



Queensland

Commission for Children and Young People and Child Guardian Amendment Act 2007

Act No. 40 of 2007



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Commission for Children and Young People and Child Guardian Amendment Act 2007

Act No. 40 of 2007

***An Act to amend the *Commission for Children and Young
People and Child Guardian Act 2000****

[Assented to 11 September 2007]

The Parliament of Queensland enacts—

1 Short title

This Act may be cited as the *Commission for Children and Young People and Child Guardian Amendment Act 2007*.

2 Act amended

This Act amends the *Commission for Children and Young People and Child Guardian Act 2000*.

3 Amendment of s 97 (Employment and businesses regulated by this part)

Section 97—

insert—

‘(3) This part does not apply to the paid employment of a child merely because help or guidance is given to the child as part of the child’s employment.’.

4 Replacement of pt 9 heading (Repeal and transitional provisions)

Part 9, heading—

omit, insert—

‘Part 9 Transitional and other provisions’.

5 Insertion of new pt 9, div 10

Part 9—

insert—

‘Division 10 Transitional and validation provisions for Commission for Children and Young People and Child Guardian Amendment Act 2007

‘213 Definitions for div 10

‘In this division—

commencing day means the day this section commences.

revised regulated business, in relation to a person, means a business carried on by the person that—

- (a) was not a regulated business under schedule 1, part 2, section 8, as in force immediately before the commencing day; and
- (b) is a regulated business under schedule 1, part 2, section 8, as in force on the commencing day.

revised regulated employment, in relation to a person, means employment of the person that—

- (a) was not regulated employment under schedule 1, part 1, section 5, as in force immediately before the commencing day; and
- (b) is regulated employment under schedule 1, part 1, section 5, as in force on the commencing day.

transition period means the period, including a period before the commencing day, ending 3 months after the commencing day.

‘214 Continuing employment in health, counselling or support services

- ‘(1) This section applies if a person whose employment is revised regulated employment does not hold a positive notice.
- ‘(2) An employer of the person does not commit an offence against a penalty provision by continuing to employ the person—

- (a) if an application for a prescribed notice about the person has been made within the transition period, and the application is not withdrawn before the commencing day—until the day a prescribed notice is issued to the person; or
 - (b) if an application for a prescribed notice about the person has been made within the transition period, and the application is withdrawn on or after the commencing day—until the day the application is withdrawn; or
 - (c) if an application for a prescribed notice about the person is not made within 3 months after the commencing day and paragraphs (a) and (b) do not apply—until 3 months after the commencing day.
- ‘(3) Subsection (2) does not apply to an employer who—
- (a) is aware, or becomes aware, that a negative notice has been issued to the person and is current; or
 - (b) receives notice under section 119C(5) or 126B(2)(b) that the person’s positive notice is suspended.
- ‘(4) In this section—
- penalty provision* means section 104B or 105(2).

‘215 Carrying on regulated business providing health, counselling or support services

- ‘(1) This section applies to a person who—
- (a) carries on a business that is a revised regulated business; and
 - (b) does not hold a prescribed notice.
- ‘(2) The person does not commit an offence against section 109 by continuing to carry on the business without a positive notice—
- (a) if an application for a prescribed notice for the person has been made within the transition period, and the application is not withdrawn before the commencing day—until the day a prescribed notice is issued to the person; or

- (b) if an application for a prescribed notice for the person has been made within the transition period, and the application is withdrawn on or after the commencing day—until the day the application is withdrawn; or
 - (c) if an application for a prescribed notice about the person is not made within 3 months after the commencing day and paragraphs (a) and (b) do not apply—until 3 months after the commencing day.
- ‘(3) This section does not limit section 119C(3).

‘216 Applications and decisions made before the commencing day relating to health, counselling or support services

- ‘(1) This section applies to the following—
- (a) an application for a prescribed notice made under this Act before the commencing day relating to employment that is revised regulated employment, or carrying on a business that is a revised regulated business, in relation to a person;
 - (b) all matters relating to an application mentioned in paragraph (a), including, for example, decisions about an application made before the commencing day by the commissioner or the Children Services Tribunal.
- ‘(2) The application and matters are not invalid merely because the application and matters related to employment that is revised regulated employment, or carrying on a business that is a revised regulated business.
- ‘(3) To remove any doubt, it is declared that if, before the commencing day, an application was made to the Children Services Tribunal to review a reviewable decision in relation to an application mentioned in subsection (1)(a), the application must continue to be dealt with on the basis that the decision is not invalid as mentioned in subsection (2).’

6 Amendment of sch 1 (Regulated employment and businesses for employment screening)

(1) Schedule 1, part 1, section 5—

omit, insert—

‘5 Health, counselling and support services

‘(1) Employment is regulated employment if the usual functions of the employment include, or are likely to include, an employee, other than a registered health practitioner, providing 1 or more of the following—

(a) a health service to a child—

(i) that, by its nature, requires physical contact with the child; or

Example for subparagraph (i)—

a person providing massage services to children

(ii) if the employee is physically present with the child while no-one else is present;

(b) a counselling service to a child—

(i) if the employee is physically present with the child while no-one else is present; or

(ii) if the employee is not physically present with the child;

Example for subparagraph (ii)—

a counselling service that involves an internet or telephone help line service that provides help to children to resolve personal problems or difficulties

(c) a support service to a child—

(i) if the employee is physically present with the child while no-one else is present; or

(ii) if the employee is not physically present with the child.

Example for paragraph (c)—

a support service providing emotional support for child victims or witnesses in connection with court or other legal proceedings

- ‘(2) However, employment mentioned in subsection (1) is not regulated employment if—
- (a) the employee is an Australian lawyer who, under the *Legal Profession Act 2007*, may engage in legal practice in this State and the employment involves the employee engaging in legal practice; or
 - (b) the employee is a registered teacher and the employment is part of the employee’s duties for the school that employs the employee; or
 - (c) the employee is providing the service as part of the employee’s employment with a licensed care service; or
 - (d) the employee is a person—
 - (i) who holds a positive notice under the *Disability Services Act 2006* that has not been cancelled or suspended; or
 - (ii) in relation to whom a service provider within the meaning of the *Disability Services Act 2006* has applied for a prescribed notice under that Act and the application has not been decided or withdrawn; or
 - (e) the employer is a government service provider.

- ‘(3) In this section—

counselling service means a service that provides or purports to provide, on a professional basis, help or guidance to persons to resolve personal, social or emotional problems or difficulties.

health service means any of the following—

- (a) a service for maintaining, improving, restoring or caring for a person’s health or wellbeing that is any of the following—
 - (i) a service provided at a hospital, community health facility or other health facility;
 - (ii) a medical service;
 - (iii) a service provided by a midwife or nurse within the meaning of the *Nursing Act 1992*;

- (iv) a service provided by a paramedic or ambulance officer;
- (v) a service providing personal care to a person who is ill, injured or otherwise infirm;

Examples of providing personal care—

- help with personal hygiene
- help with dressing

- (vi) a service providing respite care;
- (vii) a service provided by a practitioner of hypnosis, naturopathy, acupuncture or another form of natural or alternative health care;
- (viii) a massage service, including a massage service for relaxation;
- (ix) a service that is of the nature of, and provided as part of, a service provided by a registered health practitioner or a service mentioned in subparagraphs (i) to (viii);

Examples for subparagraph (ix)—

- a service provided by a student on a practicum placement as part of the student's training to become a registered health practitioner
- a service provided by an aide to a natural or alternative health care practitioner
- a service provided by a ward assistant whose duties include lifting and turning bedridden patients or moving patients from place to place in a hospital

- (b) a service prescribed under a regulation to be a health service.

hospital see the *Health Quality and Complaints Commission Act 2006*, schedule 5.

support service means a service that provides emotional support, mentoring or pastoral care, but does not include a legal advice or legal advocacy service.’

- (2) Schedule 1, part 2, section 8—

omit, insert—

‘8 Health, counselling and support services

‘(1) A business is a regulated business if the usual activities of the business include, or are likely to include, a person, other than a registered health practitioner, providing 1 or more of the following—

- (a) a health service to a child—
 - (i) that, by its nature, requires physical contact with the child; or
 - (ii) if the person is physically present with the child while no-one else is present;
- (b) a counselling service to a child—
 - (i) if the person is physically present with the child while no-one else is present; or
 - (ii) if the person is not physically present with the child;
- (c) a support service to a child—
 - (i) if the person is physically present with the child while no-one else is present; or
 - (ii) if the person is not physically present with the child.

‘(2) However, a business mentioned in subsection (1) is not a regulated business if the business is—

- (a) a licensed care service; or
- (b) a government service provider.

‘(3) In this section—

counselling service means a service that provides or purports to provide, on a professional basis, help or guidance to persons to resolve personal, social or emotional problems or difficulties.

health service means any of the following—

- (a) a service for maintaining, improving, restoring or caring for a person’s health or wellbeing that is any of the following—

- (i) a service provided at a hospital, community health facility or other health facility;
- (ii) a medical service;
- (iii) a service provided by a midwife or nurse within the meaning of the *Nursing Act 1992*;
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Examples of providing personal care—

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support service means a service that provides emotional support, mentoring or pastoral care, but does not include a legal advice or legal advocacy service.’