

Queensland



CRIMINAL LAW (REHABILITATION OF OFFENDERS) ACT 1986

**Reprinted as in force on 6 February 1997
(includes amendments up to Act No. 79 of 1996)**

Warning—see last endnote for uncommenced amendments

Reprint No. 1A

**This reprint is prepared by
the Office of the Queensland Parliamentary Counsel
Warning—This reprint is not an authorised copy**

Information about this reprint

This Act is reprinted as at 6 February 1997. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprint for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **provisions that have not commenced and are not incorporated in the reprint**
- **editorial changes made in earlier reprints.**

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CRIMINAL LAW (REHABILITATION OF OFFENDERS) ACT 1986

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CRIMINAL LAW (REHABILITATION OF OFFENDERS) ACT 1986

[as amended by all amendments that commenced on or before 6 February 1997]

An Act to provide with respect to the rehabilitation of persons convicted for offences and for related purposes

Short title

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

Commencement

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

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

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

Interpretation

3.(1) In this Act—

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

- (a) the allegation is not pursued to a final determination in a court; or
- (b) a conviction is not recorded by a court in respect of the allegation; or

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

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

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

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

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

“rehabilitation period” means—

- (a) in relation to a conviction upon indictment recorded against a person who in relation to that conviction was not dealt with as a child—
- (i) a period of 10 years commencing on the date the conviction is recorded; or
 - (ii) where an order of a court made in relation to the conviction has not been satisfied within that period of 10 years—a period terminating on the date the order is satisfied;
- whichever period is the later to expire;
- (b) in relation to a conviction recorded against a person where paragraph (a) does not apply—
- (i) a period of 5 years commencing on the date the conviction is recorded; or
 - (ii) where an order of a court made in relation to the conviction has not been satisfied within that period of 5 years—a period terminating on the date the order is satisfied;

whichever period is the later to expire.

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

“simple offence” means—

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

(1A) For the purpose of paragraph (a) of the definition “**rehabilitation period**” in subsection (1) the term “**indictment**”, in relation to a conviction recorded elsewhere than in Queensland, means a written charge preferred against an accused person before some court other than one of like jurisdiction to a Magistrates Court exercising summary jurisdiction.

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

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

and the provisions of this Act shall be construed accordingly.

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

Construction of Act

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

(2) This Act shall be construed so as not to relieve any person from a responsibility that rests on the person to disclose his or her criminal history in connection with seeking admission to or offering himself or herself for selection for any profession, occupation or calling prescribed by regulation.

(3) This Act shall not be construed to prohibit or hinder the provision by any person of particulars of the criminal history of any person to a Crown

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prosecutor, a police prosecutor or other person prosecuting upon a charge of an offence with a view to those particulars being disclosed to the court in the event of the defendant being convicted.

Matter excluded from criminal history

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

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

(3) Subsection (2) does not apply where the requirement or request to disclose a conviction or charge therein referred to is made—

- (a) for the purposes of an inquiry being conducted pursuant to authority conferred by or under an Act; or
- (b) in criminal or civil proceedings before a court if the fact of the conviction or charge is relevant to an issue in the proceedings or the court has granted permission for the requisition or request to be made.

Non-disclosure of convictions upon expiration of rehabilitation period

6. Where the rehabilitation period has expired in relation to a conviction recorded against any person and the conviction has not been revived in respect of the person, neither that person nor any other person, if the person knows that the rehabilitation period has expired, shall disclose the conviction unless—

- (a) being the person against whom the conviction is recorded—the person wishes to disclose the conviction; or
- (b) the person makes the disclosure under the authority of a permit granted under section 10 in accordance with the conditions (if any) of the permit; or
- (c) the person makes the disclosure in circumstances that constitute an exception to the operation of section 9(1) or that are expressed

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by section 9(2) to be a case to which the provisions of section 9(1) do not apply.

Section 6 not applicable in certain cases

7.(1) The provisions of section 6 do not apply in relation to—

- (a) a report of judicial proceedings in a recognised series of law reports;
- (b) a report or commentary upon judicial proceedings made in good faith for educational, scientific or professional purposes or in the course of historical research or a lecture, course or discussion given or held for any such purpose;
- (c) a report or disclosure made by any person who, pursuant to any provision of law, is required to make a report that includes reference to or a disclosure of a conviction referred to in section 6;
- (d) a disclosure made in discharge of a duty prescribed by or under the *Libraries and Archives Act 1988*.

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

- (a) the dissemination into, in or from Queensland by members of a police service (whether of Queensland or elsewhere) or by any other person in discharge of the person's duties within a police department (whether of Queensland or elsewhere) of information concerning any person;
- (b) the filing and recording by members of the Police Service or any other person in discharge of the person's duties within the department that deals with police services of information in the possession of that police force;
- (c) the use in police practice, with a view to the prevention of offences or the detection and punishment of offenders, of information in the possession of the Police Service.

Lawful to deny certain convictions

8.(1) Where the rehabilitation period has expired in relation to a

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conviction recorded against any person and the conviction has not been revived in respect of the person, it is lawful to claim, upon oath or otherwise, that the person has not suffered the conviction, except upon an occasion when, as provided by section 4, this Act is to be construed so as not to prejudice a provision of law or rule of legal practice or to relieve from a responsibility.

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

Duty to disregard certain convictions

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

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

(2) The provisions of subsection (1) do not apply where an assessment is to be made of an offender with a view to a court, or the Queensland Community Corrections Board or a regional community corrections board constituted under the *Corrective Services Act 1988*, making an appropriate order in relation to the person.

Disclosure of particulars in special cases

9A.(1) Notwithstanding any other provision of this Act, a person who is an applicant for a position, office or status specified in column 1 of the following table and who is requested or required in furtherance of the

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person's application to furnish the information hereinafter in this subsection referred to shall disclose—

- (a) the person's criminal history concerning offences specified in column 2 and set opposite the position office or status applied for; and
- (b) convictions recorded against the person in respect of offences specified in column 2 and set opposite the position, office or status applied for, being convictions that pursuant to any law are to be deemed not to be convictions—

Table

Column 1	Column 2
Position office or status	Offences
1. Police officer	1. Contraventions of or failures to comply with any provisions of law, whether committed in Queensland or elsewhere.
2. Officer or employee of the Corrective Services Commission	2. Contraventions of or failures to comply with any provisions of law, whether committed in Queensland or elsewhere.
3. Justice of the peace or commissioner for declarations	3. Contraventions of or failures to comply with any provision of law, whether committed in Queensland or elsewhere.
4. Licensee under the <i>Casino Control Act 1982</i> , part 4	4. Contraventions of or failures to comply with any provision of law, whether committed in Queensland or elsewhere.

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5.(1) Registered teacher within the meaning of the *Education (Teacher Registration) Act 1988*; or

(2) Employee in the Department of Education as—

(a) a teacher; or

(b) a teacher's aide; or

(c) a member of staff (administrative or ground) at a State school.

6.(1) Person registered, licensed, approved or provided for under the *Child Care Act 1991*, *Children's Services Act 1965* or the *Family Services Act 1987*; or

(2) Employee in the department of government responsible for the administration of the *Family Services Act 1987* under a contract of service; or

(3) Agent of the chief executive of the department that deals with matters arising under the *Family Services Act 1987*, whether under a contract of service or a contract for service.

5. Offences defined in the Criminal Code chapter 22, 32, 33, 34, or in the *Drugs Misuse Act 1986* part 2, and contraventions, committed in Queensland or elsewhere, of any provision of law constituting an offence of a similar nature or involving an assault of a sexual nature.

6. Offences defined in the Criminal Code, chapter 22, 32, 33, 34 or in the *Drugs Misuse Act 1986*, part 2 or in the *Children's Services Act 1965*, section 69(1) or (2) or 133 and contraventions, committed in Queensland or elsewhere, of any provision of law constituting an offence of a similar nature or involving an assault of a sexual nature.

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7. Person employed in the department in which the *Vocational Education, Training and Employment Act 1991* is administered as—

- (a) an educational administrator; or
- (b) a teacher; or
- (c) a college educational assistant; or
- (d) a member of the administrative, building or ground staff at a State college under the *Vocational Education, Training and Employment Act 1991*.

8. Person employed at an agricultural college under the *Agricultural Colleges Act 1994* as—

- (a) an associate director; or
- (b) an instructor; or
- (c) a member of the administrative, building, domestic or ground staff.

9. Security provider within the meaning of the *Security Providers Act 1993*.

7.(1) An offence defined in the Criminal Code, chapter 22, 32, 33 or 34 or the *Drugs Misuse Act 1986*, part 2.

(2) An offence of a similar nature committed in Queensland or elsewhere.

(3) An offence of a sexual nature whether committed in Queensland or elsewhere.

8.(1) An offence defined in the Criminal Code, chapter 22, 32, 33 or 34 or the *Drugs Misuse Act 1986*, part 2.

(2) An offence of a similar nature committed in Queensland or elsewhere.

(3) An offence of a sexual nature whether committed in Queensland or elsewhere.

9. Contraventions of any law, whether committed in Queensland or elsewhere.

(2) Notwithstanding any other provision of this Act, the Commissioner of the Police Service or a person delegated by the commissioner for the purpose, upon request made by a person having in the opinion of the commissioner or such delegated person a legitimate and sufficient interest

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in obtaining the information, shall disclose to the person making the request the criminal history and convictions (such as is or are referred to in subsection (1) and is or are contained in the commissioner's records) of a person referred to in subsection (1) where that person would be required by that subsection to disclose such criminal history and convictions.

(3) No provision of this Act shall be construed to render any person liable to punishment or the Crown or any person liable to action at the suit of another—

- (a) on account of a disclosure referred to in subsection (2); or
- (b) on account of any person having required or sought to be made a disclosure required by subsection (1) or (2) to be made; or
- (c) on account of any person having had regard to any particular furnished in a disclosure required by subsection (1) or (2) to be made.

(4) Subsections (1) and (2) shall operate without prejudice to any other provision of this Act that authorises or excuses the disclosure of any particular or that preserves any disclosure of particulars from the operation of any provision of this Act.

Permit to disclose convictions

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

Revival of convictions

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

- (a) in relation to which the rehabilitation period is running; or
- (b) in relation to which the rehabilitation period has expired;

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is again convicted for an offence whether in Queensland or elsewhere—

- (c) in the case referred to in provision (a)—the rehabilitation period in relation to that conviction shall commence again to run on the date the offender is again convicted and any part of the rehabilitation period that elapsed between that conviction and that date shall be disregarded; and
- (d) in the case referred to in provision (b)—that conviction shall be taken to be revived and the rehabilitation period in relation to that conviction shall commence again to run on the date of the revival of that conviction.

(1A) However, if the subsequent conviction is quashed on appeal, the provisions of paragraph (c) or (d) (whichever is appropriate) shall be deemed to have had no application and the other provisions of this Act shall have application as if the subsequent conviction had not been incurred.

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

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

Offence provision

12.(1) A person who contravenes any provision of this Act commits an offence against this Act and is liable, on summary conviction, to maximum penalty of 100 penalty units.

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

(3) A document purporting to be an authorisation referred to in

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subsection (2) shall, in all proceedings, be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein.

Regulations

13.(1) The Governor in Council may make regulations for the purposes of this Act.

(2) A regulation may prescribe fees payable for the purposes of the Act.

ENDNOTES

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 6 February 1997. Future amendments of the Criminal Law (Rehabilitation of Offenders) Act 1986 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

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3 Key

Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
prev	=	previous			

4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

[If a reprint number includes an arabic letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 83 of 1993	24 March 1995

5 Tables in earlier reprints

TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Changed citations and remade laws	1
Changed names and titles	1
Obsolete and redundant provisions	1
Renumbered provisions	1

6 List of legislation

Criminal Law (Rehabilitation of Offenders) Act 1986 No. 20

date of assent 8 April 1986

ss 1–2 commenced on date of assent

remaining provisions commenced 1 November 1986 (proc pubd gaz 18 October 1986 p 1118)

as amended by—

Criminal Law (Rehabilitation of Offenders) Act Amendment Act 1986 No. 45

date of assent 25 September 1986

ss 1–2 commenced on date of assent

remaining provisions commenced 1 November 1986 (proc pubd gaz 18 October 1986 p 1118)

Family Services Act 1987 No. 32 s 69(1), (13) sch (prev Family and Youth Services Act 1987)

date of assent 30 April 1987

ss 1–2 commenced on date of assent

remaining provisions commenced 9 June 1987 (proc pubd gaz 30 May 1987 p 846)

Acts Amendment and Construction Act 1988 No. 47 s 3 sch 1

date of assent 12 May 1988

commenced on date of assent

Commissions of Inquiry Act and Other Acts Amendment Act 1988 No. 58 pt 3

date of assent 25 August 1988

commenced on date of assent

Corrective Services (Consequential Amendments) Act 1988 No. 88 s 3 sch 1

date of assent 1 December 1988

ss 1–2 commenced on date of assent

remaining provisions commenced 15 December 1988 (see s 2(2) and o in c pubd gaz 10 December 1988 p 1675)

Criminal Law (Rehabilitation of Offenders) Act Amendment Act 1990 No. 52

date of assent 3 September 1990

commenced on date of assent

Public Service (Administrative Arrangements) Act 1990 (No. 2) No. 80 s 3 sch 1

date of assent 14 November 1990

ss 1–2 commenced on date of assent

remaining provisions commenced 31 August 1989 (see s 2(2)(b))

Child Care Act 1991 No. 79 s 87 sch 3

date of assent 9 December 1991

ss 1–2 commenced on date of assent

remaining provisions commenced 5 June 1992 (1992 SL No. 119)

Statute Law (Miscellaneous Provisions) Act 1991 No. 97 s 3 sch 2

date of assent 17 December 1991

commenced on date of assent

Statute Law (Miscellaneous Provisions) Act (No. 2) 1993 No. 76 s 3 sch 1

date of assent 14 December 1993

commenced on date of assent

Security Providers Act 1993 No. 83 pt 7

date of assent 17 December 1993

ss 1–2 commenced on date of assent

remaining provisions commenced 17 February 1995 (1995 SL No. 24)

Justice Legislation (Miscellaneous Provisions) Act 1996 No. 79 pts 1, 7

date of assent 12 December 1996

ss 1–2 commenced on date of assent

remaining provisions not yet proclaimed into force

7 List of annotations

Long title

amd R1 (see RA s 40)

Interpretation**s 3**

amd 1990 No. 52 s 2(b)

def “**Minister**” ins 1990 No. 80 s 3 sch 1

om 1991 No. 97 s 3 sch 2

def “**rehabilitation period**” amd 1990 No. 52 s 2(a)def “**simple offence**” amd 1986 No. 45 s 6**Construction of Act****s 4**

amd 1986 No. 45 ss 4, 6; 1993 No. 83 s 99

Matter excluded from criminal history**s 5**

amd 1988 No. 58 s 9

Section 6 not applicable in certain cases**s 7**

amd 1993 No. 83 s 100

Duty to disregard certain convictions**s 9**

amd 1988 No. 88 s 3(1) sch 1

Disclosure of particulars in special cases**s 9A**

ins 1986 No. 45 s 5

amd 1987 No. 32 s 69(1) sch; 1988 No. 47 s 3(1) sch 1; 1988 No. 88

s 3(1) sch 1; 1991 No. 79 s 87 sch 3; 1991 No. 97 s 3 sch 2; 1993

No. 76 s 3 sch 1; 1993 No. 83 s 101; 1996 No. 79 s 24**Permit to disclose convictions****s 10**

amd 1990 No. 80 s 3 sch 1

Offence provision

s 12 amd 1990 No. 80 s 3 sch 1; 1993 No. 83 s 102

Regulations

s 13 sub 1993 No. 83 s 103

Amendment of Evidence Act

s 14 om R1 (see RA s 40)

8 Provisions that have not commenced and are not incorporated into reprint

The following provisions are not incorporated in this reprint because they had not commenced before the reprint date (see Reprints Act 1992, s 5(c)).

Justice Legislation (Miscellaneous Provisions) Act 1996 No. 79, s 24 reads as follows—

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

24. Section 9A(1), table, column 2, item 6—

omit, insert—

‘6. Contraventions of any provision of law committed in Queensland or elsewhere.’.