurrent funding for a non-government service provider only if the service provider is an approved non-government service provider.
- (2) However, the Minister may approve recurrent funding for a non-government service provider that is not an approved non-government service provider if the Minister is satisfied—
 - (a) there is an urgent need for the funding; and
 - (b) it is not practicable for the non-government service provider to become an approved non-government service provider before funding is approved.
- (3) If recurrent funding is approved for a non-government service provider under subsection (2)—
 - (a) the service provider must take action to become an approved non-government service provider as soon as reasonably practicable after receiving the funding; and
 - (b) the funding must stop 6 months after it is first given if the non-government service provider has not become an approved non-government service provider within that time.
- (4) Recurrent funding may be given to a non-government service provider only if the service provider is a corporation.

55 Who may receive approval for one-off funding

- (1) The Minister may approve one-off funding for a non-government service provider.
- (2) One-off funding may be given to a non-government service provider only if the service provider is a corporation.

56 No funding without agreement

- (1) If the Minister approves funding for a non-government service provider, the chief executive must enter into a written agreement with the service provider (a *funding agreement*) for giving the funding.
- (2) The chief executive may give the funding to the non-government service provider only if the service provider has entered into a written agreement with the chief executive for the funding.
- (3) However, the chief executive may give funding before a written agreement is entered into if the Minister is satisfied—
 - (a) there is an urgent need for the funding; and
 - (b) it is not practicable to enter into an agreement before funding is given.
- (4) If subsection (3) applies, the service provider must—
 - (a) before receiving the funding, agree in writing to enter into a funding agreement after receiving the funding, within a stated time decided by the chief executive; and
 - (b) enter into the funding agreement within that time.
- (5) Recurrent funding must stop if the service provider has not entered into a funding agreement within the stated time.

57 Insurance for service outlets

A funded non-government service provider must ensure there is in force, for all service outlets of the service provider for which funding is provided by the department, the insurance cover prescribed under a regulation.

Maximum penalty—

- (a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 206¹—50 penalty units; or
- (b) for a funded non-government service provider—250 penalty units.

1 Section 206 (Executive officers must ensure corporation complies with Act)

58 What funding agreement is to contain

- (1) A funding agreement must state each of the following the chief executive considers relevant to the funding—
 - (a) the amount of funding;
 - (b) whether the funding is recurrent or one-off funding;
 - (c) the period of the agreement and, for recurrent funding, how often funding is to be given;
 - (d) the type of disability services to be provided;
 - (e) the place at which the disability services are to be provided;
 - (f) the service delivery outcomes to be achieved;
 - (g) the performance measures to be used in measuring the service delivery outcomes;
 - (h) the policies and procedures to guide service delivery;
 - (i) the way the service provider is to report to the chief executive;
 - (j) that recurrent funding to a non-government service provider will stop if the service provider's certification under the disability sector quality system is withdrawn;
 - (k) the circumstances in which the service provider is in breach of the agreement;
 - (l) the action that may be taken by the chief executive for a breach of the agreement, including the suspension or stopping of funding;
 - (m) the way the service provider must receive and deal with complaints about the delivery of disability services by the service provider.
- (2) The agreement may also include other matters the chief executive considers necessary to give effect to or enforce the agreement.

Part 8

Prescribed requirements for funded non-government service providers

59 Prescribed requirements

- (1) A regulation may prescribe requirements relating to the provision of disability services to people with a disability by funded non-government service providers.
- (2) Without limiting subsection (1), a regulation may prescribe a requirement about—
 - (a) how a funded non-government service provider conducts its operations while providing a disability service, including operations relating to—
 - (i) financial management and accountability; and
 - (ii) corporate governance; and
 - (iii) staff recruitment, employment and training; and
 - (iv) compliance with the disability sector quality system.
 - (b) how a funded non-government service provider provides disability services to people with a disability including—
 - (i) addressing individual needs; and
 - (ii) protecting the people from abuse, neglect or exploitation; and
 - (iii) deciding eligibility and priority in relation to the delivery of the services; and
 - (iv) giving information about the services; and
 - (v) providing opportunities for decision making; and
 - (vi) resolving complaints and disputes; and
 - (vii) respecting privacy and confidentiality.
- (3) A requirement may include provision about—
 - (a) preparing, maintaining, publishing or implementing a policy or procedure; or

- (b) reporting a change of address of a funded non-government service provider to the chief executive; or
- (c) collecting and reporting data and other information about the provision of disability services to consumers; or
- (d) reporting other matters to the chief executive.

60 Funded non-government service provider must comply with prescribed requirements

A funded non-government service provider must not contravene a prescribed requirement.

Notes—

- 1 Under section 161, a funded non-government service provider may be given a compliance notice requiring the provider to remedy a contravention of a prescribed requirement.
- 2 The extent of a funded non-government service provider's compliance with, or contravention of, a prescribed requirement is likely to be a relevant matter for the Minister to consider when deciding the further funding, if any, to give to the provider under this Act.
- 3 Noncompliance with certain types of prescribed requirements may lead to the appointment of an interim manager for a funded non-government service provider. See section 169.

Part 9 Screening of persons engaged by the department

Division 1 Preliminary

61 Main purpose of pt 9

The main purpose of this part is to enable the chief executive to obtain the criminal history of, and related information about, persons engaged or to be engaged by the department.

62 Safety of people with a disability to be paramount consideration

The paramount consideration in making a decision under this part is the right of people with a disability to live lives free from abuse, neglect or exploitation.

63 Persons engaged by the department

Each of the following persons is *engaged by the department*—

- (a) a public service employee in the department;
- (b) a person contracted by the chief executive to provide disability services for the department;
- (c) members of committees established under section 216;
- (d) a person working in the department as a volunteer or as a student on work experience.

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

This part applies to a person despite anything in the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

65 Chief executive to advise of duties of disclosure etc.

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 70;² and
- (c) that guidelines for dealing with information obtained by the chief executive under this part are available from the chief executive on request.

² Section 70 (Chief executive may obtain report from commissioner of the police service)

Division 2 Disclosure of criminal history

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

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.

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

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

68 Requirements for disclosure

- (1) To comply with section 66 or 67, 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.

69 False, misleading or incomplete disclosure or failure to disclose

- (1) A person must not—
- (a) give the chief executive a disclosure for the purposes of this division that is false or misleading in a material particular; or
 - (b) fail to give the chief executive a disclosure as required under section 67, 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 who, when giving the disclosure—
- (a) informs the chief executive, to the best of the person's ability, how it is false or misleading; and
 - (b) gives the correct information to the chief executive if the person has, or can reasonably obtain, the correct information.
- (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 or misleading'.

Division 3 Chief executive may obtain information from other entities about criminal history and certain investigations**70 Chief executive may obtain report from commissioner of the police service**

- (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.

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

- (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 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 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 notice to the chief executive of the following—
 - (a) the person's name;
 - (b) particulars of the offence;

- (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.

73 Person to be advised of information obtained

- (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.

74 Guidelines for dealing with information

- (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.

Part 10 Screening of persons engaged by funded non-government service providers

Division 1 Preliminary

75 Main purpose of pt 10

The main purpose of this part is to enable the chief executive to obtain the criminal history of, and related information about, persons engaged or to be engaged by funded non-government service providers at service outlets.

76 Safety of people with a disability to be paramount consideration

The paramount consideration in making a decision under this part is the right of people with a disability to live lives free from abuse, neglect or exploitation.

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

This part applies to a person despite anything in the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

Division 2 Interpretation

78 What is engagement

- (1) For this part, a funded non-government service provider is engaging a person at a service outlet of the service provider if the provider has an agreement with the person for the person to carry out work at the outlet.
- (2) Without limiting subsection (1), each of the following persons at a service outlet of a funded non-government service provider is engaged by the service provider—

- (a) an employee of the service provider employed under a contract of service;
 - (b) a volunteer of the service provider;
 - (c) a person employed by the service provider under a contract for services;
 - (d) a member of a board, management committee or other governing body of the service provider;
 - (e) an executive officer of the service provider;
 - (f) a student on work experience with the service provider.
- (3) It is immaterial for this section—
- (a) whether the agreement is written or unwritten; and
 - (b) the time for which the person is engaged to carry out the work; and
 - (c) whether the agreement provides for the person to carry out work on 1 occasion or on an ongoing basis, whether regularly or irregularly.
- (4) Also, for this section, the nature of the work is immaterial.
- (5) However, the following are not engaged by a service provider—
- (a) a consumer of the service provider even if the consumer carries out work at a service outlet of the service provider;
 - (b) a tradesperson who—
 - (i) from time to time performs work at a service outlet of the service provider; and
 - (ii) is not an employee of the service provider employed under a contract of service.
- (6) Also, a volunteer is not engaged by a funded non-government service provider if—
- (a) the volunteer is a relative of a person with a disability who is receiving disability services at a service outlet of the service provider; and
 - (b) the volunteer is at the service outlet only to help with the care of the person.

(7) In this section—

cousin means a first cousin.

parent, of a person, includes—

- (a) in any case—the spouse of a parent of the person; and
- (b) for an Aboriginal person—a person who, under Aboriginal tradition, is regarded as a parent of the person; and
- (c) for a Torres Strait Islander—a person who, under Island custom, is regarded as a parent of the person.

relative, of a person with a disability—

- (a) means the person's parent, grandparent, great grandparent, brother, sister, uncle, aunt, niece, nephew or cousin; and
- (b) for an Aboriginal person—includes a person who, under Aboriginal tradition, is regarded as a relative mentioned in paragraph (a); and
- (c) for a Torres Strait Islander—includes a person who, under Island custom, is regarded as a relative mentioned in paragraph (a); and
- (d) for a person with a parent who is not a natural parent—includes anyone who would be a relative mentioned in paragraph (a) if the parent were a natural parent.

Example for paragraph (d)—

The daughter of a person's step-parent is a relative of the person.

79 What is a ***serious offence***

(1) A ***serious offence*** is—

- (a) for each Act mentioned in schedule 3, an offence against a provision mentioned in column 1 of that schedule for that Act, subject to any limitation relating to the provision mentioned opposite in column 3; or
- (b) an offence of counselling or procuring the commission of, or attempting or conspiring to commit, an offence mentioned in paragraph (a); or

- (c) an offence against a provision mentioned in schedule 4 that is an expired or repealed provision of the Criminal Code, subject to any qualification relating to the provision mentioned opposite in column 3; or
- (d) an offence against a law at any time of another jurisdiction that substantially corresponds to an offence mentioned in paragraph (a), (b) or (c); or
- (e) an offence that is a class 1 or 2 offence as defined under the *Child Protection (Offender Reporting) Act 2004* that is not otherwise a serious offence under this subsection.

Note—

Column 2 in schedules 3 and 4 is included for information purposes only and states a section heading for the provision mentioned opposite in column 1.

- (2) For this section, it is immaterial if a provision mentioned in schedule 3 or 4, column 1, for an Act has been amended from time to time or that the provision was previously numbered with a different number.

80 What is a *serious sexual or violent offence*

- (1) A *serious sexual or violent offence* is—
 - (a) an offence against a provision of the Criminal Code mentioned in schedule 5, column 1; or
 - (b) an offence against a provision mentioned in schedule 6, column 1, that is an expired or repealed provision of the Criminal Code, subject to any qualification relating to the provision mentioned opposite in column 3.

Note—

Column 2 in schedules 5 and 6 is included for information purposes only and states a section heading for the provision mentioned opposite in column 1.

- (2) For this section, it is immaterial if a provision mentioned in schedule 5 or 6, column 1 has been amended from time to time or that the provision was previously numbered with a different number.

81 What is an *excluding offence*

An *excluding offence* is—

- (a) a serious sexual or violent offence; or
- (b) an offence against a provision mentioned in schedule 3, in relation to the entry for the *Classification of Computer Games and Images Act 1995*, *Classification of Films Act 1991* or *Classification of Publications Act 1991*; or
- (c) an offence against the Criminal Code, section 228A, 228B, 228C or 228D.³

Division 3 Risk management strategies

82 Risk management strategies about persons engaged by funded non-government service providers

- (1) This section applies to a funded non-government service provider who engages a person at a service outlet of the service provider.
- (2) For each year, the service provider must develop and implement a written strategy (a *risk management strategy*) for persons engaged by the service provider.

Maximum penalty—

- (a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 206⁴—20 penalty units; or
- (b) for a funded non-government service provider—100 penalty units.
- (3) The purpose of a risk management strategy is to implement engagement practices and procedures in relation to people with a disability to—

³ Criminal Code, section 228A (Involving child in making child exploitation material), 228B (Making child exploitation material), 228C (Distributing child exploitation material) or 228D (Possessing child exploitation material)

⁴ Section 206 (Executive officers must ensure corporation complies with Act)

- (a) promote their wellbeing; and
 - (b) protect them from abuse, neglect or exploitation.
- (4) Without limiting subsection (3), a regulation may prescribe the matters that are to be included in a risk management strategy.

Division 4 Issue of prescribed notices for funded non-government service providers

83 Application for notice

- (1) A funded non-government service provider who proposes to start engaging, or continue engaging, another person (the *engaged person*) at a service outlet of the service provider, may apply to the chief executive for a prescribed notice about the engaged person.
- (2) The application must be—
- (a) in the approved form; and
 - (b) signed by, or on behalf of, the service provider; and
 - (c) signed by the engaged person.
- (3) The approved form must include provision for—
- (a) identifying information about the engaged person; and
 - (b) certification by the service provider that the service provider has sighted documents, relating to proof of the engaged person's identity, prescribed under a regulation; and
 - (c) the engaged person's consent to screening under this part.
- (4) On receiving the application, the chief executive may ask the service provider or engaged person for further information that the chief executive reasonably considers necessary to establish the engaged person's identity.

- (5) If an engaged person is given a written request under subsection (4), the engaged person is taken to have withdrawn the application if—
- (a) the request includes a warning that, if the request is not complied with within a stated time, the engaged person's application will be taken to have been withdrawn; and
 - (b) the engaged person does not comply with the request within the stated time; and
 - (c) the chief executive gives the engaged person a notice stating that the engaged person is taken to have withdrawn the application.

84 Notice of change of engagement, or name and contact details in application under s 83

- (1) This section applies to a person if an application under section 83 is made for a prescribed notice about an engaged person and any of the following (each a *relevant change*) happens before the chief executive has issued a prescribed notice to the engaged person in relation to the application—
- (a) the engaged person's name or contact details, as stated in the application, change;
 - (b) the engaged person's engagement, as stated in the application, ends.
- (2) The engaged person must give notice, in the approved form, to the chief executive of the relevant change within 14 days after the relevant change happens.
- Maximum penalty—10 penalty units.
- (3) The approved form mentioned in subsection (2) must provide for an engaged person to give notice withdrawing the person's consent to screening under this part.

85 Decision on application

- (1) This section applies if an application under section 83 is made for a prescribed notice about an engaged person.

- (2) The chief executive must decide the application by issuing either of the following unless the application is withdrawn—
- (a) a notice declaring the application for the prescribed notice is approved (a *positive notice*);
 - (b) a notice declaring the application for the prescribed notice is refused (a *negative notice*).
- (3) Subject to subsection (4), the chief executive must issue a positive notice to the engaged person if the chief executive—
- (a) is not aware of any police information about the engaged person; or
 - (b) is not aware of a conviction of the engaged person for any offence but is aware that there is 1 or more of the following about the engaged person—
 - (i) investigative information;
 - (ii) a charge for an offence other than an excluding offence;
 - (iii) a charge for an excluding offence that has been dealt with other than by a conviction; or
- Note for subparagraph (iii)—*
- See sections 104 and 117(5) in relation to charges for excluding offences that have not been dealt with.
- (c) is aware of a conviction of the engaged person for an offence other than a serious offence.
- (4) The chief executive is required to issue a positive notice under subsection (3)(b) or (c) unless the chief executive is satisfied it is an exceptional case in which it would not be in the best interests of people with a disability for the chief executive to issue a positive notice.
- (5) If the chief executive is satisfied under subsection (4) that it is an exceptional case, the chief executive must issue a negative notice.
- (6) Subject to subsection (7), the chief executive must issue a negative notice to the engaged person if the chief executive is aware of a conviction of the engaged person for—
- (a) an excluding offence for which the court that convicted the engaged person imposed an imprisonment order for

- the offence or made a disqualification order under section 122; or
- (b) a serious offence, other than an excluding offence dealt with in a way mentioned in paragraph (a).
- (7) The chief executive is required to issue a negative notice under subsection (6)(b) unless the chief executive is satisfied it is an exceptional case in which it would not harm the best interests of people with a disability for the chief executive to issue a positive notice.
- (8) If the chief executive is satisfied under subsection (7) that it is an exceptional case, the chief executive must issue a positive notice.

86 Decision-making under s 85 in relation to discretionary matters

- (1) This section applies if the chief executive is deciding whether or not there is an exceptional case as mentioned in section 85(4) or (7).
- (2) If the chief executive is aware that an engaged person has been convicted of, or charged with, an offence, the chief executive must have regard to the following—
- (a) in relation to the commission, or alleged commission, of an offence by the person—
- (i) whether it is a conviction or a charge; and
- (ii) whether the offence is a serious offence and, if it is, whether it is an excluding offence; and
- (iii) when the offence was committed or is alleged to have been committed; and
- (iv) the nature of the offence and its relevance to engagement that involves people with a disability; and
- (v) in the case of a conviction—the penalty imposed by the court and if it decided not to impose an imprisonment order for the offence, or decided not to make a disqualification order under section 122, the court's reasons for its decision;

- (b) anything else relating to the commission, or alleged commission, of the offence that the chief executive reasonably considers to be relevant to the assessment of the engaged person.
- (3) If the chief executive is aware of investigative information about a person, the chief executive must have regard to the following—
 - (a) when the acts or omissions constituting the alleged offence to which the investigative information relates were committed;
 - (b) anything else relating to the commission of the acts or omissions that the chief executive reasonably considers relevant to the assessment of the engaged person.

87 Actions of chief executive after making decision on application

- (1) After making a decision about an application under section 83, the chief executive must issue a prescribed notice to the engaged person.
- (2) If the prescribed notice is a negative notice, the prescribed notice must be accompanied by a notice stating the following—
 - (a) the reasons for the chief executive's decision on the application;
 - (b) if the reasons do not include investigative information, a statement that the engaged person may apply to the tribunal, within 28 days after the engaged person is given the notice, to have reviewed only a decision of the chief executive about whether there is an exceptional case as mentioned in section 85(4) or (7);
 - (c) if the reasons include investigative information, a statement that, within 28 days after the engaged person is given the notice, the engaged person—

-
- (i) may appeal as mentioned in section 111(2)⁵ to a Magistrates Court about only the investigative information; or
 - (ii) may decide not to appeal under section 111(2) but apply to the tribunal to have reviewed only a decision of the chief executive about whether there is an exceptional case as mentioned in section 85(4) or (7);
- (d) how the person may apply for the review to the tribunal or appeal to the Magistrates Court.
- (3) The notice must also include a copy of section 108.
- (4) After the chief executive issues the prescribed notice to the engaged person under this section, the chief executive must give notice to the funded non-government service provider stating whether the engaged person was given a positive notice or negative notice.
- (5) Within 14 days after a prescribed notice is issued under this section to an engaged person who previously held another prescribed notice, the engaged person must give the chief executive—
- (a) the previously held prescribed notice; and
 - (b) if the previously held prescribed notice was a positive notice—the positive notice card previously held by the engaged person.

Maximum penalty for subsection (5)—10 penalty units.

88 Chief executive to invite submissions from engaged person about particular information

- (1) This section applies if, for an application under section 83, the chief executive must decide whether or not there is an exceptional case as mentioned in section 85(4) or (7).

⁵ Section 111 (Decision by police commissioner that information is investigative information)

- (2) If the chief executive proposes to decide the application by issuing a negative notice, the chief executive must give the engaged person a notice—
 - (a) stating the police information about the engaged person that the chief executive is aware of; and
 - (b) inviting the engaged person to give the chief executive, within a stated time, a written submission about why the chief executive should not issue a negative notice.
- (3) The stated time must be reasonable and, in any case, at least 7 days after the chief executive gives the notice to the engaged person.
- (4) Before deciding the application, the chief executive must consider any submission received from the engaged person within the stated time.

89 Currency of prescribed notice and positive notice card

- (1) A negative notice remains current until it is cancelled under division 6.
- (2) A positive notice remains current for 2 years after it is issued, unless it is earlier cancelled under division 6.
- (3) A positive notice card relating to a positive notice remains current for the same period as the positive notice.

Division 5 Obligations and offences relating to prescribed notices

Subdivision 1 Engagement of persons by funded non-government service provider

90 When person without current positive notice may be engaged

- (1) This section applies if—

- (a) a person is engaged or to be engaged by a funded non-government service provider at a service outlet of the service provider; and
 - (b) the person does not have a current positive notice.
- (2) The service provider must not engage or continue to engage the person at a service outlet of the service provider unless the service provider has applied for a prescribed notice, or further prescribed notice, about the person.

Maximum penalty—

- (a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 206⁶—50 penalty units; or
- (b) for a funded non-government service provider—250 penalty units.

91 Prohibited engagement

- (1) This section applies if a person (the *engaged person*) does not have a current positive notice.
- (2) A funded non-government service provider must not engage, or continue to engage, the engaged person at a service outlet of the service provider if the service provider—
 - (a) has applied for a prescribed notice about the engaged person and has been notified by the chief executive, other than as provided under paragraph (b), that the engaged person has withdrawn the engaged person's consent to screening under this part; or
 - (b) has been given a notice of deemed withdrawal relating to the engaged person under section 117(4); or
 - (c) is aware that a negative notice has been issued to the engaged person and is current.

Maximum penalty—

- (a) for paragraph (a)—

6 Section 206 (Executive officers must ensure corporation complies with Act)

- (i) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 206⁷—40 penalty units; or
- (ii) for a funded non-government service provider—200 penalty units; or
- (b) for paragraphs (b) and (c)—
 - (i) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 206—100 penalty units; or
 - (ii) for a funded non-government service provider—500 penalty units.

Subdivision 2 Obligations if holder of negative notice or application for prescribed notice is withdrawn

92 Person holding negative notice, or who has withdrawn consent to screening, not to apply for, or start or continue in, engagement by funded non-government service provider

- (1) A person must not apply for, or start or continue in engagement by a funded non-government service provider at a service outlet of the service provider if a negative notice has been issued to the person and is current.

Maximum penalty—500 penalty units or 5 years imprisonment.

- (2) A person must not apply for, or start or continue in, engagement by a service provider at a service outlet of the service provider if an application about the person was made under section 83⁸ but the person withdrew the person's consent, or is taken to have withdrawn the person's consent, to screening under this part before a prescribed notice was issued.

7 Section 206 (Executive officers must ensure corporation complies with Act)

8 Section 83 (Application for notice)

Maximum penalty—100 penalty units or 1 year's imprisonment.

- (3) However, if the person held a positive notice but a negative notice was substituted for the positive notice under section 101,⁹ a court may not find the person contravened subsection (1) unless the court is satisfied that notice of the substitution was given to the person.

Subdivision 3 Changes in criminal history

93 Acquiring a criminal history

For a person who does not have a criminal history, there is taken to be a change in the person's criminal history if the person acquires a criminal history.

94 Effect of conviction for serious offence or charge for excluding offence

- (1) This section applies to a person with a current positive notice immediately on the person's conviction for a serious offence or the person being charged with an excluding offence.
- (2) Until the notice is cancelled and a further positive notice is issued to the person, the person must not start or continue engagement with a funded non-government service provider at a service outlet of the service provider.

Maximum penalty—500 penalty units or 5 years imprisonment.

95 Change in criminal history of engaged person

- (1) This section applies to a person engaged by a funded non-government service provider if there is a change in the person's criminal history.

⁹ Section 101 (Chief executive may cancel a prescribed notice and substitute another prescribed notice)

- (2) The person must immediately disclose to the service provider that there has been a change in the person's criminal history.
- Maximum penalty—100 penalty units.
- (3) On receiving the disclosure, the service provider must not continue to engage the person at a service outlet of the service provider without applying for a prescribed notice, or further prescribed notice, about the person.
- Maximum penalty—
- (a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 206¹⁰—100 penalty units; or
- (b) for a funded non-government service provider—500 penalty units.
- (4) To remove any doubt, it is declared that—
- (a) it is not a requirement of subsection (2) that the person give the service provider any information about the change other than that a change has happened; and
- (b) it is not a requirement of subsection (3) that the service provider stop engaging the person at a service outlet of the service provider on receiving the disclosure.

96 Change in criminal history of other persons

- (1) This section applies if—
- (a) a person has a current positive notice; and
- (b) there has been a change in the person's criminal history since the notice was issued; and
- (c) the person is not engaged by a funded non-government service provider at a service outlet of the service provider.
- (2) Before starting engagement with a funded non-government service provider at a service outlet of the service provider, the person must notify the service provider that there has been a

¹⁰ Section 206 (Executive officers must ensure corporation complies with Act)

change in the person's criminal history since the person's current prescribed notice was issued.

Maximum penalty—100 penalty units.

- (3) On receiving the disclosure, the service provider must not engage the person at a service outlet of the service provider without applying for a further prescribed notice about the person.

Maximum penalty—

- (a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 206¹¹—100 penalty units; or
- (b) for a funded non-government service provider—500 penalty units.

Subdivision 4 General

97 False or misleading disclosure

A person must not—

- (a) give a funded non-government service provider who is proposing to engage the person information for this part that is false or misleading in a material particular; or
- (b) state anything to the chief executive for this part that the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units or 2 years imprisonment.

98 False or misleading documents

- (1) A person must not give the chief executive a document for this part containing information the person knows is false or misleading in a material particular.

¹¹ Section 206 (Executive officers must ensure corporation complies with Act)

Maximum penalty—100 penalty units or 2 years imprisonment.

- (2) Subsection (1) does not apply to a person if the person, when giving the document—
 - (a) tells the chief executive, to the best of the person's ability, how it is false or misleading; and
 - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

99 Return of positive notice and positive notice card to chief executive

- (1) This section applies to a person with a current positive notice if—
 - (a) the person is convicted of a serious offence; or
 - (b) the chief executive cancels the notice and issues a negative notice to the person.
- (2) The person must immediately return the positive notice, and the positive notice card issued to the person, to the chief executive, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

Division 6 Cancellation and replacement of prescribed notices

100 Cancellation of negative notice and issuing of positive notice

- (1) This section applies if the chief executive has issued a negative notice to a person and the notice is current.
- (2) The person may apply to the chief executive to cancel the notice.
- (3) The application may not be made less than 2 years after the issue of the notice or any previous application by the person under this section.
- (4) The application must be—

- (a) in the approved form; and
 - (b) signed by the person; and
 - (c) accompanied by the fee prescribed under a regulation for the application.
- (5) The person may state in the application anything the person considers relevant to the chief executive's decision including, in particular, any change in the person's circumstances since the negative notice was issued.
- (6) Sections 85, 86, 87 and 88¹² apply to the application as if—
- (a) the application were an application for a prescribed notice; and
 - (b) a reference in the provisions to issuing a positive notice were a reference to granting the application; and
 - (c) a reference in the provisions to issuing a negative notice were a reference to refusing the application.
- (7) If the chief executive grants the application, the chief executive must cancel the negative notice to which the application relates and issue a positive notice to the person.

101 Chief executive may cancel a prescribed notice and substitute another prescribed notice

- (1) The chief executive may cancel a positive notice (the *cancelled notice*) about a person and substitute a negative notice if the chief executive is satisfied that—
- (a) the decision on the application for the cancelled notice was based on wrong or incomplete information and, based on the correct or complete information, the chief executive should issue the negative notice; or
 - (b) it is appropriate to cancel the positive notice having regard to information received under section 114 or

12 Sections 85 (Decision on application), 86 (Decision-making under s 85 in relation to discretionary matters), 87 (Actions of chief executive after making decision on application) and 88 (Chief executive to invite submissions from engaged person about particular information)

115,¹³ about the person.

- (2) If the person is engaged by a funded non-government service provider at the time the negative notice is substituted, the chief executive must give notice of the substitution to the service provider.
- (3) The chief executive may cancel a negative notice (the *cancelled notice*) and substitute a positive notice if the chief executive is satisfied that—
 - (a) the decision on the application for the cancelled notice was based on wrong or incomplete information and, based on the correct or complete information, the chief executive should issue the positive notice; or
 - (b) a penalty or order of a court of the type mentioned in section 102(1), that required the chief executive to cancel the positive notice and issue a negative notice, is not upheld on appeal.
- (4) In making a decision under subsection (1) or (3), the chief executive must make the decision as if it were a decision about an application for a prescribed notice and, for that purpose, sections 85, 86 and 87 apply to the decision under this section.
- (5) If the chief executive proposes to substitute a negative notice as mentioned in subsection (1), the chief executive must first comply with section 88 as if—
 - (a) the reference in section 88(2) to deciding the application by issuing a negative notice were a reference to substituting a negative notice for a positive notice; and
 - (b) the reference in section 88(4) to deciding the application were a reference to substituting a negative notice for a positive notice.
- (6) The chief executive may exercise a power under subsection (1) or (3)—

13 Section 114 (Chief executive may obtain information from police commissioner) or 115 (Notice of change in police information about a person)

- (a) on application by the person to whom the cancelled notice was issued or the person who applied for the cancelled notice; or
- (b) on the chief executive's own initiative.

102 Cancellation if conviction for excluding offence and imprisonment or disqualification order

- (1) This section applies if a person who is the holder of a positive notice, including a positive notice that is suspended under section 104,¹⁴ is convicted of an excluding offence and the court that convicts the person—
 - (a) imposes an imprisonment order; or
 - (b) makes a disqualification order under section 122.¹⁵
- (2) The chief executive must cancel the positive notice held by the person and substitute a negative notice.
- (3) At the time the chief executive gives the person the negative notice, the chief executive must give the person a further notice stating—
 - (a) there is no appeal under this Act against the decision of the chief executive to cancel the positive notice and substitute a negative notice; and
 - (b) the person can not apply under section 100¹⁶ for the cancellation of the negative notice, even after 2 years; and
 - (c) the person may apply under section 101 for the cancellation of the negative notice if the decision to issue the cancelled notice was made under this section and the penalty or order mentioned in subsection (1)(a) or (b) is not upheld on appeal against the imposition of the penalty or making of the order and that is the only reason for an application under section 101.

14 Section 104 (Effect of charge for excluding offence pending charge being dealt with)

15 Section 122 (Disqualification order)

16 Section 100 (Cancellation of negative notice and issuing of positive notice)

- (4) Also, if the person is engaged by a funded non-government service provider, the chief executive must give notice to the service provider stating the person was given a negative notice.
- (5) There is no appeal under this Act against a decision of the chief executive under this section to cancel the positive notice and substitute a negative notice.
- (6) In section—
appeal includes review.

103 Cancellation if conviction for excluding offence but no imprisonment or disqualification order

- (1) This section applies if a person who is the holder of a positive notice, including a positive notice that is suspended under section 104, is convicted of an excluding offence but the court that convicts the person—
 - (a) imposes a penalty that does not include an imprisonment order for the offence; or
 - (b) does not make a disqualification order under section 122.¹⁷
- (2) The chief executive must cancel the person's positive notice and substitute a negative notice unless the chief executive is satisfied it is an exceptional case in which it would not harm the best interests of people with a disability for the chief executive not to cancel the positive notice.
- (3) In making a decision under subsection (2), the chief executive must make the decision as if it were a decision about an application for a prescribed notice and, for that purpose, sections 85, 86 and 87¹⁸ apply to the decision under this section.

¹⁷ Section 122 (Disqualification order)

¹⁸ Sections 85 (Decision on application), 86 (Decision-making under s 85 in relation to discretionary matters) and 87 (Actions of chief executive after making decision on application)

-
- (4) If the chief executive proposes to substitute a negative notice as mentioned in subsection (2), the chief executive must first comply with section 88¹⁹ as if—
- (a) the reference in section 88(2) to deciding the application by issuing a negative notice were a reference to substituting a negative notice for a positive notice; and
 - (b) the reference in section 88(4) to deciding the application were a reference to substituting a negative notice for a positive notice.

104 Effect of charge for excluding offence pending charge being dealt with

- (1) If a person who is the holder of a positive notice is charged with an excluding offence, the chief executive must suspend the positive notice by notice given to the person.
- (2) The notice about the suspension must state the following—
- (a) the positive notice held by the person is suspended;
 - (b) the reason for the suspension;
 - (c) how long the suspension will continue;
 - (d) the effect of the suspension;
 - (e) the person must return the positive notice, and the positive notice card, to the chief executive within 7 days after the notice is given to the person.
- (3) Until a suspension is cancelled, the person whose positive notice is suspended and who is given a notice under subsection (1) must not apply, start or continue to be engaged by a funded non-government service provider at a service outlet of the service provider.

Maximum penalty—200 penalty units or 2 years imprisonment.

- (4) Within 7 days after a person is given notice under subsection (1), the person must return each of the following to the chief executive—

¹⁹ Section 88 (Chief executive to invite submissions from engaged person about particular information)

- (a) the positive notice;
- (b) the positive notice card relating to the positive notice.

Maximum penalty—100 penalty units.

- (5) Also, if the person is engaged by a funded non-government service provider, the chief executive must give notice to the service provider stating that the positive notice held by the person is suspended and the effect of the suspension.
- (6) A notice under subsection (5) to a funded non-government service provider must state that—
 - (a) the service provider must not allow the person to work at a service outlet of the service provider; and
 - (b) the service provider must not terminate the person's engagement or continued engagement solely or mainly because the person's positive notice is suspended.
- (7) A funded non-government service provider to whom a notice is given under subsection (5) must not allow the person engaged by the service provider to work at a service outlet of the service provider.

Maximum penalty—

- (a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 206²⁰—200 penalty units or 2 years imprisonment; or
 - (b) for a funded non-government service provider—1000 penalty units.
- (8) A funded non-government service provider to whom a notice is given under subsection (5) about a person must not terminate the person's engagement or continued engagement solely or mainly because the service provider is given the notice.
 - (9) Without limiting subsection (3) and despite section 89(2), a positive notice remains current during the period of suspension even if it would otherwise end under section 89(2) during that period.

20 Section 206 (Executive officers must ensure corporation complies with Act)

105 Cancellation of suspension and issue of further prescribed notice

- (1) This section applies to a positive notice held by a person that is suspended under section 104 (the *suspended notice*).
- (2) The suspension is cancelled if—
 - (a) the suspended notice is cancelled under section 102(2) or 103(2); or
 - (b) on application by the person for the cancellation of the suspension and issue of a further prescribed notice, the chief executive cancels the suspended notice and issues a further positive notice or a negative notice.
- (3) If, in relation to the charge of an excluding offence that resulted in the person's positive notice being suspended, the person—
 - (a) was not convicted of any offence or was convicted of an offence that is not a serious offence, the chief executive must issue a further positive notice unless the chief executive is satisfied it is an exceptional case in which it would not be in the best interests of people with a disability for the chief executive to issue a further positive notice; or
 - (b) was convicted of a serious offence, the chief executive must issue a negative notice unless the chief executive is satisfied it is an exceptional case in which it would not harm the best interests of people with a disability for the chief executive to issue a further positive notice.
- (4) If the chief executive is satisfied that—
 - (a) there is an exceptional case under subsection (3)(a), the chief executive must issue a negative notice; or
 - (b) there is an exceptional case under subsection (3)(b), the chief executive must issue a further positive notice.
- (5) In making a decision under subsection (3), the chief executive must make the decision as if it were a decision about an application for a prescribed notice and, for that purpose,

sections 85, 86 and 87²¹ apply to the decision under this section.

- (6) If the chief executive proposes to issue a negative notice, the chief executive must first comply with section 88.²²

106 Replacement of positive notice or positive notice card

- (1) If a person's current positive notice, or current positive notice card, is lost or stolen, the person must apply for a replacement notice or card within 14 days after the loss or theft.

Maximum penalty—10 penalty units.

- (2) The application must be in the approved form and accompanied by the fee prescribed under a regulation for the application.
- (3) The chief executive must—
 - (a) cancel the lost or stolen notice or card; and
 - (b) issue a replacement notice or card to the person.
- (4) The chief executive may issue the replacement notice or card with a different registration number to the number of the lost or stolen notice or card.
- (5) If the person's lost or stolen notice or card is returned to, or otherwise recovered by, the person after the application for a replacement notice or card, the person must give the replaced notice or card to the chief executive within 14 days after it is returned to, or otherwise recovered by, the person.

Maximum penalty—10 penalty units.

- (6) The chief executive must give notice to the police commissioner about the fact that a current positive notice, or current positive notice card, has been lost or stolen.

21 Sections 85 (Decision on application), 86 (Decision-making under s 85 in relation to discretionary matters) and 87 (Actions of chief executive after making decision on application)

22 Section 88 (Chief executive to invite submissions from engaged person about particular information)

107 Change of details for prescribed notice or positive notice card

- (1) This section applies if the holder of a positive notice does any of the following (each of which is a *relevant change*)—
 - (a) changes a name the holder has previously given to the chief executive;
 - (b) starts to use a different name to the name or names the holder has previously given to the chief executive;
 - (c) changes contact details previously given to the chief executive.
- (2) The holder must give notice, in the approved form, to the chief executive about the relevant change within 14 days after the relevant change.

Maximum penalty—10 penalty units.

- (3) If the chief executive considers it is appropriate to do so, the chief executive may issue to the holder a replacement positive notice or replacement positive notice card.
- (4) If the chief executive issues to the holder a replacement positive notice, or replacement positive notice card, within 14 days after receiving the replacement notice or card the holder must return the replaced notice or card to the chief executive.

Maximum penalty—10 penalty units.

- (5) The chief executive must cancel the previously held positive notice or positive notice card if the chief executive has issued a replacement notice or card.

Division 7 Miscellaneous**108 Person may apply for review of decision**

- (1) A person may apply to the tribunal for a review of either of the following decisions of the chief executive—
 - (a) a decision as to whether or not there is an exceptional case as mentioned in section 85(4) or (7), 103(2) or 105(3) if, because of the decision, the chief executive

issued a negative notice, or refused to cancel a negative notice, about the person;

- (b) a decision that the person had been charged with an excluding offence if, because of the decision, the positive notice held by the person was suspended under section 104(1).
- (2) An application to review a decision mentioned in subsection (1)(b) may only be made if the person claims he or she has not been charged with the relevant excluding offence.
- (3) If a person applies under subsection (1) to have a decision reviewed, the tribunal may not stay the operation of the decision.
- (4) To remove any doubt, it is declared that there is no appeal, or review, under this Act against a decision of the chief executive to issue, or refuse to cancel, a negative notice about a person other than a decision mentioned in subsection (1).
- (5) This section does not limit section 111.²³
- (6) In this section—
issue a negative notice includes substitute a negative notice after cancelling a positive notice.

109 Police commissioner may decide that information about a person is investigative information

- (1) The police commissioner may decide under this section that information about a person (the *investigated person*) is *investigative information* if—
 - (a) there is or was evidence of acts or omissions that, at the time of the acts or omissions, constituted a serious sexual or violent offence (the *alleged offence*) by the investigated person against a person with a disability (a *complainant*); and

²³ Section 111 (Decision by police commissioner that information is investigative information)

-
- (b) the police investigated the alleged offence and the investigated person was formally notified about the investigation, including—
 - (i) by participating in an interview, or by being asked to participate in an interview, about the alleged offence; or
 - (ii) by otherwise being given an opportunity to answer allegations about the alleged offence; and
 - (c) there was sufficient evidence available that was capable of establishing each element of the alleged offence but a decision was made not to charge the investigated person because—
 - (i) the complainant died before the charge was brought; or
 - (ii) either or both of the following applied—
 - (A) the complainant was unwilling to proceed;
 - (B) an adult who, at the relevant time, was the complainant's parent or guardian decided that, in the interests of the complainant, the matter should not proceed.
- (2) Evidence of acts or omissions includes information from a third party if the complainant did not make a formal complaint at or about the time of the investigation.

110 Delegation by police commissioner of power under s 109 restricted

Despite the *Police Service Administration Act 1990*, section 4.10, the police commissioner may not delegate the police commissioner's powers under section 109 other than to a police officer of at least the rank of superintendent.

111 Decision by police commissioner that information is investigative information

- (1) This section applies if—
 - (a) the police commissioner decides that information about a person is investigative information; and

- (b) the investigative information is given, under section 114 or 115,²⁴ to the chief executive; and
 - (c) a negative notice is issued, or a positive notice is cancelled and a negative notice is substituted for it, after the investigative information is given to the chief executive.
- (2) The person may appeal to a Magistrates Court about the decision that information, given to the chief executive as investigative information, is investigative information.
 - (3) However, an appeal under subsection (2) may only be made after the chief executive has issued a negative notice to the person under section 87(1) and within 28 days after the negative notice is given to the person.
 - (4) The chief executive and police commissioner must be given a copy of the notice of appeal.
 - (5) The tribunal does not have jurisdiction to review a decision of the police commissioner that information about a person is investigative information or that information that is investigative information may be given to the chief executive.

112 Court to decide matters afresh

- (1) A Magistrates Court hearing an appeal under section 111 is to decide afresh whether information given to the chief executive as investigative information about a person is investigative information.
- (2) A person who is the relevant complainant under section 109 must not be asked or called on by the investigated person under that section to give evidence in person before the court.
- (3) Subsection (2) does not prevent documentary evidence being tendered and received in evidence by the court.
- (4) After hearing an appeal under section 111, the court may confirm or set aside the decision and the clerk of the court is to give the appellant notice of the decision.

²⁴ Section 114 (Chief executive may obtain information from police commissioner) or 115 (Notice of change in police information about a person)

- (5) For subsection (4), the court must have regard to the matters the police commissioner was required to have regard to under this Act when the police commissioner made the decision.

113 Consequence of decision on appeal

- (1) If, on appeal, a Magistrates Court sets aside the police commissioner's decision under section 109 that information given to the chief executive about a person is investigative information, the person may apply under section 101²⁵ to cancel the negative notice issued to the person on the grounds that the decision to issue the negative notice was based on wrong information.
- (2) If the court confirms the decision appealed against—
- (a) the person who appealed the decision may, within 28 days after receiving the notice under section 112(4), apply to the tribunal to have reviewed only a decision of the chief executive about whether there is an exceptional case as mentioned in section 85(4) or (7); and
- (b) the notice under section 112(4) must state that the person may apply to the tribunal to have the decision mentioned in paragraph (a) reviewed and how the person may apply.

114 Chief executive may obtain information from police commissioner

- (1) This section applies to a person if—
- (a) the person has a current positive notice; or
- (b) the chief executive has received an application for a prescribed notice about the person and the application has not been withdrawn and the person has not withdrawn his or her consent to screening under this part; or
- (c) the person has applied to the chief executive to cancel a negative notice about the person or to cancel a

²⁵ Section 101 (Chief executive may cancel a prescribed notice and substitute another prescribed notice)

suspension of the person's positive notice under section 104.

- (2) The chief executive may ask the police commissioner for information, or for access to the police commissioner's records, to enable the chief executive to learn what police information exists, if any, in relation to the person.
- (3) For subsection (2), the chief executive's request may include the following information—
 - (a) the person's name and any other name that the chief executive believes the person may use or may have used;
 - (b) the person's gender and date and place of birth;
 - (c) if the person is currently the holder of a prescribed notice—any number or date relevant to the prescribed notice or a positive notice card;
 - (d) the status of the relevant application, applicant or prescribed notice, including, for example, by reference to subsection (1).
- (4) If there is police information about the person, the chief executive may ask the police commissioner for a brief description of the circumstances of a conviction, charge or investigative information mentioned in the police information.
- (5) The police commissioner must comply with a request under this section unless the police commissioner is, under subsection (9), told not to provide the information.
- (6) However, the duty imposed on the police commissioner to comply with a request applies only to information in the police commissioner's possession or to which the police commissioner has access.
- (7) The police commissioner need not disclose investigative information about the person to the chief executive under this section if the police commissioner is reasonably satisfied that giving the information may do any of the following—
 - (a) prejudice the investigation of a contravention or possible contravention of the law in a particular case;
 - (b) enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained;

- (c) endanger a person's life or physical safety;
 - (d) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law.
- (8) If the police commissioner gives investigative information about the person to the chief executive under this section, the police commissioner must give notice, in the approved form, to the person that—
- (a) the police commissioner has decided that information about the person is investigative information; and
 - (b) investigative information has been given to the chief executive.
- (9) If the chief executive decides that information requested under subsection (2) about the person is no longer required, the chief executive must tell the police commissioner not to provide the information.
- (10) Information given to the police commissioner under this section must not be accessed or disclosed for any purpose except for a purpose under this part or any other purpose relevant to law enforcement.
- (11) Information given to the police commissioner under this section must not be used for any purpose except for a purpose under this part.
- (12) However, subsections (10) and (11) do not apply to information the police commissioner obtained before the chief executive gave the information to the police commissioner under this section.

115 Notice of change in police information about a person

- (1) This section applies if, for a person in relation to whom either of the following happens, the police commissioner reasonably suspects the person is a person mentioned in section 114(1)(a) to (c)—
- (a) the person's criminal history changes;

- (b) the police commissioner decides, under section 109, that information about the person is investigative information (regardless of when the act or omission relevant to the investigative information happened or is alleged to have happened).
- (2) The police commissioner may notify the chief executive that—
 - (a) the person’s criminal history has changed; or
 - (b) the police commissioner has decided that information about the person is investigative information.
- (3) The notice must state the following—
 - (a) the person’s name and any other name that the police commissioner believes the person may use or may have used;
 - (b) the person’s gender and date and place of birth;
 - (c) a brief description of the conviction or charge to which the change relates, or of the investigative information.
- (4) The chief executive may confirm the police commissioner’s suspicions under subsection (1).
- (5) If the person is a person to whom section 95(1) or 96(1) applies, the chief executive, on receiving notice under subsection (2), may write to the person to inform the person of the person’s obligations under sections 95(2) and 96(2).²⁶
- (6) If the police commissioner gives investigative information to the chief executive under this section, the police commissioner must give notice, in the approved form, to the person that investigative information has been given to the chief executive.
- (7) For a person who does not have a criminal history, there is taken to be a change in the person’s criminal history if the person acquires a criminal history.

²⁶ Sections 95 (Change in criminal history of engaged person) and 96 (Change in criminal history of other persons)

116 Chief executive to give notice to funded non-government service provider about making screening decision about engaged person

- (1) This section applies if—
 - (a) the police commissioner, the holder of a prescribed notice (the *engaged person*) or another person gives notice to the chief executive that police information about the engaged person has changed; or
 - (b) the chief executive otherwise becomes aware that police information about the engaged person has changed.
- (2) However, this section does not apply if the change is that the engaged person has been convicted or charged with an excluding offence.
- (3) If the chief executive considers the change in police information may be relevant to the engagement of a person by a funded non-government service provider, the chief executive must give notice to the service provider—
 - (a) identifying the engaged person; and
 - (b) stating only that the chief executive is making a screening decision in relation to the engaged person.
- (4) However, if the change in police information is a change in criminal history, the notice under subsection (3) must state whether or not—
 - (a) the change in criminal history is a charge or a conviction; and
 - (b) the offence is a serious offence or serious sexual or violent offence.
- (5) The service provider must not terminate the engaged person's engagement or continued engagement solely or mainly because the service provider is given the notice.

117 Withdrawal of engaged person's consent to screening

- (1) This section applies if the chief executive—
 - (a) has received an application from a funded non-government service provider for a prescribed notice about a person (the *engaged person*); and

- (b) has not yet issued the prescribed notice.
- (2) The engaged person may give a notice to the chief executive withdrawing the engaged person's consent to screening under this part.
- (3) The engaged person is taken to have withdrawn his or her consent to screening under this part if—
 - (a) the chief executive gives the engaged person a notice—
 - (i) asking the engaged person to provide, within a reasonable stated time, stated information that the chief executive reasonably needs to establish the engaged person's identity; and
 - (ii) warning the engaged person that, if the engaged person does not comply with the request, the chief executive may give the engaged person a notice of deemed withdrawal; and
 - (b) the engaged person does not comply with the request within the stated time; and
 - (c) the chief executive can not establish with certainty the engaged person's identity; and
 - (d) the chief executive gives the engaged person and the service provider a notice of deemed withdrawal relating to the engaged person.
- (4) Also, the engaged person is taken to have withdrawn his or her consent to screening under this part if—
 - (a) the service provider has given the chief executive notice that the person is no longer engaged by the service provider or the chief executive can not obtain information, in writing, from the service provider that the person is engaged by the service provider; and
 - (b) the engaged person has not given notice to the chief executive about the end of the engagement as required under section 84;²⁷ and

²⁷ Section 84 (Notice of change of engagement, or name and contact details in application under s 83)

- (c) the chief executive gives the engaged person and the service provider a notice of deemed withdrawal relating to the engaged person.
- (5) Further, the engaged person is taken to have withdrawn his or her consent to screening under this part if—
 - (a) the engaged person gives the chief executive, or the chief executive gives the engaged person, notice that the engaged person is charged with an excluding offence; and
 - (b) the chief executive gives the engaged person and the service provider a notice of deemed withdrawal under this subsection relating to the engaged person.
- (6) If the engaged person withdraws his or her consent to screening under this part before the chief executive issues a prescribed notice about the engaged person—
 - (a) the chief executive must not issue the prescribed notice; and
 - (b) if the engaged person withdraws consent by giving a notice to the chief executive, the chief executive must give notice of the withdrawal to the service provider.
- (7) For subsection (4), a service provider may give notice to the chief executive that a stated person—
 - (a) is engaged, or continues to be engaged, by the service provider; or
 - (b) is no longer engaged by the service provider.
- (8) In this section—

notice of deemed withdrawal, relating to the engaged person, means a notice stating that the engaged person is taken to have withdrawn his or her consent to screening under this part.

118 Compliance with requirement to end, or not start, a person's engagement

- (1) This section applies if it would be a contravention of a provision of this part for a funded non-government service provider to engage, or continue to engage, another person (the *engaged person*) at a service outlet of the service provider.

- (2) The service provider must comply with the provision despite another Act or law or any industrial award or agreement.
- (3) The service provider does not incur any liability because, in compliance with the provision, the service provider does not engage, or continue to engage, the engaged person at a service outlet of the service provider.
- (4) A person whose positive notice is suspended under section 104²⁸ may be engaged by the service provider, other than at a service outlet of the service provider, until the charge for the excluding offence is dealt with and the chief executive cancels the suspension and issues a further prescribed notice.

119 Guidelines for dealing with information

- (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 making screening decisions; and
 - (c) screening decisions, based on the information, are made consistently.
- (3) The chief executive must give a copy of the guidelines to a person on request.

120 Use of information obtained under this part about a person

The chief executive must not use information obtained under this part about a person, other than for this part.

28 Section 104 (Effect of charge for excluding offence pending charge being dealt with)

121 Chief executive must give police commissioner a person's current address

- (1) The chief executive must, on written application of the police commissioner, give the police commissioner information about an address for a person if—
 - (a) the chief executive has an address for the person that is different to the address stated by the police commissioner in the application; and
 - (b) the police commissioner is, under this part, required to give a notice to the person.
- (2) Information given to the police commissioner under this section must not be used, disclosed or accessed for any purpose except to give a notice under this part to the person.

122 Disqualification order

- (1) This section applies if—
 - (a) a person is convicted of an excluding offence; and
 - (b) the court that convicted the person did not impose an imprisonment order for the offence.
- (2) The court may, on application by the prosecutor or on its own initiative, make an order (*disqualification order*) in relation to the person stating that the person may never hold a positive notice or be the subject of an application for a prescribed notice.
- (3) In this section—

Crown prosecutor includes—

 - (a) the Attorney-General; and
 - (b) the director of public prosecutions; and
 - (c) another person, other than a police officer, appearing for the State.

prosecutor means—

- (a) in the context of a proceeding before, or an application to, a Magistrates Court—a police officer or Crown prosecutor; or
- (b) otherwise—a Crown prosecutor.

123 Register of persons engaged by funded non-government entities

- (1) The chief executive must keep a register with up-to-date information for each engaged person for whom an application for a prescribed notice is made.
- (2) The register may include the matters decided by the chief executive but must include the following—
 - (a) the engaged person's name;
 - (b) the name of the funded non-government service provider engaging the person;
 - (c) whether a positive or negative notice was issued;
 - (d) the date of issue of the prescribed notice;
 - (e) if an application for a prescribed notice is taken to have been withdrawn, the date of the withdrawal;
 - (f) if an engaged person applies for a review of a chief executive's decision relating to a prescribed notice, details of the review and its outcome.
- (3) If a funded non-government service provider proposes to start engaging a person at a service outlet of the service provider, the service provider may apply to the chief executive in the approved form for information contained in the register.
- (4) If a funded non-government service provider asks the chief executive for information contained in the register, the chief executive must give the service provider the information.

Part 11 Monitoring and enforcement

Division 1 Authorised officers

124 Powers generally

- (1) An authorised officer has the powers given under this Act.
- (2) In exercising the powers an authorised officer is subject to the directions of the chief executive.

125 Appointment

- (1) The chief executive may appoint any of the following persons as an authorised officer—
 - (a) a public service employee;
 - (b) for the purpose of investigating a particular matter, another person.
- (2) A person may be appointed for the Act generally or for stated provisions of the Act.

126 Qualifications for appointment

The chief executive may appoint a person as an authorised officer only if—

- (a) the chief executive is satisfied the person is qualified for appointment because the person has the necessary expertise or experience; and
- (b) the person has the competencies, if any, prescribed under a regulation as relevant to the person's appointment.

127 Appointment conditions and limit on powers

- (1) An authorised officer holds office on the conditions stated in—
 - (a) the authorised officer's instrument of appointment; or

- (b) a signed notice given to the authorised officer; or
 - (c) a regulation.
- (2) The instrument of appointment, a signed notice given to an authorised officer or a regulation may limit the authorised officer's powers under this Act.
- (3) In this section—
signed notice means a notice signed by the chief executive.

128 Issue of identity card

- (1) The chief executive must issue an identity card to each authorised officer.
- (2) The identity card must—
- (a) contain a recent photo of the authorised officer; and
 - (b) contain a copy of the authorised officer's signature; and
 - (c) identify the person as an authorised officer under this Act; and
 - (d) state an expiry date for the card.
- (3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

129 Production or display of identity card

- (1) In exercising a power under this Act in relation to another person, an authorised officer must—
- (a) produce the authorised officer's identity card for the other person's inspection before exercising the power; or
 - (b) have the identity card displayed so it is clearly visible to the other person when exercising the power.
- (2) However, if it is not practicable to comply with subsection (1), the authorised officer must produce the identity card for the other person's inspection at the first reasonable opportunity.
- (3) For subsection (1), an authorised officer does not exercise a power in relation to another person only because the

authorised officer has entered a place as mentioned in section 133(1)(b) or (2).

130 When authorised officer ceases to hold office

- (1) An authorised officer ceases to hold office if any of the following happens—
 - (a) the term of office stated in a condition of office ends;
 - (b) under another condition of office, the authorised officer ceases to hold office;
 - (c) the authorised officer's resignation under section 131 takes effect.
- (2) Subsection (1) does not limit the ways an authorised officer may cease to hold office.
- (3) In this section—

condition of office means a condition on which the authorised officer holds office.

131 Resignation

An authorised officer may resign by signed notice given to the chief executive.

132 Return of identity card

A person who ceases to be an authorised officer must return the person's identity card to the chief executive within 21 days after ceasing to be an authorised officer unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

Division 2 Powers of authorised officers

Subdivision 1 Entry of places

133 Power to enter places

- (1) An authorised officer may enter a place if—
 - (a) its occupier consents to the entry; or
 - (b) it is a public place and the entry is made when it is open to the public; or
 - (c) the entry is authorised by a warrant; or
 - (d) it is a place where a funded non-government service provider provides disability services and the entry is authorised under section 134.
- (2) For the purpose of asking the occupier of a place for consent to enter, an authorised officer may, without the occupier's consent or a warrant—
 - (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
 - (b) enter part of the place the officer reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.

134 Power to enter place where funded non-government service provider provides disability services

- (1) This section applies to the entry of a place where a funded non-government service provider provides disability services.
- (2) If the place is not a home, the authorised officer may enter the place if it is open for carrying on business or otherwise open for entry.
- (3) Also, the authorised officer may enter the place with necessary and reasonable help and force, whether or not the place is a home—
 - (a) if the authorised officer reasonably suspects—

- (i) there is an immediate risk of harm to a person with a disability at the place because of abuse, neglect or exploitation; or
 - (ii) there is an imminent risk that evidence at the place, of a misuse of funds provided to the service provider under part 7, will be destroyed or removed; or
 - (b) to check whether the service provider has taken the steps required under a compliance notice.
- (4) The authorised officer must comply with section 141²⁹ before entering, when entering and after entering a home.

Subdivision 2 Procedure for entry

135 Entry with consent

- (1) This section applies if an authorised officer intends to ask an occupier of a place to consent to the officer or another authorised officer entering the place under section 133(1)(a).
- (2) Before asking for the consent, the authorised officer must tell the occupier—
 - (a) the purpose of the entry; and
 - (b) that the occupier is not required to consent.
- (3) If the consent is given, the authorised officer may ask the occupier to sign an acknowledgment of the consent.
- (4) The acknowledgment must state—
 - (a) that the occupier has been told—
 - (i) the purpose of the entry; and
 - (ii) that the occupier is not required to consent; and
 - (b) the purpose of the entry; and

29 Section 141 (Entering a home and preserving privacy)

- (c) that the occupier gives the authorised officer consent to enter the place and exercise the powers under this part; and
 - (d) the time and date the consent was given.
- (5) If the occupier signs the acknowledgment, the authorised officer must immediately give a copy to the occupier.
- (6) If—
- (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
 - (b) an acknowledgment complying with subsection (4) for the entry is not produced in evidence;
- the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

136 Application for warrant

- (1) An authorised officer may apply to a magistrate for a warrant for a place.
- (2) The authorised officer must prepare a written application that states the grounds on which the warrant is sought.
- (3) The written application must be sworn.
- (4) The magistrate may refuse to consider the application until the authorised officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Example—

The magistrate may require additional information supporting the application to be given by statutory declaration.

137 Issue of warrant

- (1) The magistrate may issue a warrant for the place only if the magistrate is satisfied there are reasonable grounds for suspecting—
 - (a) there is a particular thing or activity (the *evidence*) that may provide evidence of an offence against this Act and

the evidence is at the place or, within the next 7 days, will be at the place; or

- (b) that it is necessary to enter the place—
 - (i) to protect a person with a disability at the place from risk of harm because of abuse, neglect or exploitation; or
 - (ii) to investigate the suspected misuse of funds provided to the service provider under part 7; or
 - (iii) to check whether the service provider has taken the steps required under a compliance notice.
- (2) The warrant must state—
 - (a) the place to which the warrant applies; and
 - (b) that a stated authorised officer may, with necessary and reasonable help and force—
 - (i) enter the place and any other place necessary for the entry; and
 - (ii) exercise the officer's powers under this part; and
 - (c) if subsection (1)(a) applies, particulars of the offence that the magistrate considers appropriate in the circumstances; and
 - (d) if subsection (1)(b) applies, particulars of the reason it is necessary to enter the place that the magistrate considers appropriate in the circumstances; and
 - (e) if subsection (1)(a) applies, the name of the person suspected of having committed the offence, unless the name is unknown or the magistrate considers it inappropriate to state the name; and
 - (f) if subsection (1)(a) applies, the evidence that may be seized under the warrant; and

- (g) the hours of the day or night when the place may be entered; and
- (h) the magistrate's name; and
- (i) the date and time of the warrant's issue; and
- (j) the date, within 14 days after the warrant's issue, the warrant ends.

138 Application by electronic communication and duplicate warrant

- (1) An application under section 136 may be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if the authorised officer reasonably considers it necessary because of—
 - (a) urgent circumstances; or
 - (b) other special circumstances, including, for example, the authorised officer's remote location.
- (2) The application—
 - (a) may not be made before the authorised officer prepares the written application under section 136(2); but
 - (b) may be made before the written application is sworn.
- (3) The magistrate may issue the warrant (the *original warrant*) only if the magistrate is satisfied—
 - (a) it was necessary to make the application under subsection (1); and
 - (b) the way the application was made under subsection (1) was appropriate.
- (4) After the magistrate issues the original warrant—
 - (a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the authorised officer, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the authorised officer; or
 - (b) otherwise—

- (i) the magistrate must tell the authorised officer the date and time the warrant is issued and the other terms of the warrant; and
 - (ii) the authorised officer must complete a form of warrant, including by writing on it—
 - (A) the magistrate’s name; and
 - (B) the date and time the magistrate issued the warrant; and
 - (C) the other terms of the warrant.
- (5) The copy of the warrant mentioned in subsection (4)(a), or the form of warrant completed under subsection (4)(b) (in either case the ***duplicate warrant***), is a duplicate of, and as effectual as, the original warrant.
- (6) The authorised officer must, at the first reasonable opportunity, send to the magistrate—
 - (a) the written application complying with section 136(2) and (3); and
 - (b) if the authorised officer completed a form of warrant under subsection (4)(b)—the completed form of warrant.
- (7) The magistrate must keep the original warrant and, on receiving the documents under subsection (6)—
 - (a) attach the documents to the original warrant; and
 - (b) give the original warrant and documents to the clerk of the court of the relevant magistrates court.
- (8) Despite subsection (5), if—
 - (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and
 - (b) the original warrant is not produced in evidence;the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.
- (9) This section does not limit section 136.

(10) In this section—

relevant magistrates court, in relation to a magistrate, means the Magistrates Court that the magistrate constitutes under the *Magistrates Act 1991*.

139 Defect in relation to a warrant

(1) A warrant is not invalidated by a defect in the warrant, or in compliance with section 136, 137 or 138, unless the defect affects the substance of the warrant in a material particular.

(2) In this section—

warrant includes a duplicate warrant mentioned in section 138(5).

140 Warrants—procedure before entry

(1) This section applies if an authorised officer named in a warrant issued under this part for a place is intending to enter the place under the warrant.

(2) Before entering the place, the authorised officer must do or make a reasonable attempt to do the following things—

(a) identify himself or herself to a person present at the place who is an occupier of the place by producing a copy of the authorised officer's identity card or other document evidencing the appointment;

(b) give the person a copy of the warrant;

(c) tell the person the authorised officer is permitted by the warrant to enter the place;

(d) give the person an opportunity to allow the authorised officer immediate entry to the place without using force.

(3) However, the authorised officer need not comply with subsection (2) if the authorised officer believes on reasonable grounds that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

(4) In this section—

warrant includes a duplicate warrant mentioned in section 138(5).

141 Entering a home and preserving privacy

- (1) Before entering a home under section 134, an authorised officer must do or make a reasonable attempt to do the following things—
 - (a) comply with section 129;³⁰
 - (b) tell an occupier of the home that the officer is permitted to enter the home;
 - (c) give the occupier an opportunity to allow the officer immediate entry to the home without using force.
- (2) When entering and after entering a home, or exercising a power or performing a function in a home, an authorised officer must, as far as practicable—
 - (a) preserve the privacy and dignity of anyone living at the home; and
 - (b) minimise the impact on occupiers of the home who are people with a disability.
- (3) Subsection (2) applies to entry to a home under this division with consent or without consent.

Subdivision 3 Powers after entry**142 General powers after entering a place**

- (1) This section applies to an authorised officer who enters a place.
- (2) However, if an authorised officer enters a place to get the occupier's consent to enter the place, this section applies to the officer only if the consent is given or the entry is otherwise authorised.
- (3) For monitoring or enforcing compliance with this Act, the authorised officer may do any of the following—
 - (a) search any part of the place;

30 Section 129 (Production or display of identity card)

- (b) inspect, measure, test, photograph or film any part of the place or anything at the place;
 - (c) take a thing, or a sample of or from a thing, at the place for analysis or testing;
 - (d) copy a document at the place or take the document to another place to copy it;
 - (e) take into or onto the place any person, equipment and materials the officer reasonably requires for the exercise of a power under this part;
 - (f) confer alone with a consumer or person engaged by a funded non-government service provider;
 - (g) require a person at the place to give the authorised officer reasonable help to exercise the authorised officer's powers under paragraphs (a) to (f);
 - (h) require a person at the place to answer questions by the authorised officer to help the authorised officer ascertain whether this Act is being or has been complied with.
- (4) When making a requirement mentioned in subsection (3)(g) or (h), the authorised officer must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.
- (5) If an authorised officer takes a document from a place to copy it, the document must be copied as soon as practicable and returned to the place.

143 Failure to help authorised officer

A person required to give reasonable help under section 142(3)(g) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

144 Failure to answer questions

- (1) A person of whom a requirement is made under section 142(3)(h) must comply with the requirement, unless the person has a reasonable excuse.³¹

Maximum penalty—50 penalty units.

- (2) It is a reasonable excuse for the person to fail to comply with the requirement that complying with the requirement might tend to incriminate the person.

Subdivision 4 Power to seize evidence**145 Seizing evidence after entry without consent or warrant**

An authorised officer who lawfully enters a place under this part without the occupier's consent and without a warrant, may seize a thing at the place if the authorised officer reasonably believes the thing is evidence of an offence against this Act.

146 Seizing evidence after entry with consent or warrant

- (1) This section applies if an authorised officer—
- (a) is authorised to enter a place under this part with the consent of the occupier or a warrant; and
 - (b) enters the place after obtaining the necessary consent or warrant.
- (2) If the authorised officer enters the place with the occupier's consent, the officer may seize a thing at the place if—
- (a) the officer reasonably believes the thing is evidence of an offence against this Act; and
 - (b) seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for the occupier's consent.

³¹ Also, a person must not state anything the person knows to be false or misleading in a material particular—see section 164 (False or misleading statements).

- (3) If the authorised officer enters the place with a warrant, the officer may seize the evidence for which the warrant was issued.
- (4) The authorised officer may seize anything else at the place if the officer reasonably believes—
 - (a) the thing is evidence of an offence against this Act; and
 - (b) the seizure is necessary to prevent the thing being hidden, lost, destroyed or used to continue or repeat the offence.
- (5) Also, the authorised officer may seize a thing at the place if the officer reasonably believes it has just been used in committing an offence against this Act.

Subdivision 5 Dealing with seized things

147 Definition for sdiv 5

In this subdivision—

owner, of a seized thing, includes the person entitled to possession of it.

148 Securing a seized thing

- (1) This section applies if an authorised officer seizes a thing under section 145 or 146.
- (2) Having seized the thing, the authorised officer may—
 - (a) move the thing from the place where it was seized (the *place of seizure*); or
 - (b) leave the thing at the place of seizure, but take reasonable action to restrict access to it.

Examples of restricting access to a thing—

- 1 sealing a thing and marking it to show access to it is restricted
- 2 sealing the entrance to a room where the thing is situated and marking it to show access to it is restricted

149 Tampering with a seized thing

- (1) If an authorised officer restricts access to a seized thing under section 148, a person must not tamper with the thing, or something restricting access to the thing, without an authorised officer's approval.

Maximum penalty—100 penalty units.

- (2) In this section—

tamper includes attempt to tamper.

150 Powers to support seizure

- (1) To enable a thing to be seized, an authorised officer may require the person in control of it—

(a) to take it to a stated reasonable place by a stated reasonable time; and

(b) if necessary, to remain in control of it at the stated place for a reasonable time.

- (2) The requirement—

(a) must be made by notice; or

(b) if for any reason it is not practicable to give the notice, may be made orally and confirmed by notice as soon as practicable.

- (3) A further requirement may be made under this section about the same thing if it is necessary and reasonable to make the further requirement.

- (4) A person of whom the requirement is made under subsection (1) or (3) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (5) Subject to section 163,³² the cost of complying with subsection (4) must be borne by the person.

151 Authorised officer may require thing's return

- (1) If an authorised officer has required a person to take a thing to a stated place by a stated reasonable time under section 150, the authorised officer may require the person to return the thing to the place from which it was taken.
- (2) A person of whom the requirement is made under subsection (1) must comply with the requirement, unless the person has a reasonable excuse.
Maximum penalty—100 penalty units.
- (3) Subject to section 163, the cost of complying with subsection (1) must be borne by the person.

152 Receipts for seized thing

- (1) As soon as practicable after seizing a thing, an authorised officer must give a receipt for it to the person from whom it was seized.
- (2) However, if for any reason it is not practicable to comply with subsection (1), the authorised officer must leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way.
- (3) The receipt must describe generally each thing seized and its condition.
- (4) This section does not apply to a thing if it is impracticable, or would be unreasonable, to give the receipt, having regard to the thing's nature, condition and value.

153 Forfeiture of seized thing

- (1) A seized thing is forfeited to the State if an authorised officer—
 - (a) can not find its owner, after making reasonable inquiries; or
 - (b) can not return it to its owner, after making reasonable efforts.
- (2) In applying subsection (1)—

- (a) subsection (1)(a) does not require the authorised officer to make inquiries if it would be unreasonable to make inquiries to find the owner; and
 - (b) subsection (1)(b) does not require the authorised officer to make efforts if it would be unreasonable to make efforts to return the thing to its owner.
- (3) Regard must be had to a thing's nature, condition and value in deciding—
- (a) whether it is reasonable to make inquiries or efforts; and
 - (b) if making inquiries or efforts, what inquiries or efforts, including the period over which they are made, are reasonable.
- (4) On the forfeiture of a thing to the State, the thing becomes the State's property and may be dealt with by the chief executive as the chief executive considers appropriate.
- (5) Without limiting subsection (4), the chief executive may destroy or dispose of the thing.

154 Return of seized thing

- (1) If a seized thing is not forfeited, the authorised officer must return it to its owner—
- (a) at the end of 6 months; or
 - (b) if a proceeding for an offence involving the thing is started within 6 months—at the end of the proceeding and any appeal from the proceeding.
- (2) Despite subsection (1), unless the thing is forfeited, the authorised officer must immediately return it to its owner if the officer stops being satisfied—
- (a) its continued retention as evidence is necessary; or
 - (b) its continued retention is necessary to prevent the thing being used to continue, or repeat, the offence.

155 Access to seized thing

- (1) Until a seized thing is forfeited or returned, an authorised officer must allow its owner to inspect it and, if it is a document, to copy it.
- (2) Subsection (1) does not apply if it is impracticable, or would be unreasonable, to allow the inspection or copying.

Subdivision 6 Power to obtain information**156 Power to require name and address**

- (1) This section applies if—
 - (a) an authorised officer finds a person committing an offence against this Act; or
 - (b) an authorised officer finds a person in circumstances that lead, or has information that leads, the authorised officer reasonably to suspect the person is committing, or has just committed, an offence against this Act.
- (2) The authorised officer may require the person to state the person's name and residential address.
- (3) When making the requirement, the authorised officer must warn the person it is an offence to fail to state the person's name or residential address, unless the person has a reasonable excuse.
- (4) The authorised officer may require the person to give the authorised officer evidence of the correctness of the stated name or residential address if the authorised officer reasonably suspects the stated name or address to be false.
- (5) A requirement under subsection (2) or (4) is a *personal details requirement*.

157 Failure to give name or address

- (1) A person of whom a personal details requirement is made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) A person does not commit an offence against subsection (1) if—
- (a) the person was required to state the person's name and residential address by an authorised officer who suspected the person had committed an offence against this Act; and
 - (b) the person is not proved to have committed the offence.

158 Power to require production of documents

- (1) An authorised officer may require a person to make available for inspection by the authorised officer, or produce to the authorised officer for inspection, at a reasonable time and place nominated by the authorised officer—
- (a) a document issued to the person under this Act; or
 - (b) a document required to be kept by the person under this Act.
- (2) The authorised officer may keep the document to copy it.
- (3) If the authorised officer copies the document, or an entry in the document, the authorised officer may require the person responsible for keeping the document to certify the copy as a true copy of the document or entry.
- (4) The authorised officer must return the document to the person as soon as practicable after copying it.
- (5) However, if a requirement (a *document certification requirement*) is made of a person under subsection (3), the authorised officer may keep the document until the person complies with the requirement.
- (6) A requirement under subsection (1) is a *document production requirement*.

159 Failure to produce document

- (1) A person of whom a document production requirement is made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) It is not a reasonable excuse for a person not to comply with a document production requirement that complying with the requirement might tend to incriminate the person.

160 Failure to certify copy of document

A person of whom a document certification requirement is made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

Subdivision 7 Other compliance matters

161 Compliance notice

- (1) This section applies if the chief executive reasonably believes a funded non-government service provider—
 - (a) is contravening a provision of this Act; or
 - (b) has contravened a provision of this Act in circumstances that make it likely the contravention will continue or be repeated.
- (2) This section applies to a funded non-government service provider even if the service provider's funding has been suspended under the relevant funding agreement.
- (3) The chief executive may give the service provider a notice (a **compliance notice**) requiring the service provider to remedy the contravention.
- (4) The compliance notice must state the following—
 - (a) that the chief executive reasonably believes the service provider—
 - (i) is contravening a provision of this Act; or
 - (ii) has contravened a provision of this Act in circumstances that make it likely the contravention will continue or be repeated;
 - (b) the provision the chief executive believes is being, or has been, contravened (the **relevant provision**);

- (c) briefly, how it is believed the relevant provision is being, or has been, contravened;
 - (d) that the service provider must remedy the contravention within a stated reasonable time;
 - (e) that it is an offence to fail to comply with the compliance notice unless the service provider has a reasonable excuse.
- (5) The compliance notice may also state—
- (a) the steps that the chief executive is satisfied are necessary to remedy the contravention, or avoid further contravention, of the relevant provision; and
 - (b) that the service provider must report to the chief executive after taking a step or steps.
- (6) The service provider must comply with the compliance notice unless the service provider has a reasonable excuse.

Maximum penalty—

- (a) if it is an offence to contravene the relevant provision—the maximum penalty for contravening that provision; or
 - (b) otherwise—
 - (i) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 206³³—20 penalty units; or
 - (ii) for a funded non-government service provider—100 penalty units.
- (7) If it is an offence to contravene the relevant provision, the service provider can not be prosecuted for that offence unless it fails to comply with the compliance notice and does not have a reasonable excuse for the noncompliance.
- (8) If the service provider contravenes subsection (6), the chief executive may, by notice given to the service provider, suspend or cancel funding to the service provider despite anything in a funding agreement with the service provider.

33 Section 206 (Executive officers must ensure corporation complies with Act)

- (9) This section does not limit—
 - (a) a remedy available to the chief executive under a funding agreement; or
 - (b) the chief executive's powers apart from this section.

Division 3 General enforcement matters

162 Notice of damage

- (1) This section applies if—
 - (a) an authorised officer damages property when exercising or purporting to exercise a power; or
 - (b) a person (the *other person*) acting under the direction or authority of an authorised officer damages property.
- (2) The authorised officer must immediately give notice of particulars of the damage to a person who appears to the authorised officer to be an owner of the property.
- (3) If the authorised officer believes the damage was caused by a latent defect in the property or circumstances beyond the authorised officer's or other person's control, the authorised officer may state the belief in the notice.
- (4) If, for any reason, it is impracticable to comply with subsection (2), the authorised officer must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened.
- (5) This section does not apply to damage the authorised officer reasonably believes is trivial.
- (6) In this section—

owner, of property, includes a person in possession or control of it.

163 Compensation

- (1) If a person incurs loss or expense because of the exercise or purported exercise of a power under this part, other than

section 161, the person may claim compensation from the chief executive.

- (2) Without limiting subsection (1), compensation may be claimed for loss or expense incurred in complying with a requirement made of the person under this part.
- (3) Compensation may be claimed and ordered to be paid in a proceeding—
 - (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
 - (b) for an offence against this Act brought against the person claiming compensation.
- (4) A court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

164 False or misleading statements

A person must not state anything to an authorised officer that the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

165 False or misleading documents

- (1) A person must not give an authorised officer a document containing information that the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.
- (2) Subsection (1) does not apply to a person if the person, when giving the document—
 - (a) tells the authorised officer, to the best of the person's ability, how it is false or misleading; and
 - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

166 Obstructing an authorised officer

- (1) A person must not obstruct an authorised officer in the exercise of a power, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) If a person has obstructed an authorised officer and the officer decides to proceed with the exercise of the power, the officer must warn the person that—
- (a) it is an offence to obstruct the officer, unless the person has a reasonable excuse; and
 - (b) the officer considers the person's conduct an obstruction.

167 Impersonation of an authorised officer

A person must not pretend to be an authorised officer.

Maximum penalty—100 penalty units.

168 Chief executive may advise people with a disability and others of action taken in relation to funded non-government service providers

- (1) This section applies if the chief executive gives a compliance notice to a funded non-government service provider.
- (2) The chief executive may advise any of the following about the compliance notice including particulars of the contents of the notice—
- (a) a consumer of the service provider;
 - (b) the consumer's family or carer;
 - (c) the chief executive of the department in which the *Guardianship and Administration Act 2000* is administered;
 - (d) the adult guardian;
 - (e) the Commissioner for Children and Young People and Child Guardian;

- (f) the chief executive of the department in which the *Child Protection Act 1999* is administered;
- (g) the chief executive of the department in which the *Health Services Act 1991* is administered;
- (h) another person the chief executive considers should be advised because of the person's relationship with the consumer.

Part 12 **Appointment of interim manager**

Division 1 **Appointment**

169 **Appointment**

- (1) The chief executive may appoint a person as interim manager for a funded non-government service provider receiving recurrent funding.
- (2) The appointment may apply to all service outlets of the service provider or to stated service outlets only.

170 **Basis for appointment**

- (1) The chief executive may make the appointment only if the chief executive is satisfied the appointment is reasonably necessary to—
 - (a) protect consumers of the funded non-government service provider from abuse, neglect or exploitation; or
 - (b) ensure the proper and efficient use of funds under the funding agreement with the service provider.
- (2) In deciding whether the appointment is reasonably necessary, the chief executive may have regard to all of the following matters—

- (a) whether it appears there has been abuse, neglect or exploitation of consumers of the service provider;
 - (b) the type of disability services provided to consumers by the service provider;
 - (c) the amount of funding given by the chief executive to the service provider;
 - (d) whether the chief executive has suspended or cancelled funding to the service provider or is likely to suspend or cancel funding;
 - (e) whether it appears the service provider is—
 - (i) unwilling or unable to provide disability services; or
 - (ii) providing disability services in a way that does not comply with the funding agreement with the service provider;
 - (f) the likely consequences for consumers of the service provider if disability services are not provided or not provided in a way that complies with the funding agreement with the service provider;
 - (g) the likely consequences of the appointment, of which the chief executive is aware, for the service provider and anyone else likely to be affected;
 - (h) any other relevant matter of which the chief executive is aware.
- (3) Before making the appointment the chief executive—
- (a) must consider whether it would be more appropriate to take action other than the appointment, or not to take any action; and
 - (b) may consult with the service provider, the consumers of the service provider and their families and carers.

171 Suitability of proposed appointee

- (1) The chief executive may make the appointment only if the chief executive is satisfied the proposed appointee is suitable for the appointment under this section.

- (2) In deciding whether a person is suitable for the appointment, the chief executive must have regard to the following matters—
- (a) the type of disability services provided by the funded non-government service provider;
 - (b) the reason for the appointment;
 - (c) the person's expertise or experience relevant to the appointment;
 - (d) any conflict of interest that may arise in the course of the person acting as interim manager;
 - (e) any other relevant matter of which the chief executive is aware.
- (3) A person who has agreed to a proposed appointment must advise the chief executive, before the appointment is made, whether the person is aware of a conflict of interest that may arise in the course of the person acting as interim manager.

Maximum penalty—40 penalty units.

- (4) Only an adult may be appointed as interim manager.

172 Terms of appointment

An appointment of a person as interim manager of a funded non-government service provider must state the following matters—

- (a) the person's name;
- (b) details of the service provider;
- (c) the service outlets to which the appointment applies;
- (d) the disability services to be provided;
- (e) the way in which, or the extent to which, the disability services are to be provided;
- (f) details of the person's function as interim manager;
- (g) any limitations on the person's powers as interim manager;
- (h) the period of the appointment;

- (i) any conditions of the appointment;
- (j) anything else the chief executive considers appropriate.

173 Notice to funded non-government service provider about appointment

Immediately after appointing a person as interim manager of a funded non-government service provider, the chief executive must give a copy of the appointment to the service provider.

174 Informing consumers about appointment

Before an interim manager exercises a power under this part, the chief executive must ensure the consumers of the funded non-government service provider are informed of the appointment, for example, by—

- (a) giving a notice of the appointment to the consumers of the service provider and to consumers' families, carers, guardians or administrators; or
- (b) posting a notice of the appointment at a place at the premises of the service provider where it is likely to be seen by consumers of the service provider; or
- (c) directing the interim manager to inform the consumers of the service provider about the appointment in an appropriate way.

175 Initial period of appointment

An interim manager may be appointed for a period of not more than 3 months.

176 Variation of appointment

- (1) After an interim manager starts to carry out the manager's function, the chief executive may, by notice—
 - (a) extend the period of the appointment; or
 - (b) vary the appointment in another way.

- (2) The chief executive may extend the period of the appointment if the chief executive is satisfied the extension is reasonably necessary in all the circumstances.
- (3) The period of the appointment may be extended more than once.
- (4) However—
 - (a) the period of an extension must not be more than 3 months; and
 - (b) the total period of the initial appointment and any extension or extensions must not be more than 6 months.
- (5) The chief executive may vary the appointment in a way other than by extending the period of the appointment if the chief executive is satisfied the variation is appropriate, having regard to—
 - (a) the matters stated in section 170; and
 - (b) the operation of the funded non-government service provider since the appointment started.
- (6) If the appointment is varied under this section, the chief executive must ensure notice of the variation is given—
 - (a) to the service provider; and
 - (b) if the interim manager exercises a power under this part in relation to a consumer of the service provider—to the consumer.
- (7) The notice under subsection (6)(b) must be given to the consumer at or before the time the manager exercises the power.

177 Ending of appointment

- (1) The chief executive may, by notice, end an interim manager's appointment at any time before the end of the period of appointment if the chief executive is satisfied the appointment is no longer appropriate, having regard to the matters stated in section 170.

- (2) Immediately after ending an appointment under subsection (1), the chief executive must give notice about the ending of the appointment to the funded non-government service provider and to consumers of the service provider.

Division 2 Function and powers

178 Application of div 2

This division applies to a person appointed as interim manager of a funded non-government service provider.

179 Interim manager's function

The interim manager's function is, under the terms of the appointment—

- (a) to protect consumers of the funded non-government service provider from abuse, neglect or exploitation; and
- (b) to ensure the proper and efficient use of funds under the funding agreement with the funded non-government service provider; and
- (c) to provide disability services to consumers that the funded non-government service provider has agreed to provide under the funding agreement.

180 Interim manager's powers

So far as is necessary to carry out his or her function, an interim manager appointed to a funded non-government service provider—

- (a) may enter any part of the service provider's premises; and
- (b) may use the facilities or things in the premises that it appears are intended for use, or are ordinarily used, to provide services to consumers; and
- (c) may ask for and accept payments that a consumer must pay to the service provider; and

- (d) may do anything in relation to a funding agreement, on behalf of the service provider, that the service provider is permitted or required to do.

181 Direction by chief executive

An interim manager is subject to the chief executive's direction in performing the interim managers's function and exercising the powers given under this part.

182 Other powers

The interim manager has the other powers of the funded non-government service provider that are necessary or convenient to carry out the manager's function.

Example—

It may be necessary for the interim manager to carry out repairs to the funded non-government service provider's property.

183 Limitation on powers under instrument of appointment

A power conferred on the interim manager under this part applies subject to any limitation stated in the instrument of appointment.

184 Production of instrument of appointment for inspection

- (1) This section applies if—
 - (a) the interim manager is exercising, or proposes to exercise, a power given under this part in relation to a person; and
 - (b) the person asks the manager to produce the manager's instrument of appointment for the person's inspection.
- (2) The manager must comply with the request.

185 Obstruction

- (1) A person must not obstruct an interim manager in the exercise of a power, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

- (2) If a person has obstructed an interim manager and the manager decides to proceed with the exercise of the power, the manager must warn the person that—
 - (a) it is an offence to obstruct the manager, unless the person has a reasonable excuse; and
 - (b) the manager considers the person's conduct an obstruction.

Division 3 Other matters

186 Access to information or documents

- (1) The interim manager may ask an executive officer of the funded non-government service provider for information or documents that the manager reasonably needs to carry out the manager's function.
- (2) The chief executive may disclose information to an interim manager, or give an interim manager access to documents, to the extent the chief executive considers appropriate for the purpose of the manager's appointment.

187 Confidentiality

- (1) This section applies to a person—
 - (a) who is, or has been, appointed as interim manager of a funded non-government service provider; and
 - (b) who, in the course of the appointment or because of opportunity provided by the appointment, has gained or has access to confidential information about the service provider or someone else.
- (2) The person must not disclose the information to anyone else or give access to the information to anyone else, other than—
 - (a) for a purpose of this part; or
 - (b) under section 190; or

- (c) with the consent of the service provider or other person to whom the information relates; or
- (d) in compliance with lawful process requiring production of documents or giving of evidence before a court or tribunal; or
- (e) as expressly permitted or required by another Act.

Maximum penalty—40 penalty units.

188 Remuneration

An interim manager is entitled to be paid the reasonable amount of remuneration agreed with the chief executive.

189 Funded non-government service provider liable for remuneration and other costs

- (1) If an interim manager is appointed to a funded non-government service provider, the chief executive may give the service provider a written demand for the amount of an administration cost.
- (2) The chief executive may recover the amount as a debt owed to the State.
- (3) In this section—

administration cost means the remuneration paid to the interim manager and any other reasonable cost incurred in carrying out the manager's function.

190 Accounts and reports

- (1) An interim manager appointed to a funded non-government service provider must give to the chief executive—
 - (a) records of all amounts received or paid in the course of the appointment; and
 - (b) reports about the wellbeing of consumers of the service provider; and
 - (c) the other reports about the administration that the chief executive requires.

- (2) The records and other reports must be given as soon as possible after the end of the appointment or, if required by the chief executive at a time during the appointment, at that time.
- (3) The chief executive must give a copy of each record or report to the service provider.

191 Compensation

- (1) A person may claim compensation from the chief executive if the person incurs loss or damage because of the exercise or purported exercise of a power under this part.
- (2) Compensation may be claimed and ordered to be paid in a proceeding brought in a court with jurisdiction for the recovery of the amount of compensation claimed.
- (3) A court may order compensation to be paid only if satisfied it is just to make the order in the circumstances of the particular case.

Part 13 Legal proceedings

Division 1 Application

192 Application of pt 13

This part applies to a proceeding under this Act.

Division 2 Evidence

193 Appointments and authority

The following must be presumed unless a party to the proceeding, by reasonable notice, requires proof of it—

- (a) the chief executive's appointment;
- (b) an authorised officer's appointment;

- (c) the authority of the chief executive or an authorised officer to do anything under this Act.

194 Signatures

A signature purporting to be the signature of the chief executive or an authorised officer is evidence of the signature it purports to be.

195 Evidentiary provisions

- (1) A certificate purporting to be signed by the chief executive and stating any of the following matters is evidence of the matter—
 - (a) a stated document is 1 of the following things made, given, issued or kept under this Act—
 - (i) an appointment, approval or decision;
 - (ii) a notice or requirement;
 - (iii) a record, or an extract from a record;
 - (b) a stated document is another document kept under this Act;
 - (c) a stated document is a copy of a thing mentioned in paragraph (a) or (b);
 - (d) on a stated day, or during a stated period, an appointment as an authorised officer was, or was not, in force for a stated person;
 - (e) on a stated day, a stated person was given a stated notice under this Act;
 - (f) on a stated day, a stated requirement was made of a stated person.
- (2) In a complaint starting a proceeding, a statement that the matter of complaint came to the complainant's knowledge on a stated day is evidence of when the matter came to the complainant's knowledge.

196 Positive notice card is evidence of holding positive notice

If a person holds a current positive notice card, the card is evidence of the person holding a current positive notice.

Division 3 Proceedings**197 Indictable and summary offences**

- (1) An offence against section 92(1) or 94³⁴ is an indictable offence that is a crime.
- (2) Otherwise, an offence against this Act is a summary offence.

198 Proceedings for indictable offences

- (1) A proceeding for an indictable offence against this Act may be taken, at the election of the prosecution—
 - (a) by way of summary proceedings under the *Justices Act 1886*; or
 - (b) on indictment.
- (2) A magistrate must not hear an indictable offence summarily if—
 - (a) the defendant asks at the start of the hearing that the charge be prosecuted on indictment; or
 - (b) the magistrate considers the charge should be prosecuted on indictment.
- (3) If subsection (2) applies—
 - (a) the magistrate must proceed by way of an examination of witnesses for an indictable offence; and
 - (b) a plea of the person charged at the start of the proceeding must be disregarded; and

34 Section 92 (Person holding negative notice, or who has withdrawn consent to screening, not to apply for, or start or continue in, engagement by funded non-government service provider) or 94 (Effect of conviction for serious offence or charge for excluding offence)

- (c) evidence brought in the proceeding before the magistrate decided to act under subsection (2) is taken to be evidence in the proceeding for the committal of the person for trial or sentence; and
 - (d) before committing the person for trial or sentence, the magistrate must make a statement to the person as required by the *Justices Act 1886*, section 104(2)(b).³⁵
- (4) The maximum penalty that may be summarily imposed for an indictable offence is 150 penalty units or 2 years imprisonment.

199 Limitation on who may summarily hear indictable offence proceedings

- (1) A proceeding must be before a magistrate if it is a proceeding—
- (a) for the summary conviction of a person on a charge for an indictable offence; or
 - (b) for an examination of witnesses for a charge for an indictable offence.
- (2) However, if a proceeding for an indictable offence is brought before a justice who is not a magistrate, jurisdiction is limited to taking or making a procedural action or order within the meaning of the *Justices of the Peace and Commissioners for Declarations Act 1991*.

200 Proceeding for offences

A proceeding for an offence against this Act, other than an indictable offence, must be taken in a summary way under the *Justices Act 1886*.

201 When proceeding may start

A proceeding for a summary offence against this Act must start within the later of the following periods to end—

³⁵ *Justices Act 1886*, section 104 (Proceedings upon an examination of witnesses in relation to an indictable offence)

- (a) 1 year after the commission of the offence;
- (b) 6 months after the offence comes to the complainant's knowledge, but within 2 years after the offence is committed.

202 Allegations of false or misleading information or document

In any proceeding for an offence against this Act defined as involving false or misleading information, or a false or misleading document, it is enough for a charge to state that the information or document was, without specifying which, 'false or misleading'.

203 Forfeiture on conviction

- (1) On conviction of a person for an offence against this Act, a court may order the forfeiture to the State of—
 - (a) anything used to commit the offence; or
 - (b) anything else the subject of the offence.
- (2) The court may make the order—
 - (a) whether or not the thing has been seized; and
 - (b) if the thing has been seized, whether or not the thing has been returned to its owner.
- (3) The court may make any order to enforce the forfeiture it considers appropriate.
- (4) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.

204 Dealing with forfeited thing

- (1) On the forfeiture of a thing to the State, the thing becomes the State's property and may be dealt with by the State as the State considers appropriate.
- (2) Without limiting subsection (1), the State may destroy the thing.

205 Responsibility for acts or omissions of representative

- (1) This section applies in a proceeding for an offence against this Act.
- (2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—
 - (a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and
 - (b) the representative had the state of mind.
- (3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.
- (4) In this section—

representative means—

 - (a) for a corporation—an executive officer, employee or agent of the corporation; or
 - (b) for an individual—an employee or agent of the individual.

state of mind of a person includes—

 - (a) the person's knowledge, intention, opinion, belief or purpose; and
 - (b) the person's reasons for the intention, opinion, belief or purpose.

206 Executive officers must ensure corporation complies with Act

- (1) The executive officers of a corporation must ensure the corporation complies with this Act.
- (2) If a corporation commits an offence against a provision of this Act, each of the corporation's executive officers also commits an offence, namely, the offence of failing to ensure the corporation complies with the provision.

Maximum penalty—the penalty for the contravention of the provision by an individual.

- (3) Evidence that the corporation has been convicted of an offence against a provision of this Act is evidence that each of the executive officers committed the offence of failing to ensure the corporation complies with the provision.
- (4) However, it is a defence for an executive officer to prove—
 - (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence, the officer exercised reasonable diligence to ensure the corporation complied with the provision; or
 - (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

Part 14 Reviews and appeals

Division 1 Reviewable decisions

207 Reviewable decisions

Schedule 2 states—

- (a) decisions of the chief executive under this Act that are reviewable decisions; and
- (b) for each reviewable decision, the person who may seek to have the decision reviewed under this part (the *interested person*).

Note—

In addition to the reviewable decisions stated in schedule 2, part 10 provides for a person to apply to the tribunal for the matters stated in that part.

208 Chief executive must give notice after making reviewable decision

- (1) Immediately after making a reviewable decision, the chief executive must give to the interested person a notice stating—
 - (a) the reasons for the decision; and
 - (b) that, within 28 days after receiving the notice, the interested person may apply to the chief executive for a review of the decision; and
 - (c) how the interested person may apply for the review; and
 - (d) that, if the interested person applies for a review of the decision and the matter is not resolved on the review, the interested person may appeal against the decision on review to the tribunal.
- (2) Subsection (1) does not apply if the chief executive can not locate the interested person after making reasonable enquiries.

Division 2 Review of decision**209 Application for review**

- (1) This section applies to the interested person for a reviewable decision.
- (2) Within 28 days after the interested person receives a notice under section 208 about the decision, the interested person may apply to the chief executive to review the decision.
- (3) The chief executive may extend the time for applying for the review.
- (4) Also, the interested person may apply to the chief executive to review the decision if the chief executive has not given the interested person a notice under section 208 about the decision.
- (5) The application must be in the approved form and supported by enough information to enable the chief executive to decide the application.

210 Stay of operation of original decision

- (1) An application under section 209 for review of a decision does not stay the decision.
- (2) However, before the decision takes effect, the chief executive may give the interested person a notice staying the operation of the decision for a stated period.
- (3) The stay may be granted on conditions the chief executive considers appropriate.
- (4) Also, whether or not the applicant has asked the chief executive to stay the operation of the decision, the applicant may apply to the tribunal for a stay of the decision.
- (5) The tribunal may stay the decision to secure the effectiveness of the review and any later appeal to the tribunal.
- (6) The stay may be granted on conditions the tribunal considers appropriate and has effect for the period stated by the tribunal.
- (7) The period of the stay must not extend past the time when the chief executive makes the review decision and any later period the tribunal allows to enable the applicant to appeal against the review decision.
- (8) The chief executive's decision to issue a negative notice must not be stayed.

211 Review decision

- (1) This section applies to an application under section 209 for review of a decision.
- (2) Unless the chief executive made the original decision personally, the chief executive must ensure the application is not dealt with by—
 - (a) the person who made the original decision; or
 - (b) a person in a less senior office than the person who made the original decision.
- (3) Within 28 days after receiving the application, the chief executive must review the original decision and make a decision (the *review decision*)—
 - (a) confirming the original decision; or

- (b) amending the original decision; or
 - (c) substituting another decision for the original decision.
- (4) Immediately after deciding the application, the chief executive must give the interested person a notice stating—
- (a) the review decision; and
 - (b) the reasons for the review decision; and
 - (c) that, within 28 days after receiving the notice, the interested person may appeal against the review decision to the tribunal; and
 - (d) how the interested person may appeal.
- (5) If the chief executive does not decide the application within 28 days after receiving it, the chief executive is taken to have made a review decision confirming the original decision.

Division 3 Appeal against decision

212 Appeal against review decision

- (1) Within 28 days after receiving a decision notice for a review decision, the interested person for the decision may appeal against the decision to the tribunal.³⁶
- (2) Also, if the chief executive has made a review decision but has not given the interested person a decision notice for the decision, the interested person for the decision may appeal against the decision to the tribunal.
- (3) If the interested person has received a decision notice for the review decision, the application filed in the tribunal to start the appeal must be accompanied by a copy of the decision notice.
- (4) In this section—
decision notice, for a review decision, means a notice under section 211(4) about the decision.

36 See the *Commercial and Consumer Tribunal Act 2003*, section 31 (How to start proceedings).

213 Appeal is by way of rehearing

The appeal to the tribunal is by way of rehearing on the evidence that was before the chief executive.

Part 15 Miscellaneous**Division 1 Records****214 Funded non-government service provider must keep records**

A funded non-government service provider must make, and keep for the time prescribed under a regulation, the records prescribed under a regulation.

Maximum penalty—

- (a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 206³⁷—20 penalty units; or
- (b) for a funded non-government service provider—100 penalty units.

Division 2 Other matters**215 Disability service plans for departments**

- (1) The chief executive of a department must develop and implement disability service plans for the chief executive's department.
- (2) The first plan must be developed and implemented within 1 year after the commencement of this section.
- (3) A further plan must be developed and implemented at least once every 3 years.

³⁷ Section 206 (Executive officers must ensure corporation complies with Act)

- (4) The purpose of a plan is to ensure each department has regard to the following to the extent they reasonably apply to the department's operations—
 - (a) the human rights principle;
 - (b) the service delivery principles;
 - (c) the government's policies for people with a disability.
- (5) In developing a disability service plan, the chief executive of a department must consult with the following to ensure the chief executive's plan forms part of a coordinated whole-of-government approach for service delivery to people with a disability—
 - (a) the chief executive of the department in which this Act is administered;
 - (b) the chief executives of other departments.
- (6) The plan must, for the period of the plan—
 - (a) identify the issues relating to service delivery to people with a disability by the department; and
 - (b) state the way the issues will be addressed; and
 - (c) state the way the chief executive of a department is to consult with other chief executives to achieve the whole-of-government approach mentioned in subsection (5).
- (7) The chief executive of a department must publish the current disability service plan for the department on the department's website on the Internet.
- (8) Despite the *Public Service Act 1996*, section 19,³⁸ this section does not apply to a public service office.

216 Establishment of Ministerial advisory committees

The Minister may establish—

- (a) a committee to advise on the system that deals with complaints received from the following—

³⁸ *Public Service Act 1996*, section 19 (Application of Acts to public service offices)

- (i) consumers;
 - (ii) family members, carers or advocates of consumers;
and
- (b) as many other committees to advise on disability issues and disability services as the Minister considers appropriate.

217 Membership of advisory committee

- (1) An advisory committee has the membership decided by the Minister.
- (2) The Minister may appoint the following persons to an advisory committee—
- (a) a person with a disability;
 - (b) a family member or carer of a person with a disability;
 - (c) another person the Minister considers has expertise or experience relevant to people with a disability.

218 Dissolution

The Minister may dissolve an advisory committee at any time.

219 Other matters

The Minister may decide matters about an advisory committee that are not provided for under this Act, including, for example, the way a committee must conduct meetings or report to the Minister.

220 Person with a disability must advise chief executive about compensation

- (1) This section applies to a person with a disability who, in relation to the disability—
- (a) is applying for, or is receiving—
 - (i) funding for disability services from the department; or

- (ii) disability services from another entity the person knows is a funded service provider; and
 - (b) has received, or may receive, an amount relating to the disability.
- (2) The person must notify the chief executive in the approved form—
- (a) if action has been taken to claim an amount relating to the disability—of the type of action taken; and
 - (b) if an amount has been paid—of the date it was paid and the amount; and
 - (c) if part or all of the amount relates to future care—of the amount that relates to future care.

Maximum penalty—200 penalty units.

- (3) Subsection (4) applies to a person who, on behalf of a person with a disability, applies for—
- (a) funding for disability services from the department; or
 - (b) disability services from another entity the person applying knows is a funded service provider.
- (4) The person who applies for funding on behalf of a person with a disability must notify the chief executive in the approved form of the matters mentioned in subsection (2).

Maximum penalty—200 penalty units.

- (5) In this section ***an amount relating to the disability*** includes an amount relating to the disability resulting from any of the following—
- (a) a proceeding in a court;
 - (b) action taken for compensation under the *Workers' Compensation and Rehabilitation Act 2003* or an Act or law of another State, a Territory or the Commonwealth corresponding to that Act;
 - (c) an insurance claim;
 - (d) any other action taken under the common law or under an Act or law of a State or Territory or the Commonwealth.

221 Confidentiality of information about criminal history and related information

- (1) This section applies to a person who—
 - (a) is, or has been, the chief executive, a public service employee, or a selection panel member; and
 - (b) in that capacity acquired information, or gained access to a document, under part 9³⁹ about another person's criminal history or about an investigation relating to the possible commission of a serious offence by another person.
- (2) This section also applies to a person who—
 - (a) is, or has been, the chief executive or a public service employee; and
 - (b) in that capacity acquired information, or gained access to a document, under part 10⁴⁰ about another person's police information.
- (3) 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.
- (4) Subsection (3) does not apply to the disclosure of information, or giving of access to a document, about a person—
 - (a) if subsection (1) applies—to the chief executive, a public service employee or selection panel member for the purpose of assessing the person's suitability to be, or continue to be, a public service employee; or
 - (b) if subsection (2) applies—to the chief executive or a public service employee for the purpose of a screening decision; or
 - (c) if the person is an adult—with the person's consent; or
 - (d) if the disclosure or giving of access is otherwise required under an Act.

39 Part 9 (Screening of persons engaged by the department)

40 Part 10 (Screening of persons engaged by funded non-government service providers)

- (5) 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 employment as a public service employee.

222 Confidentiality of other information

- (1) This section applies to confidential information other than information mentioned in section 221(1)(b) or (2)(b).
- (2) If a person gains confidential information through involvement in this Act's administration, the person must not disclose the information to anyone, other than under subsection (4).

Maximum penalty—100 penalty units.

- (3) A person gains information through involvement in this Act's administration if the person gains the information because of being, or an opportunity given by being—
- (a) the chief executive; or
 - (b) an authorised officer; or
 - (c) an employee in the department; or
 - (d) a person contracted by the chief executive to provide disability services for the department; or
 - (e) an interim manager; or
 - (f) a member of a Ministerial advisory committee.
- (4) A person may disclose information to someone else—
- (a) for administering, monitoring or enforcing compliance with, this Act; or
 - (b) to discharge a function under another law; or
 - (c) for a proceeding in a court or tribunal; or
 - (d) if authorised under another law or a regulation made under this Act; or
 - (e) if—
 - (i) the person is authorised in writing by the person to whom the information relates; and

- (ii) the person to whom the information relates is an adult when the authorisation is given; or
- (f) to protect a person with a disability from abuse, neglect or exploitation.
- (5) Also, a person may disclose information to—
 - (a) another department, a funded non-government service provider or entity to enable the department, service provider or entity to provide for the needs of a person with a disability; or
 - (b) the Commonwealth or another entity for the purposes of an agreement with the Commonwealth.

223 Power to require information or documents

- (1) The chief executive may give notice to a funded non-government service provider requiring the service provider to give the chief executive, within a stated reasonable time, information or a document relating to the provision of disability services to consumers of the service provider.
- (2) The funded non-government service provider must comply with the notice.
- (3) For a requirement to give a document, the service provider may comply with the requirement by giving a copy of the document certified as a true copy of the document.

224 Protection from liability for giving information

- (1) This section applies to the giving of information to the chief executive, by a funded non-government service provider under this Act.
- (2) A funded non-government service provider, or a person on behalf of the provider, may give the information despite any other law that would otherwise prohibit or restrict the giving of the information.
- (3) If a person, acting honestly on reasonable grounds, gives the information to the chief executive, the person is not liable, civilly, criminally or under an administrative process, for giving the information.

- (4) Also, merely because the person gives the information, the person can not be held to have—
 - (a) breached any code of professional etiquette or ethics; or
 - (b) departed from accepted standards of professional conduct.
- (5) Without limiting subsections (3) and (4)—
 - (a) in a proceeding for defamation, the person has a defence of absolute privilege for publishing the information; and
 - (b) if the person would otherwise be required to maintain confidentiality about the information under an Act, oath or rule of law or practice, the person—
 - (i) does not contravene the Act, oath or rule of law or practice by giving the information; and
 - (ii) is not liable to disciplinary action for giving the information.
- (6) In this section—

information includes a document.

225 Chief executive to advise on-disclosure

- (1) This section applies to information or a document that the chief executive has obtained from a funded non-government service provider under section 223.
- (2) The chief executive must advise the funded non-government service provider before giving the information or document to another entity, unless the chief executive considers that doing so would not be in the best interests of a consumer to whom the information or document relates.

226 Chief executive may enter into arrangement about giving and receiving information with police commissioner

- (1) This section applies only to the extent that another provision under this Act allows the chief executive to give information to the police commissioner or the police commissioner to give information to the chief executive.

- (2) The chief executive and the police commissioner may enter into a written arrangement by which the information is given or received.
- (3) Without limiting subsection (2), the arrangement may provide for the electronic transfer of information, including on a daily basis.
- (4) However, if information is to be electronically transferred and, under this Act, there is a limitation on who may access the information or the purposes for which the information may be used, the arrangement must provide for the limitation.

227 Delegation by Minister

- (1) The Minister may delegate the Minister's powers under this Act to an appropriately qualified person who is a public service employee.
- (2) However, the Minister must not delegate the following—
 - (a) the Minister's power to make or amend the service standards;
 - (b) the review of the Act under section 233.
- (3) In this section—

appropriately qualified includes having the qualifications, experience or standing appropriate to the exercise of the power.

Example of standing—

if a person is a public service employee of the department, the person's classification level in the department

228 Delegation by chief executive

- (1) The chief executive may delegate the chief executive's powers under this Act to an appropriately qualified person who is a public service employee.
- (2) In this section—

appropriately qualified includes having the qualifications, experience or standing appropriate to the exercise of the power.

Example of standing—

if a person is a public service employee of the department, the person's classification level in the department

229 Protecting officials from liability

- (1) An official is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to the State.
- (3) In this section—

official means—

- (a) the Minister; or
- (b) the chief executive; or
- (c) an authorised officer; or
- (d) a public service employee; or
- (e) an interim manager; or
- (f) a member of a Ministerial advisory committee; or
- (g) a person acting under the direction of an official.

230 Approval of forms

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

231 Service of documents

- (1) If a document is required or permitted under this Act to be given to a person, the document may be given to the person by fax transmission directed and sent to—
 - (a) the last fax number given to the giver of the document by the person as the facsimile transmission number for service of documents on the person; or
 - (b) the fax transmission number operated—
 - (i) at the address of the person last known to the giver of the document; or

- (ii) if the person is a corporation, at the corporation's registered office under the Corporations Act.
- (2) A document given under subsection (1) is taken to have been given on the day the document is transmitted.

232 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation made under this Act may—
 - (a) impose a penalty of not more than 20 penalty units for a contravention of a provision of a regulation; and
 - (b) prescribe fees payable under this Act and the matters for which fees are payable.

233 Review of Act

The Minister must review the efficacy and efficiency of this Act as soon as practicable after the end of 5 years after the commencement of this section.

Part 16 Repeal and transitional provisions

Division 1 Repeal

234 Repeal of Disability Services Act 1992

The Disability Services Act 1992 No. 24 is repealed.

Division 2 Transitional provisions

235 Definitions for div 2

In this division—

commencement means the commencement of this part.

repealed Act means the *Disability Services Act 1992*.

236 Screening of persons engaged by funded non-government service providers at the commencement

- (1) This section applies to a funded non-government service provider who is engaging a person at a service outlet of the service provider at the commencement.
- (2) Section 90⁴¹ does not apply to the continued engagement of the person until the earliest of the following—
 - (a) the end of the period after the commencement prescribed under a regulation;
 - (b) if an application for a prescribed notice about the person is made within that period and is not withdrawn—the day a prescribed notice is issued to the person;
 - (c) if an application for a prescribed notice about a person is made within that period and is withdrawn—the day of the withdrawal.
- (3) For subsection (2)(a), a regulation must—
 - (a) name each funded non-government service provider; and
 - (b) assign a category to the service provider; and
 - (c) state the period after the commencement, not exceeding 6 months, that applies to the category.
- (4) The category must relate to the type of disability services provided by the service provider and is for the purposes of this section only.

41 Section 90 (When person without current positive notice may be engaged)

- (5) A particular category may be assigned to a funded non-government service provider even though the service provider also falls within another category.

237 Certain non-government service providers taken to be approved under part 6 and to be funded non-government service providers

- (1) This section applies to a non-government service provider that, at the commencement, is receiving financial assistance under the repealed Act that is recurrent funding.
- (2) The service provider is, from the commencement, taken to be—
- (a) an approved non-government service provider for this Act; and
 - (b) a funded non-government service provider for this Act.

238 When grants of financial assistance under the repealed Act continue

- (1) This section applies to a non-government service provider that, at the commencement, is receiving financial assistance under the repealed Act that is recurrent funding.
- (2) Subject to subsection (4), the service provider may continue to receive recurrent funding under this Act.
- (3) If the service provider has, before the commencement, signed an agreement under the repealed Act known as a general service agreement, that agreement is taken to be a funding agreement under this Act.
- (4) If the service provider has not signed a general service agreement before the commencement, funding must stop 3 months after the commencement unless—
- (a) the Minister approves funding under this Act; and
 - (b) a funding agreement is signed by the service provider.
- (5) No compensation is payable to a service provider if funding to the service provider stops under subsection (4).

239 Queensland disability service standards to continue in force

- (1) The prescribed standards are taken to be service standards made and notified under this Act and take effect for this Act from the commencement.
- (2) The prescribed standards may be amended and repealed under this Act.
- (3) In this section—
prescribed standards means the standards called the Queensland disability service standards that were approved by the Minister administering the *Disability Services Act 1992* in December, 2003.

240 Disability sector quality system to continue in force

- (1) The prescribed system is taken to be the disability sector quality system approved under this Act and takes effect for this Act from the commencement.
- (2) The Minister may approve an amendment of, or the repeal of, the prescribed system under this Act.
- (3) Subsection (4) applies if—
 - (a) the Minister administering the *Disability Services Act 1992* has approved an entity as being suitable to accredit another entity for the purpose of the other entity deciding whether a service provider has met the service standards for the prescribed system; and
 - (b) the approval is in force immediately before the commencement.
- (4) The entity is taken to be an entity approved under section 38.⁴²
- (5) The Minister may revoke the approval of the entity.
- (6) In this section—

42 Section 38 (Minister may approve entity as suitable to accredit external certification body)

prescribed system means the process called the disability sector quality system that was approved by the Minister administering the *Disability Services Act 1992* in June, 2004.

Part 17 Consequential amendments

241 Acts amended

Schedule 1 amends the Acts mentioned in it.

Schedule 1 Consequential amendments

section 241

Charitable and Non-Profit Gaming Act 1999

- 1 **Section 10(5)(a)(i), ‘Disability Services Act 1992’—**
omit, insert—
‘Disability Services Act 2006’.

Child Protection (Offender Reporting) Act 2004

- 1 **Schedule 3, definition *disability*, ‘Disability Services Act 1992, section 5’—**
omit, insert—
‘Disability Services Act 2006, section 11’.

Commercial and Consumer Tribunal Act 2003

- 1 **Schedule 2, definition *empowering Act*—**
insert—
 - *Disability Services Act 2006’.*

Schedule 1 (continued)

Coroners Act 2003

- 1 **Section 9(1)(a), ‘Disability Services Act 1992, section 5’—**
omit, insert—
‘Disability Services Act 2006, section 11’.
- 2 **Section 9(1)(a)(ii), ‘Disability Services Act 1992’—**
omit, insert—
‘Disability Services Act 2006’.
- 3 **Section 47(3), definition *relevant Act*, ‘Disability Services Act 1992’—**
omit, insert—
‘Disability Services Act 2006’.

Education (Work Experience) Act 1996

- 1 **Schedule, definition *person with a disability*—**
omit, insert—
‘person with a disability means a person who has a disability within the meaning of the Disability Services Act 2006, section 11.’.

Family Services Act 1987

- 1 **Sections 31 and 32—**
omit.

Schedule 1 (continued)

Guardianship and Administration Act 2000

- 1 Section 231(4)(a), ‘Disability Services Act 1992’—**
omit, insert—
‘Disability Services Act 2006’.

Residential Services (Accreditation) Act 2002

- 1 Section 4(5)(k)(ii), ‘a grant of financial assistance under the Disability Services Act 1992’—**
omit, insert—
‘funding given under the Disability Services Act 2006’.
- 2 Schedule 2, definition *disability services department*, ‘Disability Services Act 1992’—**
omit, insert—
‘Disability Services Act 2006’.

Terrorism (Preventative Detention) Act 2005

- 1 Section 62(1)(b), ‘Disability Services Act 1992’—**
omit, insert—
‘Disability Services Act 2006’.
- 2 Section 62(2), ‘Disability Services Act 1992, section 35’—**
omit, insert—
‘Disability Services Act 2006, section 228’.

Schedule 1 (continued)

Whistleblowers Protection Act 1994

- 1 **Section 9(2), ‘Disability Services Act 1992’—**
omit, insert—
‘Disability Services Act 2006’.

- 2 **Schedule 6, dictionary, definition *disability*, ‘Disability Services Act 1992’—**
omit, insert—
‘Disability Services Act 2006’.

Schedule 2 Reviewable decisions

section 207

Interested person	Reviewable decision
applicant for approval as an approved non-government service provider	to refuse approval as an approved non-government service provider (s 46(3))
approved non-government service provider	to refuse to cancel approval as an approved non-government service provider (s 48(3))
approved non-government service provider	to cancel approval as an approved non-government service provider (s 49(1))
funded non-government service provider whose funding is suspended or cancelled	to cancel or suspend the funding of a funded non-government service provider for not complying with a compliance notice (s 161(8))
funded non-government service provider for whom interim manager appointed	to appoint an interim manager for a funded non-government service provider (s 169)

Schedule 3 Current serious offences

section 79

1 *Classification of Computer Games and Images Act 1995*

Provision of Act	Relevant heading	Limitation relating to the provision of the Act
23	Demonstration of an objectionable computer game before a minor	
26(3)	Possession of objectionable computer game	
27(3) and (4)	Making objectionable computer game	
28	Obtaining minor for objectionable computer game	

2 *Classification of Films Act 1991*

Provision of Act	Relevant heading	Limitation relating to the provision of the Act
41(3)	Possession of objectionable film	
42(3) and (4)	Making objectionable film	
43	Procurement of minor for objectionable film	

 Schedule 3 (continued)
3 *Classification of Publications Act 1991*

Provision of Act	Relevant heading	Limitation relating to the provision of the Act
12	Sale etc. of prohibited publication or child abuse photograph	Only if an offender was or could have been liable as mentioned in section 12, penalty, paragraph (c)
13	Possession of prohibited publication	Only if an offender was or could have been liable as mentioned in section 13, penalty, paragraph (c)
14	Possession of child abuse publication or child abuse photograph	
15	Exhibition or display of prohibited publication or child abuse photograph	
16	Leaving prohibited publication or child abuse photograph in or on public place	Only if an offender was or could have been liable as mentioned in section 16, penalty, paragraph (c)
17	Producing prohibited publication	Only if an offender was or could have been liable as mentioned in section 17(1), penalty, paragraph (c) or 17(2), penalty, paragraph (c) or the offence is an offence under section 17(3) or (4)

Schedule 3 (continued)

Provision of Act	Relevant heading	Limitation relating to the provision of the Act
18	Procurement of minor for RC publication or child abuse photograph	
20	Leaving prohibited publication or child abuse photograph in or on private premises	Only if an offender was or could have been liable as mentioned in section 20, penalty, paragraph (c)

4 Criminal Code

Provision of Act	Relevant heading	Limitation relating to the provision of the Act
208	Unlawful sodomy	
209	Attempted sodomy	
210	Indecent treatment of children under 16	
211	Bestiality	
213	Owner etc. permitting abuse of children on premises	
215	Carnal knowledge with or of children under 16	
216	Abuse of intellectually impaired persons	

Schedule 3 (continued)

Provision of Act	Relevant heading	Limitation relating to the provision of the Act
217	Procuring young person etc. for carnal knowledge	
218	Procuring sexual acts by coercion etc.	
218A	Using internet etc. to procure children under 16	
219	Taking child for immoral purposes	
221	Conspiracy to defile	
222	Incest	
228	Obscene publications and exhibitions	Only if an offender was or could have been liable as mentioned in section 228(2) or (3)
228A	Involving child in making child exploitation material	
228B	Making child exploitation material	
228C	Distributing child exploitation material	
228D	Possessing child exploitation material	

Schedule 3 (continued)

Provision of Act	Relevant heading	Limitation relating to the provision of the Act
229B	Maintaining a sexual relationship with a child	
229G	Procuring prostitution	Only if an offender was or could have been liable as mentioned in 229G(2)
229H	Knowingly participating in provision of prostitution	Only if an offender was or could have been liable as mentioned in 229H(2)
229I	Persons found in places reasonably suspected of being used for prostitution etc.	Only if an offender was or could have been liable as mentioned in 229I(2)
229L	Permitting young person etc. to be at place used for prostitution	
300	Unlawful homicide	Only if the unlawful killing is murder under section 302
306	Attempt to murder	
309	Conspiring to murder	
313	Killing unborn child	
315	Disabling in order to commit indictable offence	
316	Stupefying in order to commit indictable offence	

Schedule 3 (continued)

Provision of Act	Relevant heading	Limitation relating to the provision of the Act
317	Acts intended to cause grievous bodily harm and other malicious acts	
320A	Torture	
322	Maliciously administering poison with intent to harm	
323A	Female genital mutilation	
323B	Removal of child from State for female genital mutilation	
324	Failure to supply necessities	
326	Endangering life of children by exposure	
349	Rape	
350	Attempt to commit rape	
351	Assault with intent to commit rape	
352	Sexual assaults	
354	Kidnapping	
354A	Kidnapping for ransom	

Schedule 3 (continued)

Provision of Act	Relevant heading	Limitation relating to the provision of the Act
363	Child-stealing	
363A	Abduction of child under 16	
364	Cruelty to children under 16	
409	Definition of <i>robbery</i>	Only if an offender was or could have been liable as mentioned in section 411(2)
419	Burglary	Only if an offender was or could have been liable as mentioned in section 419(3)(b)(i) and (ii)
427	Unlawful entry of vehicle for committing indictable offence	Only if an offender was or could have been liable as mentioned in section 427(2)(b)(i) or (ii)

5 *Drugs Misuse Act 1986*

Provision of Act	Relevant heading	Limitation relating to the provision of the Act
5	Trafficking in dangerous drugs	
6	Supplying dangerous drugs	Only if the offence is one of aggravated supply as mentioned in section 6(2)
8	Producing dangerous drugs	Only if an offender was or could have been liable for a penalty as mentioned in section 8, penalty, paragraph (a) or (b)

Schedule 4 Repealed or expired serious offences

section 79

Criminal Code

Provision of Act	Relevant heading	Qualification relating to the provision of the Act
212	Defilement of Girls under Twelve	As the provision was in force from time to time before its repeal by the <i>Criminal Code, Evidence Act and Other Acts Amendment Act 1989</i>
214	Attempt to Abuse Girls under Ten	As the provision was in force from time to time before its repeal by the <i>Criminal Code, Evidence Act and Other Acts Amendment Act 1989</i>
220	Unlawful Detention with Intent to Defile or in a Brothel	As the provision was in force from time to time before its repeal by the <i>Criminal Code, Evidence Act and Other Acts Amendment Act 1989</i>
223	Incest by adult female	As the provision was in force from time to time before its repeal by the <i>Criminal Law Amendment Act 1997</i>
325	Endangering life or health of apprentices or servants	As the provision was in force from time to time before its repeal by the <i>Training and Employment Act 2000</i>

Schedule 4 (continued)

Provision of Act	Relevant heading	Qualification relating to the provision of the Act
344	Aggravated assaults	As the provision was in force from 20 December 1946 to 30 June 1997 if the circumstance of aggravation was that the unlawful assault was an offence of a sexual nature as defined in the <i>Criminal Law Amendment Act 1945</i> , section 2A ^a

a *Criminal Law Amendment Act 1945*, section 2A was inserted into the *Criminal Law Amendment Act 1945* by the *Criminal Law Amendment Act 1946*.

Schedule 5 Current serious sexual or violent offences

section 80

Criminal Code

Provision of Act	Relevant heading
208	Unlawful sodomy
209	Attempted sodomy
210	Indecent treatment of children under 16
213	Owner etc. permitting abuse of children on premises
215	Carnal knowledge with or of children under 16
216	Abuse of intellectually impaired persons
217	Procuring young person etc. for carnal knowledge
218	Procuring sexual acts by coercion etc.
219	Taking child for immoral purposes
222	Incest
229B	Maintaining a sexual relationship with a child
229G	Procuring prostitution
349	Rape
350	Attempt to commit rape
351	Assault with intent to commit rape
352	Sexual assaults

Schedule 6 Repealed or expired serious sexual or violent offences

section 80

Criminal Code

Provision of Act	Relevant heading	Qualification relating to the provision of the Act
212	Defilement of Girls under Twelve	As the provision was in force from time to time before its repeal by the <i>Criminal Code, Evidence Act and Other Acts Amendment Act 1989</i>
214	Attempt to Abuse Girls under Ten	As the provision was in force from time to time before its repeal by the <i>Criminal Code, Evidence Act and Other Acts Amendment Act 1989</i>
220	Unlawful Detention with Intent to Defile or in a Brothel	As the provision was in force from time to time before its repeal by the <i>Criminal Code, Evidence Act and Other Acts Amendment Act 1989</i>
223	Incest by adult female	As the provision was in force from time to time before its repeal by the <i>Criminal Law Amendment Act 1997</i>
344	Aggravated assaults	As the provision was in force from 20 December 1946 to 30 June 1997 if the circumstance of aggravation was that the unlawful assault was an offence of a sexual nature as defined in the <i>Criminal Law Amendment Act 1945</i> , section 2A

Schedule 7 Dictionary

section 9

administrator means an administrator appointed under the *Guardianship and Administration Act 2000*.

adult guardian means the adult guardian appointed under the *Guardianship and Administration Act 2000*.

appeal, against a decision to the tribunal, means apply to the tribunal for a review of the decision.

approved form means a form approved by the chief executive under section 230.

approved non-government service provider see section 16.

authorised officer means a person appointed as an authorised officer under section 125.

carer means a person of any age, who without being paid, cares for another person who needs ongoing support because of a disability, but does not include a volunteer for and organisation.

Commissioner for Children and Young People and Child Guardian means the Commissioner for Children and Young People and Child Guardian appointed under the *Commission for Children and Young People and Child Guardian Act 2000*.

complaints agency means any of the following—

- (a) the ombudsman under the *Ombudsman Act 2001*;
- (b) the Crime and Misconduct Commission under the *Crime and Misconduct Act 2001*;
- (c) the Anti-Discrimination Commissioner under the *Anti-Discrimination Act 1991*;
- (d) the Health Rights Commissioner under the *Health Rights Commission Act 1991*;
- (e) the adult guardian;
- (f) the Commissioner for Children and Young People and Child Guardian.

Schedule 7 (continued)

compliance notice see section 161(3).

confidential information includes information about a person's affairs but does not include—

- (a) information already publicly disclosed unless further disclosure of the information is prohibited by law; or
- (b) statistical or other information that could not reasonably be expected to result in the identification of the person to whom the information relates.

consumer, of a funded non-government service provider, means a person with a disability who is provided with disability services by the service provider.

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

current, for a prescribed notice or a positive notice card, means current under section 89.

disability see section 11.

disability sector quality system means the process approved by the Minister under section 37 under which a service provider may be certified by an external certification body as meeting the service standards.

disability services see section 12.

disqualification order, for part 10, see section 122(2).

document certification requirement see section 158(5).

document production requirement see section 158(6).

engaged, by a funded non-government service provider, see section 78.

Schedule 7 (continued)

engaged by the department see section 63.

engaged person, for part 10, see section 83(1).

excluding offence, for part 10, see section 81.

executive officer, of a corporation, means any person, by whatever name called and whether or not the person is a director of the corporation, who is concerned or takes part in the management of the corporation.

external certification body see section 38(1).

funded non-government service provider see section 17.

funded service provider see section 14.

funding agreement see section 56(1).

guardian means a guardian appointed under the *Guardianship and Administration Act 2000*.

home means premises used as a private residence.

human rights principle means the principle and rights stated in section 19.

imprisonment order means an order of a court that convicts a person for an offence, if the order includes a penalty that includes imprisonment for the offence, including imprisonment that is wholly or partially suspended.

indictable offence includes an indictable offence dealt with summarily, whether or not the Criminal Code, section 659,⁴³ applies to the indictable offence.

interested person, for a reviewable decision, see section 207.

interim manager means a person appointed as interim manager under section 169.

investigative information, about a person, see section 109(1).

negative notice see section 85(2)(b).

non-government service provider see section 15.

43 Criminal Code, section 659 (Effect of summary conviction for indictable offences)

Schedule 7 (continued)

notice means a written notice.

obstruct includes hinder and attempt to obstruct or hinder.

owner, for part 11, division 2, subdivision 5, see section 147.

personal details requirement, for part 11, division 2, subdivision 6, see section 156(5).

place includes premises and vacant land.

police commissioner means the commissioner of the police service.

police information, about a person, means the following—

- (a) the person's criminal history;
- (b) investigative information about the person.

police service means the Queensland Police Service.

positive notice see section 85(2)(a).

positive notice card means a document, in the form of a card, issued to a person who is the holder of a current positive notice at or about the time that the person is issued with the positive notice, that includes the following information—

- (a) the name of the person who is the holder of the positive notice;
- (b) the date of birth of the person;
- (c) a registration number for the person;
- (d) an expiry date for the positive notice;
- (e) the signature, or an electronic version of the signature, of the person to whom the positive notice is issued.

premises includes—

- (a) a building or other structure; and
- (b) a part of a building or other structure; and
- (c) a vehicle; and
- (d) a caravan.

prescribed notice means a notice issued under section 85(2).

Schedule 7 (continued)

prescribed requirement means a requirement prescribed under section 59.

repealed Act, for part 16, division 2, see section 235.

reviewable decision means a decision stated in schedule 2.

review decision, for part 14, see section 211(3).

screening decision, in relation to a person, means a decision about whether a positive or negative notice should be issued to the person.

serious offence see section 79.

serious sexual or violent offence see section 80.

service delivery principles means the principles stated in part 2, division 2.

service outlet means a place at which disability services are provided.

service provider see section 13.

service standards see section 34(1).

tribunal means the Commercial and Consumer Tribunal established under the *Commercial and Consumer Tribunal Act 2003*.