



Queensland

# Commission for Children and Young People and Child Guardian Act 2000

Reprinted as in force on 17 September 2012

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Queensland

# Commission for Children and Young People and Child Guardian Act 2000

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# Commission for Children and Young People and Child Guardian Act 2000

[as amended by all amendments that commenced on or before 17 September 2012]

**An Act to establish a Commission for Children and Young People and Child Guardian to promote and protect the rights, interests and wellbeing of children in Queensland**

## Chapter 1 Preliminary

### Part 1 Introduction

#### 1 Short title

This Act may be cited as the *Commission for Children and Young People and Child Guardian Act 2000*.

#### 2 Commencement

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

#### 3 Dictionary

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

[s 4]

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#### **4 Act binds all persons**

- (1) This Act binds all persons including the State and, as far as the legislative power of the Parliament permits, the Commonwealth and all the other States.
- (2) Subsection (1) does not make the State, the Commonwealth or another State liable for an offence.

## **Part 2 Object, underlying principles and scope of Act**

#### **5 Object of Act**

The object of this Act is to establish the Commission for Children and Young People and Child Guardian to promote and protect the rights, interests and wellbeing of children in Queensland.

#### **6 Principles for administering this Act**

- (1) This Act is to be administered under the principle that the welfare and best interests of a child are paramount.
- (2) Subject to subsection (1), this Act is also to be administered under the following principles—
  - (a) every child is a valued member of society;
  - (b) in decisions involving a child, the child's views and wishes should be taken into account in a way that has regard to the child's age and ability to understand;
  - (c) every child is entitled—
    - (i) to be treated in a way that respects the child's dignity and privacy; and
    - (ii) to be cared for in a way that protects the child from harm and promotes the child's wellbeing; and

- 
- (iii) to express the child's concerns and grievances and to have them dealt with in a way that is fair and timely and promotes the child's participation; and
  - (iv) to receive information and help to enable the child to exercise the child's entitlements; and
  - (v) to have access to services necessary to meet the child's needs;
- (d) the family has the primary responsibility for the upbringing and development of its children, and should be supported in that role.

**7 Scope of Act not limited to acts against persons who are children when commissioner involved, or to future acts**

- (1) This Act is not limited to—
- (a) matters about persons who are children at the time the commissioner is involved; or
  - (b) matters that happen after this Act commences.

*Example for paragraph (a)—*

A 17 year old child makes a complaint about a matter. The commissioner may continue to perform the commissioner's functions and exercise the commissioner's powers in relation to the matter after the child turns 18.

- (2) Without limiting subsection (1)—
- (a) the commissioner may perform the commissioner's functions or exercise the commissioner's powers in relation to something that happened when a person was a child, even if the person is no longer living; and
  - (b) a person may complain about something that happened when another person was a child, even if the other person is no longer living.

[s 8]

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## **8 Scope of Act relating to children in the child safety system**

To remove any doubt, it is declared that this Act applies to matters relating to children in the child safety system even if the children are no longer in the child safety system when the matters are dealt with under this Act.

*Examples—*

- 1 Under section 18(1)(b), the commissioner may review the child safety department's handling of a case of a particular child in the child safety system even though the child is no longer in the child safety system at the time of the review.
- 2 Under section 54(a), a complaint may be made about a service provided to a child in the child safety system, even though the child is no longer in the child safety system when the complaint is made.

## **Part 3 Service providers**

### **9 Meaning of *service provider***

A *service provider* is a government service provider or private service provider.

### **10 Meaning of *government service provider***

A *government service provider* is a government entity or a local government.

### **11 Meaning of *private service provider***

A *private service provider* is an entity, other than a government service provider, that provides a service for which the funding is—

- 
- (a) wholly or partly provided by the State or a local government; or
  - (b) wholly or partly administered by the State.

## 12 Services provided by a service provider

A reference in this Act to a service provided by a service provider is a reference to a service provided—

- (a) directly by the service provider; or
- (b) under an arrangement that involves a written agreement to which the service provider is a party.

*Example for paragraph (b)—*

services provided to children under foster care arrangements

# Part 4 Children in the child safety system

## 13 When is a child *in the child safety system*

- (1) A child starts being *in the child safety system* if the chief executive (child safety) becomes aware (whether because of receiving a notification or otherwise) of alleged harm or alleged risk of harm to the child.
- (2) A child stops being *in the child safety system* if—
  - (a) the chief executive (child safety) decides there is no ground for forming a reasonable suspicion that the child is in need of protection; or
  - (b) otherwise—
    - (i) the child is not the subject of an order under the *Child Protection Act 1999*; and

[s 14]

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- (ii) the chief executive (child safety) decides not to take action, or further action, relating to the child.

## **Chapter 2            Commissioner, assistant commissioner and commission**

### **Part 1                    Establishment**

#### **14            Establishment of commissioner, assistant commissioner and commission**

- (1) There is to be a Commissioner for Children and Young People and Child Guardian.
- (2) There is to be an assistant commissioner.
- (3) A commission called the ‘Commission for Children and Young People and Child Guardian’ is established.
- (4) The commission consists of the commissioner, the assistant commissioner and the staff of the commission.

#### **15            Control of commission**

The commissioner is to control the commission.

#### **16            Application of other Acts**

- (1) The commission is—
  - (a) a unit of public administration under the *Crime and Misconduct Act 2001*; and
  - (b) a statutory body under the *Financial Accountability Act 2009*; and



- (c) a statutory body under the *Statutory Bodies Financial Arrangements Act 1982*.
- (2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B, sets out the way in which the commissioner's powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

## Part 2                      Functions and powers

### 17            Commissioner's functions

- (1) The commissioner has the following functions—
  - (a) to receive, seek to resolve, monitor and investigate complaints about services provided to certain children by service providers;  
*Note—*  
See section 54 for the complaints that the commissioner deals with under this Act.
  - (b) to monitor and review the way in which service providers respond to complaints about services provided by them to certain children;
  - (c) the commissioner's monitoring functions under section 18;
  - (d) to investigate matters relating to services provided to children in the child safety system;
  - (e) to seek to resolve, with the chief executive (child safety), disputes about reviewable decisions under chapter 10, part 1;
  - (g) to advocate for children and, in advocating for children, to seek help from advocacy entities, service providers and other entities;

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- (h) to promote the establishment by service providers of appropriate and accessible mechanisms for the participation of children in matters that may affect them;
- (i) to monitor and review laws, policies and practices that—
  - (i) relate to the delivery of services to children; or
  - (ii) otherwise impact on children;
- (j) to promote laws, policies and practices that uphold the principles underlying this Act;

*Note—*

See section 6 for the principles underlying this Act.

- (k) to encourage, facilitate and support the development and coordination of advocacy and other support services for children;
- (l) to promote awareness among children about advocacy entities, complaints agencies and other relevant entities;
- (m) to promote an understanding of, and informed public discussion about, the rights, interests and wellbeing of children;
- (n) to conduct, coordinate, sponsor, participate in and promote research about the rights, interests and wellbeing of children;
- (o) to administer a community visitor program;
- (p) to record, analyse, research and report on information about child deaths;
- (q) to screen persons employed, or proposed to be employed, in certain child-related employment;
- (r) to screen persons carrying on, or proposing to carry on, certain child-related businesses;
- (ra) to audit or monitor compliance with chapter 8;
- (s) to report on, and make recommendations about, matters relating to the commissioner's functions;

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- (t) other functions conferred on the commissioner under this or another Act.
  - (2) The commissioner's *child guardian functions* are—
    - (a) the monitoring functions under section 18; and
    - (b) the functions under subsection (1)(d) and (e); and
    - (c) the other functions, so far as they relate to children in the child safety system.

## 18 Monitoring functions

- (1) The commissioner has the following functions (the *monitoring functions*)—
  - (a) to monitor, audit and review the systems, policies and practices of the child safety department and other service providers that affect children in the child safety system;
  - (b) to monitor, audit and review the handling of individual cases of children in the child safety system by the child safety department and licensees under the *Child Protection Act 1999*;
  - (c) to monitor compliance by the chief executive (child safety) with the *Child Protection Act 1999*, section 83.

### *Note—*

Chapter 3 includes powers of the commissioner that may be exercised to perform the monitoring functions, but only in relation to the service providers mentioned in section 39.

- (2) To perform the monitoring functions, the commissioner may need to access, under chapter 3, information or documents relating to individual cases.
- (3) The systems, policies and practices mentioned in subsection (1)(a) include systems, policies and practices for case handling.

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- (4) However, to remove any doubt, it is declared that the monitoring functions under subsection (1)(a) do not include reviewing a decision taken in an individual case.
- (5) Also, subsection (1)(a) does not apply to—
  - (a) the systems, policies and practices of the director of public prosecutions or the police service that directly relate to decisions about whether or not to institute, or continue with, a proceeding for an offence; or
  - (b) the systems, policies and practices of the police service that directly relate to decisions about whether or not to apply for a domestic violence order under the *Domestic and Family Violence Protection Act 2012*; or
  - (c) the systems, policies and practices of Legal Aid Queensland that directly relate to the content of legal advice given by Legal Aid lawyers.

## **19 Role of assistant commissioner**

The assistant commissioner is responsible to the commissioner for the proper performance of the commissioner's child guardian functions.

## **20 Commissioner's powers**

The commissioner has all necessary or convenient powers to perform the commissioner's functions, including the powers under chapters 3 and 4.

## **21 Assistant commissioner's powers**

- (1) The assistant commissioner has the powers of the commissioner under this Act that are necessary or convenient to perform the assistant commissioner's role.
- (2) For subsection (1), a provision of this Act about a power of the commissioner applies, with necessary changes, as if a

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reference to the commissioner were a reference to the assistant commissioner.

- (3) The assistant commissioner is subject to the directions of the commissioner in the exercise of the powers.

## **22 Commissioner must act independently etc.**

- (1) In performing the commissioner's functions and exercising the commissioner's powers, the commissioner—
- (a) must act independently and in a way that promotes and protects the rights, interests and wellbeing of children; and
  - (b) is not under the control or direction of the Minister.
- (2) Subsection (1) is not limited by section 23, 24 or 25.

## **23 Way in which commissioner is to perform commissioner's functions**

- (1) In performing the commissioner's functions, the commissioner must do the following—
- (a) consult with children in ways that promote their participation in decision making by the commissioner;
  - (b) listen to, and seriously consider, the concerns, views and wishes of children;
  - (c) adopt work practices that ensure the commission is accessible to children;
  - (d) be sensitive to the ethnic or cultural identity and values of children including, in particular, Aboriginal and Torres Strait Islander children;
  - (e) give priority to the needs and interests of children—
    - (i) who are in, or may enter, out-of-home care or detention in a detention centre; or
    - (ii) who have no appropriate person to act on their behalf; or

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- (iii) who are not able to protect their rights, interests or wellbeing; or
    - (iv) who are disadvantaged because of a disability, geographic isolation, homelessness or poverty;
  - (f) consult with the following entities about the work of the commission—
    - (i) advocacy entities;
    - (ii) complaints agencies;
    - (iii) service providers;
    - (iv) other entities concerned with the rights, interests and wellbeing of children;
  - (g) liaise with other entities about the resolution of complaints referred to the entities under this Act.
- (2) Also, in performing the commissioner's monitoring functions, the commissioner must—
  - (a) to the greatest extent practicable—
    - (i) work cooperatively with service providers; and
    - (ii) help build their capacity to meet the needs of children in the child safety system; and

*Example for subparagraph (ii)—*

The commissioner may prepare, and issue to service providers, guidelines about systems, policies or practices affecting children in the child safety system.
  - (b) exercise the commissioner's powers in relation to service providers in a way that is fair and reasonable, having regard to—
    - (i) their capacity, and the resources available to them, to comply with requests or requirements made by the commissioner; and
    - (ii) for a service provider holding a licence to provide care services under the *Child Protection Act*

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1999—its licence conditions and other requirements applying to it under that Act; and

- (c) respect and promote the role of Aboriginal and Torres Strait Islander service providers in supporting Aboriginal and Torres Strait Islander families and communities to care for their children; and
- (d) to the greatest extent practicable, enter into arrangements with service providers to facilitate the performance by the commissioner of the functions; and

*Example for paragraph (d)—*

The commissioner may agree with a service provider on a plan for how the commissioner will perform the commissioner's monitoring functions in relation to the service provider over the following year.

- (e) have sufficient regard to the sensitive nature of personal information, and access it only to the extent necessary to perform the functions.
- (3) Subsection (2) does not limit the commissioner's powers under this Act.

## **24 Commissioner may use expert advisers or cooperate with other entities**

- (1) In performing the commissioner's functions, the commissioner may—
  - (a) obtain help from anyone whom the commissioner considers to be appropriately qualified to give the help; and
  - (b) cooperate with any service provider or other entity providing services or dealing with issues affecting children.
- (2) For subsection (1), the commissioner may enter into arrangements, with a Minister responsible for administering an Act under which a government service provider is established, to secure the service provider's cooperation.

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*Example—*

The commissioner may enter into arrangements to secure a service provider's cooperation to obtain information about services or issues affecting children.

## **25 Referral of matters or offences to other persons**

- (1) This section applies to information received by the commissioner in performing the commissioner's functions.
- (2) If, based on the information, the commissioner considers—
  - (a) a child may be a child in need of protection under the *Child Protection Act 1999*, the commissioner must refer the matter to the chief executive (child safety) or the police commissioner; or
  - (b) a child is, or may be, the victim of a criminal offence, the commissioner must—
    - (i) refer the matter to the police commissioner; and
    - (ii) if the matter may involve relevant criminal activity, refer the matter to the Crime and Misconduct Commission.
- (3) To remove doubt, it is declared that the commissioner may refer a matter to other entities and may refer a matter to more than 1 entity.

*Example—*

The commissioner may refer a matter to the chief executive (child safety), the police commissioner and the Crime and Misconduct Commission.

- (4) A reference in subsection (2)(b) to a child who is, or may be, the victim of a criminal offence includes a child who was, or may have been, the victim of a criminal offence and who has died.
- (5) In this section—

***criminal paedophilia*** see *Crime and Misconduct Act 2001*, schedule 2.



*organised crime* see *Crime and Misconduct Act 2001*, schedule 2.

*relevant criminal activity* means—

- (a) criminal paedophilia; or
- (b) organised crime; or
- (c) something that is—
  - (i) preparatory to the commission of criminal paedophilia or organised crime; or
  - (ii) undertaken to avoid detection of or prosecution for criminal paedophilia or organised crime.

## Part 3 **Appointment of commissioner and related provisions**

### 26 **Appointment of commissioner**

- (1) The commissioner is to be appointed by the Governor in Council.
- (2) A person is eligible for appointment as the commissioner only if the person has—
  - (a) knowledge, and experience working with children, in a relevant subject area; and
  - (b) a demonstrated commitment to upholding the principles underlying this Act.

*Note—*

See section 6 for the principles underlying this Act.

- (3) A person can not be appointed as the commissioner if the person—
  - (a) does not consent to a criminal history check before the appointment; or

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- (b) has a conviction for an indictable offence.
- (4) For subsection (3), the *Criminal Law (Rehabilitation of Offenders) Act 1986*, sections 6, 8 and 9, do not apply in relation to the appointment of the commissioner.
- (5) The commissioner is to be appointed under this Act and not under the *Public Service Act 2008*.
- (6) In this section—  
*relevant subject area* means child protection, children's rights, child welfare, community services, education, law, medicine, psychology or social work.

## **27 Duration of appointment**

- (1) Subject to sections 31 and 32, the commissioner holds office for the term stated in the instrument of appointment.
- (2) The term stated in the instrument of appointment must not be longer than 5 years.
- (3) However, a person appointed as commissioner is eligible for reappointment.

## **28 Terms and conditions of appointment**

- (1) The commissioner is to be paid the remuneration and allowances decided by the Governor in Council.
- (2) The commissioner holds office on the terms and conditions, not provided for by this Act, that are decided by the Governor in Council.

## **29 Preservation of rights**

- (1) This section applies if a public service officer is appointed as the commissioner.
- (2) The person retains and is entitled to all rights that have accrued to the person because of employment as a public service officer, or that would accrue in the future to the person

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because of that employment, as if service as commissioner were a continuation of service as a public service officer.

- (3) At the end of the person's term of office or on resignation—
- (a) the person is entitled to be appointed to an office in the public service at a salary level not less than the current salary level of an office equivalent to the office the person held before being appointed as commissioner; and
  - (b) the person's service as commissioner is to be regarded as service of a like nature in the public service for deciding the person's rights as a public service officer.

### **30 Leave of absence**

The Minister may grant leave of absence to the commissioner on the terms and conditions the Minister considers appropriate.

### **31 Resignation**

The commissioner may resign by signed notice given to the Minister.

### **32 Termination of appointment**

- (1) The Governor in Council may end the commissioner's appointment if the commissioner—
- (a) becomes incapable of satisfactorily performing the commissioner's duties; or
  - (b) is guilty of misconduct that could warrant dismissal from the public service if the commissioner were a public service officer; or
  - (c) is absent from duty or from the State, without the Minister's leave and without reasonable excuse, for 14 consecutive days or 28 days in a year.

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- (2) The Governor in Council must end the commissioner's appointment if the commissioner—
  - (a) is convicted of an indictable offence, whether in Queensland or elsewhere; or
  - (b) engages in paid employment outside the duties of office without the Minister's approval.

### **33 Acting commissioner**

- (1) The Governor in Council may appoint a person to act as commissioner—
  - (a) during a vacancy in the office; or
  - (b) during any period, or during all periods, when the commissioner is absent from duty or from the State or can not, for another reason, perform the duties of the office.
- (2) A person can not be appointed to act as commissioner unless the Governor in Council could appoint the person as commissioner under section 26.

## **Part 4 Appointment of assistant commissioner**

### **34 Appointment of assistant commissioner**

- (1) The assistant commissioner is to be appointed by the Governor in Council.
- (2) Part 3 applies, with necessary changes, in relation to the assistant commissioner as if—
  - (a) a reference to the commissioner were a reference to the assistant commissioner; and



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- (a) the way in which the commissioner's powers are to be exercised; and
- (b) the priority to be given to matters relating to the commissioner's functions.

## **Chapter 3 Powers and obligations relating to the commissioner's monitoring functions**

### **Part 1 Operation of ch 3**

#### **38 Powers relate to monitoring functions**

The powers under this chapter may be exercised only to perform the commissioner's monitoring functions.

#### **39 Services to which this chapter applies**

This chapter applies only to the following service providers (*relevant service providers*)—

- (a) the child safety department;
- (b) a service provider holding a licence to provide care services under the *Child Protection Act 1999* (a *licensee*);
- (c) a department that is mainly responsible for any of the following matters—
  - (i) Aboriginal and Torres Strait Islander policy;
  - (ii) administration of justice;
  - (iii) adult corrective services;

- (iv) community services;
- (v) disability services;
- (vi) education;
- (vii) housing services;
- (viii) public health;
- (d) the director of public prosecutions;
- (e) Legal Aid Queensland;
- (f) the Public Trust Office;
- (g) the police service.

## **Part 2                      Powers and obligations**

### **40      Power to require information or documents**

- (1) The commissioner may give a written notice to a relevant service provider requiring the service provider to give the commissioner, within a stated reasonable time—
  - (a) information about a stated matter; or
  - (b) a stated document, or documents of a stated class, in the service provider's possession or control; or
  - (c) a copy of a document, or copies of documents, mentioned in paragraph (b).
- (2) A requirement may, for example, relate to—
  - (a) information, or a file containing information, about the service provider's provision of care to a particular child; or
  - (b) information about the service provider's internal complaints management system; or

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- (c) information that the commissioner reasonably needs to implement a plan for monitoring the service provider's operations.
- (3) The notice must state the purpose for making the requirement.
- (4) For subsection (1)(b)—
  - (a) a document is taken to be in the service provider's control if, under an agreement between the service provider and another entity, the other entity must give the document to the service provider for the purpose of the commissioner performing the commissioner's monitoring functions; but
  - (b) otherwise, a document is not taken to be in the service provider's control merely because of an agreement between the service provider and another entity under which the other entity must give the document to the service provider.

#### **41 Access to information and documents of the child safety department**

- (1) This section applies to a notice under section 40 given to the child safety department.
- (2) The notice must state the way in which the information or documents must be given.

*Examples of stated ways—*

- sending the commissioner an electronic copy of a document
- allowing the commissioner to enter the service provider's premises and access information or documents
- (3) The stated way must be—
  - (a) reasonably necessary for achieving the stated purpose for making the requirement; and
  - (b) reasonable, having regard to the matters stated in section 23(2).



*Example—*

A notice requires the child safety department to give particular documents to the commissioner. The stated purpose for making the requirement is to audit the department's responses to notifications about suspected harm or risk of harm to children placed in the care of approved foster carers. The stated way in which the documents must be given is by allowing the commissioner to enter stated premises of the child safety department at a stated reasonable time to access the documents.

- (4) The department must comply with the notice.

**42 Access to information and documents of a relevant service provider other than the child safety department**

- (1) This section applies to a notice under section 40 given to a relevant service provider other than the child safety department.
- (2) The notice must state the way in which the commissioner seeks to have the information or documents given.

*Examples of stated ways—*

- sending the commissioner an electronic copy of a document
  - allowing the commissioner to enter the department's premises and access information or documents
- (3) The service provider is not required to give the information or documents in the stated way.
  - (4) For a requirement to give a document, the service provider may comply with the requirement by giving the information contained in the document.
  - (5) The service provider is not required to give information or a document to which section 43 applies.
  - (6) Otherwise, the service provider must comply with the notice.

*Example—*

The commissioner gives a notice to a licensee seeking particular documents by allowing the commissioner entry to the licensee's premises. The licensee does not have to allow the entry. But if the licensee does not allow the entry, the licensee must comply with the

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requirement, by the stated time, by giving the information contained in the documents or giving the documents in another way.

- (7) The notice must state the matters mentioned in subsections (3) to (5).

### **43 Exempt information and documents**

- (1) This section applies to a relevant service provider other than the child safety department.
- (2) In response to a notice under section 40, the service provider is not required to give the commissioner information or a document that is exempt under this section.
- (3) Information or a document is exempt if giving it could reasonably be expected to—
- (a) prejudice the investigation of a contravention or possible contravention of the law in a particular case; or
  - (b) prejudice an investigation under the *Coroners Act 2003*; or
  - (c) enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained; or
  - (d) endanger a person's life or physical safety; or
  - (e) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law.
- (4) Subsection (3) does not apply if giving the information or document would, on balance, be in the public interest.
- (5) Also, information or a document is exempt if—
- (a) it relates to a review of a matter, being conducted within the entity that is the relevant service provider, that has not been completed; and

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- (b) giving the information or document is likely to prejudice or interfere with the review.
  - (6) For subsection (5)(a), a review is taken not to be completed until the end of any period allowed for an appeal from the review and the end of any appeal.
  - (7) Also, for Legal Aid Queensland, information or a document is exempt to the extent it contains communications mentioned in the *Legal Aid Queensland Act 1997*, section 75.
  - (8) In this section—  
*review* includes investigation.

#### **44 Help to obtain information or documents from a licensee**

- (1) This section applies if the commissioner considers a licensee has not complied with a notice under section 40.
- (2) The commissioner may ask the chief executive (child safety) to take action, within a stated time, to facilitate access to the information or documents sought under the notice.
- (3) The chief executive (child safety) may, for example, facilitate access by obtaining a document under the *Child Protection Act 1999*, or under an agreement with the licensee, and giving it to the commissioner.
- (4) The stated time for taking the action must be reasonable, having regard to the matters stated in section 23(2).
- (5) The chief executive (child safety) must comply with the request.
- (6) The chief executive (child safety) must keep the commissioner informed of progress in facilitating the access, including by giving information about any delays or any inability to facilitate the access.

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## **45 Protection from liability for giving information**

- (1) This section applies to the giving of information to the commissioner, by a relevant service provider, for the purpose of the commissioner performing the commissioner's monitoring functions.
- (2) A person may give the information despite any other law that would otherwise prohibit or restrict the giving of the information.

*Examples of other laws—*

- *Education (General Provisions) Act 2006*, section 426
- *Hospital and Health Boards Act 2011*, section 142
- *Police Service Administration Act 1990*, section 10.1

- (3) If a person, acting honestly, gives the information to the commissioner, 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.

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- (6) This section does not apply to a person giving information in contravention of the *Legal Aid Queensland Act 1997*, section 75.
  - (7) In this section—  
*information* includes a document.

**46 Restricted use of confidential information accessed under this chapter**

- (1) This section applies to information, given to the commissioner for the purpose of the commissioner performing the commissioner's monitoring functions, to the extent the information comprises confidential information.
- (2) The commissioner may only use or disclose the information—
  - (a) to perform the commissioner's monitoring functions; or
  - (b) to refer a matter under section 25; or
  - (c) to undertake an investigation under chapter 4; or
  - (d) if authorised under another Act or required by law; or
  - (e) with the written consent of the person to whom the information relates or, if the person is a child unable to consent, with the written consent of a parent or guardian of the child.
- (3) In this section—  
*information* includes a document.

**47 Commissioner to advise on-disclosure**

- (1) This section applies to information or a document that the commissioner has obtained from a relevant service provider for the purpose of performing the commissioner's monitoring functions.
- (2) The commissioner must advise the service provider before giving the information or document to another entity, unless the commissioner considers that doing so would not be in the

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best interests of a child to whom the information or document relates.

#### **48 Periodic reporting**

A relevant service provider must give to the commissioner, at the times and in the way prescribed under a regulation, the information prescribed under a regulation about its systems, policies or practices affecting children in the child safety system.

#### **49 Review of service**

- (1) This section applies if the commissioner—
  - (a) has a particular concern about—
    - (i) a relevant service provider's systems, policies or practices affecting children in the child safety system; or
    - (ii) the handling of individual cases of children in the child safety system by the child safety department or a licensee; and
  - (b) considers it would be appropriate, having regard to the matters stated in section 23(2), to exercise a power under this section to address the concern.
- (2) The commissioner may require the service provider to—
  - (a) undertake a review of—
    - (i) if subsection (1)(a)(i) applies—the systems, policies or practices; or
    - (ii) if subsection (1)(a)(ii) applies—the handling of the individual cases; and
  - (b) give the commissioner a report about the review.
- (3) The commissioner may—

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- (a) require the service provider to stop carrying out a review mentioned in subsection (2)(a); and
  - (b) assume responsibility from the service provider for the review; and
  - (c) require the service provider to give the commissioner reasonable help to complete the review.
- (4) The service provider must comply with a requirement under this section.
- (5) For a relevant service provider that is a licensee, the commissioner—
- (a) must inform the chief executive (child safety) before requiring the service provider to undertake a review; and
  - (b) may ask the chief executive (child safety) to help the service provider undertake the review; and
  - (c) must give the chief executive (child safety) a copy of the report about the review.

## **50 Recommendations**

- (1) The commissioner may make recommendations to a relevant service provider about matters arising from the commissioner's performance of the monitoring functions in relation to the service provider.
- (2) Before making the recommendations, the commissioner must give the service provider a written copy of the proposed recommendations and a reasonable opportunity to comment on them.
- (3) The commissioner must give a copy of the recommendations to the Minister responsible for the service provider.
- (4) The Minister responsible for a relevant service provider mentioned in section 39(b) is the Minister responsible for the child safety department.

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## **51 Report to Ministers about noncompliance**

- (1) This section applies if the commissioner considers a relevant service provider has—
  - (a) contravened a provision of this part; or
  - (b) failed to take appropriate action in response to a recommendation made under section 50.
- (2) The commissioner may prepare a report about the matter and give it to the Minister responsible for the child safety department and the Minister responsible for the service provider.

*Note—*

Sections 82 to 85 establish a process for reports prepared by the commissioner to be tabled in the Legislative Assembly. The process includes giving an opportunity for an entity to respond to adverse comments in a report.

## **52 Noncompliance not an offence**

A person does not commit an offence only by failing to comply with this part.

# **Chapter 4 Complaints and investigations**

## **Part 1 Preliminary**

### **53 Operation of ch 4**

- (1) This chapter provides a process for making and resolving complaints about certain matters.



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- (2) The commissioner may undertake an investigation to deal with a complaint.
  - (3) Also, the commissioner may undertake an investigation, apart from the process for dealing with a complaint, relating to a service provided, or required to be provided, to a child in the child safety system.

## **Part 2                      Making complaints**

### **54            Subject matter of complaints**

A complaint may be made, or dealt with under this chapter, only so far as the complaint relates to a service provided, or required to be provided, to a child—

- (a) while the child is in the child safety system; or
- (b) while the child is subject to a conditional release order, supervised release order, intensive supervision order, community service order or probation order under the *Youth Justice Act 1992*; or
- (c) while the child is in detention under the *Youth Justice Act 1992* or the *Bail Act 1980*; or
- (d) in the course of a program or service established under the *Youth Justice Act 1992*, section 302.

### **55            Basis of complaints and who may complain**

- (1) A complaint may be made to the commissioner—
  - (a) that a service provider has not provided, or is not providing, a service to a child or children that the service provider is required to provide; or

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- (b) that a service provider has provided, or is providing, a service to a child or children in a way that is contrary to the rights, interests or wellbeing of the child or children.
- (2) The complaint may be made by—
- (a) a child to whom the complaint relates; or
  - (b) any person (including a member of an advocacy entity or another child) acting for, and in the interests of, a child or children to whom the complaint relates.

## **56 Time limit for making complaint**

A person may only make a complaint about a matter within 1 year after the person first becomes aware of the matter.

## **57 Identity of complainant**

- (1) A person making a complaint must give the commissioner—
- (a) the person's name and address; and
  - (b) any other information relating to the person's identity that the commissioner reasonably requires.
- (2) However, the commissioner may accept a complaint from a complainant who does not comply with subsection (1) if the commissioner reasonably believes it is in the public interest to do so.

## **58 Complaint may be made in writing or orally**

- (1) A person may make a complaint to the commissioner—
- (a) orally, whether in person or by telephone, radio or another form of communication; or
  - (b) in writing, whether by giving a document or by sending the writing by facsimile, email or another form of communication.
- (2) If an adult makes a complaint orally, the commissioner—

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- (a) must ask the adult to make the complaint in writing within a reasonable period of time stated in the request; and
  - (b) may assess the complaint, but must not otherwise deal with it until the written complaint is received.
- (3) If a child makes a complaint orally, the commissioner—
- (a) may provide help to the child to make the complaint in writing; and
  - (b) may assess or otherwise deal with the complaint, whether or not the child makes the complaint in writing.

## **59 Initiation of complaints in name of commissioner**

- (1) This section applies if—
- (a) the commissioner becomes aware of a matter the commissioner considers may be the subject of a complaint; and
  - (b) a complaint about the matter has not been made under this part; and
  - (c) the commissioner believes—
    - (i) the rights, interests or wellbeing of a child or children may be seriously affected if a complaint about the matter is not made, and it is not reasonable to require the child or children affected by the matter to complain to a complaints agency or another government entity; or
    - (ii) the matter raises issues of public interest; or
    - (iii) the matter raises a significant issue about a law, policy or practice underlying the relevant service, or about the need for a law, policy or practice to underlie the relevant service.

*Examples for paragraph (b)—*

- 1 No-one has contacted the commissioner about the matter.

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- 2 An adult has made a complaint about the matter orally and has not confirmed it in writing.
  - 3 A person has contacted the commissioner about the matter but can not make a complaint because it is more than 1 year since the person first became aware of the matter.
- (2) The commissioner may make a complaint in the commissioner's name about the matter.

## Part 3                      **Assessing complaints and deciding further action**

### **60      Assessment of complaint**

- (1) The commissioner must assess a complaint within the following times—
  - (a) if the commissioner seeks more information under subsection (2) to assess the complaint—within 28 days after obtaining the information;
  - (b) otherwise—within 28 days after receiving the complaint.
- (2) If the commissioner needs more information to properly assess a complaint, the commissioner must seek the information as soon as practicable.
- (3) This section does not apply to a complaint in the commissioner's name.

### **61      Action following assessment**

- (1) After assessing a complaint made under part 2, or making a complaint in the commissioner's name, the commissioner must take 1 or more of the following actions—
  - (a) if the service provider to whom the complaint relates (the *relevant provider*) has a complaint handling

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- mechanism that the commissioner considers would be appropriate for the complainant to use—refer the complaint to the relevant provider;
- (b) refer the complaint to a complaints agency, another government service provider responsible for regulating the relevant provider, or another appropriate entity;
  - (c) seek to resolve the complaint in a way the commissioner considers appropriate;
  - (d) investigate the complaint;
  - (e) decide, under section 62, not to deal with the complaint.
- (2) When deciding the action to take, the commissioner must consider whether the action should be taken urgently because the rights, interests or wellbeing of a child or children may be adversely affected if action is delayed.
- (3) The commissioner's functions and powers relating to a complaint are not affected by the referral of the complaint to another entity.
- (4) In this section—  
*complaint* includes part of a complaint.

## **62 Grounds for not dealing with complaint**

- (1) The commissioner must not deal with a complaint, or continue dealing with a complaint, if the commissioner is satisfied of any of the following—
- (a) the complaint is frivolous or otherwise lacks substance;
  - (b) the subject matter of the complaint—
    - (i) has already been adequately dealt with by the commissioner; or
    - (ii) has already been adequately dealt with, or would be more appropriately dealt with, by the relevant provider, another government service provider

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- responsible for regulating the relevant provider or another entity; or
  - (iii) is before QCAT or has already been decided by QCAT or the former tribunal; or
  - (iv) is the subject of an investigation under the *Coroners Act 2003*; or
  - (v) is, or has been, otherwise the subject of a legal proceeding;
  - (c) any dealing, or further dealing, with the complaint is unnecessary or unjustifiable in all the circumstances of the case;
  - (d) the basis of the complaint is not related to the interests of the child or children on whose behalf the complaint is alleged to be made;
  - (e) the complainant has failed, without reasonable excuse, to satisfactorily cooperate with attempts made or arranged by the commissioner to resolve the complaint.
- (2) Also, the commissioner may decide not to deal with a complaint, or may stop dealing with a complaint, if—
- (a) the complainant does not comply with a request by the commissioner for information about the complaint or about the complainant's identity; or
  - (b) the complainant withdraws the complaint; or
  - (c) the commissioner considers it would be inappropriate to deal or continue to deal with the complaint, having regard to—
    - (i) the resources available to deal with the complaint; and
    - (ii) the relevance of the subject matter of the complaint to the rights, interests and wellbeing of children in Queensland at the time of the commissioner's consideration of the complaint and in the future.

(3) If the commissioner decides not to deal with a complaint, or continue dealing with a complaint, the commissioner must give written notice of the decision, and the reasons for the decision, to the complainant as soon as practicable.

(4) In this section—

*complaint* includes part of a complaint.

*former tribunal* means the Children Services Tribunal established under the repealed *Children Services Tribunal Act 2000*, section 8.

## Part 4 Investigations

### Division 1 Starting an investigation

#### 63 Investigation of complaint

- (1) The commissioner may investigate a complaint after—
  - (a) making it under section 59; or
  - (b) assessing it under section 60.
- (2) Before investigating a complaint, the commissioner must give a written notice to the service provider to which the complaint relates.
- (3) The notice must state the following—
  - (a) that a complaint has been made;
  - (b) the particulars of the complaint;
  - (c) that the commissioner intends to investigate the complaint;
  - (d) that the service provider may make a written submission about the complaint within a reasonable time stated in the notice.

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## **64 Other investigations**

- (1) The commissioner may investigate a matter relating to a service provided, or required to be provided, to a child in the child safety system if the commissioner believes—
  - (a) the rights, interests or wellbeing of a child or children may be seriously affected if the investigation is not conducted; or
  - (b) the matter raises issues of public interest; or
  - (c) the matter raises a significant issue about a law, policy or practice underlying the service, or about the need for a law, policy or practice to underlie the service.
- (2) Subsection (1) applies whether or not a complaint has been received about the matter.
- (3) The commissioner may make reasonably necessary inquiries to decide whether to investigate a matter.
- (4) Before exercising powers under this chapter for an investigation under this section, the commissioner must give a written notice to the service provider to whom the investigation relates.
- (5) The notice must state the following—
  - (a) the investigation that the commissioner is conducting or proposing to conduct;
  - (b) the subject matter of the investigation;
  - (c) in general terms, the powers that the commissioner may exercise under this chapter for the investigation.



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## **Division 2                      Access to child and information for investigation**

### **65            Access to child**

- (1) The commissioner may, by written notice, require a person to provide access to a child who is or whom the commissioner reasonably believes is—
  - (a) a complainant; or
  - (b) a child on whose behalf or in whose interests a complaint has been made; or
  - (c) a child, to whom an investigation relates, who is or was in the child safety system; or
  - (d) a witness to a matter being investigated by the commissioner.
- (2) The notice must state the time and place at which access must be provided.
- (3) A person to whom a notice is given under subsection (1) must comply with the notice, unless the person has a reasonable excuse for not complying.  
Maximum penalty—50 penalty units.
- (4) It is a reasonable excuse for a person not to comply with a notice that the child to whom access is required has indicated to the commissioner that he or she does not wish to communicate with the commissioner in relation to the complaint or matter being investigated.
- (5) Subsection (1)(a), (c) and (d) apply to a child whether or not the child may, under section 54, be the subject of a complaint.

### **66            Security directions about visiting detention centres etc.**

- (1) The chief executive of the department responsible for the administration of the *Youth Justice Act 1992* may give directions to a person, about the conduct of visits to a

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detention centre, that the chief executive considers necessary for maintaining the security of the centre.

- (2) The police commissioner may give directions to a person, about the conduct of visits to a watch-house or lockup, that the police commissioner considers necessary for maintaining the security of the place.
- (3) If a person visits a child in a detention centre, watch-house or lockup, under a notice given under section 65, the person must comply with any relevant directions given under subsection (1) or (2).

## **67 Notice for information**

- (1) The commissioner may give a notice (a *notice for information*) under this section to a person, other than a child, for the purpose of carrying out the commissioner's functions for an investigation.
- (2) The notice may require the person—
  - (a) to give information by statutory declaration, by a stated reasonable time, about a stated matter; or
  - (b) to attend before the commissioner at a stated reasonable time and place—
    - (i) to give information and answer questions about a stated matter; or
    - (ii) to produce a stated document or other thing; or
  - (c) if it does not appear to the commissioner to be reasonable to require the person to attend before the commissioner in person, but it is reasonable to require the person to communicate with the commissioner by telephone conferencing, videoconferencing or another form of telecommunication—to communicate with the commissioner in a stated way and at a stated reasonable time about a stated matter.
- (3) The person must comply with the notice, unless the person has a reasonable excuse for not complying.

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Maximum penalty—50 penalty units.

- (4) The notice need not state the matter of the investigation if the commissioner is satisfied that, in the particular circumstances of the investigation, stating the matter may prejudice the effectiveness of the investigation.
- (5) The stating of a matter, or the failure to state a matter, in the notice does not prevent the commissioner from questioning the person about a matter relating to the investigation.
- (6) If the person gives the commissioner a document or other thing, as required by the notice, the commissioner—
  - (a) may inspect the document or other thing and make a reproduction of it; and
  - (b) must return the document or other thing to the person as soon as practicable.

## **68 Identity of notifier under Child Protection Act 1999 or Public Health Act 2005**

- (1) If the commissioner decides it is necessary for the commissioner to know the identity of a notifier, the commissioner must give written notice to the chief executive (child safety) requiring disclosure of the identity within a reasonable time stated in the notice.
- (2) The chief executive (child safety) must comply with the notice.
- (3) In this section—

***notifier*** means—

  - (a) a notifier mentioned in the *Child Protection Act 1999*, section 186; or
  - (b) a notifier mentioned in the *Public Health Act 2005*, section 196 whose identity is known to the chief executive (child safety).

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## **Division 3                      Defences for failing to comply with notice for information**

### **69            Application of div 3**

This division applies to a person who is given a notice for information by which the person is required to give information or produce a document or other thing.

### **70            Witness privilege**

The person is not required to give the information, or produce the document or other thing, if the person objects on the ground of a privilege the person would be entitled to claim against giving the information, or producing the document or other thing, were the person a witness in a prosecution for an offence in the Supreme Court.

### **71            Notice for information given to law enforcement agency**

- (1) If the person is the police commissioner, the police commissioner need not comply with the notice to the extent the police commissioner considers that giving the information, or producing the document or other thing, would compromise the security of an investigation by the police service.
- (2) If the person is the Crime and Misconduct Commission under the *Crime and Misconduct Act 2001*, it need not comply with the notice to the extent its chairperson considers that giving the information, or producing the document or other thing, would compromise the security of an investigation by it.

### **72            Claim of unjustifiable exercise of power**

The person is not required to comply with the notice if a Supreme Court judge decides that, on balance, the purpose for which the information was required to be given, or the

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document or other thing was required to be produced, does not justify—

- (a) the adverse effect on the person's financial interests that would result from complying with the notice; or
- (b) the intrusion on the privacy of an individual by disclosure of private or confidential matters relating to the individual that would result from complying with the notice.

### **73 Supreme Court applications**

- (1) The person may apply to a Supreme Court judge for a decision about—
  - (a) the validity of a claim of privilege under section 70; or
  - (b) whether, under section 72, the person is not required to comply with the notice.
- (2) The application must be made under the rules of court or, to the extent the rules do not provide, as directed by a Supreme Court judge.
- (3) The application must be heard in closed court.
- (4) The applicant has the burden of proof on the application.
- (5) In deciding the application, a Supreme Court judge may make all orders necessary for the practical operation of this division including, for example—
  - (a) excusing the person from giving or producing, or ordering the person to give or produce, the whole or part of the information, document or other thing; or
  - (b) amending the notice.
- (6) Costs of the application are to be borne by the commissioner, unless the judge orders otherwise on the ground that a claim to withhold the information, document or other thing was frivolous, vexatious or lacking in substance.

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## **Division 4                      Other offences**

### **74            Commissioner may require oath or affirmation**

- (1) This section applies if the commissioner gives a notice for information to a person, requiring the person to—
  - (a) attend before the commissioner at a stated time and place; or
  - (b) communicate with the commissioner in a stated way and at a stated time about a matter stated in the notice.
- (2) The commissioner may require the person to either take an oath or make an affirmation and may administer the oath or affirmation.
- (3) The person must comply with a requirement under subsection (2).

Maximum penalty—10 penalty units.
- (4) If subsection (1)(b) applies, the commissioner may make arrangements appearing to the commissioner to be appropriate in the circumstances for administering the oath or affirmation to the person.
- (5) Also, the commissioner may allow the person to give information by tendering a written statement, verified, if the commissioner directs, by oath or affirmation.

### **75            False or misleading statements**

A person must not state anything to the commissioner, in response to a notice for information, that the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

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**76 False or misleading documents**

- (1) A person must not give to the commissioner, in response to a notice for information, a document containing information 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 commissioner, 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.

**77 Obstructing or improperly influencing investigation**

A person must not obstruct or improperly influence the conduct of an investigation.

Maximum penalty—100 penalty units.

**Division 5 Matters at end of investigation**

**78 Ending an investigation in child’s best interests**

- (1) The commissioner may stop an investigation if the commissioner is satisfied it would not be in the best interests of a child or children to whom the investigation relates to continue it.
- (2) Subsection (1) does not limit the commissioner’s power to deal with a complaint in another way.

**79 Notice of complaint investigation result**

As soon as practicable after completing an investigation of a complaint, or ending an investigation of a complaint under section 78, the commissioner must give written notice of the

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commissioner's decision or proposed action in relation to the complaint to the complainant.

## **80 Report after investigation**

- (1) As soon as practicable after completing an investigation of a complaint, or ending an investigation of a complaint under section 78, the commissioner must prepare a written report and give a copy to—
  - (a) the chief executive of the department that deals with the subject matter of the complaint; and
  - (b) if the commissioner considers it appropriate—the Minister responsible for the subject matter of the complaint; and
  - (c) if the report relates to a complaint about the delivery of services to children by a private service provider—the service provider.
- (2) As soon as practicable after completing an investigation other than an investigation of a complaint, or ending it under section 78, the commissioner must prepare a written report and give a copy to—
  - (a) the chief executive (child safety); and
  - (b) if the report relates to the delivery of services to children by a service provider other than the child safety department—the service provider; and
  - (c) if the commissioner considers it appropriate—the Minister responsible for a subject matter of the investigation.
- (3) A report under subsection (1) or (2) may recommend that a service provider (whether or not a service provider to which a complaint relates) take stated action within a stated time that is reasonable in the circumstances.
- (4) If the report makes a recommendation mentioned in subsection (3) and the commissioner is not satisfied the service provider has taken the stated action within the stated



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time, the commissioner may give a copy of the report, and the commissioner's comments—

- (a) if the service provider is a government service provider—to the Minister responsible for the service provider or the Act under which the service provider is established; or
- (b) if the service provider is a private service provider—to—
  - (i) the Minister responsible for the government entity that provides funding to, or administers the funding for, the service provider; or
  - (ii) the local government that provides funding to the service provider.

**81 No liability for defamation if report made in good faith**

It is a lawful excuse for the publication of any defamatory statement made in a report that the publication is made in good faith and is, or purports to be, made for this Act.

**Division 6 Reports and tabling them**

**82 Application of div 6**

This division applies only to reports prepared by the commissioner under this Act.

**83 Commissioner may ask Minister to table report**

- (1) The commissioner may, by written notice, ask the Minister to table a report in the Legislative Assembly if—
  - (a) at least 28 days before finalising the report, the commissioner—
    - (i) gives a draft of the report to the Minister; and

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- (ii) tells the Minister in writing that the commissioner intends to ask the Minister to table the report; and
  - (b) in finalising the report, the commissioner—
    - (i) considers any written response from the Minister about the draft; and
    - (ii) to the extent practicable, carries out any further consultation that the Minister asks for; and
    - (iii) includes in the report any written comments from the Minister that the Minister asks be included; and
  - (c) the report does not include any information identifying, or that is likely to lead to the identification of, a person as a complainant or a child who is, or has been, the subject of a complaint under this Act.
- (2) The Minister must table the report within 14 sitting days of receiving the notice.
  - (3) To remove doubt, it is declared that the Minister may not require the commissioner to change the contents of the report before it is tabled, other than by including the Minister's comments.

## **84 Confidential reports**

- (1) This section applies if the commissioner asks the Minister to table a report under section 83.
- (2) The commissioner may also give the Minister a second report about the same matter, containing information that the commissioner considers should not be publicly disclosed on the ground that—
  - (a) disclosure of the information may not be in the best interests of a child involved in the matter; or
  - (b) disclosure of the information may adversely affect the outcome of an inquiry or investigation by a complaints agency or the police service, or an investigatory body established under a law of the Commonwealth; or

- (c) the matter dealt with in the second report is before a court.

## **85 Response to adverse comment**

- (1) The commissioner must not include in a report any comments adverse to an entity identifiable from the report, unless the entity has been given a copy of the comments and given a reasonable opportunity to respond to them.
- (2) If the entity gives the commissioner a written statement in response to the comments and asks that the statement be included in the report, the commissioner must include the statement in the report.
- (3) However, if the report will be made public, the commissioner is not required by subsection (2) to include a statement so far as it contains information that the commissioner considers should not be publicly disclosed for a reason mentioned in section 84(2)(a) to (c).

# **Chapter 5 Community visitors**

## **Part 1 Preliminary**

### **86 Purpose of ch 5**

The purpose of this chapter is to provide for community visitors to promote and protect the rights, interests and wellbeing of the following children—

- (a) a child residing at a residential facility or detention centre, or at an authorised mental health service under the *Mental Health Act 2000*;

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- (b) a child in the custody or guardianship of the chief executive (child safety) under the *Child Protection Act 1999* who, under section 82 of that Act, has been placed in the care of an approved carer or someone else other than a parent of the child;
- (c) a child who, under a care agreement under the *Child Protection Act 1999*, has been placed in the care of someone other than a parent of the child.

**87 Meaning of *visitable site***

A *visitable site* is a place mentioned in section 86(a).

**88 Meaning of *visitable home***

A *visitable home* is a home in which a child mentioned in section 86(b) or (c) is residing.

## **Part 2 Visits to visitable sites and homes**

**89 Commissioner must arrange regular and frequent visits**

The commissioner must make arrangements for each visitable site and each visitable home to be visited by a community visitor regularly and frequently.

**90 Requirement to visit visitable site or communicate if asked**

- (1) A child residing at a visitable site may—
  - (a) ask the commissioner to arrange for a community visitor to visit the site to perform the functions of a community visitor; or

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- (b) ask a staff member of the site to arrange for a community visitor to visit the site to perform the functions of a community visitor; or
  - (c) inform a staff member of the site that the child wishes to communicate with a stated community visitor.
- (2) If subsection (1)(b) applies, the staff member must tell the commissioner about the request as soon as practicable.
- Maximum penalty—10 penalty units.
- (3) If subsection (1)(c) applies, the staff member must take reasonable steps to inform the community visitor as soon as practicable.
- Maximum penalty—10 penalty units.
- (4) A community visitor must comply with a request to visit a site, or communicate with a child residing at a site, as soon as practicable after being informed of the request.

**91 Requirement to visit visitable home or communicate if asked**

- (1) A child residing in a visitable home may—
- (a) ask the commissioner to arrange for a community visitor to visit the home to perform the functions of a community visitor; or
  - (b) ask a carer of the child to arrange for a community visitor to visit the home to perform the functions of a community visitor; or
  - (c) inform a carer of the child that the child wishes to communicate with a stated community visitor.
- (2) If subsection (1)(b) applies, the carer must tell the commissioner about the request as soon as possible.
- (3) If subsection (1)(c) applies, the carer must take reasonable steps to inform the community visitor as soon as possible.

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- (4) A community visitor must comply with a request to visit a visitable home, or communicate with a child residing at a visitable home, as soon as practicable after being informed of the request.
- (5) A person does not commit an offence only by failing to comply with subsection (2), (3) or (4).

## **92 Report after each visit**

- (1) As soon as practicable after visiting a visitable site or visitable home, a community visitor must prepare, and give to the commissioner, a report about the visit.
- (2) So far as the commissioner considers appropriate, the commissioner may give a copy of a report about a visit to a visitable site, or information from the report, to any of the following entities—
  - (a) a person in charge of the site;
  - (b) a government service provider responsible for regulating the site;
  - (c) the chief executive of an entity responsible for operating the site;
  - (d) the chief executive of a department responsible for providing funding or services to the site;
  - (e) the chief executive of a department responsible for providing services to children residing at the site;
  - (f) a child who is a subject of the report.
- (3) So far as the commissioner considers appropriate, the commissioner may give a copy of a report about a visit to a visitable home, or information from the report, to any of the following entities—
  - (a) the chief executive (child safety);
  - (b) the chief executive of a department responsible for providing services to the child who is a subject of the report;

- (c) a carer of the child;
  - (d) a service provider, holding a licence to provide care services under the *Child Protection Act 1999*, involved in the placement of the child in the home;
  - (e) the child.
- (4) However, the commissioner must not give confidential information about a person (the *relevant person*) to an entity, other than the relevant person, under subsection (2) or (3) unless—
- (a) the relevant person authorises the commissioner to give the information; and
  - (b) the relevant person is an adult when giving the authorisation.

## Part 3                      Functions and powers

### Division 1                Functions

#### 93            Functions

- (1) A community visitor has the following functions relating to children residing at visitable sites and visitable homes—
- (a) to develop trusting and supportive relationships with the children, so far as is possible;
  - (b) to advocate on behalf of the children by listening to, giving voice to, and facilitating the resolution of, their concerns and grievances;
  - (c) to seek information about, and facilitate access by the children to, support services appropriate to their needs provided by service providers;

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- (d) to assess the adequacy of information given to the children about their rights;
  - (e) to assess the physical and emotional wellbeing of the children;
  - (f) for visitable sites—
    - (i) to inspect the sites and assess their appropriateness for the accommodation of the children or the delivery of services to them, having regard to relevant State and Commonwealth laws, policies and standards; and
    - (ii) to observe the treatment of the children, including the extent to which their needs are met by staff of the sites; and
    - (iii) to assess the morale of the staff of the sites; and
    - (iv) for detention centres—to assess whether the programs for the release of children subject to detention orders adequately and appropriately prepare them for release;
  - (g) for visitable homes—
    - (i) to assess their appropriateness for the accommodation of the children; and
    - (ii) to observe the treatment of the children, including the extent to which their needs are met by persons caring for them at the homes.
- (2) A community visitor also has the function of giving advice and reports to the commissioner about anything relating to the visitor's functions and powers.



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## **Division 2                      Power of entry to visitable sites and visitable homes**

### **94            Power of entry**

- (1) A community visitor may enter a visitable site if—
  - (a) a person in charge of the site 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.
- (2) A community visitor may enter a visitable home if—
  - (a) a carer residing in the home consents to the entry; or
  - (b) the entry is authorised by a warrant.
- (3) For the purpose of asking a person who is in charge of a visitable site, or who is a carer residing in a visitable home, for consent to enter, a community visitor may, without the person's consent or a warrant—
  - (a) enter land around the site or home to an extent that is reasonable to contact the person; or
  - (b) enter part of the site or home the community visitor reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the person.

### **95            Consent to entry**

- (1) This section applies if a community visitor intends to ask a person who is in charge of a visitable site, or who is a carer residing in a visitable home, to consent to the community visitor entering the site or home under section 94(1)(a) or (2)(a).
- (2) Before asking for the consent, the community visitor must tell the person—

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- (a) the purpose of the entry; and
  - (b) that the person is not required to consent.
- (3) If the consent is given, the community visitor may ask the person to sign an acknowledgement of the consent.
- (4) The acknowledgement must state—
- (a) that the person has been told—
    - (i) the purpose of the entry; and
    - (ii) that the person is not required to consent; and
  - (b) the purpose of the entry; and
  - (c) that the person gives the community visitor consent to enter the place and exercise powers under this part; and
  - (d) the time and date the consent was given.
- (5) If the person signs the acknowledgement, the community visitor must immediately give a copy to the person.
- (6) If—
- (a) an issue arises in a proceeding about whether a person who was in charge of a visitable site, or who was a carer residing in a visitable home, consented to the entry; and
  - (b) an acknowledgement 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 a person mentioned in paragraph (a) consented.

## **96 Application for warrant**

- (1) A community visitor may apply to a magistrate for a warrant for a visitable site or visitable home.
- (2) The application must be sworn and state the grounds on which the warrant is sought.

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- (3) The magistrate may refuse to consider the application until the community visitor 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.

## **97 Issue of warrant**

- (1) The magistrate may issue a warrant only if the magistrate is satisfied the community visitor can not properly carry out the visitor's functions without gaining entry to the visitable site or visitable home.
- (2) The warrant must state—
- (a) that a stated community visitor may, with necessary and reasonable help and force—
    - (i) enter the site or home and any other place necessary for entry; and
    - (ii) exercise the community visitor's powers under this part; and
  - (b) the hours of the day or night when the site or home may be entered; and
  - (c) the date, within 14 days after the warrant's issue, the warrant ends.

## **98 Warrants—procedure before entry**

- (1) This section applies if a community visitor named in a warrant issued under this division for a visitable site or visitable home is intending to enter the site or home under the warrant.
- (2) Before entering the site or home, the community visitor must do or make a reasonable attempt to do the following things—

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- (a) identify himself or herself to a person who is in charge of the visitable site, or who is a carer residing in the visitable home, by producing the community visitor's identity card or another document evidencing the community visitor's appointment;
- (b) give the person a copy of the warrant;
- (c) tell the person the community visitor is permitted by the warrant to enter the site or home;
- (d) give the person an opportunity to allow the community visitor immediate entry to the site or home without using force.

## **Division 3                      Other powers**

### **99            Related powers for visitable sites**

After entering a visitable site, a community visitor may—

- (a) inspect the site; or
- (b) inspect or copy a document held at the site that relates to a child residing at the site or the operations of the site.

### **100          Powers in relation to staff of visitable sites**

- (1) A community visitor may, at any reasonable time, require a staff member of a visitable site to give the visitor reasonable help to—
  - (a) obtain information about the site and its operation; or
  - (b) have access to a child residing at the site; or
  - (c) talk with a child residing at the site, out of the hearing of staff and management of the site and other persons at the site; or
  - (d) exercise the visitor's powers under section 99.

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- (2) The staff member must comply with the requirement, unless the staff member has a reasonable excuse.

Maximum penalty—40 penalty units.

- (3) If the requirement is to give information or produce a document, it is a reasonable excuse for the staff member not to comply with the requirement that complying with the requirement might tend to incriminate the staff member.
- (4) A staff member does not commit an offence against subsection (2) unless, when making the requirement, the visitor warns the staff member it is an offence to fail to comply with the requirement unless the staff member has a reasonable excuse.

## **101 Power to require staff of visitable site to produce documents**

- (1) A community visitor may require a staff member of a visitable site to produce for inspection, at a reasonable time and place nominated by the visitor, a document held at the site that relates to a child residing at the site or the operations of the site.
- (2) The staff member must produce the document, unless the staff member has a reasonable excuse.
- Maximum penalty—40 penalty units.
- (3) A staff member does not commit an offence against subsection (2) unless, when making the relevant requirement, the visitor warns the staff member it is an offence to fail to comply with the requirement unless the staff member has a reasonable excuse.
- (4) The visitor may keep the document to copy it.
- (5) If the visitor copies the document, the visitor may require the staff member responsible for keeping the document to certify the copy as a true copy of the document.
- (6) The visitor must return the document to the staff member as soon as practicable after copying it.

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- (7) However, if a requirement is made of the staff member under subsection (5), the visitor may keep the document until the staff member complies with the requirement.

## 102 Powers relating to visitable homes

- (1) After entering a visitable home, a community visitor may do any of the following—
- (a) look around the home and assess its appropriateness for the accommodation of the relevant child;
  - (b) have access to the relevant child;
  - (c) talk with the relevant child at an appropriate place out of the hearing of other persons at the home;
  - (d) require a carer residing in the home to give the visitor reasonable help to exercise the visitor's powers under paragraphs (a) to (c).
- (2) An appropriate place under subsection (1)(c) may be a place away from the visitable home (for example, a local park) where the child has asked to talk.
- (3) A person must comply with a requirement under subsection (1)(d).
- (4) A person does not commit an offence only by failing to comply with a requirement under subsection (1)(d).
- (5) In this section—
- relevant child*** means a child mentioned in section 86(b) or (c) residing at the home.

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## **Division 4                      Exercise of powers**

### **103      Child's views and wishes**

- (1) To the greatest extent practicable, a community visitor must seek, and take into account, the views and wishes of a child residing at a visitable site before—
  - (a) asking a staff member of the site a question about the child; or
  - (b) inspecting, taking extracts from, or making copies of, a document held at the site that relates to the child; or
  - (c) including information about the child in a report to the commissioner under section 92(1).
- (2) To the greatest extent practicable, a community visitor must seek, and take into account, the views and wishes of a child residing at a visitable home before—
  - (a) asking a carer or someone else at the home a question about the child; or
  - (b) including information about the child in a report to the commissioner under section 92(1).
- (3) The child's views and wishes may be expressed orally, in writing or in another way, including, for example, by conduct.
- (4) The child's views and wishes should be taken into account in a way that has regard to the child's age and maturity.

### **104      Community visitor to respect privacy**

- (1) In exercising a power or performing a function in relation to a visitable site, a community visitor must act in a way that—
  - (a) preserves, as far as practicable, the privacy of children residing at the site; and
  - (b) respects the wishes of any of the children who does not wish to communicate with the visitor.

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- (2) In exercising a power or performing a function in relation to a visitable home, a community visitor must act in a way that—
  - (a) preserves, as far as practicable, the privacy of persons residing at the home and does not cause them unnecessary inconvenience; and
  - (b) respects the wishes of any of the children residing in the home who does not wish to communicate with the visitor.

### **105 Commissioner's directions about the exercise of powers**

A community visitor is subject to the commissioner's directions in the exercise of a power.

### **106 Security directions about visiting detention centres**

- (1) The chief executive of the department in which the *Youth Justice Act 1992* is administered may give directions to a community visitor, about the conduct of visits to a detention centre, that the chief executive considers necessary for maintaining the security of the centre.
- (2) The community visitor must comply with the directions when visiting the centre.

## **Part 4 Appointment of community visitors**

### **107 Appointment**

- (1) The commissioner may appoint community visitors.
- (2) An appointment may be on a full-time, part-time or casual basis.



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- (3) A person is eligible for appointment as a community visitor only if the commissioner considers the person has—
- (a) the knowledge, experience and skills needed to perform a community visitor's functions; and
  - (b) a demonstrated commitment to upholding the principles underlying this Act.

*Note—*

See section 6 for the principles underlying this Act.

- (4) In appointing community visitors, the commissioner must take into account the desirability of the community visitors reflecting the social and cultural diversity of children in Queensland.
- (5) A person may not hold office as a community visitor while the person is—
- (a) a member of the police service; or
  - (b) a public service employee employed in the child safety department or a department whose primary responsibilities include health, disability services or correctional institutions; or
  - (c) engaged in any capacity in relation to a correctional institution, other than as an official visitor under the *Corrective Services Act 2006*; or
  - (d) an approved carer.
- (6) A community visitor is a member of the commissioner's staff.
- (7) A community visitor is appointed under this Act and not under the *Public Service Act 2008*.

*Note—*

See also chapter 8A in relation to the appointment of a community visitor.

## **108 Duration of appointment**

- (1) A community visitor—

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- (a) holds office for the period, not more than 2 years, stated in the appointment; and
  - (b) is eligible for reappointment; and
  - (c) may resign at any time by giving a signed notice of resignation to the commissioner.
- (2) The commissioner may terminate the appointment of a community visitor if the commissioner is satisfied the community visitor—
- (a) has become physically or mentally incapable of satisfactorily performing the duties of a community visitor; or
  - (b) has performed the community visitor's duties carelessly, incompetently or inefficiently; or
  - (c) is guilty of misconduct that could warrant dismissal from the public service if the community visitor were a public service officer; or
  - (d) has been found guilty of an offence the commissioner reasonably considers makes the person inappropriate to perform the duties of a community visitor.
- (3) The commissioner must terminate the appointment of a community visitor if the commissioner is satisfied the community visitor is a person who may not hold office as a community visitor under section 107(5).

## **109 Terms of appointment**

- (1) The commissioner must decide the remuneration and allowances payable to community visitors.
- (2) A community visitor is entitled to be paid the remuneration and allowances decided by the commissioner.
- (3) To the extent this Act does not state the terms on which a community visitor holds office, the community visitor holds office on the terms decided by the commissioner.

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## **Part 5                      Identity cards**

### **110      Identity card**

- (1) The commissioner must give each community visitor an identity card.
- (2) The identity card must—
  - (a) contain a recent photograph of the visitor; and
  - (b) be signed by the visitor; and
  - (c) identify the person as a visitor for this Act.
- (3) This section does not prevent the issue of a single identity card to a person for this Act and other Acts.

### **111      Failure to return identity card**

A person who ceases to be a community visitor must return the person's identity card to the commissioner as soon as possible (but within 21 days) after the person ceases to be a community visitor, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

### **112      Production or display of identity card**

A community visitor may exercise a power in relation to another person only if the visitor—

- (a) first produces his or her identity card for the person's inspection; or
- (b) has the visitor's identity card displayed so it is clearly visible to the other person.

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## **Part 6                      Miscellaneous**

### **113      Obstruction of visitor in exercise of powers**

A staff member of a visitable site must not obstruct a community visitor in the exercise of a power, unless the staff member has a reasonable excuse.

Maximum penalty—50 penalty units.

### **114      Privacy of correspondence between community visitor and residents**

A staff member of a visitable site must not open, read, copy or remove any correspondence sent, or being sent, between a community visitor and a child residing at the site, unless the child asks the staff member to do so.

Maximum penalty—20 penalty units.

## **Chapter 6                  Child deaths**

### **Part 1                      Child Death Case Review Committee**

#### **Division 1                  Preliminary**

### **115      Definitions for pt 1**

In this part—

*appointed members* see section 120(1)(c).

*CDCRC* see section 116.

***CDCRC member*** means a person mentioned in section 120(1)(a) or (b) or an appointed member.

***original reviews*** means reviews carried out under the *Child Protection Act 1999*, chapter 7A by the chief executive (child safety).

***policies*** includes guidelines, procedures, protocols, standards and systems.

***review criteria*** see section 133(1).

## **Division 2                    Establishment and functions**

### **116    Establishment**

The Child Death Case Review Committee (the ***CDCRC***) is established.

### **117    Functions**

The CDCRC's functions are—

- (a) to review all reviews carried out under the *Child Protection Act 1999*, chapter 7A; and
- (b) in relation to matters arising out of its reviews under paragraph (a), to make recommendations to the chief executive (child safety) about—
  - (i) improving the child safety department's policies relating to the delivery of services to children and families; and
  - (ii) improving the relationships between the child safety department and other entities whose functions include having involvement with children and families; and
  - (iii) whether disciplinary action should be taken against officers or employees of the child safety

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department in relation to the child safety department's involvement with a child; and

- (c) to monitor the implementation of its recommendations under paragraph (b); and
- (d) if asked by the Minister, to give the Minister information about particular reviews, or classes or reviews, carried out under this chapter.

### **118 CDCRC must act independently**

In performing the CDCRC's functions under this chapter, the CDCRC—

- (a) must act independently; and
- (b) is not under the control or direction of any other entity, including the Minister and the commissioner, in relation to the way it performs its functions.

### **119 CDCRC may use expert advisors**

In performing its functions, the CDCRC may obtain help from anyone whom the CDCRC considers to be appropriately qualified to help.

*Example of when CDCRC may decide to obtain help—*

The CDCRC may be reviewing the chief executive (child safety's) review about a child who has died and whose mother has an intellectual disability. It may decide to obtain help from a person with expert knowledge of delivering services to persons with intellectual disabilities. The person's expert knowledge may help the CDCRC to evaluate an assessment in the chief executive (child safety's) review about the adequacy and appropriateness of the child safety department's involvement with the child.

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## Division 3                      Membership

### 120      Membership

- (1) The CDCRC consists of—
  - (a) the commissioner; and
  - (b) the assistant commissioner; and
  - (c) not less than 5, and not more than 7, members appointed by the Minister (*appointed members*).
- (2) A person is eligible for appointment as an appointed member only if the Minister is satisfied—
  - (a) the person—
    - (i) has expertise in the field of paediatrics and child health, forensic pathology, mental health, investigations or child protection; or
    - (ii) is otherwise, because of the person's qualifications, experience or membership of an entity, likely to make a valuable contribution to the CDCRC; and
  - (b) the person is otherwise suitable for appointment to the CDCRC.
- (3) Without limiting the matters to which the Minister may have regard in deciding whether a person is otherwise suitable for appointment, the Minister—
  - (a) must not appoint a person if the person does not consent to a criminal history check before appointment; and
  - (b) may have regard to the person's criminal history.
- (4) The members of the CDCRC must include at least—
  - (a) 1 Aboriginal person; and
  - (b) 1 Torres Strait Islander.

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**121 Provision relating to appointment of State Coroner as appointed member**

- (1) If the Minister proposes to appoint the State Coroner as an appointed member—
  - (a) the State Coroner is not required to consent under section 120(3)(a) to a criminal history check before appointment; and
  - (b) section 120(3)(b) does not apply to the Minister's consideration of the State Coroner's suitability for appointment.
- (2) Subsections (3) to (5) apply if the State Coroner is an appointed member.
- (3) The State Coroner may, by written notice given to the chairperson of the CDCRC, nominate a person to act as the State Coroner's deputy in relation to the CDCRC.
- (4) Subject to the terms of the notice, the deputy may act for the State Coroner as a CDCRC member at any time.
- (5) While the deputy is acting—
  - (a) the deputy has all the functions and powers of a CDCRC member; and
  - (b) this Act applies to the deputy as if the deputy were a CDCRC member.

**122 Minister may obtain report from police commissioner**

- (1) This section applies to—
  - (a) a person who—
    - (i) the Minister proposes to appoint as a member of the CDCRC; and
    - (ii) has consented to a criminal history check under section 120; or
  - (b) a person who is an appointed member.



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- (2) However, this section does not apply if the person is the State Coroner.
  - (3) The Minister may ask the police commissioner to give the commissioner 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.
  - (4) Subject to subsection (5), the police commissioner must comply with the request.
  - (5) The duty imposed on the police commissioner to comply with the request applies only to information in the police commissioner’s possession or to which the police commissioner has access.
  - (6) The Minister must destroy a report given to the Minister under this section as soon as practicable after it is no longer needed for the purpose for which it was requested.

### **123 Application of Criminal Law (Rehabilitation of Offenders) Act 1986**

Sections 120(3) and 122 apply to a person despite anything in the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

### **124 Conditions of appointment**

- (1) An appointed member holds office for the term, not more than 3 years, stated in the member’s instrument of appointment.
- (2) An appointed member is appointed on a part-time basis only.
- (3) An appointed member is entitled to the fees and allowances fixed by the Minister, and otherwise holds office under the conditions of appointment fixed by the Minister.

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## **125 Vacation of office of appointed member**

The office of an appointed member becomes vacant if the appointed member—

- (a) resigns office by signed notice given to the Minister; or
- (b) is removed from office as a member under section 126.

## **126 Removal from office of appointed members**

- (1) The Minister may remove an appointed member from office if—
  - (a) the member is mentally or physically incapable of performing the member's duties; or
  - (b) the Minister is satisfied the member has neglected the member's duties or performed the member's duties incompetently or inefficiently; or
  - (c) the member is otherwise unsuitable to continue as a member; or
  - (d) for a member appointed because of the member's membership of an entity—the member ceases to be a member of the entity.
- (2) However, subsection (1) does not apply to an appointed member who is the State Coroner.

## **Division 4 Chairperson**

### **127 Chairperson**

- (1) The commissioner is chairperson of the CDCRC.
- (2) The chairperson is to preside at all meetings of the CDCRC at which the chairperson is present.
- (3) If the chairperson is not present at a meeting of the CDCRC, a CDCRC member chosen by the members present at the meeting is to preside.

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## **Division 5                      Conduct of business**

### **128      Quorum**

- (1) A quorum for the CDCRC is the number equal to one-half of the number of CDCRC members for the time being holding office or, if one-half is not a whole number, the next higher whole number.
- (2) However, if the review being carried out by the CDCRC concerns—
  - (a) an Aboriginal child, there is not a quorum unless at least 1 CDCRC member present is an Aboriginal person; or
  - (b) a Torres Strait Islander child, there is not a quorum unless at least 1 CDCRC member present is a Torres Strait Islander.

### **129      Conduct of meetings**

- (1) A question at a CDCRC meeting is decided by a majority of the votes of the CDCRC members present.
- (2) Each CDCRC member present at the meeting has a vote on each question to be decided and, if the votes are equal, the member presiding also has a casting vote.

### **130      Minutes**

The CDCRC must keep minutes of its meetings.

### **131      Disclosure of interests**

- (1) This section applies to a CDCRC member (the *interested person*) if—
  - (a) the interested person has a direct or indirect interest in an issue being considered, or about to be considered, by the CDCRC; and

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- (b) the interest could conflict with the proper performance of the person's duties about the consideration of the issue.
- (2) As soon as practicable after the relevant facts come to the interested person's knowledge, the person must disclose the nature of the interest to a CDCRC meeting.
- (3) Unless the CDCRC otherwise directs, the interested person must not—
  - (a) be present when the CDCRC considers the issue; or
  - (b) take part in a decision of the CDCRC about the issue.
- (4) The interested person must not be present when the CDCRC is considering whether to give a direction under subsection (3).
- (5) If there is another person who must, under subsection (2), also disclose an interest in the issue, the other person must not—
  - (a) be present when the CDCRC is considering whether to give a direction under subsection (3) about the interested person; or
  - (b) take part in making the decision about giving the direction.
- (6) If—
  - (a) because of this section, a CDCRC member is not present at a meeting for considering or deciding an issue, or for considering or deciding whether to give a direction under subsection (3); and
  - (b) there would be a quorum if the member were present; the remaining persons present are a quorum of the CDCRC for considering or deciding the issue, or for considering or deciding whether to give the direction, at the meeting.
- (7) A disclosure under subsection (2) must be recorded—
  - (a) in the CDCRC's minutes; and

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- (b) if the disclosure relates to a review being carried out by the CDCRC, in the report prepared under section 134 by the CDCRC about the review.
- (8) Subsection (7)(b) is subject to section 135(2).

### **132 Conduct of business**

Subject to this part, the CDCRC may conduct its business, including meetings, in the way it considers appropriate.

## **Division 6 Reviews and reports**

### **133 Criteria to be used in carrying out review**

- (1) The CDCRC must develop criteria (*review criteria*) to be used in carrying out its reviews of original reviews.
- (2) In developing the review criteria, the CDCRC must consult the chief executive (child safety) and may consult other entities the CDCRC considers have a sufficient interest in the performance of its functions.
- (3) The review criteria must be published in the gazette.
- (4) The review criteria are a statutory instrument.

### **134 Carrying out review**

- (1) This section applies if the CDCRC is given a copy of a report of an original review under the *Child Protection Act 1999*, section 246D(2).
- (2) The CDCRC must review the original review using the review criteria, and prepare a report about its review, as soon as practicable but, in any case, so that it can comply with section 135(1).
- (3) For its review, the CDCRC may give a notice to the chief executive (child safety) requiring the chief executive (child

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safety) to give the CDCRC a supplementary report relating to the original review.

- (4) Also, for its review, the CDCRC may have regard to a report that—
  - (a) is given, under the *Ombudsman Act 2001*, section 57B, to the CDCRC; and
  - (b) relates to the child whose involvement with the child safety department is the subject of the review.
- (5) Without limiting what the CDCRC's report may contain, the report may recommend that the chief executive (child safety) take stated action within a stated time that is reasonable in the circumstances.

### **135 CDCRC to give copy of its report to certain persons**

- (1) Within 3 months after being given the report of an original review, the CDCRC must give a copy of its report to—
  - (a) the chief executive (child safety); and
  - (b) the commissioner.
- (2) The CDCRC's report must not include any information identifying, or that is likely to lead to the identification of, any individual.
- (3) However, the CDCRC may include with the copy of its report given to the chief executive (child safety) a separate document that allows the chief executive (child safety) to identify individuals mentioned in the report.

## **Division 7 Recommendations**

### **136 Request to chief executive (child safety)**

The CDCRC may ask the chief executive (child safety) to notify the CDCRC, within a reasonable stated time, of the

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steps taken to give effect to the recommendations contained in its report and, if no steps have been taken, the reasons for this.

**137 CDCRC may give report to Minister in certain circumstances**

- (1) This section applies if the CDCRC, after considering the response of the chief executive (child safety) given under section 136, considers that no steps have been taken to give effect to the CDCRC's recommendations or the steps taken are inadequate or inappropriate.
- (2) The CDCRC may report on the matter to the Minister and the Minister to whom the chief executive (child safety) is responsible.
- (3) The CDCRC must attach the following to the report—
  - (a) a copy of the CDCRC's report on the review;
  - (b) the response of the chief executive (child safety) under section 136 about the matter.

**Division 8 Other provisions**

**138 Confidentiality of information**

- (1) This section applies to a person who gains confidential information because of, or an opportunity given by—
  - (a) being a CDCRC member; or
  - (b) being a person who is giving, or has given, help to the CDCRC under section 119; or
  - (c) providing administrative support to the CDCRC under section 142.
- (2) The person must not—
  - (a) make a record of the information or intentionally disclose the information to anyone except—

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- (i) to the extent necessary to perform the person's functions relating to the CDCRC; or
  - (ii) if the person is the State Coroner, to a coroner for use by the coroner to help in an investigation under the *Coroners Act 2003*; or
  - (iii) if the person is the State Coroner's deputy under section 121, to the State Coroner or to a coroner for use by the coroner to help in an investigation under the *Coroners Act 2003*; or
- (b) recklessly disclose the information to anyone.
- Maximum penalty—100 penalty units.

### **139 No liability for defamation if report made in good faith**

It is a lawful excuse for the publication of any defamatory statement made in a report prepared by the CDCRC under this chapter that the publication is made in good faith and is, or purports to be, made for this Act or the *Child Protection Act 1999*.

### **140 Information not to be given in evidence**

- (1) A relevant person is neither competent nor compellable—
  - (a) to produce, in compliance with a requirement under an Act or legal process, any document in the person's possession or under the person's control created by, at the request of, or solely for the purpose of, the CDCRC; or
  - (b) to divulge or communicate, in compliance with a requirement under an Act, or legal process, information that came to the person's notice as a relevant person.
- (2) Subsection (1) does not apply to a requirement made in proceedings about an act or omission by the relevant person or the CDCRC.
- (3) In this section—



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*relevant person* means a person who is, or was—

- (a) a CDCRC member; or
- (b) giving help to the CDCRC under section 119; or
- (c) providing administrative support to the CDCRC under section 142.

### **141 Annual report**

- (1) By 31 October in each year, the CDCRC must give to the Minister a report about the performance of the CDCRC's functions during the previous financial year.
- (2) The report must not include information that identifies, or is likely to identify, individuals referred to in reports under section 134(2).
- (3) Within 14 sitting days after receiving the report, the Minister must table it in the Legislative Assembly.

### **142 Administrative support for CDCRC**

The commissioner must ensure the CDCRC has the administrative support services reasonably required for the CDCRC to carry out its functions effectively and efficiently.

## **Part 2 Commissioner's functions relating to child deaths**

### **143 Register**

The commissioner must keep a register of child deaths in Queensland.

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#### **144 Access to information in the register for research purposes**

- (1) This section applies if a person wants access to information in the register to undertake research to help reduce the likelihood of child deaths.
- (2) The person may access the information only with the commissioner's consent.
- (3) The commissioner may consent only if satisfied—
  - (a) the person is a genuine researcher; and
  - (b) the information is reasonably necessary for research mentioned in subsection (1).
- (4) The commissioner must not give the person access to identifying information unless the commissioner reasonably believes—
  - (a) the identifying information is necessary for the research to be effective; and
  - (b) the opportunity for increased knowledge that may result from the research outweighs the need to protect the privacy of any living or dead person.
- (5) The commissioner may impose conditions on the consent that the commissioner considers appropriate including, for example, a condition that the person must not disclose identifying information to anyone else or use the information other than for a stated purpose.
- (6) The person must comply with any condition imposed on the consent, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (7) In this section—

***genuine researcher*** means—

- (a) a person for whom an application for health information has been granted under the *Public Health Act 2005*, chapter 6, part 4; or

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- (b) a member of a quality assurance committee established under the *Hospital and Health Boards Act 2011*, section 82; or
  - (c) another person who the commissioner considers is conducting genuine research.

*identifying information* means information that identifies an individual.

## 145 Other functions relating to information about child deaths

The commissioner also has the following functions to help reduce the likelihood of child deaths—

- (a) in relation to the information about child deaths recorded in the register—
  - (i) to classify the deaths according to cause of death, demographic information and other relevant factors; and
  - (ii) to analyse the information to identify patterns or trends;
- (b) to conduct research, alone or in cooperation with other entities;
- (c) to identify areas for further research by the commissioner or other entities;
- (d) to make recommendations, arising from keeping the register and conducting research under this part, about laws, policies and practices.

## 146 Reports

- (1) By 31 October in each year, the commissioner must prepare, and give to the Minister, a report about the following matters for the previous financial year—

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- (a) the results of analysing information included in the register;
  - (b) the commissioner's activities relating to research about child deaths;
  - (c) any persons given access to information in the register for research purposes;
  - (d) recommendations the commissioner has made about laws, policies or practices;
  - (e) the extent to which previous recommendations of the commissioner have been implemented.
- (2) The commissioner may also prepare, and give to the Minister, other reports arising from the performance of the commissioner's functions under section 145.
- (3) The commissioner must not include in a report any comments adverse to an entity identifiable from the report, unless the entity has been given a copy of the comments and given a reasonable opportunity to respond to them.
- (4) If the entity gives the commissioner a written statement in response to the comments and asks that the statement be included in the report, the commissioner must include the statement in the report.
- (5) However, the commissioner is not required by subsection (4) to include a statement so far as it contains information that the commissioner considers should not be publicly disclosed on the ground that—
- (a) disclosure of the information may adversely affect the outcome of an inquiry or investigation by a complaints agency or the police service, or an investigatory body established under a law of the Commonwealth; or
  - (b) the information concerns a matter before a court.
- (6) It is a lawful excuse for the publication of any defamatory statement made in a report that the publication is made in good faith and is, or purports to be, made for this Act.

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- (7) Within 14 sitting days after receiving a report under this section, the Minister must table it in the Legislative Assembly.

**147 Government entity may enter into arrangement with commissioner**

- (1) A government entity may—
- (a) enter into an arrangement with the commissioner about providing to the commissioner information or a document that the commissioner reasonably needs to perform the commissioner's functions under this part; and
  - (b) provide information or a document to the commissioner under the arrangement.
- (2) The government entity and the commissioner must, as far as practicable, protect the persons to whom the information or document relates from unjustified intrusion on their privacy.
- (3) The government entity may charge a fee for a service under the arrangement that is not more than the actual cost of providing the service.
- (4) This section does not apply to—
- (a) QCAT; or
  - (b) the registrar under the *Births, Deaths and Marriages Registration Act 2003*; or
  - (c) the State Coroner or the chief executive of the department in which the *Coroners Act 2003* is administered.
- (5) A person does not, by providing access to information or a document under this section—
- (a) contravene a provision of an Act or a law imposing a statutory or commercial obligation or restriction to maintain secrecy in relation to the information or document; or

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- (b) incur any civil liability in relation to the information or document.
- (6) To remove doubt, for the purpose of the *Hospital and Health Boards Act 2011*, section 142, it is declared a designated person mentioned in that section is authorised to give information under this section.

### **148 Disclosure of information**

The commissioner may disclose information obtained under this part, to the State Coroner, for use by a coroner to help in—

- (a) an investigation under the *Coroners Act 2003*; or
- (b) an inquiry into a death under the *Coroners Act 1958*.

## **Chapter 7 Advisory committees**

### **149 Establishment**

The commissioner may establish as many of the following committees as the commissioner considers appropriate—

- (a) expert advisory committees;
- (b) youth advisory committees;
- (c) other advisory committees.

### **150 Membership**

- (1) An advisory committee has the membership decided by the commissioner.
- (2) The commissioner may appoint a person to an expert advisory committee only if the commissioner is satisfied the person has expertise, relevant to children, in the field of the arts, child protection, child psychology and development, disabilities,

education, employment, health, law, sports or vocational education and training.

## **151 Functions**

- (1) An advisory committee's function is to help the commissioner effectively and efficiently perform the commissioner's functions by—
  - (a) for an expert advisory committee—advising the commissioner on matters in relation to which the committee has expertise; or
  - (b) for a youth advisory committee—advising the commissioner, from a youth perspective, on matters relevant to this Act; or
  - (c) for another committee—advising the commissioner on matters referred to it by the commissioner.
- (2) It is not an advisory committee's function to advise the commissioner on the day-to-day management of the commission.

## **152 Dissolution**

The commissioner may dissolve an advisory committee at any time.

## **153 Other matters**

The commissioner 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 commissioner.

## **Chapter 8            Screening for regulated                                  employment and regulated                                  businesses**

### **Part 1                    Preliminary**

#### **Division 1            General**

##### **154    Main purpose of ch 8**

The main purpose of this chapter is to ensure that persons employed in particular employment, or carrying on particular businesses, as prescribed under this Act undergo screening under this chapter.

##### **155    Safety and wellbeing of children to be paramount          consideration**

Without limiting section 6, the paramount consideration in making a decision under this chapter is a child's entitlement to be cared for in a way that protects the child from harm and promotes the child's wellbeing.

#### **Division 2            Application of chapter**

##### **156    Employment and businesses regulated by this chapter**

- (1) This chapter concerns—
  - (a) employment of a type mentioned in schedule 1, part 1 (*regulated employment*); and
  - (b) the carrying on of a business of a type mentioned in schedule 1, part 2 (a *regulated business*).



- (2) Schedule 1, part 3 provides for employment, or the carrying on of a business, to which this chapter does not apply.

**157 This chapter applies despite the Criminal Law (Rehabilitation of Offenders) Act 1986**

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

**158 Declaration relating to exemption to category of regulated employment**

- (1) This section applies if, under a section of schedule 1, part 1, the employment of a person is regulated employment.
- (2) The employment is regulated employment even if—
- (a) another section of schedule 1, part 1 expressly provides that employment of the person is not regulated employment; or
  - (b) a section of schedule 1, part 2 expressly provides that a business carried on by the person is not a regulated business.

*Example—*

An Australian lawyer is employed at a school as a student counsellor and the lawyer is not an approved teacher or a volunteer who is a parent of a child attending the school. The employment of the Australian lawyer at the school is regulated employment under schedule 1, section 3 even though, under schedule 1, section 6(3)(a), the employment of the Australian lawyer is not regulated employment.

**159 Declaration relating to exemption to category of regulated business**

- (1) This section applies if, under a section of schedule 1, part 2, a business carried on by a person is a regulated business.
- (2) The business is a regulated business even if—

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- (a) another section of schedule 1, part 2 expressly provides that a business carried on by the person is not a regulated business; or
- (b) a section of schedule 1, part 1 expressly provides that employment of the person is not regulated employment.

*Example—*

If a person carries on a business that includes private tutoring of children at a school, the person is carrying on a regulated business under schedule 1, section 17 even if employment of the person is not regulated employment under schedule 1, section 3 because the person is an approved teacher.

## **160 Application of chapter to children**

This chapter applies to the unpaid employment of a child only if the child is a trainee student of an education provider and the employment is part of the course undertaken by the trainee student with the education provider.

# **Part 2 Interpretation**

## **161 What is employment**

- (1) For this chapter, a person is employing another person if the first person has an agreement with the other person for the other person to carry out work.
- (2) It is immaterial for this section—
  - (a) whether the agreement is written or unwritten; and
  - (b) whether the work is carried out voluntarily or for financial reward; and
  - (c) what a person's motivation is for carrying out the work; and

- (d) the time for which the person is engaged to carry out the work; and
  - (e) whether the agreement provides for the other person to carry out work on 1 occasion or on an ongoing basis, whether regularly or irregularly.
- (3) Also, for this section, the nature of the work is immaterial.
- (4) This section is subject to section 162.

*Examples of employment—*

- 1 A person is engaged by a school as a cleaner under a written contract of employment.
- 2 A person orally agrees with the manager of a club to coach a children's sporting team during a season.
- 3 The manager of a counselling organisation agrees with an adult student that the student attend the organisation's office each day during a semester and carry out various duties.
- 4 A tour operator arranges with the parents of a family to provide a child accommodation service in their home to an international student.

**162 What is employment when education provider arranges trainee student to carry out work for someone else**

- (1) This section applies if—
- (a) the first person mentioned in section 161 is an education provider; and
  - (b) the other person mentioned in section 161 is a trainee student of the education provider; and
  - (c) the work to be carried out is part of the course that the trainee student is undertaking with the education provider; and
  - (d) the work is to be carried out for someone else.
- (2) For section 161, the person for whom the trainee student is to carry out work, or carries out work, is employing the trainee student.

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- (3) Subsection (2) applies even if—
  - (a) there is no agreement for the trainee student to carry out the work made expressly between the person and the trainee student; or
  - (b) the education provider—
    - (i) applies for a prescribed notice about the trainee student as mentioned in section 199(2); or
    - (ii) applies for an exemption notice about the trainee student as mentioned in section 260(2).
- (4) For this chapter, if the education provider applies for a prescribed notice or exemption notice about the trainee student as mentioned in subsection (3)(b)—
  - (a) the person for whom the trainee student is to carry out work, or carries out work, need not apply for the prescribed notice or exemption notice; but
  - (b) the person is—
    - (i) if the education provider has applied for a prescribed notice about the trainee student—taken to have applied for a prescribed notice about the trainee student for part 4, divisions 3 and 4; or
    - (ii) if the education provider has applied for an exemption notice about the trainee student—taken to have applied for an exemption notice about the trainee student for part 5, divisions 2 and 3.

### **163 What is employment in child care**

- (1) This section applies to the employment of a person as a carer in, or staff member of, a child care service.
- (2) A reference in this Act to employment of the person includes a reference to engagement of the person within the meaning of the *Child Care Act 2002*, section 58.

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**164 Matters about particular regulated employment relating to care of children**

- (1) This section applies if a person is engaged, or proposes to be engaged, in regulated employment mentioned in schedule 1, section 14(1) or (2).
- (2) For this chapter, and for no other purpose, the State is taken to be employing, or proposing to employ, the person in the regulated employment.
- (3) For this chapter—
  - (a) the chief executive (child safety) may carry out a function of the State relating to the person; and
  - (b) if the person must disclose information to the person's employer, or notify the employer about a matter—the person must disclose the information to, or notify, the chief executive (child safety).

*Note—*

This declaration arises out of the volunteer or non-employee status of persons engaged in regulated employment mentioned in schedule 1, section 14(1) or (2).

**165 Who is a *volunteer***

- (1) A *volunteer* is a person who is employed by another person and does not carry out any work for the other person for a financial reward.
- (2) In this section—

*financial reward* does not include—

  - (a) a payment that is a reimbursement for out-of-pocket expenses; or
  - (b) for a person who is an approved carer—an allowance or other amount paid to the person under the *Child Protection Act 1999*, section 159.

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**166 Executive officers of a corporation carrying on a regulated business**

- (1) This section applies in relation to a corporation that carries on, or proposes to carry on, a regulated business.
- (2) For this chapter other than section 172, a person is taken to be carrying on, or proposing to carry on, the regulated business by being, or proposing to be, an executive officer of the corporation.
- (3) Subsection (2) applies only if the person's principal place of residence is in Australia.

*Note—*

In relation to section 172 and other provisions of this Act applying to corporations, see section 383.

**167 What is a *serious offence***

- (1) A *serious offence* is—
  - (a) an offence against a provision of an Act mentioned in schedule 2 or 3, column 1, subject to any qualification relating to the provision mentioned opposite in column 3; or
  - (b) an offence of counselling or procuring the commission of an offence of a kind mentioned in paragraph (a); or
  - (c) an offence of attempting, or of conspiring, to commit an offence of a kind mentioned in paragraph (a); or
  - (d) an offence that has, as an element, an intention to commit an offence of a kind mentioned in paragraph (a); or
  - (e) an offence that, at the time it was committed, was an offence of a kind mentioned in paragraph (a); or
  - (f) another offence that is a class 1 offence or a class 2 offence under the Offender Reporting Act that is not otherwise a serious offence under this Act; or

- 
- (g) an offence under a law of another jurisdiction that, if it had been committed in Queensland, would have constituted an offence mentioned in paragraph (a) to (f).

*Note—*

Column 2 in schedules 2 and 3 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 2 or 3, column 1, for an Act has been amended from time to time or that the provision was previously numbered with a different number.

## **168 What is a *disqualifying offence***

- (1) A *disqualifying offence* is—
- (a) an offence against a provision of an Act mentioned in schedule 4 or 5, column 1, subject to any qualification relating to the provision mentioned opposite in column 3; or
  - (b) an offence of counselling or procuring the commission of an offence of a kind mentioned in paragraph (a); or
  - (c) an offence of attempting, or of conspiring, to commit an offence of a kind mentioned in paragraph (a); or
  - (d) an offence that has, as an element, intention to commit an offence of a kind mentioned in paragraph (a); or
  - (e) an offence that, at the time it was committed was an offence of a kind mentioned in paragraph (a); or
  - (f) an offence under a law of another jurisdiction that, if it had been committed in Queensland, would have constituted an offence mentioned in paragraph (a) to (e).

*Note—*

Column 2 in schedules 4 and 5 is included for information purposes only and states a section heading for the provision mentioned opposite in column 1.

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- (2) For this section, it is immaterial if a provision mentioned in schedule 4 or 5, column 1, for an Act has been amended from time to time or that the provision was previously numbered with a different number.

### **169 Who is a *disqualified person***

- (1) A person is a *disqualified person* if the person—
- (a) has been or is convicted of a disqualifying offence; or
  - (b) is subject to—
    - (i) offender reporting obligations; or
    - (ii) an offender prohibition order; or
    - (iii) a disqualification order; or
    - (iv) a sexual offender order.
- (2) However, a person to whom subsection (1)(a) applies is not a disqualified person if the commissioner issued an eligibility declaration to the person and the eligibility declaration has not expired.

*Notes—*

- 1 See part 4, division 2 for obtaining an eligibility declaration.
- 2 Under section 181, a person who is issued a positive notice, or whose negative notice or negative exemption notice is cancelled, is taken to be issued with an eligibility declaration.
- 3 See section 185 for when an eligibility declaration expires, including if the person is charged with a disqualifying offence or becomes a relevant disqualified person after the declaration was issued.

### **170 Who is a *relevant disqualified person***

A person is a *relevant disqualified person* if the person—

- (a) has been or is convicted of a disqualifying offence for which an imprisonment order was or is imposed; or
- (b) is subject to—



- (i) offender reporting obligations; or
- (ii) an offender prohibition order; or
- (iii) a disqualification order; or
- (iv) a sexual offender order.

## Part 3 Risk management strategies

### 171 Risk management strategies about persons employed in regulated employment

- (1) A person who employs someone else in employment that is regulated employment must, for each year, develop and implement a written strategy about the person's employees in regulated employment that—
- (a) implements employment practices and procedures to promote the wellbeing of a child affected by the regulated employment and to protect the child from harm; and
  - (b) includes the matters prescribed under a regulation.

Maximum penalty—20 penalty units.

- (2) In this section—

*employees in regulated employment*, for a person, includes each of the following whom the person employs in regulated employment—

- (a) persons about whom the person has applied for a prescribed notice or exemption notice;
- (b) persons who hold a positive notice or positive exemption notice;
- (c) persons who need not hold a positive notice or exemption notice;

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- (d) persons about whom the person is notified under section 339.

## **172 Risk management strategies about regulated businesses**

A person who carries on a regulated business must, for each year, develop and implement a written strategy about the regulated business that—

- (a) implements employment practices and procedures to promote the wellbeing of a child affected by the regulated business and to protect the child from harm; and
- (b) includes the matters prescribed under a regulation.

Maximum penalty—20 penalty units.

# **Part 4 Prescribed notices**

## **Division 1 Preliminary**

### **173 Part does not apply to police officers or registered teachers**

This part does not apply in relation to the employment of a person, or the carrying on of a business by a person, who is—

- (a) a police officer; or
- (b) a registered teacher.

### **174 Offences for disqualified person**

- (1) A disqualified person must not—
  - (a) sign an application about the person made by someone else under division 7; or

- (b) make an application under division 8; or
- (c) apply for, or start or continue in, regulated employment.

Maximum penalty—500 penalty units or 5 years imprisonment.

*Note—*

See section 197 in relation to carrying on a regulated business.

- (2) Subsection (1)(c) applies even though it may not be an offence for a person to employ the disqualified person in regulated employment.

**175 Commissioner to give notice if person signing or making prescribed notice application is disqualified person**

- (1) This section applies if the commissioner is satisfied a person who has signed or made a prescribed notice application is a disqualified person.
- (2) The commissioner must give the person a written notice stating the following—
  - (a) the commissioner is satisfied the person is a disqualified person;
  - (b) the application is invalid;
  - (c) the person must not start or continue in regulated employment or carry on a regulated business.
- (3) Also, the commissioner must give each notifiable person for the person a written notice stating that the commissioner is satisfied that the person is a disqualified person and—
  - (a) if the notice is given to a notifiable person in relation to the regulated employment or proposed regulated employment of the person—the notifiable person must not allow the person to start or continue to perform work that is regulated employment; or
  - (b) otherwise—the person must not start or continue to carry on a regulated business.

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- (4) Further, the commissioner must consider whether notice must be given under section 342(3).

*Note—*

Under section 342, the commissioner is required to notify the accreditation board about particular decisions relating to a director of a school's governing body.

## **176 Giving notification under pt 4**

- (1) This section applies in relation to a provision of this part that provides that a person (the *employer*) must notify the commissioner about the employment of someone else (the *employee*) in regulated employment.
- (2) The notification must—
- (a) be in the approved form; and
  - (b) if the employer did not give the certification mentioned in subsection (3)(b)—be accompanied by the alternative certifications relating to the employee.
- (3) The approved form mentioned in subsection (2)(a) must include provision for—
- (a) identifying information about the employee; and
  - (b) certification by the employer that the employer has sighted the employee's proof of identity documents.

## **Division 2 Eligibility declaration**

### **177 Purpose of div 2**

The purpose of this division is to allow a person who may be a disqualified person to apply to the commissioner for a declaration (*eligibility declaration*) that the person is not a disqualified person and is eligible—

- 
- (a) to sign an application about the person made by someone else under division 7; or
  - (b) to make an application under division 8.

### **178 Application for an eligibility declaration**

- (1) A person may make an application (*eligibility application*) to the commissioner for an eligibility declaration.
- (2) The person can not make an eligibility application less than 2 years after making a previous eligibility application that has been refused, unless—
  - (a) the decision to refuse the previous eligibility application was based on wrong or incomplete information; or
  - (b) the previous eligibility application was refused because the person was a relevant disqualified person and the person is no longer a relevant disqualified person.
- (3) The eligibility application must be—
  - (a) in the approved form; and
  - (b) signed by the applicant; and
  - (c) accompanied by the prescribed fee.
- (4) The approved form must include provision for—
  - (a) identifying information about the applicant; and
  - (b) certification by a prescribed person that the prescribed person has sighted the applicant's proof of identity documents.

### **179 Notice of change of name and contact details in eligibility application**

- (1) This section applies if, after a person makes an eligibility application, the person's name or contact details, as stated in the application, change before the commissioner decides the application.

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- (2) Within 14 days after the change happens, the person must give notice of it, in the approved form, to the commissioner.

Maximum penalty—10 penalty units.

## **180 Commissioner's decision on eligibility application**

- (1) The commissioner may issue an eligibility declaration to a person only if the person—
  - (a) has been convicted of a disqualifying offence; and
  - (b) is not a relevant disqualified person.
- (2) The commissioner must decide the eligibility application as if it were a decision about a prescribed notice application and, for that purpose, sections 222 to 229 applies to the decision.
- (3) For subsection (2), sections 222 to 229 apply as if—
  - (a) a reference in the sections to a prescribed notice application were a reference to an eligibility application; and
  - (b) a reference in the sections to issuing a positive notice were a reference to issuing an eligibility declaration; and
  - (c) a reference in the sections to issuing a negative notice were a reference to refusing to issue an eligibility declaration.
- (4) If the eligibility application is granted, the commissioner must issue the eligibility declaration to the person.
- (5) If the eligibility application is refused, the commissioner must give the person a written notice stating—
  - (a) the reasons for the refusal; and
  - (b) if the reasons include investigative information—
    - (i) that, within 28 days after the person is given the notice, the person may appeal to a Magistrates Court about the police commissioner's decision

- that the information is investigative information;  
and
- (ii) how the person may appeal to the Magistrates Court.
- (6) If the commissioner considers the person has not been convicted of a disqualifying offence, the commissioner must give written notice to the person stating the following—
- (a) the commissioner may only issue an eligibility declaration if the person has been convicted of a disqualifying offence;
  - (b) the commissioner does not consider the person has been convicted of a disqualifying offence and, for that reason, the commissioner can not issue an eligibility declaration to the person;
  - (c) that, if the person is not a disqualified person for another reason, a prescribed notice application may be made about the person;
  - (d) that the eligibility application will not be further dealt with by the commissioner.
- (7) There is no review or appeal under this Act in relation to a decision of the commissioner under this section to refuse an eligibility application.

### **181 Eligibility declaration taken to have been issued**

The commissioner is taken to have issued an eligibility declaration to a disqualified person if the commissioner—

- (a) issues a positive notice to the person; or
- (b) cancels a negative notice or negative exemption notice issued to the person.

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## **182 Withdrawing eligibility application generally**

A person may withdraw the person's eligibility application at any time before the commissioner issues an eligibility declaration or a notice relating to the application under section 180 to the person.

## **183 Deemed withdrawal of eligibility application if identity can not be established**

A person is taken to have withdrawn the person's eligibility application if—

- (a) the commissioner gives the person a written notice—
  - (i) asking the person to provide, within a reasonable stated time, stated information that the commissioner reasonably needs to establish the person's identity; and
  - (ii) warning the person that, if the person does not comply with the request, the person's eligibility application may be taken to have been withdrawn; and
- (b) the person does not comply with the request within the stated time; and
- (c) the commissioner can not establish with certainty the person's identity; and
- (d) the commissioner gives the person a written notice stating that the person is taken to have withdrawn the eligibility application.

## **184 Deemed withdrawal of eligibility application if particular requests not complied with**

A person is taken to have withdrawn the person's eligibility application if—

- (a) the commissioner gives the person—



- 
- (i) a written notice asking the person to provide, within a reasonable stated time, stated information, including by way of a submission, about a stated matter that the commissioner reasonably believes is relevant to the application; or
  - (ii) a written notice under section 330; or
  - (iii) a written notice asking the person to give the necessary consent for section 332 or 333; or
  - (iv) a written notice asking the person to give the necessary consent for section 337 or 338; and
- (b) the notice includes a warning that, if the person does not comply with the notice, the person's eligibility application may be taken to have been withdrawn; and
  - (c) the person does not comply with the notice; and
  - (d) the commissioner gives the person a written notice stating that the person is taken to have withdrawn the eligibility application.

## **185 Expiry of eligibility declaration**

An eligibility declaration issued to a person expires if, after it is issued—

- (a) the person—
  - (i) is charged with a disqualifying offence; or
  - (ii) is convicted of a serious offence; or
  - (iii) becomes a relevant disqualified person; or
  - (iv) is issued with a negative notice or negative exemption notice; or
- (b) any positive notice or positive exemption notice held by the person is cancelled.

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### **186 Reversal of decision refusing an eligibility declaration**

- (1) The commissioner may revoke a decision to refuse an eligibility application and issue an eligibility declaration if the commissioner is satisfied—
  - (a) the decision on the application was based on wrong or incomplete information; and
  - (b) based on the correct or complete information, the commissioner decides under section 180 that the commissioner may issue the eligibility declaration.
- (2) The commissioner may exercise the power under subsection (1) on the commissioner's own initiative or on application by the person whose eligibility application was refused.

## **Division 3 Prescribed notice required for employment of volunteers in regulated employment**

### **187 Application of div 3**

This division applies to employment of a volunteer.

### **188 Starting employment of volunteers**

- (1) A person (the *employer*) must not employ another person (the *employee*) in regulated employment unless—
  - (a) the employee has a current positive notice and the employer has notified the commissioner that the employer is proposing to employ the employee in regulated employment; or

*Note—*

See section 176 for how the notification must be given.

  - (b) the employee is a transitioning person and the employer has applied for a prescribed notice about the employee.

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Maximum penalty—50 penalty units.

*Note—*

For the application of this section to persons taken to be volunteers engaged in regulated employment mentioned in schedule 1, section 14(2), see the *Child Protection Act 1999*, section 148D.

(2) In this section—

***transitioning person*** means a person who was, but is no longer, a police officer or registered teacher if—

- (a) the person was, immediately before a prescribed notice application about the person was made as mentioned in subsection (1)(b), employed in regulated employment on the basis the person was a police officer or registered teacher—
  - (i) who held a positive exemption notice; or
  - (ii) about whom an exemption notice application was made; and
- (b) if paragraph (a)(i) applies—the person’s positive exemption notice—
  - (i) ceased to have effect—
    - (A) for a person who was a police officer—under section 289(2); or
    - (B) for a person who was a registered teacher—under section 289(3) because the person’s registration under the *Education (Queensland College of Teachers) Act 2005* ended under section 26(3), 47(2)(b)(i), 59 or 66(6) of that Act; or
  - (ii) was cancelled under section 302 but was not suspended under section 298 when it was cancelled; and
- (c) if paragraph (a)(ii) applies—the person’s exemption notice application was withdrawn—
  - (i) under section 263; or

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- (ii) under section 270 because the person's consent to employment screening was withdrawn under section 265.

### **189 Currency of prescribed notice for person continuing employment**

- (1) This section applies if—
  - (a) a person has a positive notice (the *previous notice*) and is employed in regulated employment; and
  - (b) the person's employer applied for a further prescribed notice about the person at least 30 days before the previous notice expires; and
  - (c) the application has not been decided.
- (2) Despite section 231(2), the previous notice remains current from the day it would otherwise end under that subsection until the application is decided or withdrawn unless the previous notice is earlier cancelled under division 11.

*Note—*

See, however, section 240 or 242 for the effect of a suspension of a prescribed notice.

## **Division 4 Prescribed notice required for employment of other persons in regulated employment**

### **190 Application of div 4**

This division does not apply to employment of a volunteer.

### **191 Continuing employment of certain regular employees**

- (1) This section applies if—

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- (a) a person (the *employee*) is employed in regulated employment under an agreement with another person (the *employer*); and
  - (b) after considering any agreement relating to the employment and the hours or times that the employee previously carried out work for the employer, the employer reasonably expects that the employee is likely to carry out work as part of the employment for the minimum frequency for regulated employment; and
  - (c) the employee does not have a current positive notice.
- (2) The employer must not continue to employ the employee in regulated employment unless the employer has applied for a prescribed notice, or further prescribed notice, about the employee.

Maximum penalty—50 penalty units.

## **192 Starting employment of certain regular employees**

- (1) This section applies if—
- (a) a person (the *employee*) is not employed in regulated employment but has previously been employed in regulated employment under 1 or more agreements with another person (the *employer*); and
  - (b) it is less than 1 year since the employee last carried out the regulated employment for the employer; and
  - (c) after considering any agreement relating to the proposed employment between the employer and employee and the employee's employment during the period when the employee was last employed by the employer, the employer reasonably expects that the employee is likely to carry out work as part of the proposed employment for the minimum frequency for regulated employment.
- (2) The employer must not employ the employee in regulated employment unless—

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- (a) the employee has a current positive notice and the employer has notified the commissioner that the employer is proposing to employ the employee in regulated employment; or

*Note—*

See section 176 for how the notification must be given.

- (b) the employer has applied for a prescribed notice about the employee.

Maximum penalty—50 penalty units.

### **193 Starting employment of new employees**

- (1) This section applies if—

- (a) a person (the *employee*) is not employed in regulated employment; and
- (b) another person (the *employer*) proposes to employ the employee in regulated employment; and
- (c) after considering any agreement relating to the proposed employment between the employer and employee, the employer reasonably expects that the employee is likely to carry out work as part of the proposed employment for the minimum frequency for regulated employment; and
- (d) section 192 does not apply to the proposed employment.

- (2) The employer must not employ the employee in regulated employment unless—

- (a) the employee has a current positive notice and the employer has notified the commissioner that the employer is proposing to employ the employee in regulated employment; or

*Note—*

See section 176 for how the notification must be given.

- (b) the employer has applied for a prescribed notice about the employee.

Maximum penalty—50 penalty units.

## 194 Prohibited employment

- (1) This section applies if a person (the *employee*) does not have a current positive notice.
- (2) A person (the *employer*) must not employ, or continue to employ, the employee in regulated employment if—
- (a) the employer has applied for a prescribed notice about the employee and the commissioner gives the employer—
- (i) a notice of deemed withdrawal relating to the employee other than under section 208; or
- (ii) a notice of deemed withdrawal relating to the employee under section 208; or

*Editor's note—*

section 208 (Deemed withdrawal of consent to employment screening if charged with disqualifying offence etc.)

- (b) the employer is aware that a negative notice or negative exemption notice has been issued to the employee and the notice is current; or
- (c) the employer has been given a notice in relation to the employee—
- (i) under section 175(3) or 244(4); or
- (ii) under section 339(3) because of a change in police information mentioned in section 339(3)(g).

*Editor's note—*

- section 175 (Commissioner to give notice if person signing or making prescribed notice application is disqualified person)
- section 244 (Cancelling positive notice on holder's request)

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- section 339 (Commissioner to give notice to particular entities about a change in police information)

Maximum penalty—

- (a) for subsection (2)(a)(i)—40 penalty units; or
- (b) otherwise—200 penalty units or 2 years imprisonment.

## **Division 5                      Obligations if holder of negative notice or negative exemption notice, or prescribed notice application is withdrawn**

### **195      Person holding negative notice or negative exemption notice not to apply for, or start or continue in, regulated employment etc.**

- (1) A person who holds a current negative notice or current negative exemption notice must not—
  - (a) sign an application about the person made by someone else under division 7; or
  - (b) make an application under division 8; or
  - (c) apply for, or start or continue in, regulated employment.

Maximum penalty—500 penalty units or 5 years imprisonment.

*Note—*

See section 197 in relation to carrying on a regulated business.

- (2) However, if the person held a positive notice but a negative notice or negative exemption notice was substituted for it under section 237, 239, 241 or 243, a court may not find the person contravened subsection (1) unless the court is satisfied that written notice of the substitution was given to the person.



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- (3) Also, if the person held a positive exemption notice but a negative exemption notice was substituted for it under section 295, 297 or 299, a court may not find the person contravened subsection (1) unless the court is satisfied that written notice of the substitution was given to the person.

**196 Person who has withdrawn consent to employment screening not to start or continue in regulated employment**

- (1) This section applies if—
- (a) an application about a person was made under division 7; and
  - (b) before a prescribed notice was issued, the application was withdrawn under section 209 because the person's consent to employment screening under this chapter was withdrawn under section 204 or 208.
- (2) The person must not start or continue in regulated employment unless a positive notice is issued to the person.

Maximum penalty—

- (a) if the person's consent to employment screening under this chapter was withdrawn under section 204—100 penalty units or 1 year's imprisonment; or
- (b) otherwise—500 penalty units or 5 years imprisonment.

**Division 6 Prescribed notice required for regulated business**

**197 Carrying on regulated business**

- (1) A person must not carry on a regulated business unless—
- (a) the person has a current positive notice; or
  - (b) the person—

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- (i) is a transitioning person; and
- (ii) has applied for a prescribed notice.

Maximum penalty—500 penalty units or 5 years imprisonment.

*Note—*

Under section 166, particular executive officers of a corporation that carries on a regulated business are taken to carry on the regulated business.

(2) In this section—

***transitioning person*** means a person who was, but is no longer, a police officer or registered teacher if—

- (a) the person was, immediately before the person applied for a prescribed notice as mentioned in subsection (1)(b)(ii), carrying on a regulated business on the basis the person was a police officer or registered teacher who—
  - (i) held a positive exemption notice; or
  - (ii) had made an exemption notice application; and
- (b) if paragraph (a)(i) applies—the person’s positive exemption notice—
  - (i) ceased to have effect—
    - (A) for a person who was a police officer—under section 289(2); or
    - (B) for a person who was a registered teacher—under section 289(3) because the person’s registration under the *Education (Queensland College of Teachers) Act 2005* ended under section 26(3), 47(2)(b)(i), 59 or 66(6) of that Act; or
  - (ii) was cancelled under section 302 and was not suspended under section 298 when it was cancelled; or

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- (c) if paragraph (a)(ii) applies—the person’s exemption notice application was withdrawn under section 276.

## **198 Currency of prescribed notice for person carrying on regulated business**

- (1) This section applies if—
- (a) a person who carries on a regulated business has a positive notice (a *previous notice*); and
  - (b) the person applies for a further prescribed notice about the person at least 30 days before the previous notice expires.
- (2) Despite section 231(2), the previous notice remains current from the day it would otherwise end under that subsection until the application is decided or withdrawn unless the previous notice is earlier cancelled under division 11.

*Note—*

See, however, section 240 or 242 for the effect of a suspension of a prescribed notice.

## **Division 7 Applying for prescribed notice for regulated employment**

### **199 Who makes application**

- (1) A person who proposes to start employing, or continue employing, another person in regulated employment may apply to the commissioner for a prescribed notice about the other person.
- (2) If, as part of a course undertaken by a trainee student of an education provider, the education provider proposes for the trainee student to perform work that is regulated employment, the education provider may apply to the commissioner for a prescribed notice about the trainee student.

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*Note—*

Under section 162, if the education provider makes a prescribed notice application about the trainee student, the person who proposes to start employing the trainee student is not required to make a prescribed notice application about the trainee student.

- (3) If a person who makes an application under this division asks the person about whom the application is made to sign the application, the person making the application must warn the person asked to sign it that it is an offence for a disqualified person to sign the application.

Maximum penalty for subsection (3)—10 penalty units.

## **200 Form of application**

- (1) An application under this division must be—
  - (a) in the approved form; and
  - (b) signed by, or on behalf of, the person making the application (the *applicant*); and
  - (c) signed by the person about whom the application is made (the *employee*); and
  - (d) if the applicant did not sight the documents as mentioned in subsection (2)(b)—be accompanied by the alternative certifications relating to the employee; and
  - (e) accompanied by the prescribed fee.
- (2) The approved form mentioned in subsection (1)(a) must include provision for—
  - (a) identifying information about the employee; and
  - (b) certification by the applicant that the applicant has sighted the employee's proof of identity documents; and
  - (c) a declaration by the applicant that the applicant has given the employee a warning as required under section 199(3); and

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- (d) a declaration by the employee that he or she is not a disqualified person; and
  - (e) the employee's consent to employment screening under this chapter.
- (3) The approved form mentioned in subsection (1)(a) must include—
- (a) a warning that it is an offence for a disqualified person to sign the application; and
  - (b) a statement about applying for an eligibility declaration.

## **201 Commissioner may obtain further information**

On receiving an application under this division, the commissioner may, orally or in writing—

- (a) ask the person making the application, or the person about whom the application is made (the *employee*), to provide, within a reasonable stated time—
  - (i) stated information that the commissioner reasonably needs to establish the employee's identity; or
  - (ii) stated information, including by way of a submission, about a stated matter that the commissioner reasonably believes is relevant to the application; or
- (b) ask the person making the application about why the person did not sign the documents as mentioned in section 200(2)(b).

## **202 Payment of fee for application**

- (1) For an application under this division—
- (a) the person about whom the application is made is liable to pay the prescribed fee mentioned in section 200(1)(e); and

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- (b) if the person's employer pays the prescribed fee, the amount of the fee is a debt payable by the person to the employer.
- (2) Subsection (1) applies subject to—
- (a) a written agreement entered into between the person and the employer; or
  - (b) an industrial instrument under the *Industrial Relations Act 1999*; or
  - (c) another document that regulates wages and conditions of employment and is enforceable under any of the following—
    - (i) the *Fair Work Act 2009* (Cwlth);
    - (ii) the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cwlth);
    - (iii) the repealed *Workplace Relations Act 1996* (Cwlth).

## **203 Withdrawal of application generally**

- (1) A person who makes an application under this division may withdraw the application at any time before it is decided.
- (2) A person who makes an application under this division is taken to have withdrawn the application if—
  - (a) the commissioner gives the person a written notice—
    - (i) asking the person to provide information about why the person did not sign the documents as mentioned in section 200(2)(b); and
    - (ii) warning the person that, if the person does not comply with the request, the person's application may be taken to have been withdrawn; and
  - (b) the person does not comply with the request within the stated time; and

- (c) the commissioner gives the person a notice of deemed withdrawal.

#### **204 Withdrawal of consent to employment screening generally**

- (1) The person about whom an application is made under this division may, orally or by written notice to the commissioner, withdraw the person's consent to employment screening under this chapter.
- (2) If a person withdraws his or her consent to employment screening under this chapter under subsection (1), the commissioner must give written notice of the withdrawal to the person who made the application.

#### **205 Deemed withdrawal of consent to employment screening if identity can not be established**

The person about whom an application is made under this division is taken to have withdrawn his or her consent to employment screening under this chapter if—

- (a) the commissioner gives the person a written notice—
  - (i) asking the person to provide, within a reasonable stated time, stated information that the commissioner reasonably needs to establish the person's identity; and
  - (ii) warning the person that, if the person does not comply with the request, the person's consent to employment screening under this chapter may be taken to have been withdrawn; and
- (b) the person does not comply with the request within the stated time; and
- (c) the commissioner can not establish with certainty the person's identity; and

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- (d) the commissioner gives the person, and the person who made the application, a notice of deemed withdrawal.

**206 Deemed withdrawal of consent to employment screening if particular requests not complied with**

The person about whom an application is made under this division is taken to have withdrawn his or her consent to employment screening under this chapter if—

- (a) the commissioner gives the person—
  - (i) a written notice asking the person to provide, within a reasonable stated time, stated information, including by way of a submission, about a stated matter that the commissioner reasonably believes is relevant to the application; or
  - (ii) a written notice under section 330; or
  - (iii) a written notice asking the person to give the necessary consent for section 332 or 333; or
  - (iv) a written notice asking the person to give the necessary consent for section 337 or 338; and
- (b) the notice includes a warning that, if the person does not comply with the notice, the person's consent to employment screening under this chapter may be taken to have been withdrawn; and
- (c) the person does not comply with the notice; and
- (d) the commissioner gives the person, and the person who made the application, a notice of deemed withdrawal.

**207 Deemed withdrawal of consent to employment screening if employment changes**

- (1) The person about whom an application is made under this division is taken to have withdrawn his or her consent to employment screening under this chapter if—



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- (a) the relevant person for the person has given the commissioner written notice that the person is no longer employed by the employer stated in the application, or the commissioner can not obtain information, in writing, from the relevant person that the person is employed by the employer; and
  - (b) the person has not given written notice to the commissioner about the end of the employment as required under section 230; and

*Note—*

If the person gives a written notice about the end of the employment under section 230, the written notice should provide for the withdrawal of the person's consent to employment screening under this chapter. See section 230(3).

- (c) the commissioner gives the person, and the person who made the application, a notice of deemed withdrawal.
- (2) For subsection (1), the relevant person for a person about whom an application is made under this division may give written notice to the commissioner that the person—
- (a) is employed, or continues to be employed, by the employer stated in the application; or
  - (b) is no longer employed by the employer stated in the application.

- (3) In this section—

***relevant person***, for a person, means—

- (a) the person's employer; or
- (b) if the person is a trainee student and the prescribed notice application is made by an education provider—the person's employer or the education provider.

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**208 Deemed withdrawal of consent to employment screening if charged with disqualifying offence etc.**

The person about whom an application is made under this division is taken to have withdrawn his or her consent to employment screening under this chapter if—

- (a) the person gives the commissioner, or the commissioner gives the person, written notice that the person—
  - (i) is charged with a disqualifying offence; or
  - (ii) is named as the respondent in an application for an offender prohibition order and the proceeding for the offender prohibition order has not ended; or
  - (iii) is subject to a temporary offender prohibition order or interim sexual offender order made after the day the application was made; and
- (b) the commissioner gives the person, and the person who made the application, a notice of deemed withdrawal.

**209 Effect of withdrawal of consent to employment screening**

- (1) This section applies if the person about whom an application is made under this division withdraws his or her consent to employment screening under this chapter before the commissioner issues a prescribed notice to the person.
- (2) The application is taken to have been withdrawn and the commissioner must not issue the prescribed notice.

**210 Notice about withdrawal of application or negative notice or negative exemption notice**

- (1) This section applies if—
  - (a) an application is made about a person under this division; and
  - (b) the application is withdrawn or the person already has a current negative notice or current negative exemption notice.

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- (2) The commissioner must give written notice about the withdrawal or the negative notice or negative exemption notice to each notifiable person for the person.
  - (3) If the notice under subsection (2) is about the person having a current negative notice or current negative exemption notice, it must state—
    - (a) the date of issue of the negative notice or negative exemption notice; and
    - (b) for a notice given to the chief executive (child safety) about a negative notice or negative exemption issued on the basis the person is or was a relevant disqualified person—the provision of this chapter under which the negative notice or negative exemption notice was issued.

## **Division 8                      Applying for prescribed notice for regulated businesses**

### **211      Who makes application**

A person who proposes to carry on, or continue carrying on, a regulated business may apply to the commissioner for a prescribed notice about the person.

### **212      Form of application**

- (1) An application under this division must be—
  - (a) in the approved form; and
  - (b) signed by the applicant; and
  - (c) accompanied by the prescribed fee.
- (2) The approved form must include provision for—
  - (a) identifying information about the applicant; and

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- (b) certification by a prescribed person that the prescribed person has sighted the applicant's proof of identity documents; and
  - (c) a declaration by the applicant that he or she is not a disqualified person.
- (3) The approved form must include—
- (a) a warning that it is an offence for a disqualified person to make the application; and
  - (b) a statement about applying for an eligibility declaration.

### **213 Commissioner may obtain further information**

On receiving an application under this division, the commissioner may ask the applicant, orally or in writing, to provide, within a reasonable stated time—

- (a) stated information that the commissioner reasonably needs to establish the applicant's identity; or
- (b) stated information, including by way of a submission, about a stated matter that the commissioner reasonably believes is relevant to the application.

### **214 Withdrawal of application generally**

A person may withdraw the person's application under this division at any time before it is decided.

### **215 Deemed withdrawal of application if identity can not be established**

A person who makes an application under this division is taken to have withdrawn the application if—

- (a) the commissioner gives the person a written notice—
  - (i) asking the person to provide, within a reasonable stated time, stated information that the

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- commissioner reasonably needs to establish the person's identity; and
- (ii) warning the person that, if the person does not comply with the request, the person's application may be taken to have been withdrawn; and
  - (b) the person does not comply with the request within the stated time; and
  - (c) the commissioner can not establish with certainty the person's identity; and
  - (d) the commissioner gives the person a notice of deemed withdrawal.

**216 Deemed withdrawal of application if particular requests not complied with**

A person who makes an application under this division is taken to have withdrawn the application if—

- (a) the commissioner gives the person—
  - (i) a written notice asking the person to provide, within a reasonable stated time, stated information, including by way of a submission, about a stated matter that the commissioner reasonably believes is relevant to the application; or
  - (ii) a written notice under section 330; or
  - (iii) a written notice asking the person to give the necessary consent for section 332 or 333; or
  - (iv) a written notice asking the person to give the necessary consent for section 337 or 338; and
- (b) the notice includes a warning that, if the person does not comply with the notice, the person's application may be taken to have been withdrawn; and
- (c) the person does not comply with the notice; and

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- (d) the commissioner gives the person a notice of deemed withdrawal.

**217 Deemed withdrawal of application if person charged with disqualifying offence etc.**

A person who makes an application under this division is taken to have withdrawn the application if—

- (a) the person gives the commissioner, or the commissioner gives the person, written notice that the person—
  - (i) is charged with a disqualifying offence; or
  - (ii) is named as the respondent in an application for an offender prohibition order and the proceeding for the offender prohibition order has not ended; or
  - (iii) is subject to a temporary offender prohibition order or interim sexual offender order made after the date of the application for the prescribed notice; and
- (b) the commissioner gives the person a notice of deemed withdrawal.

**218 Notice about withdrawal of application or negative notice or negative exemption notice**

- (1) This section applies if—
  - (a) a person makes an application under this division; and
  - (b) the application is withdrawn or the person already has a current negative notice or current negative exemption notice.
- (2) The commissioner must—
  - (a) if the application is withdrawn—give written notice of the withdrawal to each notifiable person for the person; or

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- (b) if the person already has a current negative notice or current negative exemption notice—give written notice of the negative notice or negative exemption notice to the person and each notifiable person for the person.
- (3) If the notice under subsection (2) is about the person having a current negative notice or current negative exemption notice, it must state—
- (a) the date of issue of the negative notice or negative exemption notice; and
  - (b) for a notice given to the chief executive (child safety) about a negative notice or negative exemption issued on the basis the person is or was a relevant disqualified person—the provision of this chapter under which the negative notice or negative exemption notice was issued.

## **Division 9                      Deciding prescribed notice application**

### **219      Application of div 9**

This division applies if a prescribed notice application is made about a person and the application is not withdrawn.

### **220      Positive notice or negative notice to be issued**

The commissioner must decide the prescribed notice application by issuing either of the following to the person—

- (a) a notice declaring the application is approved (a *positive notice*);
- (b) a notice declaring the application is refused (a *negative notice*).

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**221 Issuing prescribed notice to person with no conviction etc. or conviction for offence other than serious offence**

- (1) Subject to subsection (2), the commissioner must issue a positive notice to the person if—
- (a) the commissioner is not aware of any police information or disciplinary information about the person; or
  - (b) the commissioner is not aware of a conviction of the person for any offence but is aware that there is 1 or more of the following about the person—
    - (i) investigative information;
    - (ii) disciplinary information;
    - (iii) a charge for an offence other than a disqualifying offence;
    - (iv) a charge for a disqualifying offence that has been dealt with other than by a conviction; or
- Note for subparagraph (iv)—*
- For charges for disqualifying offences that have not been dealt with, see sections 208, 217 and 240 (in relation to prescribed notices), and sections 269, 279 and 298 (in relation to exemption notices).
- (c) the commissioner is aware of a conviction of the person for an offence other than a serious offence.
- (2) If subsection (1)(b) or (c) applies to the person and the commissioner is satisfied it is an exceptional case in which it would not be in the best interests of children for the commissioner to issue a positive notice, the commissioner must issue a negative notice to the person.

**222 Issuing prescribed notice to previous holder of a positive exemption notice**

- (1) Subject to subsection (2), the commissioner must issue a positive notice to the person if—



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- (a) the person was the holder of a positive exemption notice that was cancelled because the person resigned or retired from being a police officer, and there has not been a change in police information about the person since the resignation or retirement; or
  - (b) the person was the holder of a positive exemption notice that was cancelled because the person surrendered the person's registration under the *Education (Queensland College of Teachers) Act 2005*, and there has not been a change in police information about the person since the surrender.
- (2) If subsection (1)(a) or (b) applies to the person and the commissioner is satisfied it is an exceptional case in which it would not be in the best interests of children for the commissioner to issue a positive notice, the commissioner must issue a negative notice to the person.

**223 Issuing prescribed notice to person whose negative notice or negative exemption notice is cancelled or who holds eligibility declaration**

- (1) This section applies if—
- (a) the commissioner has—
    - (i) under section 236, cancelled a negative notice issued to the person; or
    - (ii) under section 294, cancelled a negative exemption notice issued to the person; or
  - (b) the commissioner has issued an eligibility declaration to the person, and the eligibility declaration has not expired.
- (2) If the commissioner is not aware of any police information or disciplinary information about the person, other than information known to the commissioner at the time of taking the action mentioned in subsection (1)(a) or (b), the commissioner must issue a positive notice to the person.

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- (3) Subject to subsection (4), if the commissioner is aware of police information or disciplinary information about the person, other than information known to the commissioner at the time of taking the action mentioned in subsection (1)(a) or (b), the commissioner must issue a negative notice to the person.
- (4) If subsection (3) applies to the person and the commissioner is satisfied it is an exceptional case in which it would not harm the best interests of children for the commissioner to issue a positive notice, the commissioner must issue a positive notice to the person.

#### **224 Issuing negative notice to relevant disqualified person except because of temporary or interim order**

- (1) The commissioner must issue a negative notice to the person if the commissioner is aware the person is a relevant disqualified person.
- (2) Subsection (1) does not apply if the person is a relevant disqualified person only because the person is subject to either or both of the following—
  - (a) a temporary offender prohibition order;
  - (b) an interim sexual offender order.

#### **225 Issuing prescribed notice to other persons**

- (1) Subject to section 223 and subsection (2), the commissioner must issue a negative notice to the person if the commissioner is aware the person—
  - (a) is a relevant disqualified person because the person is subject to a temporary offender prohibition order or interim sexual offender order; or
  - (b) has been a relevant disqualified person at any time but is no longer a relevant disqualified person (other than a person who was a relevant disqualified person by reason

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of a conviction, sentence or order that was set aside on appeal); or

- (c) has been convicted of a serious offence.
- (2) If subsection (1)(a), (b) or (c) applies to the person and the commissioner is satisfied it is an exceptional case in which it would not harm the best interests of children for the commissioner to issue a positive notice, the commissioner must issue a positive notice to the person.

## **226 Deciding exceptional case if conviction or charge**

- (1) This section applies if the commissioner—
- (a) is deciding whether or not there is an exceptional case for the person; and
  - (b) is aware that the person has been convicted of, or charged with, an offence.
- (2) The commissioner 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 a disqualifying 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 employment, or carrying on a business, that involves or may involve children; and
    - (v) in the case of a conviction—the penalty imposed by the court and, if the court decided not to impose an imprisonment order for the offence or not to make a disqualification order under section 357, the court’s reasons for its decision;

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- (b) any information about the person given to the commissioner under section 318 or 319;
- (c) any report about the person's mental health given to the commissioner under section 335;
- (d) any information about the person given to the commissioner under section 337 or 338;
- (e) anything else relating to the commission, or alleged commission, of the offence that the commissioner reasonably considers to be relevant to the assessment of the person.

**227 Deciding exceptional case if investigative information exists**

- (1) This section applies if the commissioner—
  - (a) is deciding whether or not there is an exceptional case for the person; and
  - (b) is aware of investigative information about the person.
- (2) The commissioner 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 commissioner reasonably considers relevant to the assessment of the person.

**228 Deciding exceptional case if disciplinary information exists**

- (1) This section applies if the commissioner—
  - (a) is deciding whether or not there is an exceptional case for the person; and
  - (b) is aware of disciplinary information about the person.
- (2) The commissioner must have regard to the following—

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- (a) the decision or order of the decision-maker relating to the disciplinary information and the reasons for the decision or order;
  - (b) any decision or order of an entity hearing and deciding a review of, or appeal against, a decision or order mentioned in paragraph (a), and the reasons for the decision or order;
  - (c) the relevance of the disciplinary information to employment, or carrying on a business, that involves or may involve children;
  - (d) anything else relating to the disciplinary information that the commissioner reasonably considers to be relevant to the assessment of the person.

**229 Commissioner to invite submissions from person about particular information**

- (1) This section applies if the commissioner—
  - (a) must decide whether or not there is an exceptional case for the person; and
  - (b) is proposing to decide the prescribed notice application by issuing a negative notice to the person.
- (2) The commissioner must give the person a written notice—
  - (a) stating the following—
    - (i) the police information about the person that the commissioner is aware of;
    - (ii) any disciplinary information about the person that the commissioner is aware of; and
  - (b) inviting the person to give the commissioner, within a stated time, a submission about—
    - (i) whether or not there is an exceptional case for the person; or

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- (ii) why the commissioner should issue a positive notice, or should not issue a negative notice, because of an exceptional case for the person.
- (3) The stated time must be reasonable and, in any case, at least 7 days after the commissioner gives the notice to the person.
- (4) Before deciding the application, the commissioner must consider any submission received from the person within the stated time.
- (5) A submission mentioned in subsection (2)(b) may be made orally or in a language other than English if the commissioner considers a submission in that form is reasonable in the circumstances.

### **230 Commissioner to be notified of change of particular information**

- (1) This section applies if any of the following (each a *relevant change*) happens before the commissioner has issued a prescribed notice to the person in relation to the prescribed notice application—
  - (a) the person's name or contact details, as stated in the application, change;
  - (b) the person's employment, as stated in the application, ends;
  - (c) the person stops carrying on the business as stated in the application.
- (2) The person must give notice, in the approved form, to the commissioner 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 a person to give notice withdrawing the person's consent to employment screening under this chapter.

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**231 Currency of prescribed notice and positive notice blue card**

- (1) A negative notice remains current until it is cancelled under division 11.
- (2) A positive notice remains current for 3 years after it is issued, unless it is earlier cancelled under division 11.
- (3) A positive notice blue card relating to a positive notice remains current for the same period as the positive notice.

**Division 10 Steps after prescribed notice application decided**

**232 Application of div 10**

This division applies if the commissioner decides a prescribed notice application about a person.

**233 Additional information to be given if negative notice issued**

If the commissioner issues a negative notice to the person, the negative notice must be accompanied by a written notice stating the following—

- (a) the reasons for the commissioner's decision to issue a negative notice to the person;
- (b) the relevant review and appeal information;
- (c) that it is an offence for a person who holds a current negative notice to—
  - (i) sign an application about the person made by someone else under division 7; or
  - (ii) make an application under division 8; or

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- (iii) apply for, or start or continue in, regulated employment; or
- (iv) carry on a regulated business.

### **234 Notifiable person to be notified of decision**

- (1) After the commissioner issues a prescribed notice to the person, the commissioner must give each notifiable person for the person a written notice stating whether the person was issued a positive notice or negative notice.
- (2) If the person is issued with a negative notice on the basis the person is or was a relevant disqualified person and a notice about the person is given to the chief executive (child safety) under subsection (1), the notice must also state the provision of this part under which the negative notice was issued.

*Note—*

See sections 224 and 225 for circumstances in which a negative notice is issued to a person on the basis the person is or was a relevant disqualified person.

### **235 Department to be given particular advice**

- (1) This section applies if—
  - (a) the person is a person about whom the chief executive of a department has made an application under division 7; and
  - (b) the commissioner issues a positive notice to the person; and
  - (c) the chief executive of the department asks the commissioner for advice under this section.
- (2) The commissioner may advise the chief executive of the department that the chief executive may need to undertake a further assessment of the person under the *Public Service Act 2008*, chapter 5, part 6, division 3A to decide whether or not the department should engage the person.



*Note—*

The *Public Service Act 2008*, chapter 5, part 6, division 3A does not apply in relation to the engagement of particular persons by a department. See section 164 of that Act.

- (3) However, the commissioner may give the advice mentioned in subsection (2) only if the commissioner is aware that the person has a criminal history.
- (4) If the commissioner gives advice under subsection (2), the advice must be accompanied by a written notice stating that no adverse inference about the person's criminal history or suitability for engagement, or continued engagement, by the department may be drawn by the fact the advice was given.

## **Division 11                      Cancellation or suspension of prescribed notices**

### **236      Cancelling negative notice etc. on holder's application**

- (1) This section applies if—
  - (a) the commissioner has issued a negative notice to a person and the notice is current; and
  - (b) the person is not a relevant disqualified person.
- (2) The person may apply to the commissioner to cancel the notice.
- (3) The application may not be made less than 2 years after the issue of the negative notice or any previous application by the person under this section, unless—
  - (a) the decision to issue the negative notice was based on wrong or incomplete information; or
  - (b) the negative notice was issued because the person was a relevant disqualified person and the person is no longer a relevant disqualified person.
- (4) The application must be—

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- (a) in the approved form; and
  - (b) signed by the person; and
  - (c) accompanied by the prescribed fee.
- (5) The person may state in the application anything the person considers relevant to the commissioner's decision including, in particular, any change in the person's circumstances since the negative notice was issued.
- (6) Division 9 applies to the application as if—
- (a) the application were a prescribed notice application about the person; and
  - (b) a reference in the division to issuing a positive notice were a reference to granting the application; and
  - (c) a reference in the division to issuing a negative notice were a reference to refusing the application.
- (7) If the commissioner grants the application, the commissioner must cancel the negative notice to which the application relates.
- (8) If the commissioner refuses the application, the commissioner must give the person a written notice stating—
- (a) that the application has been refused and the person's negative notice continues in effect subject to section 231; and
  - (b) the reasons for the commissioner's decision to refuse the application; and
  - (c) the relevant review and appeal information.

### **237 Cancelling positive notice and substituting it with negative notice**

- (1) The commissioner may cancel a person's positive notice (the *cancelled notice*) and substitute a negative notice if the commissioner is satisfied that—

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- (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 commissioner should issue a negative notice to the person; or
  - (b) subject to sections 240 and 242, it is appropriate to cancel the positive notice having regard to—
    - (i) disciplinary information, or information received under part 6, division 2 to 4, about the person, other than information known to the commissioner at the time the positive notice was issued; or
    - (ii) a decision of a court made after the positive notice was issued, including the reasons for the decision, relating to an offence committed by the person.

*Note—*

Sections 240 and 242 provide for the suspension of a person's positive notice, in particular circumstances, before the commissioner decides whether to issue a further positive notice or a negative notice to the person.

- (2) In making a decision under subsection (1), the commissioner must make the decision as if it were a decision about a prescribed notice application and, for that purpose, division 9 applies in relation to making the decision.
- (3) Without limiting subsection (2), if the commissioner must decide whether or not there is an exceptional case for the person and is proposing to substitute a negative notice as mentioned in subsection (1)—
  - (a) the commissioner must comply with section 229(2) to (5); and
  - (b) for that purpose, the reference in section 229(4) to deciding the application is taken to include a reference to deciding whether to substitute a negative notice for a positive notice under this section.

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*Note—*

Section 229 is about inviting a person to make submissions about the existence of an exceptional case for the person.

- (4) If, under subsection (1), the commissioner cancels a person's positive notice and issues a negative notice to the person, the commissioner must—
  - (a) give the person a written notice stating—
    - (i) the reasons for the commissioner's decision to cancel the person's positive notice and issue a negative notice to the person; and
    - (ii) the relevant review and appeal information; and
  - (b) give each notifiable person a written notice stating that—
    - (i) the person's positive notice has been cancelled; and
    - (ii) the person has been issued a negative notice.
- (5) Also, the commissioner must consider whether notice must be given under section 342(2)(a), 343 or 344.
- (6) If the commissioner's decision under subsection (2) is that the person should be issued a positive notice—
  - (a) the commissioner must not cancel the person's positive notice under subsection (1); and
  - (b) the person's positive notice continues in effect subject to section 231.

## **238 Cancelling negative notice and issuing positive notice**

- (1) The commissioner may cancel a person's negative notice (the *cancelled notice*) and, subject to subsection (3), substitute it with a positive notice if—
  - (a) the commissioner is satisfied that the decision on the application for the cancelled notice was based on wrong or incomplete information and, based on the correct or

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- complete information, the commissioner should issue a positive notice to the person; or
- (b) the negative notice was issued on the basis the person was a relevant disqualified person and the person is no longer a relevant disqualified person; or
  - (c) the commissioner is satisfied that it is appropriate to cancel the negative notice having regard to information not known to the commissioner at the time the negative notice was issued.
- (2) In making a decision under subsection (1), the commissioner must make the decision as if it were a decision about a prescribed notice application and, for that purpose, division 9 applies in relation to making the decision.
- (3) If the commissioner's decision under subsection (2) is that the person should be issued a positive notice, the commissioner may issue a positive notice to the person only if the commissioner is satisfied the person is proposing, if the positive notice is issued—
- (a) to be employed in regulated employment; or
  - (b) to carry on a regulated business.
- Note—*
- See, however, sections 195(1)(c) and 197.
- (4) The commissioner may cancel a person's negative notice under subsection (1) even if—
- (a) a positive notice is not issued to the person under subsection (3) until a later time; or
  - (b) a positive notice is never issued to the person under subsection (3).
- (5) If the commissioner's decision under subsection (2) is that the person should be issued a negative notice—
- (a) the commissioner must not cancel the person's negative notice under subsection (1); and

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- (b) the person's negative notice continues in effect subject to section 231.
- (6) The commissioner may—
  - (a) act under subsection (1) on the commissioner's own initiative; or
  - (b) if a person has applied for the cancellation of the person's negative notice under section 236—act under subsection (1)(a) or (b) instead of cancelling the person's negative notice under section 236.

### **239 Cancelling positive notice if relevant disqualified person**

- (1) This section applies if a person who is the holder of a positive notice, including a positive notice that is suspended under section 240 or 242, becomes a relevant disqualified person other than only because the person is subject to either or both of the following—
  - (a) a temporary offender prohibition order;
  - (b) an interim sexual offender order.

*Note—*

See section 240 in relation to the holder of a positive notice who becomes a relevant disqualified person because the holder is subject to a temporary offender prohibition order or interim sexual offender order (or both).

- (2) The commissioner must cancel the person's positive notice and substitute a negative notice.
- (3) At the time the commissioner gives the person the negative notice, the commissioner must give the person a further written notice stating—
  - (a) the reasons for the decision; and
  - (b) the relevant review and appeal information; and
  - (c) that the person may apply under section 236 for the cancellation of the negative notice unless the person is a relevant disqualified person.

- (4) Also, the commissioner must give each notifiable person for the person a written notice stating that the person's positive notice has been cancelled and the person has been issued a negative notice.
- (5) A notice given to the chief executive (child safety) under subsection (4) about a person must state that the person was given the negative notice under this section.
- (6) Also, the commissioner must consider whether notice must be given under section 342(2)(a), 343 or 344.

**240 Suspension of a positive notice if charged with disqualifying offence or subject to temporary or interim order**

- (1) This section applies if a person who is the holder of a positive notice (the *suspended person*)—
  - (a) is charged with a disqualifying offence; or
  - (b) becomes a relevant disqualified person because the person is subject to either or both of the following—
    - (i) a temporary offender prohibition order;
    - (ii) an interim sexual offender order.

*Note—*

If the holder of a positive notice becomes a relevant disqualified person for another reason, the positive notice must be cancelled under section 239.

- (2) The commissioner must, by written notice given to the suspended person, suspend the person's positive notice.
- (3) The notice about the suspension must state the following—
  - (a) that the positive notice held by the suspended person is suspended;
  - (b) the reason for the suspension;
  - (c) how long the suspension will continue;
  - (d) the effect of the suspension;

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- (e) that the suspended person must return the positive notice, and any positive notice blue card relating to the positive notice, to the commissioner within 7 days after the notice about the suspension is given to the person;
  - (f) the relevant review and appeal information.
- (4) Until the suspension ends, the suspended person must not—
- (a) apply for or start in regulated employment; or
  - (b) if the suspended person is in regulated employment when the positive notice is suspended—perform work that is regulated employment; or
  - (c) start or continue to carry on a regulated business.

Maximum penalty—500 penalty units or 5 years imprisonment.

- (5) Within 7 days after the suspended person is given notice under subsection (2), the person must return each of the following to the commissioner—
- (a) the positive notice;
  - (b) any positive notice blue card relating to the positive notice.

Maximum penalty—100 penalty units.

- (6) The commissioner must give each notifiable person for the suspended person a written notice stating the following—
- (a) that the positive notice held by the suspended person is suspended;
  - (b) how long the suspension will continue;
  - (c) the effect of the suspension;
  - (d) that the notifiable person must not allow the suspended person to perform work that is regulated employment while the suspended person's positive notice is suspended;



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- (e) that the suspended person's employer must not terminate the suspended person's employment or continued employment solely or mainly because the person's positive notice is suspended.
- (7) Also, the commissioner must consider whether notice must be given under section 342(2)(b) or 344.
- (8) A person to whom a notice is given under subsection (6) or (7) must not allow the suspended person to perform work that is regulated employment while the suspended person's positive notice is suspended.

Maximum penalty—200 penalty units.

- (9) A person's employer who is given a notice under subsection (6) must not terminate the person's employment solely or mainly because the person's positive notice is suspended.

*Note—*

See also section 356(4).

- (10) Without limiting subsection (4) and despite section 231(2), a positive notice remains current during the period of suspension even if it would otherwise end under section 231(2) during that period.

## **241 Ending of suspension under s 240 and issue of further prescribed notice**

- (1) This section applies to a positive notice held by a person that is suspended under section 240 (the *suspended notice*).
- (2) The suspension ends if—
- (a) the suspended notice is cancelled under another provision of this division; or
  - (b) on the commissioner's own initiative or on application by the person—
    - (i) the commissioner cancels the suspended notice and issues a further positive notice or a negative notice to the person; or

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- (ii) the commissioner cancels the suspended notice as mentioned in subsection (5).
- (3) In making a decision under subsection (2)(b) to cancel the suspended notice and, subject to subsection (5), issue a further positive notice or a negative notice to the person, the commissioner must make the decision as if it were a decision about a prescribed notice application and, for that purpose, division 9 applies in relation to making the decision.
- (4) Without limiting subsection (3), if the commissioner must decide whether or not there is an exceptional case for the person and is proposing to issue a negative notice as mentioned in subsection (2)(b)—
  - (a) the commissioner must comply with section 229(2) to (5); and
  - (b) for that purpose, the reference in section 229(4) to deciding the application is taken to include a reference to deciding whether to issue a further positive notice or a negative notice under this section.

*Note—*

Section 229 is about inviting a person to make submissions about the existence of an exceptional case for the person.

- (5) The commissioner may cancel the suspended positive notice without issuing a further prescribed notice to the person if the commissioner is satisfied that the person is no longer proposing to be employed in regulated employment or to carry on a regulated business.
- (6) If the commissioner cancels the suspended notice and issues a negative notice under subsection (2)(b) to the person, the commissioner must give the person a written notice stating—
  - (a) the reasons for the commissioner’s decision to cancel the person’s positive notice and issue a negative notice to the person; and
  - (b) the relevant review and appeal information.

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- (7) If the commissioner cancels the suspended notice under this section, the commissioner must—
- (a) give each notifiable person for the person a written notice stating—
    - (i) that the person’s suspended notice has been cancelled under this section; and
    - (ii) whether the person has been issued a further positive notice or negative notice; and
  - (b) if section 235 applied in relation to the original application for a prescribed notice about the person and the commissioner issues a further positive notice to the person—give the advice mentioned in that section to the relevant chief executive.
- (8) Also, the commissioner must consider whether notice must be given under section 342(2)(c), 343 or 344.
- (9) Despite an application made by the person as mentioned in subsection (2)(b), the commissioner is not required to decide the application—
- (a) while a charge against the person for a disqualifying offence is pending; or
  - (b) while the person is a relevant disqualified person because the person is subject to a temporary offender prohibition order or interim sexual offender order; or
  - (c) if the person has been convicted of a disqualifying offence and—
    - (i) the period allowed for an appeal relating to the conviction or sentence of the person has not ended; or
    - (ii) an appeal relating to the conviction or sentence has started but has not been decided; or
  - (d) if the person is subject to a final offender prohibition order, disqualification order or final sexual offender order and—

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- (i) the period allowed for an appeal relating to the order has not ended; or
- (ii) an appeal relating to the order has started but has not been decided.

**242 Suspension of a positive notice held by registered teacher if teacher registration suspended**

- (1) This section applies if—
  - (a) a registered teacher (the *teacher*) holds a positive notice; and
  - (b) the teacher's registration is suspended under the *Education (Queensland College of Teachers) Act 2005*, section 49.
- (2) The commissioner must, by written notice given to the teacher, suspend the teacher's positive notice.
- (3) The notice about the suspension must state the following—
  - (a) the positive notice held by the teacher is suspended;
  - (b) the reason for the suspension;
  - (c) how long the suspension will continue;
  - (d) the effect of the suspension;
  - (e) that the teacher must return the positive notice, and any positive notice blue card relating to the positive notice, to the commissioner within 7 days after the notice about the suspension is given to the teacher;
  - (f) the relevant review and appeal information.
- (4) Until the suspension ends, the teacher must not—
  - (a) apply for or start in regulated employment; or
  - (b) if the teacher is in regulated employment when the positive notice is suspended—perform work that is regulated employment; or
  - (c) start or continue to carry on a regulated business.

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Maximum penalty—500 penalty units or 5 years imprisonment.

- (5) Within 7 days after the teacher is given notice under subsection (2), the teacher must return each of the following to the commissioner—
- (a) the positive notice;
  - (b) any positive notice blue card relating to the positive notice.

Maximum penalty—100 penalty units.

- (6) The commissioner must give each notifiable person for the teacher a written notice stating the following—
- (a) the positive notice held by the teacher is suspended;
  - (b) how long the suspension will continue;
  - (c) the effect of the suspension;
  - (d) that the notifiable person must not allow the teacher to perform work that is regulated employment while the teacher's positive notice is suspended;
  - (e) that the suspended teacher's employer must not terminate the teacher's employment or continued employment solely or mainly because the teacher's positive notice is suspended.
- (7) Also, the commissioner must consider whether notice must be given under section 342(2)(b) or 344(2).
- (8) A person to whom a notice is given under subsection (6) or (7) must not allow the teacher to perform work that is regulated employment while the teacher's positive notice is suspended.

Maximum penalty—200 penalty units.

- (9) A person's employer who is given a notice under subsection (6) may not terminate the person's employment solely or mainly because the person's positive notice is suspended.

*Note—*

See also section 356(4).

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- (10) Without limiting subsection (4) and despite section 231(2), a positive notice remains current during the period of suspension even if it would otherwise end under section 231(2) during that period.
- (11) This section applies despite section 173.

**243 Ending of suspension under s 242 and issue of further prescribed notice or exemption notice**

- (1) This section applies to a positive notice held by a person that is suspended under section 242 (the *suspended notice*).
- (2) The suspension ends if—
  - (a) the suspended notice is cancelled under another provision of this division; or
  - (b) on the commissioner’s own initiative or on application by the person—
    - (i) the commissioner cancels the suspended notice and issues the following (*replacement notice*) to the person—
      - (A) if the person is not a registered teacher when the suspended notice is cancelled—a further positive notice or a negative notice;
      - (B) if the person is a registered teacher when the suspended notice is cancelled—a positive exemption notice or negative exemption notice; or
    - (ii) the commissioner cancels the suspended notice as mentioned in subsection (6).
- (3) If the person is not a registered teacher when the commissioner is acting under subsection (2)(b), in making a decision to cancel the suspended notice and, subject to subsection (6), issue a replacement notice to the person, the commissioner must make the decision as if it were a decision about a prescribed notice application and, for that purpose, division 9 applies in relation to making the decision.

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- (4) If the person is a registered teacher when the commissioner is acting under subsection (2)(b), in making a decision to cancel the suspended notice and, subject to subsection (6), issue a replacement notice to the person, the commissioner must make the decision as if it were a decision about an exemption notice application and, for that purpose, part 5, division 8 applies in relation to making the decision.
  - (5) Without limiting subsection (3) or (4), if the commissioner must decide whether or not there is an exceptional case for the person and is proposing to issue a replacement notice as mentioned in subsection (2)(b)—
    - (a) the commissioner must comply with section 229(2) to (5); and
    - (b) for that purpose, the reference in section 229(4) to deciding the application is taken to include a reference to deciding whether to issue a replacement notice under this section.

*Note—*

Section 229 is about inviting a person to make submissions about the existence of an exceptional case for the person.

- (6) The commissioner may cancel the suspended positive notice without issuing a further prescribed notice or an exemption notice to the person if the commissioner is satisfied that the person is no longer proposing to be employed in regulated employment or to carry on a regulated business.
- (7) If the commissioner cancels the suspended notice and issues a negative notice or negative exemption notice to the person, the commissioner must give the person a written notice stating—
  - (a) the reasons for the commissioner's decision to cancel the person's positive notice and issue a negative notice or negative exemption notice to the person; and
  - (b) the relevant review and appeal information.
- (8) If the commissioner cancels the suspended notice under this section, the commissioner must—

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- (a) give each notifiable person for the person a written notice stating—
    - (i) that the person’s suspended notice has been cancelled under this section; and
    - (ii) whether the person has been issued a further positive notice or a negative notice, positive exemption notice or negative exemption notice; and
  - (b) if section 235 applied in relation to the original application for a prescribed notice about the person and the commissioner issues a further positive notice or a positive exemption notice to the person—give the advice mentioned in that section to the relevant chief executive.
- (9) Also, the commissioner must consider whether notice must be given under section 342(2)(c), 343 or 344.
- (10) Despite an application made by the person as mentioned in subsection (2)(b)(ii), the commissioner is not required to decide the application while the person’s registration under the *Education (Queensland College of Teachers) Act 2005* is suspended under section 49 of that Act.
- (11) This section applies despite section 173.

#### **244 Cancelling positive notice on holder’s request**

- (1) A person, including a person whose positive notice is suspended under section 240 or 242, may, by written notice, ask the commissioner to cancel the person’s positive notice.
- (2) After receiving the written notice, the commissioner must—
  - (a) cancel the positive notice; and
  - (b) give the person a written notice stating that—
    - (i) the positive notice has been cancelled; and



- 
- (ii) the person must not perform work that is regulated employment other than in accordance with subsection (3); and
    - (iii) the person must not carry on a regulated business other than in accordance with section 197 or 259.
  - (3) The person must not perform work that is regulated employment unless—
    - (a) if paragraph (b) does not apply—the commissioner issues a further positive notice to the person; or
    - (b) if the person is a police officer or registered teacher—
      - (i) the commissioner issues a positive exemption notice to the person; or
      - (ii) an exemption notice application is made about the person.

Maximum penalty—500 penalty units or 5 years imprisonment.

*Note—*

See sections 197 and 259 in relation to carrying on a regulated business.

- (4) The commissioner must give written notice about the cancellation of the person's positive notice to each notifiable person for the person.
- (5) Also, the commissioner must consider whether notice must be given under section 342(2)(d), 343 or 344.
- (6) A notice under subsection (4) or (5) must state that a person to whom the notice is given must not allow the person whose positive notice is cancelled to perform work that is regulated employment other than in circumstances mentioned in subsection (3).

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## **Division 12                    Return of prescribed notices etc.**

### **245    Return of previously held prescribed notice or exemption notice**

- (1) This section applies if a person to whom a prescribed notice (*new notice*) is issued previously held a prescribed notice or exemption notice (the *old notice*) other than a positive notice or positive exemption notice that has been cancelled.
- (2) Unless the person has a reasonable excuse, the person must, within 14 days after the new notice is issued, give the commissioner—
  - (a) the old notice; and
  - (b) if the old notice was a positive notice—any positive notice blue card relating to the old notice.

Maximum penalty—10 penalty units.

### **246    Return of cancelled positive notice**

- (1) This section applies to a person with a current positive notice if the commissioner cancels the notice.
- (2) The person must immediately return the positive notice, and any positive notice blue card relating to the positive notice, to the commissioner, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

## **Division 13                    Persons who are police officers or registered teachers**

### **247    Prescribed notices held by police officers and registered teachers**

- (1) This section applies if—

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- (a) a person holds a current positive notice or current negative notice; and
  - (b) the person is or becomes a police officer or registered teacher.
- (2) The person's positive notice or negative notice continues in effect subject to section 231.
  - (3) This chapter continues to apply in relation to the person's positive notice or current negative notice while it remains current.
  - (4) If, under a provision of division 11 or part 7, division 1, the commissioner is required or permitted to issue a positive notice to the person and the commissioner is aware the person is a police officer or registered teacher, the commissioner must instead issue a positive exemption notice to the person.
  - (5) If, under a provision of division 11 or part 7, division 1, the commissioner is required or permitted to issue a negative notice to the person and the commissioner is aware the person is a police officer or registered teacher, the commissioner must instead issue a negative exemption notice to the person.
  - (6) This section applies despite section 173.

## **Part 5 Exemption notices**

### **Division 1 Preliminary**

#### **248 Part applies to police officers or registered teachers**

This part applies only in relation to the employment of a person, or the carrying on of a business by a person, who is—

- (a) a police officer; or
- (b) a registered teacher.

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## **249 Giving notification under pt 5**

- (1) This section applies in relation to a provision of this part that provides that a person (the *employer*) must notify the commissioner about the employment of someone else (the *employee*) in regulated employment.
- (2) The notification must—
  - (a) be in the approved form; and
  - (b) if the employer did not give the certification mentioned in subsection (3)(b)—be accompanied by the alternative certifications relating to the employee.
- (3) The approved form mentioned in subsection (2)(a) must include provision for—
  - (a) identifying information about the employee; and
  - (b) certification by the employer that the employer has sighted the employee's proof of identity documents.

## **Division 2 Exemption notice required for employment of volunteers in regulated employment**

### **250 Application of div 2**

This division applies to employment of a volunteer.

### **251 Starting employment**

A person (the *employer*) must not employ another person (the *employee*) in regulated employment unless—

- (a) the employee has a current positive exemption notice and the employer has notified the commissioner that the employer is proposing to employ the employee in regulated employment; or

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- (b) the employee is a transitioning person, and the employer has notified the commissioner that the employer is proposing to employ the employee in regulated employment; or
  - (c) the employer has applied for an exemption notice about the employee.

*Note—*

See section 249 for how the notification under paragraph (a) or (b) must be given.

Maximum penalty—50 penalty units.

### **Division 3                      Exemption notice required for employment of other persons in regulated employment**

#### **252      Application of div 3**

This division does not apply to employment of a volunteer.

#### **253      Continuing employment of certain regular employees**

- (1) This section applies if—
  - (a) a person (the *employee*) is employed in regulated employment under an agreement with another person (the *employer*); and
  - (b) after considering any agreement relating to the employment and the hours or times that the employee previously carried out work for the employer, the employer reasonably expects that the employee is likely to carry out work as part of the employment for the minimum frequency for regulated employment; and
  - (c) the employee is neither of the following—
    - (i) a transitioning person;

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- (ii) the holder of a current positive exemption notice.
- (2) The employer must not continue to employ the employee in regulated employment unless the employer has applied for an exemption notice, or further exemption notice, about the employee.

Maximum penalty—50 penalty units.

## **254 Starting employment of certain regular employees**

- (1) This section applies if—
- (a) a person (the *employee*) is not employed in regulated employment but has previously been employed in regulated employment under 1 or more agreements with another person (the *employer*); and
  - (b) it is less than 1 year since the employee last carried out the regulated employment for the employer; and
  - (c) after considering any agreement relating to the proposed employment between the employer and employee and the employee's employment during the period when the employee was last employed by the employer, the employer reasonably expects that the employee is likely to carry out work as part of the proposed employment for the minimum frequency for regulated employment.
- (2) The employer must not employ the employee in regulated employment unless—
- (a) the employee has a current positive exemption notice and the employer has notified the commissioner that the employer is proposing to employ the employee in regulated employment; or
  - (b) the employee is a transitioning person, and the employer has notified the commissioner that the employer is proposing to employ the employee in regulated employment; or
  - (c) the employer has applied for an exemption notice about the employee.

*Note—*

See section 249 for how the notification under paragraph (a) or (b) must be given.

Maximum penalty—50 penalty units.

## **255 Starting employment of new employees**

- (1) This section applies if—
  - (a) a person (the *employee*) is not employed in regulated employment; and
  - (b) another person (the *employer*) proposes to employ the employee in regulated employment; and
  - (c) after considering any agreement relating to the proposed employment between the employer and employee, the employer reasonably expects that the employee is likely to carry out work as part of the proposed employment for the minimum frequency for regulated employment; and
  - (d) section 254 does not apply to the proposed employment.
- (2) The employer must not employ the employee in regulated employment unless—
  - (a) the employee has a current positive exemption notice and the employer has notified the commissioner that the employer is proposing to employ the employee in regulated employment; or
  - (b) the employee is a transitioning person, and the employer has notified the commissioner that the employer is proposing to employ the employee in regulated employment; or
  - (c) the employer has applied for an exemption notice about the employee.

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*Note—*

See section 249 for how the notification under paragraph (a) or (b) must be given.

Maximum penalty—50 penalty units.

## **256 Prohibited employment**

- (1) This section applies if a person (the *employee*) does not have a current positive exemption notice.
- (2) A person (the *employer*) must not employ, or continue to employ, the employee in regulated employment if—
  - (a) the employer has applied for an exemption notice about the employee and the commissioner gives the employer—
    - (i) a notice of deemed withdrawal relating to the employee other than under section 269; or
    - (ii) a notice of deemed withdrawal relating to the employee under section 269; or

*Editor's note—*

section 269 (Deemed withdrawal of consent to employment screening if charged with disqualifying offence etc.)

- (b) the employer is aware that a negative exemption notice or negative notice has been issued to the employee and the notice is current; or
- (c) the employer has been given a notice in relation to the employee—
  - (i) under section 302; or
  - (ii) under section 339(3) because of a change in police information mentioned in section 339(3)(g).

*Editor's note—*

- section 302 (Cancelling positive exemption notice on holder's request)



- section 339 (Commissioner to give notice to particular entities about a change in police information)

Maximum penalty—

- (a) for paragraph (a)(i)—40 penalty units; or
- (b) otherwise—200 penalty units or 2 years imprisonment.

## **Division 4                      Obligations if holder of negative notice or negative exemption notice, or exemption notice application is withdrawn**

### **257      Person holding negative notice or negative exemption notice not to apply for, or start or continue in, regulated employment etc.**

- (1) A person who holds a current negative exemption notice or current negative notice must not—
  - (a) sign an application about the person made by someone else under division 6; or
  - (b) make an application under division 7; or
  - (c) apply for, or start or continue in, regulated employment.

Maximum penalty—500 penalty units or 5 years imprisonment.

*Note—*

See section 259 in relation to carrying on a regulated business.

- (2) However, if the person held a positive exemption notice but a negative exemption notice was substituted for it under section 295, 297 or 299, a court may not find the person contravened subsection (1) unless the court is satisfied that written notice of the substitution was given to the person.
- (3) Also, if the person held a positive notice but a negative notice or negative exemption notice was substituted for the positive notice under section 237, 239, 241 or 243, a court may not

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find the person contravened subsection (1) unless the court is satisfied that written notice of the substitution was given to the person.

**258 Person who has withdrawn consent to employment screening not to start or continue in regulated employment**

- (1) This section applies if—
  - (a) an application about a person was made under division 6; and
  - (b) before an exemption notice was issued, the application was withdrawn under section 270 because the person's consent to employment screening under this chapter was withdrawn under section 264 or 269.
- (2) The person must not start or continue in regulated employment unless a positive exemption notice is issued to the person.

Maximum penalty—

- (a) if the person's consent to employment screening under this chapter was withdrawn under section 264—100 penalty units or 1 year's imprisonment; or
- (b) otherwise—500 penalty units or 5 years imprisonment.

**Division 5 Exemption notice required for regulated business**

**259 Carrying on regulated business**

A person must not carry on a regulated business unless—

- (a) the person has a current positive exemption notice; or
- (b) the person is a transitioning person; or

- (c) the person does not hold a negative exemption notice or negative notice and has applied for an exemption notice.

Maximum penalty—500 penalty units or 5 years imprisonment.

*Note—*

Under section 166, particular executive officers of a corporation that carries on a regulated business are taken to carry on the regulated business.

## **Division 6                      Applying for exemption notice for regulated employment**

### **260      Who makes application**

- (1) A person who proposes to start employing, or continue employing, another person in regulated employment may apply to the commissioner for an exemption notice about the other person.
- (2) If, as part of a course undertaken by a trainee student of an education provider, the education provider proposes for the trainee student to perform work that is regulated employment, the education provider may apply to the commissioner for an exemption notice about the trainee student.

*Note—*

Under section 162, if the education provider makes an exemption notice application about the trainee student, the person who proposes to start employing the trainee student is not required to make an exemption notice application about the trainee student.

### **261      Form of application**

- (1) An application under this division must be—
  - (a) in the approved form; and
  - (b) signed by, or on behalf of, the person making the application (the *applicant*); and

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- (c) signed by the person about whom the application is made (the *employee*); and
  - (d) if the applicant did not sight the documents as mentioned in subsection (2)(b)—be accompanied by the alternative certifications relating to the employee.
- (2) The approved form mentioned in subsection (1)(a) must include provision for—
- (a) identifying information about the employee; and
  - (b) certification by the applicant that the applicant has sighted the employee’s proof of identity documents; and
  - (c) a declaration by the employee that—
    - (i) if the application is made on the basis the employee is a police officer—he or she is a police officer; or
    - (ii) if application is made on the basis the employee is a registered teacher—he or she is a registered teacher; and
  - (d) the employee’s consent to employment screening under this chapter.

## **262 Commissioner may obtain further information**

On receiving an application under this division, the commissioner may, orally or in writing—

- (a) ask the person making the application, or the person about whom the application is made (the *employee*), to provide, within a reasonable stated time—
  - (i) stated information that the commissioner reasonably needs to establish the employee’s identity; or
  - (ii) stated information, including by way of a submission, about a stated matter that the commissioner reasonably believes is relevant to the application; or

- (b) ask the person making the application about why the person did not sight the documents as mentioned in section 261(2)(b).

### **263 Withdrawal of application generally**

- (1) A person who makes an application under this division may withdraw the application at any time before it is decided.
- (2) A person who makes an application under this division is taken to have withdrawn the application if—
  - (a) the commissioner gives the person a written notice—
    - (i) asking the person to provide information about why the person did not sight the documents as mentioned in section 261(2)(b); and
    - (ii) warning the person that, if the person does not comply with the request, the person's application may be taken to have been withdrawn; and
  - (b) the person does not comply with the request within the stated time; and
  - (c) the commissioner gives the person a notice of deemed withdrawal.

### **264 Withdrawal of consent to employment screening generally**

- (1) The person about whom an application is made under this division may, by written notice to the commissioner, withdraw the person's consent to employment screening under this chapter.
- (2) If a person withdraws his or her consent to employment screening under this chapter under subsection (1), the commissioner must give written notice of the withdrawal to the person who made the application.

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**265 Deemed withdrawal of consent to employment screening if person ceases to be police officer or registered teacher**

The person about whom an application is made under this division is taken to have withdrawn his or her consent to employment screening under this chapter if—

- (a) the person gives the commissioner, or the commissioner gives the person, a written notice stating that—
  - (i) the person is no longer a police officer; or
  - (ii) the person is no longer a registered teacher; and
- (b) the commissioner gives the person, and the person who made the application, a notice of deemed withdrawal.

**266 Deemed withdrawal of consent to employment screening if identity can not be established**

The person about whom an application is made under this division is taken to have withdrawn his or her consent to employment screening under this chapter if—

- (a) the commissioner gives the person a written notice—
  - (i) asking the person to provide, within a reasonable stated time, stated information that the commissioner reasonably needs to establish the person's identity; and
  - (ii) warning the person that, if the person does not comply with the request, the person's consent to employment screening under this chapter may be taken to have been withdrawn; and
- (b) the person does not comply with the request within the stated time; and
- (c) the commissioner can not establish with certainty the person's identity; and
- (d) the commissioner gives the person, and the person who made the application, a notice of deemed withdrawal.

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**267 Deemed withdrawal of consent to employment screening if particular requests not complied with**

The person about whom an application is made under this division is taken to have withdrawn his or her consent to employment screening under this chapter if—

- (a) the commissioner gives the person—
  - (i) a written notice asking the person to provide, within a reasonable stated time, stated information, including by way of a submission, about a stated matter that the commissioner reasonably believes is relevant to the application; or
  - (ii) a written notice under section 330; or
  - (iii) a written notice asking the person to give the necessary consent for section 332 or 333; or
  - (iv) a written notice asking the person to give the necessary consent for section 337 or 338; and
- (b) the notice includes a warning that, if the person does not comply with the notice, the person's consent to employment screening under this chapter may be taken to have been withdrawn; and
- (c) the person does not comply with the notice; and
- (d) the commissioner gives the person, and the person who made the application, a notice of deemed withdrawal.

**268 Deemed withdrawal of consent to employment screening if employment changes**

- (1) The person about whom an application is made under this division is taken to have withdrawn his or her consent to employment screening under this chapter if—
  - (a) the relevant person for the person has given the commissioner written notice that the person is no longer employed by the employer stated in the application, or the commissioner can not obtain information, in writing,

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from the relevant person that the person is employed by the employer; and

- (b) the person has not given written notice to the commissioner about the end of the employment as required under section 288; and

*Note—*

If the person gives a written notice about the end of the employment under section 288, the written notice should provide for the withdrawal of the person's consent to employment screening under this chapter. See section 288(3).

- (c) the commissioner gives the person, and the person who made the application, a notice of deemed withdrawal.
- (2) For subsection (1), a relevant person for a person about whom an application is made under this division may give written notice to the commissioner that the person—
- (a) is employed, or continues to be employed, by the employer stated in the application; or
  - (b) is no longer employed by the employer stated in the application.

- (3) In this section—

*relevant person*, for a person, means—

- (a) the person's employer; or
- (b) if the person is a trainee student and the exemption notice application was made by an education provider—the person's employer or the education provider.

## **269 Deemed withdrawal of consent to employment screening if charged with disqualifying offence etc.**

The person about whom an application is made under this division is taken to have withdrawn his or her consent to employment screening under this chapter if—



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- (a) the person gives the commissioner, or the commissioner gives the person, written notice that the person—
    - (i) is charged with a disqualifying offence; or
    - (ii) is named as the respondent in an application for an offender prohibition order and the proceeding for the offender prohibition order has not ended; or
    - (iii) is subject to a temporary offender prohibition order or interim sexual offender order made after the day the application was made; and
  - (b) the commissioner gives the person, and the person who made the application, a notice of deemed withdrawal.

## **270 Effect of withdrawal of consent to employment screening**

- (1) This section applies if a person about whom an application is made under this division withdraws his or her consent to employment screening under this chapter before the commissioner issues an exemption notice to the person.
- (2) The application is taken to have been withdrawn and the commissioner must not issue the exemption notice.

## **271 Notice about withdrawal of application or negative exemption notice or negative notice**

- (1) This section applies if—
  - (a) an application is made about a person under this division; and
  - (b) the application is withdrawn or the person already has a current negative exemption notice or current negative notice.
- (2) The commissioner must give written notice about the withdrawal or the negative exemption notice or negative notice to each notifiable person for the person.

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- (3) If the notice under subsection (2) is about the person having a current negative exemption notice or current negative notice, it must state—
  - (a) the date of issue of the negative exemption notice or negative notice;
  - (b) for a notice given to the chief executive (child safety) about a negative exemption notice or negative notice issued on the basis the person is or was a relevant disqualified person—the provision of this chapter under which the negative exemption notice or negative notice was issued.

## **Division 7                      Applying for exemption notice for regulated businesses**

### **272      Who makes application**

A person who proposes to carry on, or continue carrying on, a regulated business may apply to the commissioner for an exemption notice about the person.

### **273      Form of application**

- (1) An application under this division must be—
  - (a) in the approved form; and
  - (b) signed by the applicant.
- (2) The approved form must include provision for—
  - (a) identifying information about the applicant; and
  - (b) certification by a prescribed person that the prescribed person has sighted the applicant's proof of identity documents; and
  - (c) a declaration by the applicant that—

- (i) if the application is made on the basis the applicant is a police officer—he or she is a police officer; or
- (ii) if the application is made on the basis that the applicant is a registered teacher—he or she is a registered teacher.

#### **274 Commissioner may obtain further information**

On receiving an application under this division, the commissioner may ask the applicant, orally or in writing, to provide, within a reasonable stated time—

- (a) stated information that the commissioner reasonably needs to establish the applicant’s identity; or
- (b) stated information, including by way of a submission, about a stated matter that the commissioner reasonably believes is relevant to the application.

#### **275 Withdrawal of application generally**

A person may withdraw the person’s application under this division at any time before it is decided.

#### **276 Deemed withdrawal of application if no longer police officer or registered teacher**

A person who makes an application under this division is taken to have withdrawn his or her application if—

- (a) the person gives the commissioner, or the commissioner gives the person, written notice that the person is no longer a police officer or registered teacher; and
- (b) the commissioner gives the person a notice of deemed withdrawal.

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**277 Deemed withdrawal of application if identity can not be established**

A person who makes an application under this division is taken to have withdrawn his or her application if—

- (a) the commissioner gives the person a written notice—
  - (i) asking the person to provide, within a reasonable stated time, stated information that the commissioner reasonably needs to establish the person's identity; and
  - (ii) warning the person that, if the person does not comply with the request, the person's application may be taken to have been withdrawn; and
- (b) the person does not comply with the request within the stated time; and
- (c) the commissioner can not establish with certainty the person's identity; and
- (d) the commissioner gives the person a notice of deemed withdrawal.

**278 Deemed withdrawal of application if particular requests not complied with**

A person who makes an application under this division is taken to have withdrawn the application if—

- (a) the commissioner gives the person—
  - (i) a written notice asking the person to provide, within a reasonable stated time, stated information, including by way of a submission, about a stated matter that the commissioner reasonably believes is relevant to the application; or
  - (ii) a written notice under section 330; or
  - (iii) a written notice asking the person to give the necessary consent for section 332 or 333; or

- (iv) a written notice asking the person to give the necessary consent for section 337 or 338; and
- (b) the notice includes a warning that, if the person does not comply with the notice, the person's application may be taken to have been withdrawn; and
- (c) the person does not comply with the notice; and
- (d) the commissioner gives the person a notice of deemed withdrawal.

**279 Deemed withdrawal of application if charged with disqualifying offence etc.**

A person who makes an application under this division is taken to have withdrawn the application if—

- (a) the person gives the commissioner, or the commissioner gives the person, written notice stating that the person—
  - (i) is charged with a disqualifying offence; or
  - (ii) is named as the respondent in an application for an offender prohibition order and the proceeding for the offender prohibition order has not ended; or
  - (iii) is made subject to a temporary offender prohibition order or interim sexual offender order after the day the application was made; and
- (b) the commissioner gives the person a notice of deemed withdrawal.

**280 Notice about withdrawal of application or negative notice or negative exemption notice**

- (1) This section applies if—
  - (a) a person makes an application under this division; and
  - (b) the application is withdrawn or the person already has a current negative exemption notice or current negative notice.

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- (2) The commissioner must—
  - (a) if the application is withdrawn—give written notice of the withdrawal to each notifiable person for the person; or
  - (b) if the person already has a current negative exemption notice or current negative notice—give written notice of the negative exemption notice or negative notice to the person and each notifiable person for the person.
- (3) If the notice under subsection (2) is about the person having a current negative exemption notice or current negative notice, it must state—
  - (a) the date of issue of the negative exemption notice or negative notice; and
  - (b) for a notice given to the chief executive (child safety) about a negative exemption notice or negative notice issued on the basis the person is or was a relevant disqualified person—the provision of this chapter under which the negative exemption notice or negative notice was issued.

## **Division 8                      Deciding exemption notice application**

### **281      Application of div 8**

This division applies if an exemption notice application is made about a person and the application is not withdrawn.

### **282      Positive exemption notice or negative exemption notice to be issued**

The commissioner must decide the exemption notice application by issuing either of the following to the person—

- (a) a notice declaring the application is approved (a *positive exemption notice*);

- (b) a notice declaring the application is refused (a *negative exemption notice*).

**283 Issuing positive exemption notice to police officer if further screening not required**

If the person is a police officer, the commissioner must issue a positive exemption notice to the person if—

- (a) the commissioner is not aware of any police information about the person; and
- (b) the commissioner—
  - (i) has, under section 286, been advised that the person is a police officer; and
  - (ii) has not, under section 286, been advised that the commissioner may need to undertake further employment screening of the person under this chapter.

**284 Issuing positive exemption notice to registered teacher if further screening not required**

If the person is a registered teacher, the commissioner must issue a positive exemption notice to the person if—

- (a) the commissioner is not aware of any police information or disciplinary information about the person; and
- (b) the commissioner—
  - (i) has, under section 287, been advised that the person is a registered teacher; and
  - (ii) has not, under section 287, been advised that the commissioner may need to undertake further employment screening of the person under this chapter.

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### **285 Issuing exemption notice if ss 283 and 284 do not apply**

- (1) This section applies if neither section 283 nor 284 applies to the person.
- (2) The commissioner must decide the exemption notice application in the way the commissioner would be required to decide the application if it were a prescribed notice application.
- (3) For subsection (2), sections 221 to 229 apply in relation to making the decision as if—
  - (a) a reference in the sections to issuing a positive notice were a reference to issuing a positive exemption notice; and
  - (b) a reference in the sections to issuing a negative notice were a reference to issuing a negative exemption notice; and
  - (c) a reference in section 229 to a prescribed notice application were a reference to an exemption notice application.

### **286 Obtaining advice from police commissioner**

- (1) This section applies if the exemption notice application is about a person who claims to be a police officer.
- (2) For deciding the application, the commissioner may ask the police commissioner to advise the commissioner—
  - (a) whether or not the person is a police officer; and
  - (b) if the person is a police officer—whether the commissioner may need to undertake further employment screening of the person under this chapter.
- (3) For subsection (2), the commissioner's request may include the following information—
  - (a) the person's name and any other name that the commissioner believes the person may use or may have used;



- (b) the person's gender and date and place of birth;
- (c) the person's address;
- (d) any number, date or other information given by the person about the person's status as a police officer.

*Example for paragraph (d)—*

a number identifying the person as a police officer

- (4) The police commissioner must comply with the request.
- (5) However—
  - (a) the police commissioner may give advice under subsection (2)(b) only if the police commissioner is aware—
    - (i) the person has been charged with an offence; and
    - (ii) the charge has not been finally dealt with; and
  - (b) if paragraph (a) applies, the advice must be that the commissioner may need to undertake further employment screening of the person under this chapter.

## **287 Obtaining advice from college of teachers**

- (1) This section applies if the exemption notice application is about a person who claims to be a registered teacher.
- (2) For deciding the application, the commissioner may ask the college of teachers to advise the commissioner—
  - (a) whether or not the person is a registered teacher; and
  - (b) if the person is a registered teacher—whether the commissioner may need to undertake further employment screening of the person under this chapter.
- (3) For subsection (2), the commissioner's request may include the following information—
  - (a) the person's name and any other name that the commissioner believes the person may use or may have used;

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- (b) the person's gender and date and place of birth;
- (c) the person's address;
- (d) any number, date or other information given by the person about the person's status as a registered teacher.

*Example for paragraph (d)—*

the person's identification number for the person's registration under the *Education (Queensland College of Teachers) Act 2005*

- (4) The college of teachers must comply with the request.
- (5) However—
  - (a) the college may give advice under subsection (2)(b) only if the college is aware of any police information about the person; and
  - (b) if paragraph (a) applies, the advice must be that the commissioner may need to undertake further employment screening of the person under this chapter.
- (6) If the college of teachers gives advice under subsection (2)(b), the advice must be accompanied by a written notice stating that—
  - (a) no adverse inference about the person's police information may be drawn by the fact the advice was given; and
  - (b) no inference that a negative notice or negative exemption notice may be issued to the person under this chapter may be drawn by the fact the advice was given.
- (7) In this section—

***police information*** means police information as defined under the *Education (Queensland College of Teachers) Act 2005*.

## **288 Commissioner to be notified of change of particular information**

- (1) This section applies if any of the following (each a ***relevant change***) happens before the commissioner has issued an

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exemption notice to the person in relation to the exemption notice application—

- (a) the person's name or contact details, as stated in the application, change;
  - (b) the person's employment, as stated in the application, ends;
  - (c) the person stops carrying on the business as stated in the application.
- (2) The person must give notice, in the approved form, to the commissioner 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 a person to give notice withdrawing the person's consent to employment screening under this chapter.

## **289 Currency of exemption notice**

- (1) A negative exemption notice remains current until it is cancelled under division 10.
- (2) A positive exemption notice issued to a police officer remains current while its holder is a police officer, unless it is earlier cancelled under division 10.
- (3) A positive exemption notice issued to a registered teacher remains current while its holder is a registered teacher, unless it is earlier cancelled under division 10.

## **Division 9 Steps after exemption notice application decided**

### **290 Application of div 9**

This division applies if the commissioner decides an exemption notice application about a person.

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## **291 Additional information to be given if negative exemption notice issued**

If the commissioner issues a negative exemption notice to the person, the negative exemption notice must be accompanied by a written notice stating the following—

- (a) the reasons for the commissioner's decision to issue a negative exemption notice to the person;
- (b) the relevant review and appeal information;
- (c) that it is an offence for a person who holds a current negative exemption notice to—
  - (i) sign an application about the person made by someone else under division 6; or
  - (ii) make an application under division 7; or
  - (iii) apply for, or start or continue in, regulated employment; or
  - (iv) carry on a regulated business.

## **292 Notifiable person to be notified of decision**

- (1) After the commissioner issues an exemption notice to the person, the commissioner must give each notifiable person for the person a written notice stating whether the person was issued a positive exemption notice or negative exemption notice.
- (2) If the person is issued with a negative exemption notice on the basis the person is or was a relevant disqualified person and a notice about the person is given to the chief executive (child safety) under subsection (1), the notice must also state the provision of this chapter under which the negative exemption notice was issued.

*Note—*

See sections 224 and 225 (as applied to exemption notice applications under section 285) for circumstances in which a negative exemption notice may be issued to a person on the basis the person is or was a relevant disqualified person.

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## **293 Department to be given particular advice**

- (1) This section applies if—
  - (a) the person is a person about whom the chief executive of a department has made an application under division 6; and
  - (b) the commissioner issues a positive exemption notice to the person; and
  - (c) the chief executive of the department asks the commissioner for advice under this section.
- (2) The commissioner may advise the chief executive of the department that the chief executive may need to undertake a further assessment of the person under the *Public Service Act 2008*, chapter 5, part 6, division 3A to decide whether or not the department should engage the person.

*Note—*

The *Public Service Act 2008*, chapter 5, part 6, division 3A does not apply in relation to the engagement of particular persons by a department. See section 164 of that Act.

- (3) However, the commissioner may give the advice mentioned in subsection (2) only if the commissioner is aware that the person has a criminal history.
- (4) If the commissioner gives advice under subsection (2), the advice must be accompanied by a written notice stating that no adverse inference about the person's criminal history or suitability for engagement, or continued engagement, by the department may be drawn by the fact the advice was given.

## **Division 10 Cancellation or suspension of exemption notices etc.**

### **294 Cancelling negative exemption notice etc. on holder's application**

- (1) This section applies if—

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- (a) the commissioner has issued a negative exemption notice to a person and the notice is current; and
  - (b) the person is not a relevant disqualified person.
- (2) The person may apply to the commissioner to cancel the notice.
- (3) The application may not be made less than 2 years after the issue of the negative exemption notice or any previous application by the person under this section, unless—
- (a) the decision to issue the negative exemption notice was based on wrong or incomplete information; or
  - (b) the negative exemption notice was issued on the basis the person was a relevant disqualified person and the person is no longer a relevant disqualified person.
- (4) The application must be—
- (a) in the approved form; and
  - (b) signed by the person.
- (5) The person may state in the application anything the person considers relevant to the commissioner's decision including, in particular, any change in the person's circumstances since the negative exemption notice was issued.
- (6) Division 8 applies to the application as if—
- (a) the application were an exemption notice application; and
  - (b) a reference in the division to issuing a positive exemption notice were a reference to granting the application; and
  - (c) a reference in the division to issuing a negative exemption notice were a reference to refusing the application.
- (7) If the commissioner grants the application, the commissioner must cancel the negative exemption notice to which the application relates.

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- (8) If the commissioner refuses the application, the commissioner must give the person a written notice stating—
- (a) that the application has been refused and the person's negative exemption notice continues in effect subject to section 289; and
  - (b) the reasons for the commissioner's decision to refuse the application; and
  - (c) the relevant review and appeal information.

**295 Cancellling positive exemption notice and substituting it with negative exemption notice**

- (1) The commissioner may cancel a person's positive exemption notice (the *cancelled notice*) and substitute a negative exemption notice if the commissioner 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 commissioner should issue a negative exemption notice to the person; or
  - (b) subject to section 298, it is appropriate to cancel the positive exemption notice having regard to—
    - (i) disciplinary information, or information received under part 6, division 2 to 4, about the person, other than information known to the commissioner at the time the positive exemption notice was issued; or
    - (ii) a decision of a court made after the positive exemption notice was issued, including the reasons for the decision, relating to an offence committed by the person.

*Note—*

Section 298 provides for the suspension of a person's positive exemption notice, in particular circumstances, before the

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commissioner decides whether to issue a further positive exemption notice or a negative exemption notice to the person.

- (2) In making a decision under subsection (1), the commissioner must make the decision as if it were a decision about an exemption notice application and, for that purpose, division 8 applies in relation to making the decision.
- (3) Without limiting subsection (2), if the commissioner must decide whether or not there is an exceptional case for the person and is proposing to substitute a negative exemption notice as mentioned in subsection (1)—
  - (a) the commissioner must comply with section 229(2) to (5); and
  - (b) for that purpose, the reference in section 229(4) to deciding the application is taken to include a reference to deciding whether to substitute a negative exemption notice for a positive exemption notice under this section.

*Note—*

Section 229 is about inviting a person to make submissions about the existence of an exceptional case for the person.

- (4) If, under subsection (1), the commissioner cancels a person's positive exemption notice and issues a negative exemption notice to the person, the commissioner must—
  - (a) give the person a written notice stating—
    - (i) the reasons for the commissioner's decision to cancel the person's positive exemption notice and issue a negative exemption notice to the person; and
    - (ii) the relevant review and appeal information; and
  - (b) give each notifiable person a written notice stating that—
    - (i) the person's positive exemption notice has been cancelled; and
    - (ii) the person has been issued a negative exemption notice.



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- (5) Also, the commissioner must consider whether notice must be given under section 342(2)(a).
  - (6) If the commissioner's decision under subsection (2) is that the person should be issued a positive exemption notice—
    - (a) the commissioner must not cancel the person's positive exemption notice under subsection (1); and
    - (b) the person's positive exemption notice continues in effect subject to section 289.

## **296 Cancelling negative exemption notice and issuing positive exemption notice**

- (1) The commissioner may cancel a person's negative exemption notice (the *cancelled notice*) and, subject to subsection (3), substitute it with a positive exemption notice if—
  - (a) the commissioner is satisfied that 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 commissioner should issue a positive exemption notice to the person; or
  - (b) the negative exemption notice was issued on the basis the person was a relevant disqualified person and the person is no longer a relevant disqualified person; or
  - (c) the commissioner is satisfied that it is appropriate to cancel the negative exemption notice having regard to information not known to the commissioner at the time the negative exemption notice was issued.
- (2) In making a decision under subsection (1), the commissioner must make the decision as if it were a decision about an exemption notice application and, for that purpose, division 8 applies in relation to making the decision.
- (3) If the commissioner's decision under subsection (2) is that the person should be issued a positive exemption notice, the commissioner may issue a positive exemption notice to the

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person only if the commissioner is satisfied the person is proposing, if the positive exemption notice is issued—

- (a) to be employed in regulated employment; or
- (b) to carry on a regulated business.

*Note—*

See, however, sections 257(1)(c) and 259.

- (4) The commissioner may cancel a person's negative exemption notice under subsection (1) even if—
  - (a) a positive exemption notice is not issued to the person under subsection (3) until a later time; or
  - (b) a positive exemption notice is never issued to the person under subsection (3).
- (5) If the commissioner's decision under subsection (2) is that the person should be issued a negative exemption notice—
  - (a) the commissioner must not cancel the person's negative exemption notice under subsection (1); and
  - (b) the person's negative exemption notice continues in effect subject to section 289.
- (6) The commissioner may—
  - (a) act under subsection (1) on the commissioner's own initiative; or
  - (b) if a person has applied for the cancellation of the person's negative exemption notice under section 294—act under subsection (1)(a) or (b) instead of cancelling the person's negative exemption notice under section 294.

## **297 Cancelling positive exemption notice if relevant disqualified person**

- (1) This section applies if a person who is the holder of a positive exemption notice, including a positive exemption notice that is suspended under section 298, becomes a relevant

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disqualified person other than only because the person is subject to either or both of the following—

- (a) a temporary offender prohibition order;
- (b) an interim sexual offender order.

*Note—*

See section 298 in relation to the holder of a positive exemption notice who becomes a relevant disqualified person because the holder is subject to a temporary offender prohibition order or interim sexual offender order (or both).

- (2) The commissioner must cancel the person's positive exemption notice and substitute a negative exemption notice.
- (3) At the time the commissioner gives the person the negative exemption notice, the commissioner must give the person a further written notice stating—
  - (a) the reasons for the decision; and
  - (b) the relevant review and appeal information; and
  - (c) that the person may apply under section 294 for the cancellation of the negative exemption notice unless the person is a relevant disqualified person.
- (4) Also, the commissioner must give each notifiable person for the person a written notice stating that the person's positive exemption notice has been cancelled and the person has been issued a negative exemption notice.
- (5) A notice given to the chief executive (child safety) under subsection (4) about a person must state that the person was issued the negative exemption notice under this section.
- (6) Also, the commissioner must consider whether notice must be given under section 342(2)(a).

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**298 Suspension of a positive exemption notice if charged with disqualifying offence or subject to temporary or interim order**

- (1) This section applies if a person who is the holder of a positive exemption notice (the *suspended person*)—
- (a) is charged with a disqualifying offence; or
  - (b) becomes a relevant disqualified person because the person is subject to either or both of the following—
    - (i) a temporary offender prohibition order;
    - (ii) an interim sexual offender order.

*Note—*

If the holder of a positive exemption notice becomes a relevant disqualified person for another reason, the positive exemption notice must be cancelled under section 297.

- (2) The commissioner must, by written notice given to the suspended person, suspend the person's positive exemption notice.
- (3) The notice about the suspension must state the following—
- (a) that the positive exemption notice held by the suspended person is suspended;
  - (b) the reason for the suspension;
  - (c) how long the suspension will continue;
  - (d) the effect of the suspension;
  - (e) that the suspended person must return the positive exemption notice to the commissioner within 7 days after the notice about the suspension is given to the person;
  - (f) the relevant review and appeal information.
- (4) Until the suspension ends, the suspended person must not—
- (a) apply for or start in regulated employment; or

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- (b) if the suspended person is in regulated employment when the positive notice is suspended—perform work that is regulated employment; or
  - (c) start or continue to carry on a regulated business.

Maximum penalty—500 penalty units or 5 years imprisonment.

- (5) Within 7 days after the suspended person is given notice under subsection (2), the person must return the person's positive exemption notice to the commissioner.

Maximum penalty—100 penalty units.

- (6) The commissioner must give each notifiable person for the suspended person a written notice stating the following—
  - (a) that the positive exemption notice held by the suspended person is suspended;
  - (b) how long the suspension will continue;
  - (c) the effect of the suspension;
  - (d) that the notifiable person must not allow the suspended person to perform work that is regulated employment while the suspended person's positive exemption notice is suspended;
  - (e) that the suspended person's employer must not terminate the suspended person's employment or continued employment solely or mainly because the person's positive exemption notice is suspended.

- (7) Also, the commissioner must consider whether notice must be given under section 342(2)(f).

- (8) A person to whom a notice is given under subsection (6) or (7) must not allow the suspended person to perform work that is regulated employment while the suspended person's positive exemption notice is suspended.

Maximum penalty—200 penalty units.

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- (9) A person's employer who is given a notice under subsection (6) must not terminate the person's employment solely or mainly because the person's positive exemption notice is suspended.

*Note—*

See also section 356(4).

## **299 Ending of suspension and issue of further exemption notice**

- (1) This section applies to a positive exemption notice held by a person that is suspended under section 298 (the *suspended notice*).
- (2) The suspension ends if—
- (a) the suspended notice is cancelled under another provision of this division; or
  - (b) on the commissioner's own initiative or on application by the person—
    - (i) the commissioner cancels the suspended notice and issues a further positive exemption notice or a negative exemption notice to the person; or
    - (ii) the commissioner cancels the suspended notice as mentioned in subsection (5); or
  - (c) the positive exemption notice ceases to have effect under section 289, including because the person's registration under the *Education (Queensland College of Teachers) Act 2005* is suspended under section 48 or 49 of that Act.
- (3) In making a decision under subsection (2)(b) to cancel the suspended notice and, subject to subsection (5), issue a further positive exemption notice or a negative exemption notice, the commissioner must make the decision as if it were a decision about an exemption notice application and, for that purpose, division 8 applies in relation to making the decision.

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- (4) Without limiting subsection (3), if the commissioner must decide whether or not there is an exceptional case for the person and is proposing to issue a negative exemption notice as mentioned in subsection (2)(b)—
- (a) the commissioner must comply with section 229(2) to (5); and
  - (b) for that purpose, the reference in section 229(4) to deciding the application is taken to include a reference to deciding whether to issue a further positive exemption notice or a negative exemption notice under this section.

*Note—*

Section 229 is about inviting a person to make submissions about the existence of an exceptional case for the person.

- (5) The commissioner may cancel the suspended notice without issuing a further exemption notice to the person if the commissioner is satisfied that the person is no longer proposing to be employed in regulated employment or to carry on a regulated business.
- (6) If the commissioner cancels the suspended notice and issues a negative exemption notice to the person under subsection (2)(b), the commissioner must give the person a written notice stating—
  - (a) the reasons for the commissioner’s decision to cancel the person’s positive exemption notice and issue a negative exemption notice to the person; and
  - (b) the relevant review and appeal information.
- (7) If the commissioner cancels the suspended notice under this section, the commissioner must—
  - (a) give each notifiable person for the person a written notice stating—
    - (i) that the person’s suspended notice has been cancelled under this section; and

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- (ii) whether the person has been issued a further positive exemption notice or a negative exemption notice; and
  - (b) if section 293 applied in relation to the original application for an exemption notice about the person and the commissioner issues a further positive exemption notice to the person—give the advice mentioned in that section to the relevant chief executive.
- (8) Also, the commissioner must consider whether notice must be given under section 342(2)(g).
- (9) Despite an application made by the person as mentioned in subsection (2)(b)(ii), the commissioner is not required to decide the application—
- (a) while a charge against the person for a disqualifying offence is pending; or
  - (b) while the person is a relevant disqualified person because the person is subject to a temporary offender prohibition order or interim sexual offender order; or
  - (c) if the person has been convicted of a disqualifying offence and—
    - (i) the period allowed for an appeal relating to the conviction or sentence of the person has not ended; or
    - (ii) an appeal relating to the conviction or sentence has started but has not been decided; or
  - (d) if the person is subject to a final offender prohibition order, disqualification order or final sexual offender order and—
    - (i) the period allowed for an appeal relating to the order has not ended; or
    - (ii) an appeal relating to the order has started but has not been decided.



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**300 Notifying holder of expiry of positive exemption notice if no longer police officer or registered teacher**

- (1) This section applies if—
- (a) a person was issued a positive exemption notice on the basis the person was a police officer and the person is no longer a police officer; or

*Note—*

See section 326 for the requirement that the police commissioner notify the commissioner about a person who is no longer a police officer.

- (b) a person was issued a positive exemption notice on the basis the person was a registered teacher and the person is no longer a registered teacher, including because the person's registration under the *Education (Queensland College of Teachers) Act 2005* is suspended under section 48 or 49 of that Act.

*Note—*

See the *Education (Queensland College of Teachers) Act 2005*, section 285A for the requirement that the college of teachers notify the commissioner about the cancellation, suspension, surrender or ending of a person's registration under that Act.

- (2) The commissioner must give the person a written notice stating that the person's positive exemption notice has ceased to have effect under section 289.
- (3) The written notice must also advise the person that—
- (a) the person must immediately return the positive exemption notice to the commissioner; and
- (b) a prescribed notice application may be made about the person if the person—
- (i) is not a police officer or registered teacher; and
- (ii) is not a disqualified person; and
- (c) an exemption notice application may be made about the person if the person is a police officer or registered teacher.

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- (4) Also, the commissioner must give each notifiable person for the person a written notice stating that the positive exemption notice held by the person has ceased to have effect under this Act.
- (5) Also, the commissioner must consider whether notice must be given under section 342(2)(e).

### **301 Effect of negative exemption notice if person no longer police officer or registered teacher**

- (1) This section applies if—
  - (a) a person was issued a negative exemption notice on the basis the person was a police officer and the person is no longer a police officer; or

*Note—*

See section 326 for the requirement that the police commissioner notify the commissioner about a person who is no longer a police officer.

- (b) a person was issued a negative exemption notice on the basis the person was a registered teacher and the person is no longer a registered teacher, including because the person's registration under the *Education (Queensland College of Teachers) Act 2005* is suspended under section 48 or 49 of that Act.

*Note—*

See the *Education (Queensland College of Teachers) Act 2005*, section 285A for the requirement that the college under that Act notify the commissioner about the cancellation, suspension, surrender or ending of a person's registration under that Act.

- (2) The negative exemption notice continues in effect despite section 248.
- (3) Subsection (4) applies if—
  - (a) the negative exemption notice is cancelled under section 294 or 296; and

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- (b) the commissioner is required or permitted to issue a positive exemption notice to the person; and
  - (c) the commissioner is aware the person is not a police officer or registered teacher.
- (4) The commissioner must instead issue a positive notice to the person.

### **302 Cancelling positive exemption notice on holder's request**

- (1) A person, including a person whose positive exemption notice is suspended under section 298, may, by written notice, ask the commissioner to cancel the person's positive exemption notice.
- (2) After receiving the written notice, the commissioner must—
  - (a) cancel the positive exemption notice; and
  - (b) give the person a written notice stating that—
    - (i) the positive exemption notice has been cancelled; and
    - (ii) the person must not perform work that is regulated employment other than in accordance with subsection (3); and
    - (iii) the person must not carry on a regulated business other than in accordance with section 197 or 259.
- (3) The person must not perform work that is regulated employment unless—
  - (a) if the person is a police officer or registered teacher—
    - (i) the commissioner issues a further positive exemption notice to the person; or
    - (ii) an exemption notice application is made about the person; or
  - (b) otherwise—the commissioner issues a positive notice to the person.

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Maximum penalty—500 penalty units or 5 years imprisonment.

*Note—*

See sections 197 and 259 in relation to carrying on a regulated business.

- (4) The commissioner must give written notice about the cancellation of the person's positive exemption notice to each notifiable person for the person.
- (5) Also, the commissioner must consider whether notice must be given under section 342(2)(h).
- (6) A notice under subsection (4) or (5) must state that a person to whom the notice is given must not allow the person whose positive exemption notice is cancelled to perform work that is regulated employment other than in circumstances mentioned in subsection (3).

## **Division 11                      Return of exemption notices etc.**

### **303      Return of previously held exemption notice or prescribed notice**

- (1) This section applies if a person to whom an exemption notice (*new notice*) is issued previously held an exemption notice or prescribed notice (the *old notice*) other than a positive exemption notice or positive notice that has been cancelled.
- (2) Unless the person has a reasonable excuse, the person must, within 14 days after the new notice is issued, give the commissioner—
  - (a) the old notice; and
  - (b) if the old notice was a positive notice—any positive notice blue card relating to the old notice.

Maximum penalty—10 penalty units.

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### **304 Return of cancelled or expired positive exemption notice**

- (1) This section applies to a person with a positive exemption notice if—
  - (a) the commissioner cancels the notice; or
  - (b) the person is given notice under section 300 that the positive exemption notice has ceased to have effect under section 289.
- (2) The person must immediately return the positive exemption notice to the commissioner, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

## **Part 6 Provisions about obtaining or dealing with information relating to prescribed notices and exemption notices**

### **Division 1 Investigative information**

#### **305 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 schedule 6 offence (the *alleged offence*) by the investigated person against a person (the *complainant*); and

- (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.
- (3) For this section, a *schedule 6 offence* is—
- (a) an offence against a provision of an Act mentioned in schedule 6, column 1, subject to any qualification relating to the provision mentioned opposite in column 3; or
  - (b) an offence of counselling or procuring the commission of an offence of a kind mentioned in paragraph (a); or
  - (c) an offence of attempting, or of conspiring, to commit an offence of a kind mentioned in paragraph (a); or

- (d) an offence that has, as an element, intention to commit an offence of a kind mentioned in paragraph (a); or
- (e) an offence that, at the time it was committed was an offence of a kind mentioned in paragraph (a); or
- (f) an offence under a law of another jurisdiction that, if it had been committed in Queensland, would have constituted an offence mentioned in paragraph (a), (b), (c), (d) or (e).

*Note—*

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

- (4) For subsection (3), it is immaterial if a provision mentioned in schedule 6, column 1, for an Act has been amended from time to time or that the provision was previously numbered with a different number.

### **306 Police commissioner not to delegate power under s 305**

Despite the *Police Service Administration Act 1990*, section 4.10, the police commissioner may not delegate the police commissioner's powers under section 305 other than to a police officer of at least the rank of superintendent.

### **307 Appeal against police commissioner's decision 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 division 2, to the commissioner; and
  - (c) after the investigative information is given to the commissioner, any of the following happens (*relevant event*)—

- (i) a negative notice or negative exemption notice is issued to a person;
  - (ii) the person's positive notice is cancelled and a negative notice or negative exemption notice is substituted for it;
  - (iii) the person's positive exemption notice is cancelled and a negative exemption notice is substituted for it;
  - (iv) the person's eligibility application is refused.
- (2) The person may appeal to a Magistrates Court about the police commissioner's decision mentioned in subsection (1).
- (3) However, an appeal under subsection (2) may only be made within 28 days after the person is given written notice of the relevant event.
- (4) The commissioner and police commissioner must be given a copy of the notice of appeal.
- (5) QCAT 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 commissioner.

### **308 Court to decide matters afresh**

- (1) A Magistrates Court hearing an appeal under section 307 is to decide afresh whether information given to the commissioner as investigative information about a person is investigative information.
- (2) A person who is the relevant complainant under section 305 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.



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- (4) After hearing an appeal under section 307, the court may confirm or set aside the decision and the court must give the appellant notice of the decision.
  - (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.

### **309 Consequence of decision on appeal**

- (1) This section applies if a Magistrates Court hears and decides an appeal against the police commissioner's decision under section 305 that information given to the commissioner about a person is investigative information.
- (2) If the court sets aside the decision appealed against, the person may—
  - (a) if the person was issued a negative notice on the basis of the information—apply under section 236 to cancel the negative notice issued to the person on the grounds that the decision to issue the notice was based on wrong information; or
  - (b) if the person was issued a negative exemption notice on the basis of the information—apply under section 294 to cancel the negative exemption notice issued to the person on the grounds that the decision to issue the notice was based on wrong information; or
  - (c) if the person's eligibility application was refused on the basis of the information—apply under section 186 for the commissioner to revoke the refusal on the grounds the refusal was based on wrong information.
- (3) If the court confirms the decision appealed against—
  - (a) the person who appealed the decision may apply, within 28 days after receiving the notice under section 308(4) and as otherwise provided under the QCAT Act, to QCAT for a review of a decision of the commissioner if—

- (i) the person is not a disqualified person; and
    - (ii) the decision is a chapter 8 reviewable decision; and
  - (b) the notice under section 308(4) must state how, and the period within which, the person may apply for the review.
- (4) If a person applies under subsection (3)(a) to have a decision reviewed, QCAT may not—
- (a) stay the operation of the decision; or
  - (b) grant an injunction in the proceeding for the review.
- (5) In this section—
- issue*—
- (a) in relation to a negative notice—includes substitute a negative notice after cancelling a positive notice; and
  - (b) in relation to a negative exemption notice—includes substitute a negative exemption notice after cancelling a positive exemption notice or positive notice.

## **Division 2                      Obtaining information from police commissioner**

### **310      Application of div 2**

This division applies to a person if—

- (a) the person has a current positive notice or current positive exemption notice; or
- (b) the commissioner has received a prescribed notice application or exemption notice application about the person and the application has not been withdrawn; or
- (c) the person has applied to the commissioner to cancel a negative notice or negative exemption about the person;  
or

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- (d) the person has applied, under section 241, to the commissioner to cancel the person's positive notice that is suspended and issue a further positive notice to the person; or
  - (e) the person has applied, under section 243, to the commissioner to cancel the person's positive notice that is suspended and issue a further positive notice or positive exemption notice to the person; or
  - (f) the person has applied, under section 299, to the commissioner to cancel the person's positive exemption notice that is suspended and issue a further positive exemption notice to the person; or
  - (g) the commissioner has received an eligibility application about the person and the application has not been withdrawn; or
  - (h) the commissioner has issued an eligibility declaration to the person and the eligibility declaration has not expired; or
  - (i) the commissioner has issued a negative notice or negative exemption notice to the person and—
    - (i) the person has made an application under section 309(3) or 354 that has not been decided; or
    - (ii) an appeal to an entity has been made in relation to an application under section 309(3) or 354 and the appeal has not been decided.

**311 Commissioner may ask police commissioner for information**

- (1) The commissioner may ask the police commissioner for information, or for access to the police commissioner's records, to enable the commissioner to learn what, if any, police information exists in relation to the person.
- (2) For subsection (1), the commissioner's request may include the following information—

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- (a) the person's name and any other name that the commissioner believes the person may use or may have used;
  - (b) the person's gender and date and place of birth;
  - (c) the person's address;
  - (d) if the person is currently the holder of a prescribed notice—any number or date relevant to the prescribed notice or any positive notice blue card relating to the notice;
  - (e) if the person is currently the holder of an exemption notice—any number or date relevant to the exemption notice;
  - (f) if the request relates to a person employed in regulated employment—whether or not the person carries out the work as a volunteer;
  - (g) the basis on which the commissioner may request information about the person, including, for example, by referencing the relevant provision of section 310.
- (3) If there is police information about the person, the commissioner may ask the police commissioner for—
- (a) a brief description of the circumstances of a conviction, charge or investigative information mentioned in the police information; or
  - (b) a section 93A transcript relating to an offence mentioned in the police information.
- (4) If the commissioner decides that information requested under subsection (1) or (3) about the person is no longer required, the commissioner must tell the police commissioner not to provide the information.

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### **312 Police commissioner to comply with request**

- (1) The police commissioner must comply with a request under section 311(1) or (3) unless the police commissioner is, under section 311(4), told not to provide the information.
- (2) However, the duty imposed on the police commissioner to comply with the request applies only to information in the police commissioner's possession or to which the police commissioner has access.
- (3) The police commissioner need not disclose investigative information about a person to the commissioner under this division 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) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law;
  - (d) endanger a person's life or physical safety.
- (4) To remove any doubt, it is declared that, despite the *Youth Justice Act 1992*, part 9, the police commissioner may disclose information to which that part applies to the commissioner for complying with a request under section 311(1) or (3).

### **313 Information to be given about relevant disqualified person**

If the police commissioner gives the commissioner information under section 312 about a person who is or has been a relevant disqualified person, the information must include the following information about the person—

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- (a) that the person is or has been a relevant disqualified person;
- (b) if the person is or has been subject to a disqualification order—the duration and details of the disqualification order;
- (c) if the person is or has been subject to an offender prohibition order—
  - (i) a brief description of the conduct that gave rise to the order; and
  - (ii) the duration and details of the order, including whether it is or was a temporary offender prohibition order or a final offender prohibition order.

**314 Information to be given about person subject of application for disqualification order or offender prohibition order**

If the police commissioner gives the commissioner information under section 312 about a person who is or has been the subject of an application for a disqualification order, or named as the respondent for an application for an offender prohibition order, and the order was not made, the information must include the following information about the person—

- (a) that the person is or has been the subject of an application for a disqualification order or named as the respondent for an application for an offender prohibition order and the order was not made;
- (b) the reasons why the application was made;
- (c) the reasons why the order was not made;
- (d) if the application was for an offender prohibition order and the magistrate or court hearing the application decided not to make a CPOPOA disqualification order for the person—the reasons why the CPOPOA disqualification order was not made.

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**315 Police commissioner to notify person about investigative information given about the person**

If the police commissioner gives investigative information about a person to the commissioner under this division, 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 commissioner.

**316 Use of information given to police commissioner**

- (1) Information given to the police commissioner under this division must not be accessed or disclosed for any purpose except for a purpose under this chapter or any other purpose relevant to law enforcement.
- (2) Information given to the police commissioner under this division must not be used for any purpose except if—
  - (a) for information other than information about a withdrawal—the use is for a purpose under this chapter or for any other purpose relating to child protection; or
  - (b) for information about a withdrawal—the use is for a purpose under this chapter.
- (3) However, subsections (1) and (2) do not apply to information the police commissioner obtained before the commissioner gave the information to the police commissioner under this section.
- (4) In this section—

*withdrawal* means withdrawal of any of the following—

  - (a) a prescribed notice application;
  - (b) an exemption notice application;

- (c) a person's consent to employment screening under this chapter;
- (d) an eligibility application.

### **317 Notice of change in police information about a person**

- (1) This section applies if, for a person in relation to whom any of the following happens (the *relevant event*), the police commissioner reasonably suspects the person is a person mentioned in section 310(a) to (i)—
  - (a) the person's criminal history changes;
  - (b) the police commissioner decides, under section 305, 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);
  - (c) the person becomes, or is no longer, a relevant disqualified person;
  - (d) the person is named as the respondent for an application for an offender prohibition order.
- (2) For a relevant event mentioned in subsection (1)(a) or (b), the police commissioner may notify the commissioner of the following—
  - (a) that the relevant event has happened;
  - (b) if subsection (1)(a) applies because the person has been charged with or convicted of an offence—
    - (i) the offence the person has been charged with or convicted of; and
    - (ii) the particulars of the offence; and
    - (iii) the date of the charge or conviction.
- (3) For a relevant event mentioned in subsection (1)(c) or (d), the police commissioner must notify the commissioner of the following—



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- (a) that the relevant event has happened;
  - (b) if subsection (1)(c) applies because the person has become a relevant disqualified person—the information mentioned in section 313;
  - (c) if subsection (1)(d) applies—the information mentioned in section 314 in relation to the offender prohibition order.
- (4) A notice given under subsection (2) or (3) 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.
  - (5) The commissioner may confirm the police commissioner’s suspicions under subsection (1).
  - (6) However, the duty imposed on the police commissioner to provide information to the commissioner under this section applies only to information in the police commissioner’s possession or to which the police commissioner has access.
  - (7) If the person is a person mentioned in section 323(1), 324(1) or 325(1), the commissioner, on receiving notice under subsection (2) or (3), may write to the person to inform the person of the person’s obligations under sections 323(2), 324(2) or 325(2).

*Note—*

Sections 323 to 325 impose obligations on particular persons to notify particular entities of changes in police information.

- (8) 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.
- (9) To remove any doubt, it is declared that, despite the *Youth Justice Act 1992*, part 9, the police commissioner may disclose information to which that part applies to the commissioner under this section.

## **Division 3                      Obtaining police information from other State entities**

### **318      Obtaining information from director of public prosecutions**

- (1) This section applies to a person mentioned in section 310.
- (2) If the commissioner becomes aware that the person has been charged with or convicted of an offence, the commissioner may, by written notice, ask the director of public prosecutions for the following—
  - (a) a written statement briefly describing the circumstances of a charge or conviction for the offence;
  - (b) a copy or written summary of evidentiary material about the offence;
  - (c) if a charge for the offence was not proceeded with—a written summary of the reasons why the charge was not proceeded with.
- (3) The commissioner's request may include the following information—
  - (a) the person's name and any other name the commissioner believes the person may use or have used;
  - (b) the person's gender and date and place of birth.
- (4) The director of public prosecutions may comply with a request under subsection (2) if the director reasonably believes the statement, copy or summary may help the commissioner in making an employment-screening decision about the person.
- (5) However, the director of public prosecutions must not give the commissioner a copy or written summary of evidentiary material about the offence that relates only to a person other than the person about whom the request is made.

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*Example of evidentiary material for subsection (5)—*

a report by an expert about a person other than the person about whom the request is made.

- (6) The director of public prosecutions must not give information, or a document containing information, to the commissioner under this section if the director 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) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law;
  - (d) prejudice a prosecution or another matter before a court;
  - (e) endanger a person's life or physical safety.
- (7) The giving of information, or a document containing information, under this section by the director of public prosecutions is authorised despite any other Act or law, including a law imposing an obligation to maintain confidentiality about the information.

*Note—*

See sections 384 and 385 for restrictions on disclosing or giving access to information or documents obtained under this Act.

- (8) Without limiting subsection (7), this section applies despite the *Director of Public Prosecutions Act 1984*, section 24A.
- (9) In this section—

***evidentiary material***, about an offence, means material compiled in the course of the investigation or prosecution of the offence, including, for example, the following—

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- (a) a summary of the circumstances of the alleged offence prepared by a police officer;

*Examples—*

bench charge sheet, QP9

- (b) a witness statement;
- (c) an indictment;
- (d) a record of an interview or a transcript of a record of an interview, including a section 93A transcript;
- (e) a report by an expert about the person alleged to have committed the offence.

### **319 Obtaining information from chief executive (corrective services)**

- (1) The chief executive (corrective services) must give the commissioner written notice of each person who is or becomes subject to a sexual offender order.
- (2) The written notice must state the following—
  - (a) the person's name;
  - (b) that the person is subject to a sexual offender order;
  - (c) any other information the chief executive (corrective services) reasonably considers is necessary for the commissioner to perform a function or exercise a power under this chapter.
- (3) The chief executive (corrective services) and the commissioner may enter into a written arrangement by which written notices are given under subsection (1).
- (4) Without limiting subsection (3), the arrangement may provide for the written notices to be given electronically.
- (5) However, if written notices under subsection (1) are to be given electronically and, under an Act, there is a limitation on who may access the information mentioned in the notices or

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the purposes for which that information may be used, the arrangement must provide for the limitation.

- (6) The disclosure of information by the chief executive (corrective services) under this section is authorised despite any other Act or law, including a law imposing an obligation to maintain confidentiality about the information.

*Note—*

See sections 384 and 385 for restrictions on disclosing or giving access to information or documents obtained under this Act.

- (7) In this section—

*chief executive (corrective services)* means the chief executive of the department in which the *Corrective Services Act 2006* is administered.

## **Division 4                      Obtaining information from interstate police commissioner**

### **320      Requesting further information about interstate convictions and charges**

- (1) This section applies if police information about a person obtained under division 2 includes—
- (a) a conviction of the person for an offence in another State, including an interstate spent conviction of the person; or
  - (b) an interstate charge against the person.
- (2) The commissioner may ask an interstate police commissioner for a brief description of the circumstances of the conviction or charge.
- (3) The commissioner's request may include the following information—
- (a) the person's name and any other name the commissioner believes the person may use or have used;

- (b) the person's gender and date and place of birth.
- (4) To remove any doubt, it is declared that this section applies in relation to—
  - (a) a conviction of a person whether the conviction happened before or after the commencement of this section; and
  - (b) an interstate charge against a person whether the offence to which the charge relates was committed or alleged to have been committed before or after the commencement of this section.

- (5) In this section—

*interstate charge*, made against a person, means a charge against the person for an offence alleged to have been committed by the person against a law of another State or the Commonwealth.

*interstate police commissioner* means the commissioner of a police force or service of another State or the Commonwealth.

*interstate rehabilitation law* means a law applying, or that applied, in another State or the Commonwealth, that provides, or provided, for the same matter as the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

*interstate spent conviction*, of a person, means a conviction for an offence committed by the person against a law of another State or the Commonwealth that the person is not required to disclose under an interstate rehabilitation law because—

- (a) a rehabilitation period prescribed under that law for the conviction has expired; and
- (b) the conviction has not been revived under that law.

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## **Division 5                      Changes in information or status**

### **321      Acquiring police information**

For a person in relation to whom police information does not exist, there is taken to be a change in the person's police information if the person acquires police information.

### **322      Effect of conviction for serious offence**

- (1) This section applies to a person with a current positive notice or current positive exemption notice if the person is convicted of a serious offence.

*Notes—*

- 1 See sections 237(1)(b)(ii) and 239 for the commissioner's power to cancel a positive notice if the holder of the notice is convicted of an offence.
  - 2 See sections 295(1)(b)(ii) and 297 for the commissioner's power to cancel a positive exemption notice if the holder of the notice is convicted of an offence.
- (2) The person must immediately return the positive notice or positive exemption notice to the commissioner, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (3) Until and unless a prescribed event happens for the person, the following applies—
- (a) if the person is employed in regulated employment, the person must not perform work that is regulated employment;
  - (b) if the person is not employed in regulated employment, the person must not start regulated employment;
  - (c) the person must not start or continue carrying out a regulated business.

Maximum penalty—500 penalty units or 5 years imprisonment.

- (4) For subsection (3), a *prescribed event* happens for a person if—
  - (a) the person gives the person’s positive notice or positive exemption notice to the commissioner under subsection (2), and the commissioner returns the positive notice or positive exemption notice to the person; or
  - (b) the person is issued a new positive notice or positive exemption notice.
- (5) In this section, a reference to a person’s positive notice is taken to include a reference to any positive notice blue card relating to the notice.

### **323 Effect of change in police information about employee**

- (1) This section applies to a person employed in regulated employment if the person becomes aware that there is a change in the person’s police information.
- (2) The person must immediately disclose to the person’s employer that there has been a change in the person’s police information.

Maximum penalty—100 penalty units.

- (3) On receiving the disclosure, the person’s employer must not continue to employ the person in regulated employment without notifying the commissioner, in the approved form, of the change in the person’s police information.

Maximum penalty—100 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 person’s employer any information about the change other than that a change has happened; and
  - (b) unless otherwise required under this chapter, it is not a requirement that the employer stop employing the person on receiving the disclosure.



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**324 Person carrying on a regulated business to notify commissioner of change in police information**

- (1) This section applies to a person carrying on a regulated business if the person becomes aware that there is a change in the person's police information.
- (2) The person must immediately notify the commissioner, in the approved form, of the change in the person's police information.

Maximum penalty—100 penalty units.

**325 Effect of change in police information about other persons**

- (1) This section applies if—
  - (a) a person has a current positive notice or current positive exemption notice; and
  - (b) there has been a change in the person's police information since the notice was issued; and
  - (c) the person is not employed in regulated employment or carrying on a regulated business; and
  - (d) the commissioner has not been notified about the change under section 323 or 324.
- (2) Before starting regulated employment, the person must notify the person's proposed employer that there has been a change in the person's police information since the person's current positive notice or positive exemption notice was issued.

Maximum penalty—100 penalty units.

- (3) On receiving the disclosure, the employer must not employ the person in regulated employment without notifying the commissioner, in the approved form, of the change in police information.

Maximum penalty—100 penalty units.

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- (4) Before starting to carry on a regulated business, the person must notify the commissioner, in the approved form, of the change in police information.

Maximum penalty—100 penalty units.

**326 Police commissioner to advise commissioner if person ceases to be police officer**

- (1) This section applies if—
- (a) the police commissioner is aware that—
    - (i) an exemption notice application has been made about a person; or
    - (ii) a person holds an exemption notice; and
  - (b) the person has ceased to be a police officer.
- (2) The police commissioner must notify the commissioner that the person is no longer a police officer.

**327 Effect of person ceasing to be police officer**

- (1) This section applies to a person who is a police officer employed in regulated employment if the person ceases to be a police officer.
- (2) The person must immediately notify the person's employer in relation to the regulated employment of the person ceasing to be a police officer.

Maximum penalty—10 penalty units.

*Note—*

See part 4, divisions 3 to 5 for offences about the employment of a person who is not a police officer or registered teacher in regulated employment.

- (3) To remove any doubt, it is declared that—
- (a) it is not a requirement of subsection (2) that the person give the person's employer any information about the

circumstances of the person ceasing to be a police officer other than that it has happened; and

- (b) unless otherwise required under this chapter, it is not a requirement that the employer stop employing the person on receiving the notification.

### **328 Effect of person ceasing to be registered teacher**

- (1) This section applies to a person who is a registered teacher employed in regulated employment if the person surrenders the person's registration under the *Education (Queensland College of Teachers) Act 2005*, section 59.
- (2) The person must immediately notify the person's employer in relation to the regulated employment of the surrender.

Maximum penalty—10 penalty units.

*Note—*

See part 4, divisions 3 to 5 for offences about the employment of a person who is not a police officer or registered teacher in regulated employment.

- (3) To remove any doubt, it is declared that—
  - (a) it is not a requirement of subsection (2) that the person give the person's employer any information about the surrender other than that it has happened; and
  - (b) unless otherwise required under this chapter, it is not a requirement that the employer stop employing the person on receiving the notification.

## **Division 6 Obtaining report about person's mental health**

### **329 Application of div 6**

- (1) This division applies if—

- (a) the commissioner is deciding whether or not there is an exceptional case for a person who has been—
    - (i) charged with or convicted of a serious offence; or
    - (ii) charged with or convicted of an offence, other than a serious offence, relating to or involving a child; and
  - (b) the commissioner reasonably believes it is necessary to consider a report about the person's mental health prepared under this division for deciding whether or not there is an exceptional case for the person.
- (2) For subsection (1)(b), the commissioner may form the reasonable belief only if—
- (a) in relation to the charge or conviction mentioned in subsection (1)(a)—
    - (i) the matter of the person's mental condition relating to the offence has been or was referred to the Mental Health Court or an entity of another State with similar functions to that court; or
    - (ii) a court has ordered the person to undertake treatment of a psychiatric nature; or
    - (iii) a court has been given a report about the person's mental health prepared by a registered health practitioner; or
  - (b) the commissioner has, under this chapter, been given a report about the person's mental health prepared by a registered health practitioner.

**330 Commissioner may request person to undergo examination by registered health practitioner etc.**

- (1) The commissioner may, by written notice, ask the person—
- (a) to undergo an examination by a registered health practitioner nominated by the commissioner, and any further examination required by the health practitioner,

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- so that a report about the person's mental health can be given to the commissioner under this division; and
- (b) to give the commissioner consent to obtain a report about the person's mental health from the registered health practitioner who conducts the examination.
- (2) The notice given under subsection (1) must state the following—
- (a) the reasons for the commissioner's request;
  - (b) the name and qualifications of the registered health practitioner nominated by the commissioner to conduct the examination;
  - (c) when and where the examination is to be conducted;
  - (d) that the health practitioner may require the person to undergo further examinations so that a report about the person's mental health can be prepared;
  - (e) that, under section 226, the commissioner must have regard to the report about the person's mental health prepared under this division in deciding whether or not there is an exceptional case for the person;
  - (f) that the person may withdraw the person's consent to employment screening under this chapter or, if the person is an applicant, the person's application under this chapter;
  - (g) that, if the person fails to undergo the examination, and any further examination required by the registered health practitioner, or to give the consent mentioned in subsection (1)(b), either—
    - (i) the person's consent to employment screening under this chapter or, if the person is an applicant, the person's application under this chapter may be withdrawn by the commissioner giving the person written notice of the withdrawal; or

- (ii) the commissioner may decide whether or not there is an exceptional case for the person in the absence of a report about the person's mental health.
- (3) If the person does not comply with the commissioner's request under subsection (1), the commissioner may decide whether or not there is an exceptional case for the person in the absence of a report about the person's mental health.

*Note—*

See also section 184 (in relation to the withdrawal of an eligibility application), section 206 or 216 (in relation to the withdrawal of a prescribed notice application) or section 267 or 278 (in relation to the withdrawal of an exemption notice application).

### **331 Nominating registered health practitioner to conduct examination**

The commissioner may nominate a registered health practitioner to conduct an examination under this division only if the commissioner is reasonably satisfied the health practitioner has the necessary qualifications, expertise or experience to conduct the examination.

### **332 Registered health practitioner obtaining information from Mental Health Court**

- (1) This section applies if—
  - (a) the person (*charged person*) has been charged with, but not convicted of—
    - (i) a serious offence; or
    - (ii) an offence, other than a serious offence, relating to or involving a child; and
  - (b) the matter of the charged person's mental condition relating to the offence has been referred to the Mental Health Court; and
  - (c) the commissioner is reasonably satisfied that it may be necessary or desirable for a registered health practitioner

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conducting an examination of the charged person under this division to have regard to information mentioned in subsection (2) for preparing a report about the person's mental health.

- (2) The commissioner may, by written notice, ask the charged person to give the Mental Health Court consent to give the registered health practitioner the following information—
  - (a) the court's decision in relation to the reference;
  - (b) the court's reasons for its decision;
  - (c) a copy or written summary of any expert's report about the person received in evidence by the court, including, for example, a medical report, psychiatrist's report or expert report that accompanied the reference;
  - (d) transcripts of a hearing conducted for the reference that the court has directed may be given to a party to the hearing or another person.
- (3) The written notice must state the following—
  - (a) the reasons for the commissioner's request;
  - (b) that, if the charged person fails to give the consent, the person's consent to employment screening under this chapter or, if the person is an applicant, the person's application under this chapter may be withdrawn by the commissioner giving the person written notice of the withdrawal.
- (4) If the charged person gives the consent, the Mental Health Court may give the information mentioned in subsection (2) to the commissioner for giving it to the registered health practitioner.
- (5) However, information or documents given under this section must not include—
  - (a) any record of material given to the court under the *Mental Health Act 2000*, section 284, or of how the material was taken into account; or

- (b) the Mental Health Court's reasons for taking material mentioned in paragraph (a) into account or not taking the material into account; or
  - (c) the content of an expert report about a person other than the charged person; or
  - (d) information about a person other than the charged person the Mental Health Court reasonably considers is not relevant to the registered health practitioner preparing a report about the charged person's mental health.
- (6) Also, the Mental Health Court must not give information, or a document containing information, under this section if the court is reasonably satisfied that giving the information may do any of the following—
- (a) prejudice an investigation or a matter before the court;
  - (b) prejudice the investigation of a contravention or possible contravention of the law in a particular case;
  - (c) enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained;
  - (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;
  - (e) prejudice a prosecution or another matter before another court;
  - (f) endanger a person's life or physical safety;
  - (g) adversely affect a person's mental health.
- (7) If the commissioner is given information under this section to give to the registered health practitioner, the commissioner—
- (a) must give the information to the registered health practitioner as soon as possible; and



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- (b) must not use the information for any purpose other than giving it to the registered health practitioner.
- (8) The giving of information under this section by the Mental Health Court is authorised despite any other Act or law, including a law imposing an obligation to maintain confidentiality about the information.
- Note—*
- See sections 334, 384 and 385 for restrictions on disclosing or giving access to information or documents obtained under this section.
- (9) Without limiting subsection (8)—
- (a) information may be given under this section even if the information can not be disclosed to the charged person under a confidentiality order under the *Mental Health Act 2000*, section 426; and
- (b) this section applies in relation to an expert's report despite the *Mental Health Act 2000*, section 318.
- (10) A decision of the Mental Health Court not to give an expert report about the charged person under this section does not prevent the commissioner applying under the *Mental Health Act 2000*, section 318(2) for leave of the court to give the report to the registered health practitioner.

### **333 Registered health practitioner obtaining information from Mental Health Review Tribunal**

- (1) This section applies if—
- (a) the person (*charged person*) has been charged with, but not convicted of—
- (i) a serious offence; or
- (ii) an offence, other than a serious offence, relating to or involving a child; and
- (b) the Mental Health Review Tribunal has reviewed the person's mental condition under the *Mental Health Act 2000*, chapter 6, part 3 or 4; and

- (c) the commissioner is reasonably satisfied that it may be necessary or desirable for the registered health practitioner conducting an examination of the charged person under this division to have regard to information mentioned in subsection (2) for preparing a report about the person's mental health.
- (2) The commissioner may, by written notice, ask the charged person to give the Mental Health Review Tribunal consent to give the registered health practitioner the following information—
  - (a) the tribunal's decision on the review;
  - (b) the tribunal's reasons for the decision;
  - (c) a copy or written summary of any expert's report about the charged person received by the tribunal in the proceeding for the review, including, for example, a report about an examination of the person by a psychiatrist under the *Mental Health Act 2000*, section 203A;
  - (d) transcripts of a hearing conducted for the review that the tribunal has directed may be given to a party to the hearing or another person.
- (3) The written notice must state the following—
  - (a) the reasons for the commissioner's request;
  - (b) that, if the charged person fails to give the consent, the person's consent to employment screening under this chapter or, if the person is an applicant, the person's application under this chapter may be withdrawn by the commissioner giving the person written notice of the withdrawal.
- (4) If the person gives the consent, the Mental Health Review Tribunal may give the information mentioned in subsection (2) to the commissioner for giving it to the registered health practitioner.

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- (5) However, information or documents given under this section must not include—
- (a) any record of material given to the tribunal under the *Mental Health Act 2000*, section 464, or of how the material was taken into account; or
  - (b) the Mental Health Review Tribunal's reasons for taking material mentioned in paragraph (a) into account or not taking the material into account; or
  - (c) the content of an expert report about a person other than the charged person; or
  - (d) information about a person other than the charged person the Mental Health Review Tribunal reasonably considers is not relevant to the registered health practitioner preparing a report about the charged person's mental health.
- (6) Also, the Mental Health Review Tribunal must not give information, or a document containing information, under this section if the tribunal is reasonably satisfied that giving the information may do any of the following—
- (a) prejudice a matter before the tribunal;
  - (b) prejudice the investigation of a contravention or possible contravention of the law in a particular case;
  - (c) enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained;
  - (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;
  - (e) prejudice a prosecution or another matter before a court;
  - (f) endanger a person's life or physical safety;
  - (g) adversely affect a person's mental health.

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- (7) If the commissioner is given information under this section to give to a registered health practitioner, the commissioner—
  - (a) must give the information to the registered health practitioner as soon as possible; and
  - (b) must not use the information for any purpose other than giving it to the registered health practitioner.
- (8) The giving of information under this section by the Mental Health Review Tribunal is authorised despite any other Act or law, including a law imposing an obligation to maintain confidentiality about the information.

*Note—*

See sections 334, 384 and 385 for restrictions on disclosing or giving access to information or documents obtained under this section.

- (9) Without limiting subsection (8), information may be given under this section even if the information can not be disclosed to the charged person under a confidentiality order under the *Mental Health Act 2000*, section 458.

### **334 Use of information obtained from Mental Health Court or Mental Health Review Tribunal**

- (1) This section applies if the commissioner gives a registered health practitioner information or a document about a person given to the commissioner—
  - (a) by the Mental Health Court under section 332; or
  - (b) by the Mental Health Review Tribunal under section 333.
- (2) The registered health practitioner must not—
  - (a) make a record of the information or information in the document; or
  - (b) disclose the information or information in the document to anyone; or
  - (c) give anyone access to the document; or

- (d) include any details of the information, or information in the document, in the report about the person's mental health prepared under this division.

Maximum penalty—100 penalty units.

**335 Commissioner may obtain report about person's mental health from registered health practitioner**

- (1) This section applies if a person gives the commissioner consent as mentioned in section 330(1)(b) in relation to an examination of the person conducted under this division.
- (2) The commissioner may ask the registered health practitioner who conducts the examination to give a report about the person's mental health to the commissioner, and the registered health practitioner may give the report to the commissioner.
- (3) The giving of a report under this section by a registered health practitioner is authorised despite any other Act or law, including a law imposing an obligation to maintain confidentiality about the examination.

*Note—*

See sections 384 and 385 for restrictions on disclosing or giving access to information or documents obtained under this Act.

**336 Commissioner to bear medical costs**

- (1) The commissioner must bear the medical costs for obtaining a report from a registered health practitioner under this division.
- (2) In this section—  
*medical costs*, for obtaining a report from a registered health practitioner under this division, means amounts charged by the health practitioner to—
- (a) conduct an examination for preparing the report; or
- (b) prepare the report.

## **Division 7                      Obtaining other information about person's mental health**

### **337      Commissioner may obtain particular information from Mental Health Court**

- (1) This section applies if—
  - (a) the commissioner is deciding whether or not there is an exceptional case for a person (*charged person*) who has been charged with, but not convicted of—
    - (i) a serious offence; or
    - (ii) an offence, other than a serious offence, relating to or involving a child; and
  - (b) the matter of the charged person's mental condition relating to the offence has been referred to the Mental Health Court; and
  - (c) the commissioner has the charged person's consent to obtain information about the person from the Mental Health Court under this section.
- (2) The commissioner may ask the Mental Health Court for the following (*requested information*)—
  - (a) the court's decision in relation to the reference;
  - (b) the court's reasons for its decision;
  - (c) a copy or written summary of any expert's report about the charged person received in evidence by the court, including, for example, a medical report, psychiatrist's report or expert report that accompanied the reference;
  - (d) transcripts of a hearing conducted for the reference that the court has directed may be given to a party to the hearing or another person.
- (3) The Mental Health Court may comply with the request if the court reasonably considers the requested information may

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help the commissioner in deciding whether or not there is an exceptional case for the charged person.

- (4) However, the information or documents given to the commissioner for complying with the request must not include—
- (a) any record of material given to the court under the *Mental Health Act 2000*, section 284, or of how the material was taken into account; or
  - (b) the Mental Health Court's reasons for taking material mentioned in paragraph (a) into account or not taking the material into account; or
  - (c) information that can not be disclosed to the charged person under a confidentiality order under the *Mental Health Act 2000*, section 426; or
  - (d) the content of an expert report about a person other than the charged person; or
  - (e) information about a person other than the charged person that the Mental Health Court reasonably considers is not relevant to the commissioner deciding whether or not there is an exceptional case for the charged person.
- (5) Also, the Mental Health Court must not give information, or a document containing information, to the commissioner under this section if the court is reasonably satisfied that giving the information may do any of the following—
- (a) prejudice an investigation or a matter before the court;
  - (b) prejudice the investigation of a contravention or possible contravention of the law in a particular case;
  - (c) enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained;
  - (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;
- (e) prejudice a prosecution or another matter before another court;
  - (f) endanger a person's life or physical safety;
  - (g) adversely affect a person's mental health.
- (6) The giving of information under this section by the Mental Health Court is authorised despite any other Act or law, including a law imposing an obligation to maintain confidentiality about the information.

*Note—*

See sections 384 and 385 for restrictions on disclosing or giving access to information or documents obtained under this chapter.

- (7) Without limiting subsection (6), this section applies in relation to an expert's report despite the *Mental Health Act 2000*, section 318.
- (8) A decision of the Mental Health Court not to give the commissioner an expert report about the charged person under this section does not prevent the commissioner applying under the *Mental Health Act 2000*, section 318(2) for leave of the court to give the report to the commissioner.

### **338 Commissioner may obtain particular information from Mental Health Review Tribunal**

- (1) This section applies if—
- (a) the commissioner is deciding whether or not there is an exceptional case for a person (*charged person*) who has been charged with, but not convicted of—
    - (i) a serious offence; or
    - (ii) an offence, other than a serious offence, relating to or involving a child; and



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- (b) the Mental Health Review Tribunal has reviewed the person's mental condition under the *Mental Health Act 2000*, chapter 6, part 3 or 4; and
  - (c) the commissioner has the charged person's consent to obtain information about the person from the Mental Health Review Tribunal under this section.
- (2) The commissioner may ask the Mental Health Review Tribunal for the following (the *requested information*)—
- (a) the tribunal's decision on the review;
  - (b) the tribunal's reasons for the decision;
  - (c) a copy or written summary of any expert's report about the charged person received by the tribunal in the proceeding for the review, including, for example, a report about an examination of the person by a psychiatrist under the *Mental Health Act 2000*, section 203A;
  - (d) transcripts of a hearing conducted for the review that the tribunal has directed may be given to a party to the hearing or another person.
- (3) The Mental Health Review Tribunal may comply with the request if the tribunal reasonably considers the requested information may help the commissioner in deciding whether or not there is an exceptional case for the charged person.
- (4) However, the information or documents given to the commissioner for complying with the request must not include—
- (a) any record of material given to the tribunal under the *Mental Health Act 2000*, section 464, or of how the material was taken into account; or
  - (b) the tribunal's reasons for taking material mentioned in paragraph (a) into account or not taking the material into account; or

- (c) information that can not be disclosed to the charged person under a confidentiality order under the *Mental Health Act 2000*, section 458; or
  - (d) the content of an expert report about a person other than the charged person; or
  - (e) information about a person other than the charged person that the Mental Health Review Tribunal reasonably considers is not relevant to the commissioner deciding whether or not there is an exceptional case for the charged person.
- (5) Also, the Mental Health Review Tribunal must not give information, or a document containing information, to the commissioner under this section if the tribunal is reasonably satisfied that giving the information may do any of the following—
- (a) prejudice a matter before the tribunal;
  - (b) prejudice the investigation of a contravention or possible contravention of the law in a particular case;
  - (c) enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained;
  - (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;
  - (e) prejudice a prosecution or another matter before a court;
  - (f) endanger a person's life or physical safety;
  - (g) adversely affect a person's mental health.
- (6) The giving of information under this section by the Mental Health Review Tribunal is authorised despite any other Act or law, including a law imposing an obligation to maintain confidentiality about the information.

*Note—*

See sections 384 and 385 for restrictions on disclosing or giving access to information or documents obtained under this chapter.

## **Division 8                      Dealing with information**

### **339      Commissioner to give notice to particular entities about a change in police information**

- (1) This section applies if the commissioner becomes aware that police information about a relevant person has changed.
- (2) However, this section does not apply if—
  - (a) the change is that the relevant person has been charged with or convicted of a disqualifying offence; or
  - (b) the change is that the relevant person has become a relevant disqualified person; or
  - (c) the following applies—
    - (i) the change is that the relevant person has been named as the respondent in an application for an offender prohibition order and the proceeding for the offender prohibition order has not ended;
    - (ii) a prescribed notice application or exemption notice application about the relevant person has been made and has not been decided.
- (3) If the commissioner considers the change in police information may be relevant to child-related employment, the commissioner must give each notifiable person for the person a written notice stating the following—
  - (a) the relevant person's name and identifying details;
  - (b) that the commissioner has received police information about the relevant person that the commissioner considers relevant to child-related employment;

- (c) that the commissioner is making a decision under part 4, division 9 or 11 or part 5, division 8 or 10 about the relevant person;
  - (d) a reminder of the risk management requirements under sections 171 and 172;
  - (e) an employer may not dismiss the relevant person solely or mainly because the employer is given a notice under this section;
  - (f) if the change in police information is a change in criminal history, whether it is a charge or conviction and whether or not the charge or conviction is for a serious offence;
  - (g) if the change in police information is a conviction for a serious offence—
    - (i) that, under section 194 or 256, it is an offence for an employer to employ, or continue to employ, the relevant person in regulated employment; and
    - (ii) the effect of section 322.
- (4) If the relevant person is the director of a school’s governing body, the commissioner must give written notice as mentioned in subsection (3) to the accreditation board.
- (5) An employer may not dismiss the relevant person solely or mainly because the employer is given a notice under subsection (3) or (4).
- (6) In this section—
- relevant person*** means—
- (a) the holder of a positive notice, other than a positive notice that is suspended under section 240 or 242; or
  - (b) the holder of a positive exemption notice, other than a positive exemption notice that is suspended under section 298; or

- (c) a person about whom a prescribed notice application or exemption notice application has been made, if the application has not been decided or withdrawn.

### **340 Commissioner must give police commissioner a person's current address**

- (1) The commissioner must, on written application of the police commissioner, give the police commissioner information about an address for a person if—
  - (a) the commissioner has an address for the person that is different to the address stated by the police commissioner in the application; and
  - (b) either of the following applies—
    - (i) the police commissioner is, under this chapter, required to give a notice to the person;
    - (ii) the commissioner reasonably believes the giving of the information will help the police commissioner to verify the person's identity for giving police information to the commissioner under this chapter.
- (2) Despite section 316, information given to the police commissioner under this section must not be used, disclosed or accessed for any purpose other than a purpose mentioned in subsection (1)(b).

### **341 Giving other information to police commissioner**

- (1) The commissioner may give the police commissioner confidential information about a person if the commissioner reasonably believes the giving of the information is necessary for the effective administration of any of the following—
  - (a) this chapter;
  - (b) the Offender Prohibition Order Act;
  - (c) the Offender Reporting Act;

- (d) the *Police Powers and Responsibilities Act 2000*, section 789A.
- (2) Section 316 applies to information given under this section.
- (3) This section does not limit section 340 or 385.

**342 Commissioner may give information about director of school's governing body to accreditation board**

- (1) The commissioner may, on written application of the accreditation board signed by the chairperson, give the accreditation board the following information about a director of a school's governing body—
  - (a) whether the director is the holder of a positive notice, negative notice, positive exemption notice or negative exemption notice;
  - (b) whether the director is an applicant under part 4, division 8 or part 5, division 7.

*Note—*

The *Education (Accreditation of Non-State Schools) Act 2001*, section 15 provides that, for this chapter, a person is taken to be a person carrying on a regulated business by being a director of the governing body of a provisionally accredited, or accredited, school.

- (2) The commissioner must notify the accreditation board of the following—
  - (a) the issue of a negative notice or negative exemption notice to a director of a school's governing body;
  - (b) the suspension of the positive notice of a director of a school's governing body under section 240 or 242;
  - (c) the cancellation of a suspended positive notice of a director of a school's governing body, and the issue of a further prescribed notice or an exemption notice in relation to the cancellation, under section 241 or 243;
  - (d) the cancellation of the positive notice of a director of a school's governing body under section 244;

- (e) the positive exemption notice of a director of a school's governing body ceasing to have effect under section 289;
  - (f) the suspension of the positive exemption notice of a director of a school's governing body under section 298;
  - (g) the cancellation of a suspended positive exemption notice of a director of a school's governing body, and the issue of a further exemption notice in relation to the cancellation, under section 299;
  - (h) the cancellation of the positive exemption notice of a director of a school's governing body under section 302;
  - (i) the withdrawal of an application under part 4, division 8 or part 5, division 7 of a director of a school's governing body.
- (3) Also, if a prescribed notice application is made about a director of a school's governing body whom the commissioner is satisfied is a disqualified person, the commissioner must notify the accreditation board about the commissioner's decision and that the application is invalid.
- (4) In this section—
- chairperson* see the *Education (Accreditation of Non-State Schools) Act 2001*, schedule 3.
- issue*—
- (a) in relation to a negative notice—includes substitute a negative notice after cancelling a positive notice; and
  - (b) in relation to a negative exemption notice—includes substitute a negative exemption notice after cancelling a positive exemption notice or positive notice.

**343 Commissioner must give information about particular persons to college of teachers**

- (1) This section applies if the commissioner—

- (a) has, under the *Education (Queensland College of Teachers) Act 2005*, section 15D, advised the college of teachers that an applicant for registration or permission to teach under that Act holds a positive notice; and
  - (b) the commissioner reasonably believes the person is still an applicant for registration or permission to teach under that Act.
- (2) If the person's positive notice is suspended or cancelled under part 4, division 11 or expires under section 231, the commissioner must give the college written notice of the suspension, cancellation or expiry.
- (3) If, on the cancellation of the person's positive notice under part 4, division 11, the person is issued a further positive notice or a positive exemption notice, the notice under subsection (2) must state that the person has been issued a further positive notice or positive exemption notice.
- (4) If the commissioner becomes aware that police information about the person has changed, other than in a way mentioned in section 339(2), the commissioner must give the college a written notice stating the college may need to have regard to the matters mentioned in the *Education (Queensland College of Teachers) Act 2005*, section 11(1) for deciding whether the applicant is suitable to teach.

**344 Commissioner must give information about particular holders to chief executive (disability services)**

- (1) This section applies if—
- (a) the chief executive (disability services) requested information about a person under the *Disability Services Act 2006*, section 89D; and
  - (b) the person is the holder of, or applicant for, an exemption notice under the *Disability Services Act 2006*.
- (2) If the person's positive notice is cancelled or suspended under part 4, division 11 or expires under section 231, the



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commissioner must give the chief executive (disability services) written notice of the cancellation, suspension or expiry.

- (3) If, on the cancellation of the person's positive notice under part 4, division 11, the person is issued a further positive notice or a positive exemption notice, the notice under subsection (2) must state that the person has been issued a further positive notice or a positive exemption notice.
- (4) If the commissioner becomes aware that police information about the person has changed, other than in a way mentioned in section 339(2), the commissioner must give the chief executive (disability services) a written notice complying with section 339(3) about the change.

### **345 Use of information obtained under this chapter about a person**

- (1) The commissioner must not use information obtained under this chapter about a person, other than for the purposes of this chapter or a report under section 395.
- (2) However, the commissioner may use information about a person who is, or seeks to be, engaged by the commission for deciding whether to obtain information about the person under section 357P.

### **346 Guidelines for dealing with information**

- (1) The commissioner must make guidelines, consistent with this Act, for dealing with information obtained by the commissioner under this chapter.
- (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 employment-screening decisions; and

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- (c) employment-screening decisions, based on the information, are made consistently.
- (3) The commissioner must give a copy of the guidelines to a person on request.

## **Part 7**

# **Miscellaneous provisions about prescribed notices and exemption notices**

### **Division 1**

## **Replacement notice**

#### **347 Replacement of lost or stolen notice or card**

- (1) If a person's current positive notice, positive notice blue card or positive exemption notice, is lost or stolen, the person must, within 14 days after the loss or theft—
  - (a) give the commissioner written notice of the loss or theft; and
  - (b) if the person has a current positive notice and a positive notice blue card and only the notice is lost or stolen, or only the card is lost or stolen, return the card or the notice that is not lost or stolen to the commissioner; and
  - (c) either—
    - (i) apply for a replacement notice or card; or
    - (ii) ask the commissioner to cancel the person's positive notice under section 244, or cancel the person's positive exemption notice under section 302.

Maximum penalty—10 penalty units.

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- (2) An application under subsection (1)(c)(i) must be in the approved form and accompanied by the prescribed fee.
  - (3) The commissioner must—
    - (a) cancel—
      - (i) for a lost or stolen positive notice—the lost or stolen notice and any positive notice blue card issued for it; or
      - (ii) for a lost or stolen positive notice blue card—the lost or stolen card and the positive notice for which it was issued; or
      - (iii) for a lost or stolen positive exemption notice—the lost or stolen notice; and
    - (b) if the person makes an application under subsection (1)(c)(i)—issue to the person—
      - (i) for a lost positive notice or positive notice blue card—a replacement positive notice and, if the person had a positive notice blue card for the person's previous positive notice, a replacement positive notice blue card; or
      - (ii) for a lost or stolen positive exemption notice—a replacement positive exemption notice.
  - (4) 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 is made, within 14 days after receiving a replacement notice or card the person must give the replaced notice or card to the commissioner.

Maximum penalty—10 penalty units.
  - (5) The commissioner must give written notice to the police commissioner about the fact that a current positive notice, positive notice blue card or positive exemption notice has been lost or stolen.

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### **348 Replacement notice if change of name or contact details**

(1) This section applies if the holder of a positive notice or positive exemption notice, or the holder of a negative notice or negative exemption notice who has applied for its cancellation, does any of the following (each of which is a *relevant change*)—

- (a) changes a name the holder has previously given to the commissioner;
- (b) starts to use a different name to the name or names the holder has previously given to the commissioner;
- (c) changes contact details previously given to the commissioner.

(2) The holder must give notice, in the approved form, to the commissioner about the relevant change within 14 days after the relevant change.

Maximum penalty—10 penalty units.

(3) If the commissioner considers it is appropriate to do so, the commissioner may issue to the holder—

- (a) for the holder of a positive notice—a replacement positive notice and, if the holder also has a positive notice blue card, a replacement positive notice blue card; or
- (b) for the holder of a positive exemption notice—a replacement positive exemption notice.

(4) If the commissioner issues to the holder a replacement positive notice, positive notice blue card or positive exemption notice, the holder must return the replaced notice or card to the commissioner within 14 days after receiving the replacement notice or card.

Maximum penalty—10 penalty units.

(5) The commissioner must cancel the previously held positive notice, positive notice blue card or positive exemption notice if the commissioner has issued a replacement notice or card.

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**349 Replacement notice if change in employment etc. details generally**

- (1) This section applies if any of the following (each of which is a *relevant change*) happens in relation to the holder of a positive notice or positive exemption notice that is not suspended —
  - (a) the holder ends or changes the holder’s employment;
  - (b) the holder stops carrying on a regulated business;
  - (c) the holder starts carrying on a regulated business other than a regulated business in relation to which the positive notice was issued.
- (2) However, this section does not apply if—
  - (a) the holder of a positive notice is or was, during the term of the positive notice—
    - (i) employed in regulated employment as a volunteer; or
    - (ii) carrying on a regulated business other than for financial reward; and
  - (b) a relevant change within the meaning of section 350(7) happens for the holder.

*Note—*

See section 350 in relation to the holder of a positive notice to whom circumstances mentioned in this subsection apply.

- (3) The holder must, within 14 days after the relevant change give notice, in the approved form, to the commissioner about the relevant change.

Maximum penalty—10 penalty units.

- (4) The commissioner may issue to the holder—
  - (a) for the holder of a positive notice—a replacement positive notice and, if the holder also has a positive notice blue card, a replacement positive notice blue card; or

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- (b) for the holder of a positive exemption notice—a replacement positive exemption notice.
- (5) If the commissioner issues to the holder a replacement positive notice, positive notice blue card or positive exemption notice, the holder must return the replaced notice or card to the commissioner within 14 days after receiving the replacement notice or card.
- Maximum penalty—10 penalty units.
- (6) The commissioner must cancel the previously held positive notice, positive notice blue card or positive exemption notice if the commissioner has issued a replacement notice or card.

**350 New notice if relevant change happens for volunteer or person carrying on business other than for financial reward**

- (1) This section applies if—
- (a) the holder of a positive notice that is not suspended is or was, during the term of the positive notice—
    - (i) employed in regulated employment as a volunteer; or
    - (ii) carrying on a regulated business other than for financial reward; and
  - (b) a relevant change happens for the holder.
- (2) The holder must, within 14 days after the relevant change give notice, in the approved form, to the commissioner about the relevant change.
- Maximum penalty—10 penalty units.
- (3) The commissioner must issue to the holder a new positive notice and, if the holder also has a positive notice blue card, a new positive notice blue card if—
- (a) under subsection (7), the notice under subsection (2) is accompanied by the prescribed application fee; and

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- (b) either—
- (i) the commissioner is not aware of any change in disciplinary information or police information about the person since the commissioner last made an employment-screening decision about the person; or
  - (ii) the commissioner—
    - (A) is aware of a change in disciplinary information or police information about the person since the commissioner last made an employment-screening decision about the person; and
    - (B) after considering the change, decides not to suspend or cancel the person's positive notice.
- (4) Despite subsection (3), the commissioner is not required to issue the new positive notice or new positive notice blue card if the commissioner is deciding whether to cancel the positive notice under section 237(1)(a), unless the commissioner decides not to cancel the positive notice.
- (5) If the commissioner issues to the holder a new positive notice or positive notice blue card, the holder must return the person's previously held notice or card to the commissioner within 14 days after receiving the new notice or card.
- Maximum penalty—10 penalty units.
- (6) The commissioner must cancel the previously held positive notice or positive notice blue card if the commissioner has issued a new prescribed notice or an exemption notice.
- (7) The notice under subsection (2) must be accompanied by the prescribed application fee if the application for the positive notice was made on the basis the holder was—
- (a) employed, or to be employed, in regulated employment as a volunteer; or

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- (b) carrying on, or proposing to carry on, a business other than for financial reward.
- (8) In this section—

***prescribed application fee*** means—

- (a) for a notice given under subsection (2) for a relevant change mentioned in the definition *relevant change*, paragraph (a)—the prescribed fee for a prescribed notice application about a person employed in regulated employment other than as a volunteer; or
- (b) for a notice given under subsection (2) for a relevant change mentioned in the definition *relevant change*, paragraph (b)—the prescribed fee for a prescribed notice application about a person carrying on a regulated business for financial reward.

***relevant change***, for the holder of a positive notice, means the holder—

- (a) becomes employed in regulated employment other than as a volunteer; or
- (b) starts carrying on a regulated business for financial reward.

## **Division 2                      Offences relating to false or misleading information**

### **351      False or misleading disclosure**

A person must not—

- (a) give another person who is proposing to employ the person in regulated employment information for this chapter that is false or misleading in a material particular; or



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- (b) state anything to the commissioner for this chapter that the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units or 2 years imprisonment.

### **352 False or misleading documents**

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

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 commissioner, 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.

## **Division 3 Review and appeal**

### **353 Definitions for div 3**

In this division—

*chapter 8 reviewable decision*, about a person, means—

- (a) a decision of the commissioner as to whether or not there is an exceptional case for the person if, because of the decision, the commissioner—
  - (i) issued a negative notice or negative exemption notice to the person; or
  - (ii) refused to cancel a negative notice or negative exemption notice issued to the person; or

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- (b) a decision of the commissioner that the person has been charged with a disqualifying offence if—
  - (i) because of the decision—
    - (A) the positive notice held by the person was suspended under section 240; or
    - (B) the positive exemption notice held by the person was suspended under section 298; and
  - (ii) the person claims he or she has not been charged with the disqualifying offence; and
  - (iii) the person has applied for a cancellation of the suspension under section 241 or 299 and that application has been refused; or
- (c) a decision of the commissioner that the person's registration under the *Education (Queensland College of Teachers) Act 2005* has been suspended under section 49 of that Act if—
  - (i) because of the decision, the positive notice held by the person was suspended under section 242; and
  - (ii) the person claims he or she is not the person whose registration under the *Education (Queensland College of Teachers) Act 2005* has been suspended under section 49 of that Act; and
  - (iii) the person has applied for a cancellation of the suspension under section 243 and that application has been refused; or
- (d) a relevant disqualified person decision about the person if—
  - (i) because of the decision, the commissioner issued a negative notice or negative exemption notice to the person; and
  - (ii) the person claims he or she is not the person the subject of the conviction, reporting obligations or

order in relation to which the decision was made;  
and

- (iii) the person has applied for a cancellation of the person's negative notice under section 236, or a cancellation of the person's negative exemption notice under section 294, and that application has been refused.

*issue*—

- (a) in relation to a negative notice—includes substitute a negative notice after cancelling a positive notice; and
- (b) in relation to a negative exemption notice—includes substitute a negative exemption notice after cancelling a positive exemption notice or positive notice.

***prescribed period***, for a review of a chapter 8 reviewable decision about a person, means 28 days after the person is given notice of the following—

- (a) for a chapter 8 reviewable decision mentioned in definition *chapter 8 reviewable decision*, paragraph (a)—the decision;
- (b) for a chapter 8 reviewable decision mentioned in definition *chapter 8 reviewable decision*, paragraph (b) relating to a suspended positive notice—the decision on the application under section 241 about the suspension;
- (c) for a chapter 8 reviewable decision mentioned in definition *chapter 8 reviewable decision*, paragraph (b) relating to a suspended positive exemption notice—the decision on the application under section 299 about the suspension;
- (d) for a chapter 8 reviewable decision mentioned in definition *chapter 8 reviewable decision*, paragraph (c)—the decision on the application under section 243 about the suspension;
- (e) for a chapter 8 reviewable decision mentioned in definition *chapter 8 reviewable decision*, paragraph (d)

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relating to a negative notice—the decision on the application under section 236 about the negative notice;

- (f) for a chapter 8 reviewable decision mentioned in definition *chapter 8 reviewable decision*, paragraph (d) relating to a negative exemption notice—the decision on the application under section 294 about the negative exemption notice.

***relevant disqualified person decision***, for a person, means—

- (a) a decision of the commissioner that the person has been or is convicted of a disqualifying offence for which an imprisonment order was or is imposed; or
- (b) a decision of the commissioner that the person is subject to—
- (i) offender reporting obligations; or
  - (ii) a final offender prohibition order; or
  - (iii) a disqualification order; or
  - (iv) a final sexual offender order.

### **354 Person may apply for review of chapter 8 reviewable decision**

- (1) A person who is not a disqualified person may apply, within the prescribed period and as otherwise provided under the QCAT Act, to QCAT for a review of a chapter 8 reviewable decision.
- (2) If a person applies under subsection (1) to have a chapter 8 reviewable decision reviewed, QCAT may not—
- (a) stay the operation of the decision; or
  - (b) grant an injunction in the proceeding for the review.
- (3) To remove any doubt, it is declared that there is no review or appeal under this Act in relation to a decision of the commissioner to issue, or refuse to cancel, a negative notice or

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negative exemption notice about a person other than because of a chapter 8 reviewable decision.

*Note—*

There is also no review or appeal in relation to a decision of the commissioner to refuse an eligibility application (see section 180(7)).

- (4) This section does not limit section 307.

### **355 Effect of applicant for a review becoming a disqualified person**

- (1) This section applies if a disqualified person made an application under section 354 before the person became a disqualified person.
- (2) The application and any proceeding in relation to the application must be dismissed—
  - (a) if a proceeding in relation to the application is before a court—by the court; or
  - (b) otherwise—by QCAT, even if the dismissal would be contrary to a direction of the District Court.
- (3) Any appeal by the person from a decision of QCAT on the application must be dismissed.

## **Division 4 Other miscellaneous provisions**

### **356 Compliance with requirement to end, or not start, a person's regulated employment**

- (1) This section applies if it would be a contravention of a provision of this chapter for a person (the *employer*) to employ, or continue to employ, another person (the *employee*) in regulated employment.
- (2) The employer must comply with the provision despite another Act or law or any industrial award or agreement.

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- (3) The employer does not incur any liability because, in compliance with the provision, the employer does not employ, or continue to employ, the employee in regulated employment.
- (4) A person whose positive notice is suspended under section 240 or 242, or whose positive exemption notice is suspended under section 298, may be employed in employment that is not regulated employment.

### **357 Disqualification order**

- (1) This section applies if a person is convicted of—
  - (a) a disqualifying offence and the court that convicts the person does not impose an imprisonment order for the offence; or
  - (b) another serious offence committed in relation to, or otherwise involving, a child.
- (2) The court may, on application by the prosecutor or on its own initiative, make an order (*a disqualification order*) in relation to the person stating that—
  - (a) the person may not hold a positive notice or positive exemption notice, or apply for a prescribed notice or exemption notice, for a stated period; or
  - (b) the person may never hold a positive notice or positive exemption notice or apply for a prescribed notice or exemption notice.
- (3) However, the court may make a disqualification order under subsection (2)(a) or (b) only if the court considers it would not be in the interests of children for the commissioner to issue a positive notice or positive exemption notice to the person.
- (4) The person against whom the disqualification order is made may appeal against the court's decision under subsection (2) in the same way the person may appeal against the conviction.
- (5) 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 or a Childrens Court—
  - (i) a police officer; or
  - (ii) a service legal officer within the meaning of the *Police Service Administration Act 1990*, section 10.24; or
  - (iii) a Crown prosecutor; or
- (b) otherwise—a Crown prosecutor.

## **Chapter 8A Criminal history checks, and assessing suitability, of persons engaged by the commission**

### **Part 1 Preliminary**

#### **357A Purposes of ch 8A**

The purposes of this chapter are—

- (a) to enable the commissioner to obtain a prescribed notice or exemption notice for persons who are to be engaged,

- or to continue to be engaged, by the commission in regulated employment; and
- (b) to require persons who are to be engaged, or to continue to be engaged, by the commission in child-related duties to have a positive notice or positive exemption notice, and to enable the commissioner to obtain a prescribed notice or exemption notice for the persons; and
  - (c) to enable the commissioner to obtain the criminal history of, and related information about, a person who proposes to be, or is, engaged by the commission, so that the commissioner can assess the person's suitability to be, or continue to be, engaged by the commission.

**357B This chapter applies despite the Criminal Law (Rehabilitation of Offenders) Act 1986**

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

**357C Commissioner to advise of duties of disclosure etc.**

Before a person is engaged by the commission, the commissioner must tell the person—

- (a) of the person's duties of disclosure under this chapter; and
- (b) that the commissioner may obtain the information about the person mentioned in section 357P; and
- (c) that guidelines for dealing with information obtained by the commissioner under this chapter are available from the commissioner on request.



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## Part 2                      Disclosure of criminal history

### **357D    Person seeking to be engaged by commission must disclose criminal history**

A person seeking to be engaged by the commission must disclose to the commissioner, before being so 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.

### **357E    Person engaged by commission must disclose changes in criminal history**

- (1) If there is a change in the criminal history of a person engaged by the commission, the person must immediately disclose to the commissioner 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.

### **357F    Requirements for disclosure**

- (1) To comply with section 357D or 357E, a person must give the commissioner 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.

### **357G False or misleading disclosure or failure to disclose**

- (1) A person must not—
  - (a) give the commissioner a disclosure for this part that is false, misleading or incomplete in a material particular;  
or
  - (b) fail to give the commissioner a disclosure as required under section 357E, 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 if the person, when making the disclosure—
  - (a) tells the commissioner, to the best of the person's ability, how it is false, misleading or incomplete; and
  - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

## **Part 3                      Employment screening of persons to start or continue in regulated employment**

### **357H Undertaking employment screening with consent**

- (1) This section applies in relation to a person who—
  - (a) proposes to be, or is, engaged by the commission; and
  - (b) is to start, or continue in, regulated employment in that capacity.
- (2) The commissioner may ask the person for written consent for the commissioner to undertake employment screening of the person under chapter 8.

- (3) Subsection (2) applies even if the person is a public service employee at the time the person is to start, or continue in, the regulated employment.
- (4) If the person does not give the consent, or withdraws his or her consent, the commissioner must ensure the person does not start, or continue in, the regulated employment.
- (5) If the person gives the consent, the commissioner may—
  - (a) if the person is not a police officer or registered teacher—undertake employment screening of the person under chapter 8, and issue a prescribed notice to the person, as if the commissioner were deciding a prescribed notice application about the person; or
  - (b) if the person is a police officer or registered teacher—undertake employment screening of the person under chapter 8, and issue an exemption notice to the person, as if the commissioner were deciding an exemption notice application about the person.
- (6) The person's consent to employment screening may be withdrawn—
  - (a) if the person is not a police officer or registered teacher—under sections 204 to 208 as if a prescribed notice application has been made about the person; or
  - (b) if the person is a police officer or registered teacher—under sections 264 to 269 as if an exemption notice application has been made about the person.

## Part 4                                      **Employment screening of persons engaged, or to be engaged, in child-related duties**

### 357I    **Application of pt 4**

(1) This part applies to duties to be performed in the commission if, under a part 6 directive, the commissioner decides—

- (a) the duties—
  - (i) are to be performed at a place at which services are provided only or mainly to a child or children; or
  - (ii) are to be performed in a role involving providing services only or mainly to a child or children; or
  - (iii) involve contact with a child or children that is of a kind, or happens in a context, that may create an unacceptable level of risk for the child or children; and
- (b) it is necessary to conduct employment screening of a person engaged to perform the particular duties to ensure the person is suitable to perform them; and
- (c) the particular duties are not likely to involve regulated employment.

(2) Duties to which this division applies are *child-related duties*.

(3) In this section—

*part 6 directive* means a directive under the *Public Service Act 2008* made for chapter 5, part 6 of that Act.

### 357J    **Prescribed notice or exemption notice required for child-related duties**

(1) The commissioner must ensure a person does not perform child-related duties in the commission unless—

- (a) if the person is engaged by the commission as a volunteer and is not a police officer or registered teacher—the person has a current positive notice; or
  - (b) otherwise—
    - (i) the person has a current positive notice or current positive exemption notice; or
    - (ii) the commissioner has started to undertake employment screening of the person as provided under section 357K.
- (2) Subsection (1) applies even if the person is engaged by the commission at the time the commissioner proposes to engage the person to perform the child-related duties.

### **357K Undertaking employment screening with consent**

- (1) This section applies if—
  - (a) the commissioner proposes to engage a person to perform child-related duties in the commission; and
  - (b) the person does not have a prescribed notice or exemption notice.
- (2) With the person's written consent, the commissioner must undertake child-related employment screening of the person.
- (3) For subsection (2), section 357H applies in relation to the person in the same way as it applies to a person who is to be engaged, or to continue to be engaged, by the commission in regulated employment.

### **357L Engaging public service employee before prescribed notice or exemption notice issued**

- (1) This section applies if—
  - (a) the commissioner engages a person to perform child-related duties on the basis the commissioner has

- started to undertake employment screening of the person as mentioned in section 357K; and
- (b) the person is a public service employee at the time the commissioner engages the person; and
  - (c) either of the following happens—
    - (i) the person's consent to employment screening is withdrawn, or taken to be withdrawn, under this Act;
    - (ii) the person is issued with a negative notice or negative exemption notice.
- (2) The commissioner must ensure the person does not continue to perform child-related duties.

### **357M Engaging other person before prescribed notice or exemption notice issued**

- (1) This section applies if—
- (a) the commissioner engages a person to perform child-related duties on the basis the commissioner has started to undertake employment screening of the person as mentioned in section 357K; and
  - (b) the person is not a public service employee at the time the chief executive engages the person.
- (2) The commissioner—
- (a) may only appoint the person on probation under the *Public Service Act 2008*, section 126 for a period not ending before the prescribed notice or exemption notice is issued to the person; and
  - (b) may confirm the person's appointment under the *Public Service Act 2008*, section 126 only if the person is issued with a positive notice or positive exemption notice; and

- (c) must not confirm the person's appointment under the *Public Service Act 2008*, section 126 if either of the following happens—
  - (i) the person's consent to employment screening is withdrawn, or taken to be withdrawn, under this Act;
  - (ii) the person is issued with a negative notice or negative exemption notice.
- (3) Subsection (2) does not limit the power under the *Public Service Act 2008*, section 126 to have a longer probationary period or to terminate the person's employment.

**357N Effect of suspension or cancellation of positive notice or positive exemption notice**

- (1) If the commissioner engages a person to perform child-related duties in the commission and the person's positive notice or positive exemption notice is suspended under chapter 8, the commissioner must ensure the person does not perform child-related duties while the notice is suspended.
- (2) If the commissioner engages a person to perform child-related duties in the commission and the person's positive notice or positive exemption notice is cancelled under chapter 8, the commissioner must ensure the person does not perform child-related duties.

## **Part 5**                      **Commissioner may obtain information from other entities about criminal history and certain investigations**

### **Division 1**                **Obtaining information from police commissioner on request**

#### **357O Application of div 1**

- (1) This division applies in relation to a person who—
  - (a) is engaged by the commission; or
  - (b) seeks to be engaged by the commission and has given the commissioner a disclosure for the purposes of part 2.
- (2) However, this division applies in relation to a person who is to start, or continue in, regulated employment or child-related duties only if—
  - (a) the person has been issued with a positive notice or positive exemption notice; and
  - (b) the commissioner is aware the person has a criminal history or is aware of investigative information about the person.

#### **357P Commissioner may obtain information from police commissioner**

- (1) The commissioner may ask the police commissioner to give the commissioner 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;



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- (c) information about an investigation relating to the possible commission of a serious offence by the person.
  - (2) Subject to subsections (3) and (4), the police commissioner must comply with the request.
  - (3) The duty imposed on the police commissioner to comply with the request—
    - (a) applies only to information in the police commissioner’s possession or to which the police commissioner has access; and
    - (b) in relation to information mentioned in subsection (1)(c)—applies only to information recorded on a central electronic database kept by the police commissioner.
  - (4) The police commissioner must not give information about an investigation relating to the possible commission of a serious offence by the person if—
    - (a) the police 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 police 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 police commissioner is reasonably satisfied the investigation is unlikely to lead to a reasonable suspicion that the person committed a serious offence.

## **Division 2                      Obtaining information about charges etc.**

### **357Q Prosecuting authority to notify commissioner about committal, conviction etc.**

- (1) This section applies if a person is charged with a relevant offence and the police commissioner or the director of public prosecutions (a *prosecuting authority*) is aware that the person is engaged by the commission.
- (2) If the person is committed by a court for trial for a relevant offence, the prosecuting authority must, within 7 days after the committal, give written notice to the commissioner 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 a relevant offence, the prosecuting authority must, within 7 days after the conviction, give written notice to the commissioner 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 a relevant offence, and has appealed the conviction, and the appeal is finally decided or has otherwise ended, the prosecuting authority must, within 7

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days after the decision or the day the appeal otherwise ends,  
give written notice to the commissioner of the following—

- (a) the person's name;
  - (b) particulars of the offence;
  - (c) the date of the decision or other ending of the appeal;
  - (d) if the appeal was decided—
    - (i) the court in which it was decided; and
    - (ii) particulars of the decision.
- (5) If the prosecution process ends without the person being convicted of a relevant offence, the prosecuting authority must, within 7 days after the process ends, give written notice to the commissioner about the following—
- (a) the person's name;
  - (b) if relevant, the court in which the process ended;
  - (c) particulars of the alleged offence;
  - (d) the date the process ended.
- (6) For subsection (5), a prosecution process ends if—
- (a) an indictment is presented against the person and—
    - (i) a nolle prosequi is entered on the indictment; or
    - (ii) the person is acquitted; or
  - (b) the process has otherwise ended.
- (7) A reference in this section to a conviction of a relevant offence includes a summary conviction of an indictable offence.
- (8) In this section—
- relevant offence*** means—
- (a) an indictable offence; or
  - (b) a disqualifying offence that is not an indictable offence.

## **Part 6**

# **Controls on use of information about criminal history and certain investigations**

### **357R Use of information obtained under this chapter**

- (1) This section applies to the commissioner in considering information about a person received under this chapter.
- (2) The information must not be used for any purpose other than assessing the person's suitability to be, or continue to be, engaged by the commission.
- (3) When making the assessment, the commissioner must have regard to the following matters relating to information about the commission, or alleged or possible commission, of an offence by the person—
  - (a) when the offence was committed, is alleged to have been committed or may possibly have been committed;
  - (b) the nature of the offence and its relevance to the person's proposed duties or duties in the commission;
  - (c) anything else the commissioner considers relevant to the assessment of the person.

### **357S Person to be advised of information obtained from police commissioner**

- (1) This section applies to information obtained by the commissioner about a person, under this chapter, from the police commissioner.
- (2) Before using the information to assess the person's suitability to be, or continue to be, engaged by the commission, the commissioner must—
  - (a) disclose the information to the person; and

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- (b) allow the person a reasonable opportunity to make representations to the commissioner about the information.

### **357T Guidelines for dealing with information**

- (1) The commissioner must make guidelines, consistent with this Act, for dealing with information obtained by the commissioner under this chapter.
- (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 commission; and
  - (c) decisions about the suitability of persons, based on the information, are made consistently.
- (3) The commissioner must give a copy of the guidelines, on request, to a person who is seeking to be engaged, or who is engaged, by the commission.

## **Chapter 9 Provisions about QCAT proceedings**

### **Part 1 QCAT proceedings about child-related employment review**

#### **358 Definitions for pt 1**

In this part—

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*child-related employment decision* means a chapter 8 reviewable decision

*constituting members* means the member or members of QCAT constituting it for the proceeding concerned.

*QCAT child-related employment review* means a review by QCAT of a child-related employment decision.

*QCAT president* means the president of QCAT.

### **359 Application of pt 1**

This part applies for a child-related employment review.

*Note—*

The QCAT Act also applies for the review.

### **360 Principle for reviewing child-related employment decision**

A child-related employment decision is to be reviewed under the principle that the welfare and best interests of a child are paramount.

### **361 Proceeding must always be held in private**

- (1) A hearing of a proceeding for a QCAT child-related employment review must be held in private.
- (2) However, the following are entitled to be present at the proceeding—
  - (a) each party to the proceeding;
  - (b) if, under an Act, a party is entitled to be represented by someone else at the proceeding, the party's representative;
  - (c) a witness while giving evidence;
  - (d) a person allowed to be present to support a party;

- (e) a person allowed to be present to support a witness, while the witness is giving evidence;
  - (f) a person allowed to be present by QCAT.
- (3) This section is subject to the QCAT Act, section 220.

*Editor's note—*

QCAT Act, section 220 (Tribunal may exclude person)

### **362 Applications on behalf of children**

- (1) An application for a child-related employment review may be made on behalf of a child only with the permission of the QCAT president.
- (2) The QCAT president may give permission only if the president considers—
  - (a) the person is not, on the person's own behalf, entitled to apply for the child-related employment review; and
  - (b) it is in the child's best interests that the application be made; and
  - (c) it would be inappropriate for, or unreasonable to require, the child to make the application himself or herself.

### **363 Withdrawal of application for review**

- (1) An applicant may withdraw an application made on behalf of a child under section 362 only with leave of the QCAT president or QCAT.
- (2) The QCAT president or QCAT may give leave under subsection (1) only if the president or QCAT considers that, having regard to the child's views or wishes, if any, it is in the child's best interests that the application be withdrawn.

### **364 Children must not be compelled to give evidence**

- (1) A child must not be compelled to give evidence in a proceeding for a QCAT child-related employment review.

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- (2) Without limiting subsection (1), QCAT may not require a child to do the either of the following under the QCAT Act, section 97(1)—
  - (a) attend a hearing of a proceeding to give evidence;
  - (b) produce a stated document or other thing to QCAT.
- (3) Before a child gives evidence in a proceeding, QCAT must satisfy itself that the child is willing to give the evidence.

### **365 Children giving evidence**

- (1) This section applies if, in a proceeding for a QCAT child-related employment review—
  - (a) a child is giving evidence; and
  - (b) section 367 does not apply.
- (2) Only the following persons may be present while the child gives evidence—
  - (a) the constituting members;
  - (b) the child's support person if the child has a support person and agrees to that person's presence.

### **366 Questioning of children**

- (1) This section applies if, in a proceeding for a QCAT child-related employment review—
  - (a) a child is giving evidence; and
  - (b) section 367 does not apply.
- (2) The child must not be cross-examined.
- (3) Also, only the constituting members may ask questions of the child.

### **367 Provisions for QCAT child-related employment reviews**

- (1) This section applies if—





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(2) The information must not identify the parties (other than the decision-maker) to, or other persons taking part in, a review.

(3) In this section—

***prescribed reviewable decision*** means any of the following decisions—

- (a) a child-related employment decision;
- (b) a decision or assessment mentioned in the *Adoption of Children Act 1964*, section 13AA, 13AC, 13E or 14D;
- (c) a decision mentioned in the *Child Care Act 2002*, section 163;
- (d) a decision that is a reviewable decision under the *Child Protection Act 1999*;
- (e) a decision mentioned in the Education and Care Services National Law (Queensland), section 192.

***review*** means a review by QCAT.

## Chapter 10      General

### Part 1              Review of particular decisions

#### 369      Meaning of ***reviewable decision*** for pt 1

(1) In this part—

***reviewable decision*** means any of the following—

- (a) if, under the *Child Protection Act 1999*, section 14(1), the chief executive (child safety) is required to take action under section 14(1)(a) or (b), a decision by the chief executive about the action;

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- (b) a decision, under the *Child Protection Act 1999*, section 87(2), by the chief executive (child safety) not to take action under that subsection;
  - (c) a decision by the chief executive (child safety) to take, or not to take, a step for the purpose of ensuring a child placed in care under the *Child Protection Act 1999*, section 82, is cared for in a way that meets the statement of standards under section 122 of that Act;
  - (d) a decision that is a reviewable decision under the *Child Protection Act 1999*, other than—
    - (i) a decision about a licence under section 129 of that Act; or
    - (ii) a decision about a certificate of approval under section 136 of that Act; or
    - (iii) a decision about an authority under section 137, 138, 138C, 140 or 140AA of that Act.

*Note—*

Reviewable decisions under the *Child Protection Act 1999* are in schedule 2 of that Act. See schedule 3, definition *reviewable decision* of that Act.

- (2) For paragraph (a) of the definition *reviewable decision* in subsection (1), if the chief executive (child safety) is required to take action under the *Child Protection Act 1999*, section 14(1)(a) or (b) and fails to take the action, the failure is taken to be a decision by the chief executive (child safety) not to take any action.
- (3) For paragraph (c) of the definition *reviewable decision* in subsection (1), a failure by the chief executive (child safety) to decide to take a step for the purpose mentioned in that paragraph is taken to be a decision not to take the step.
- (4) Subsection (5) applies if, in the course of the commissioner seeking to have a reviewable decision resolved to the commissioner's satisfaction—

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- (a) the chief executive (child safety) amends, or substitutes another reviewable decision for, the first reviewable decision and the amended reviewable decision or substituted reviewable decision does not resolve the matter to the commissioner's satisfaction; or
  - (b) in relation to a failure to take action or to decide to take a step as mentioned in subsection (2) or (3)—the chief executive (child safety) actually makes a reviewable decision and the reviewable decision does not resolve the matter to the commissioner's satisfaction.
- (5) For section 370, the amended or substituted reviewable decision, or the reviewable decision actually made, becomes the reviewable decision.

### **370 Commissioner may apply for review of reviewable decisions**

- (1) This section applies if, in performing the commissioner's child guardian functions, the commissioner—
  - (a) is dissatisfied with a reviewable decision; and
  - (b) has been unable to resolve the matter with the chief executive (child safety) to the commissioner's satisfaction.
- (2) The commissioner may apply to QCAT to have the reviewable decision reviewed.
- (3) The commissioner may apply to QCAT only if the commissioner is satisfied that to do so would be in the child's best interests.
- (4) Before the commissioner may apply to QCAT to have the reviewable decision reviewed, the commissioner must give the chief executive (child safety) a written notice stating—
  - (a) the commissioner is dissatisfied with the decision; and
  - (b) the reasons the commissioner is dissatisfied with the decision; and

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- (c) the matter has not been resolved to the commissioner's satisfaction; and
  - (d) the commissioner intends to apply to QCAT for a review of the decision.

## **Part 2**                      **When commissioner may give notice other than in writing**

### **371 Application of pt 2**

This part applies if, under this Act, the commissioner is required to give written notice to a person about a decision made or action taken by the commissioner.

### **372 Person asks for notice other than in writing**

- (1) This section applies if the person asks the commissioner not to notify the person by written notice but to use another way of communication.
- (2) The commissioner must communicate with the person in the requested way, to the extent it is reasonable for the commissioner to do so, instead of giving the written notice.

### **373 Written notice inappropriate**

- (1) This section applies if the commissioner considers—
  - (a) if the written notice is given—
    - (i) the rights, interests or wellbeing of a child may be adversely affected; or
    - (ii) the health or safety of the person, or of someone else, may be put at risk; or

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- (iii) an investigation by the commissioner will be prejudiced; or
  - (b) for another reason, it would not be appropriate to give the written notice in the circumstances.
- (2) The commissioner may communicate with the person in a way the commissioner considers appropriate instead of giving the written notice.
- (3) If the person asks the commissioner to give the written notice to the person's lawyer or other nominated representative, the commissioner must do so.

#### **374 Commissioner must keep record**

If, under this part, the commissioner does not give the written notice, the commissioner must keep a written record of—

- (a) the reasons for not giving the written notice; and
- (b) the way the commissioner told the person about the decision or action; and
- (c) when the commissioner told the person about the decision or action; and
- (d) the substance of the communication.

## **Part 3 Evidence and legal proceedings**

#### **375 Positive notice blue card is evidence of holding positive notice**

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

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### **376 Evidentiary provisions**

- (1) This section applies to a proceeding under or in relation to this Act.
- (2) Unless a party, by reasonable notice, requires proof of—
  - (a) the appointment of a community visitor under this Act; or
  - (b) the authority of a community visitor to do something under this Act;the appointment or authority must be presumed.
- (3) A signature purporting to be the signature of the commissioner, the assistant commissioner or a community visitor is evidence of the signature it purports to be.
- (4) A certificate purporting to be signed by the commissioner or assistant commissioner stating any of the following matters is evidence of the matter—
  - (a) a stated document is a copy of a notice given or issued under this Act;
  - (b) on a stated day, a stated person was given a stated notice under this Act.

### **377 Indictable and summary offences**

- (1) An offence against any of the following provisions is an indictable offence—
  - section 174
  - section 195, 196, 197, 240(4), 242(4) or 244(3)
  - section 257, 258, 259, 298(4) or 302(3)
  - section 322(3).
- (2) An offence against section 388 is an indictable offence that is a crime.
- (3) Otherwise, an offence against this Act is a summary offence.

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### **378 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
  - (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).
- (4) The maximum penalty that may be summarily imposed for an indictable offence is 150 penalty units or 2 years imprisonment.

### **379 Limitation on who may summarily hear indictable offence proceedings**

- (1) A proceeding must be before a magistrate if it is a proceeding—



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- (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*.

### **380 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*.

### **381 When proceeding may start**

A proceeding for an offence against this Act may be started within—

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

### **382 Allegations of false or misleading information or statements**

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

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**383 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 4 Confidentiality**

**384 Confidentiality of information about criminal history or related information**

- (1) This section applies to a person who—
  - (a) is, or has been, the commissioner, the assistant commissioner, a staff member or a selection panel member; and

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- (b) in that capacity, under chapter 8 (including as applied by section 36), acquired, or gained access to a document containing, any of the following—
- (i) information about someone else’s police information;
  - (ii) disciplinary information about someone else;
  - (iii) information about someone else’s mental health, including, for example, information about a proceeding in the Mental Health Court or the Mental Health Review Tribunal about the person.
- (2) This section also applies to a person who—
- (a) is, or has been, the commissioner, the assistant commissioner, a staff member or a selection panel member; and
  - (b) in that capacity acquired information, or gained access to a document, under previous part 7 or chapter 8A about someone else’s criminal history or about an investigation relating to the possible commission of a serious offence by someone else.
- (3) This section also applies to a person who is or has been—
- (a) the Minister and in that capacity received a verbal report, or a written report (a *document*), under section 395 that included information mentioned in subsection (1)(b); or
  - (b) a person mentioned in subsection (5)(c) or (d) and in that capacity acquired the information, or gained access to the document in so far as it relates to the information.
- (4) 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.
- (5) Subsection (4) does not apply to the disclosure of information, or giving of access to a document, about a person—

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- (a) if subsection (1) applies—
    - (i) to the commissioner, the assistant commissioner or a staff member for the purpose of an employment-screening decision; or
    - (ii) for a document about a staff member—to the commissioner, the assistant commissioner, a staff member or selection panel member for the purpose of assessing the person’s suitability to be, or continue to be, a staff member; or
  - (b) if subsection (2) applies—to the commissioner, the assistant commissioner, a staff member or selection panel member for the purpose of assessing the person’s suitability to be, or continue to be, a staff member; or
  - (c) if subsection (3)(a) applies—to a public service officer of the department, the commissioner, a staff member or a member of the Minister’s staff for the purpose of obtaining advice relating to the information; or
  - (d) if subsection (3)(b) applies—to the Minister, a public service officer of the department, the commissioner, a staff member or a member of the Minister’s staff for the purpose of providing advice to the Minister relating to the information; or
  - (e) if the person is an adult—with the person’s consent; or
  - (f) if the disclosure or giving of access is otherwise required under an Act or is authorised under section 395.
- (6) In this section—

***previous part 7*** means part 7 of this Act as in force from time to time before the commencement of this definition.

*Note—*

Previous part 7 provided for criminal history checks of the commission’s staff. Now see chapter 8A.

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*selection panel member* means a member of a panel formed to make a recommendation to the commissioner about a person's engagement as a staff member.

*staff member* means a member of the commission's staff.

### **385 Confidentiality of other information**

- (1) This section applies to confidential information other than information mentioned in section 384(1)(b) or (2)(b).
- (2) If a person gains confidential information through involvement in this Act's administration, the person must not—
  - (a) make a record of the information or intentionally disclose the information to anyone, other than under subsection (4); or

- (b) recklessly disclose the information to anyone.

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 Minister or a member of the Minister's staff; or
  - (b) the commissioner or assistant commissioner; or
  - (c) a member of the commission's staff; or
  - (d) a public service officer of the department; or
  - (e) a person consulted or employed by the commissioner or assistant commissioner for an investigation of a complaint; or
  - (f) a member of an advisory committee.
- (4) A person may make a record of confidential information or disclose it to someone else—
  - (a) for this Act; or
  - (b) to discharge a function under another law; or

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- (c) for a proceeding in a court or tribunal; or
  - (d) if authorised under a regulation or another law; 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; and
    - (iii) the information does not identify, and is unlikely to lead to the identification of, a person as a child who is, or has been, the subject of a complaint under this Act.
- (5) Without limiting subsection (4)(a), a person makes a record of confidential information or discloses it to someone else for this Act in the following circumstances—
- (a) if the person is the Minister—the Minister makes the record, or discloses the information to the commissioner, a member of the commission’s staff, a public service officer of the department or a member of the Minister’s staff, (the *relevant person*) for the purpose of obtaining advice relating to a report given to the Minister under section 395;
  - (b) if the person is a relevant person—the person makes the record, or discloses the information to the Minister or another relevant person, for the purpose of providing advice to the Minister relating to the report.

### **386 Disclosure of information about investigations**

- (1) Section 385 does not prevent the commissioner from disclosing information to a person or to members of the public, about an issue the subject of an investigation by the commissioner, if the commissioner is satisfied the disclosure—
- (a) is necessary and reasonable in the public interest; and

- (b) is unlikely to prejudice the investigation.
- (2) In a disclosure under subsection (1), the commissioner may express an opinion expressly or impliedly critical of an entity only if the commissioner has given the entity an opportunity to answer the criticism.

## Part 5 Reprisals

### 387 Meaning of *taking a reprisal*

- (1) A person *takes a reprisal* if—
  - (a) the person causes, or attempts or conspires to cause, detriment to another person; and
  - (b) a substantial reason for the person doing the thing mentioned in paragraph (a) is the belief that the other person or someone else—
    - (i) has made, or may make, a complaint to the commissioner; or
    - (ii) has helped, or may help, the commissioner.
- (2) A reference in subsection (1) to causing detriment includes inducing a person to cause detriment.

### 388 Offence of taking a reprisal

A person must not take a reprisal.

Maximum penalty—150 penalty units or 2 years imprisonment.

### 389 Damages entitlement for reprisal

- (1) A reprisal is a tort and a person who takes a reprisal is liable in damages to anyone who suffers detriment as a result.

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- (2) Any appropriate remedy that may be granted by a court for a tort may be granted by a court for the taking of a reprisal.
- (3) If the claim for the damages goes to trial in the Supreme Court or the District Court, it must be decided by a judge sitting without a jury.

## **Part 6                                  Miscellaneous**

### **390    Meaning of *parent***

- (1) A *parent* of a child is the child's mother, father or someone else, other than the chief executive (child safety), having or exercising parental responsibility for the child.
- (2) However, a person standing in the place of a parent of a child on a temporary basis is not a parent of the child.
- (3) A parent of an Aboriginal child includes a person who, under Aboriginal tradition, is regarded as a parent of the child.
- (4) A parent of a Torres Strait Islander child includes a person who, under Island custom, is regarded as a parent of the child.

### **391    Relationship with complaints agencies**

- (1) This Act does not prevent a complaints agency performing its principal function under the Act under which the complaints agency is established.
- (2) The commissioner may—
  - (a) liaise with a complaints agency about the exercise by the commissioner and the complaints agency of their functions relating to complaints about services provided to children; and



- (b) enter into an arrangement with the complaints agency aimed at avoiding inappropriate duplication of activities relating to those functions.

**392 Complaints agency or other government service provider to inform commissioner about actions taken for complaint**

- (1) This section applies if—
  - (a) the commissioner refers a complaint, about services provided by a service provider to a child, to a complaints agency or other government service provider; and
  - (b) the commissioner, by written notice to the agency or service provider, asks for information about the way in which the agency or service provider is dealing or has dealt with the complaint.
- (2) The agency or service provider must inform the commissioner about any action taken for dealing with the complaint or, if it is resolved, the resolution of the complaint.
- (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.

**393 Protection from liability**

- (1) An official does not incur civil liability 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 a member of the Minister’s staff; or

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- (b) the commissioner or assistant commissioner; or
- (c) a member of the commission's staff; or
- (d) a public service officer of the department; or
- (e) a person acting under the direction of a person mentioned in paragraph (b) or (c); or
- (f) a member of the Child Death Case Review Committee.

### **394 Whistleblowers' protection**

- (1) A person is not liable, civilly, criminally or under an administrative process, for disclosing to the commissioner information that would help the commissioner in assessing or investigating a complaint.
- (2) Without limiting subsection (1)—
  - (a) in a proceeding for defamation the discloser has a defence of absolute privilege for publishing the disclosed information; and
  - (b) if the discloser would otherwise be required to maintain confidentiality about the disclosed information under an Act, oath, rule of law or practice, the discloser—
    - (i) does not contravene the Act, oath, rule of law or practice by disclosing the information; and
    - (ii) is not liable to disciplinary action for disclosing the information.
- (3) A person's liability for the person's own conduct is not affected only because the person discloses it to the commissioner.

### **395 Other reports by commissioner**

- (1) The commissioner may provide the Minister with a report relating to the administration of this Act, including the performance and exercise of the commissioner's functions and powers under this Act.

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- (2) The commissioner must provide the Minister with a report of a type mentioned in subsection (1) if the Minister asks for it.
  - (3) A report under this section—
    - (a) may relate to matters generally or to a particular matter;  
or
    - (b) may include confidential information about a person obtained under chapter 8 including confidential information to which section 345 or 385 applies or that is mentioned in section 384(1)(b).

### **396 Annual report by commission**

The commission's annual report under the *Financial Accountability Act 2009* for a financial year must include—

- (a) a report on the performance of the commissioner's child guardian functions during the year; and
- (b) a report on the operations of community visitors during the year; and
- (c) information about the number of times the Minister asked the commissioner for a report under section 395 during the year.

### **397 Commissioner 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 commissioner to give information to the police commissioner or the police commissioner to give information to the commissioner.
- (2) The commissioner 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.

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- (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.

**398 Commissioner may enter into arrangement with chief executive (child safety)**

- (1) The commissioner and the chief executive (child safety) may enter into a written arrangement about the administration of chapter 8 in relation to—
- (a) a person who is or is likely to be engaged in regulated employment mentioned in schedule 1, section 14; or
  - (b) a regulated business mentioned in schedule 1, section 24.
- (2) Without limiting subsection (1), the arrangement may provide for the electronic transfer of information, including on a daily basis, held by the commissioner about the person or business.
- (3) 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.

**399 Delegation by commissioner or assistant commissioner**

- (1) The commissioner may delegate the commissioner's powers under this Act to—
- (a) an appropriately qualified member of the commission's staff; or
  - (b) another individual whom the commissioner considers is an appropriately qualified person to exercise the powers delegated to the person.
- (2) The assistant commissioner may delegate the assistant commissioner's powers under this Act to—

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- (a) an appropriately qualified member of the commission's staff; or
  - (b) another individual whom the assistant commissioner considers is an appropriately qualified person to exercise the powers delegated to the person.

(3) In this section—

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

*Example of standing—*

a staff member's classification level in the public service

#### **400 Approved forms**

The commissioner may approve forms for use under this Act.

#### **401 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may be made about fees, including refunding or waiving fees, for this Act.
- (3) Without limiting subsection (2), a regulation may prescribe a fee for the commissioner giving information under the *Education (Queensland College of Teachers) Act 2005*, section 15D.

## **Chapter 11 Transitional and other provisions**

*Note—*

This Act, including this chapter, was renumbered by the *Criminal History Screening Legislation Amendment Act 2010*. Cross-references to provisions of this Act appearing in this chapter have not been updated except to change references to 'division' or 'div' in a part of this chapter

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to ‘part’ or ‘pt’. The remaining cross-references remain as they were immediately before the renumbering.

## **Part 1                      Repeal**

### **402      Repeal of Children’s Commissioner and Children’s Services Appeals Tribunals Act 1996**

The Children’s Commissioner and Children’s Services Appeals Tribunals Act 1996 is repealed.

## **Part 2                      Transitional provisions on repeal of Children’s Commissioner and Children’s Services Appeals Tribunals Act 1996**

### **403      Meaning of *commencing day***

In this part—

*commencing day* means the day section 168 commences.

### **404      Commissioner**

- (1) This section applies to the person who, immediately before the commencing day, was the Children’s Commissioner under the repealed Act.
- (2) Subject to sections 26 and 27, the person continues in office as the commissioner under this Act until the end of the term stated in the person’s appointment under the repealed Act.

- (3) The remuneration, allowances and terms of appointment decided for the person under section 12 of the repealed Act are taken to have been decided under section 23.

#### **405 Continuation of commission and staff**

- (1) The Children's Commission established under the repealed Act is continued in existence as the commission under this Act.
- (2) The staff of the Children's Commission established under the repealed Act continue as the staff of the commission under this Act.

#### **406 Continuation of certain complaints**

- (1) This section applies to a complaint made under part 3 of the repealed Act that—
  - (a) immediately before the commencing day, had not been finally dealt with under the repealed Act; and
  - (b) if this Act had commenced at the relevant time, could have been made under this Act.
- (2) The commissioner must continue to deal with the complaint as if it had been made under this Act.

#### **407 Official visitors**

- (1) A person who, immediately before the commencing day, held office as an official visitor under the repealed Act continues to hold office as a community visitor, on the conditions applying to the person immediately before the commencing day, until the end of the term stated in the person's appointment.
- (2) Subsection (1) applies subject to section 82(2) and (3).

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## **Part 3**                                      **Transitional provisions for amendment of Juvenile Justice Act 1992**

### **408**      **Official visitors**

- (1) A person who, immediately before the commencement, held office as an official visitor under the *Juvenile Justice Act 1992*—
  - (a) continues to hold office as a community visitor until the end of the term stated in the person's appointment; and
  - (b) while the person continues to hold office under paragraph (a), continues to be entitled to the remuneration and allowances to which the person was entitled immediately before the commencement.
- (2) Subsection (1) applies subject to section 82(2) and (3).
- (3) In this section—  
*commencement* means the commencement of schedule 3, amendments of the *Juvenile Justice Act 1992*.

## **Part 4**                                      **Transitional provisions for Child Care Act 2002**

### **409**      **Meaning of *commencement day***

In this part—

*commencement day* means the day this section commences.



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**410 Carrying on licensed child care service**

- (1) This section applies to a person who, immediately before the commencement day, was carrying on a business mentioned in schedule 1, section 10, under a licence under the *Child Care Act 1991*.
- (2) The person does not commit an offence against section 109 by continuing to carry on the business without a current positive notice—
  - (a) until the day the licence is next due to expire; and
  - (b) if the person applies for a suitability notice before the licence is next due to expire and does not withdraw the application, until the application is decided.

**411 Carrying on other regulated child care business**

- (1) This section applies to a person who, immediately before the commencement day, was carrying on a business mentioned in schedule 1, section 10, other than under a licence under the *Child Care Act 1991*.
- (2) The person does not commit an offence against section 109 by continuing to carry on the business without a current positive notice—
  - (a) until the day that is 6 months after the commencement day; and
  - (b) if the person applies for a suitability notice within 6 months after the commencement day and does not withdraw the application, until the application is decided.

**412 Employment in child care**

- (1) This section applies to a person who, immediately before the commencement day, was employed in employment mentioned in schedule 1, section 3A.
- (2) Section 127 does not apply to the employment of the person.

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- (3) If the employment is in a licensed child care service, sections 105 and 106 do not apply to the employment until the day the licence is renewed or the day that is 6 months after the commencement day, whichever is later.
- (4) If the employment is not in a licensed child care service, sections 105 and 106 do not apply to the employment until the day that is 6 months after the commencement day.

## **Part 5**

# **Transitional provisions for Education and Other Legislation (Student Protection) Amendment Act 2003**

### **413 Definitions for pt 5**

In this part—

*amending Act* means the *Education and Other Legislation (Student Protection) Amendment Act 2003*.

*commencement* means commencement of this section.

### **414 Outstanding applications for suitability notice**

If an application for a suitability notice was made, but not decided, before the commencement, the application must be decided as if the application had been made after the commencement.

### **415 Employment mentioned in sch 1, s 6A**

- (1) This section applies if a person (the *employee*), immediately before the commencement, was employed by another person

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(the *employer*) in employment mentioned in schedule 1, section 6A.

- (2) Section 127(1) does not apply to the employment of the employee.
- (3) Subject to subsections (4) and (5), section 105 does not apply to the continued employment of the employee by the employer during the period ending 3 months after the commencement (the *3 months period*).
- (4) Subsection (5) applies if the employer, while continuing to employ the employee, applies for a suitability notice about the employee during the 3 months period.
- (5) Section 105 does not apply to the continued employment of the employee by the employer until—
  - (a) if the application is withdrawn—the day of the withdrawal; or
  - (b) the day the employer receives a suitability notice about the employee, after the application is decided.

#### **416 Carrying on business mentioned in sch 1, s 11**

- (1) This section applies to a person who, immediately before the commencement, was carrying on a business mentioned in schedule 1, section 11.
- (2) Subject to subsections (3) and (4), the person does not commit an offence against section 109 by continuing to carry on the business without a current positive notice during the period ending 3 months after the commencement (the *3 months period*).
- (3) Subsection (4) applies if the person, while continuing to carry on the business, applies for a suitability notice about the person during the 3 months period.
- (4) The person does not commit an offence against section 109 by continuing to carry on the business without a current positive notice until—

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- (a) if the application is withdrawn—the day of the withdrawal; or
- (b) the day the person receives a suitability notice, after the application is decided.

## **Part 6**

# **Transitional provisions for Child Safety Legislation Amendment Act 2004**

### **417 Commissioner**

- (1) Subject to this Act, the current commissioner continues in office under this Act as the Commissioner for Children and Young People and Child Guardian until the end of the term stated in the person's appointment.
- (2) Unless the context otherwise requires, a reference in a document to the Commissioner for Children and Young People is taken to be a reference to the Commissioner for Children and Young People and Child Guardian.
- (3) In this section—

*commencement day* means the day the *Child Safety Legislation Amendment Act 2004*, section 39 commences.

*current commissioner* means the person who, immediately before the commencement day, was the Commissioner for Children and Young People.

### **418 Commission**

- (1) The current commission continues as the Commission for Children and Young People and Child Guardian.
- (2) Unless the context otherwise requires, a reference in a document to the Commission for Children and Young People

is taken to be a reference to the Commission for Children and Young People and Child Guardian.

(3) In this section—

*commencement day* means the day the *Child Safety Legislation Amendment Act 2004*, section 39 commences.

*current commission* means the office that, immediately before the commencement day, was the Commission for Children and Young People.

#### **419 Child deaths**

(1) As far as is practicable, the commissioner must include, in the register under section 89ZC, a record of the child deaths that happened before the commencement day and on or after 1 January 2001.

(2) The first report prepared under section 89ZF(1) is due by 31 October 2005 and must include the matters stated in section 89ZF(1) for the period from the commencement day to 1 July 2005.

(3) In this section—

*commencement day* means the day the *Child Safety Legislation Amendment Act 2004*, section 80 commences.

#### **420 References to child safety department**

If the *Child Protection Act 1999* is administered only in a part of a department, a reference in this Act to the child safety department is a reference only to that part.

#### **421 First report under s 89ZA**

The first report prepared under section 89ZA is due by 31 October 2005 and must relate to the period starting on the day that section commences and ending on 30 June 2005.

## **Part 7**

# **Transitional provisions for the Commission for Children and Young People and Child Guardian Amendment Act 2004**

### **422 Volunteers**

- (1) This section applies to a person to whom section 104B applies.
- (2) Section 104B applies to the person even though the agreement about carrying out work, that is regulated employment, was entered into before the commencement of this section.
- (3) However if, before the commencement, the employee under section 104B started carrying out work and the relevant employer under the section applied for a prescribed notice about the employee—
  - (a) the employee may continue to be employed by the relevant employer until the earlier of the following—
    - (i) 1 year after the commencement;
    - (ii) the employee is issued with a negative notice by the commissioner or the application is withdrawn; and
  - (b) the employer may continue to employ the employee until the earlier of the following—
    - (i) 1 year after the commencement;
    - (ii) the employer is given notice by the commissioner that a negative notice has been issued to the employee or the application is withdrawn.

### **423 Application of amendment of sch 1 to particular employment**

- (1) This section applies to a person who, immediately before the commencement of this section, was employed or was

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continuing to be employed in employment that, after the commencement, is regulated employment mentioned in schedule 1, part 1, section 3, 6C, 6E or 6F.

- (2) To the extent that, under section 127(1), part 6 does not apply to the employment of a person mentioned in subsection (1), section 127(1) no longer applies, or does not apply, to the employment of the person and part 6 applies to the employment of the person.
- (3) However, despite part 6 applying to the employment, sections 105 and 106 do not apply to the employment of the person until the earliest of the following—
  - (a) 1 year after the commencement;
  - (b) if an application for a prescribed notice about the person is made within that year and is not withdrawn—the day a prescribed notice is issued to the person;
  - (c) if an application for a prescribed notice about the person is made within that year and is withdrawn—the day of the withdrawal.
- (4) In this section—

*employment* includes continuing employment.

**424 Employment that becomes regulated employment other than employment mentioned in s 189(1)**

- (1) This section applies to employment of a person that—
  - (a) was not regulated employment immediately before the commencement of section 189; and
  - (b) is regulated employment after that commencement.
- (2) Section 127(1) applies to the employment of the person unless the employment is regulated employment under schedule 1, part 1, section 3, 6C, 6E or 6F.
- (3) In this section—

*employment* includes continuing employment.

#### **425 Carrying on regulated business**

- (1) This section applies to a person who, immediately before the commencement of this section, was carrying on a business mentioned in schedule 1, part 2, section 12, 13, 14 or 15.
- (2) Sections 109 and 113 do not apply to the carrying on of the business until the earliest of the following—
  - (a) 1 year after the commencement of the section;
  - (b) if the person applies for a prescribed notice within that year and does not withdraw the application—the day a prescribed notice is issued to the person;
  - (c) if the person applies for a prescribed notice within that year but withdraws the application—the day of the withdrawal.

#### **426 Provision because of the definition *serious offence***

- (1) This section applies to a decision made under this Act before the commencement of this section that involved a serious offence as that term was defined before the commencement.
- (2) It is declared that the change to the definition does not affect the decision made under this Act before the commencement.
- (3) To remove any doubt, it is declared that a person to whom a negative notice was issued because of the decision can not make an application to cancel the notice, as mentioned in section 118(3) or 119(3), before the end of 2 years after the issue of the notice.

#### **427 Issue of positive notice blue card before commencement**

- (1) This section applies if, before the commencement of this section, the commissioner issued—
  - (a) a document (however described) that, immediately before the commencement, was a current suitability notice; and



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- (b) a document purporting to be a positive notice blue card (the *purported blue card*) and the date stated on the document as its expiry date has not happened.
  - (2) The purported blue card is a positive notice blue card for this Act.
  - (3) If the expiry date stated on the purported blue card was a day later than the expiry day for the relevant suitability notice, the purported blue card and suitability notice remain current until the date stated in the purported blue card.
  - (4) Subsection (3) applies despite section 104.

**428 Charge for excluding offence not to apply to particular holders of positive notices**

- (1) This section applies to a person who, immediately before the commencement of this section—
  - (a) was the holder of a current positive notice; and
  - (b) had been charged with an offence that has not been dealt with.
- (2) If, immediately after the commencement, the offence is an excluding offence, section 119C does not apply to the person.
- (3) However if, after the commencement, the person is convicted of the excluding offence with which the person was charged before the commencement, or another excluding offence, a court may make a disqualification order under section 126C and section 119A or 119B may apply to the person.

**429 References to suitability notice**

In an Act or document, a reference to a suitability notice may, if the context permits, be taken to be a reference to a prescribed notice.

## **Part 8**

# **Further transitional provisions for the Commission for Children and Young People and Child Guardian Amendment Act 2004**

### **430 Definitions for pt 8**

In this part—

*commencement* means commencement of this section.

*post-amended Act* means the *Commission for Children and Young People and Child Guardian Act 2000* as in force from time to time on and after 17 January 2005 and before the commencement.

*pre-amended Act* means the *Commission for Children and Young People and Child Guardian Act 2000* as in force immediately before 17 January 2005.

*relevant applicant*, in relation to a relevant application, means the person in relation to whom the relevant application is made.

*relevant application* means an application under section 100 or 101 of the pre-amended Act that was received by the commissioner before 17 January 2005.

*suitability notice* means a suitability notice under the pre-amended Act.

### **431 Main purpose of pt 8**

The main purpose of this part is to clarify and declare the law applying, in particular circumstances, to relevant applications and to suitability notices.

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**432 Circumstances, after commencement, in which pre-amended Act applies to outstanding relevant application**

- (1) This section applies to a relevant application and the relevant applicant if—
  - (a) a decision under section 102(1) of the pre-amended Act about the relevant application had not been made before 17 January 2005; and
  - (b) before the commencement, the commissioner had not issued a prescribed notice to the relevant applicant; and
  - (c) on or after 17 January 2005, no police information and no disciplinary information about the relevant applicant was received by the commissioner.
- (2) The pre-amended Act applies to the relevant application and the relevant applicant for the purpose of making a decision about the relevant application.
- (3) If the decision, by application of the pre-amended Act, involves declaring the relevant applicant to be a suitable person for child-related employment, the relevant applicant is to be issued, under section 102(2)(a) of this Act, with a positive notice.
- (4) If the decision, by application of the pre-amended Act, involves declaring the relevant applicant to be an unsuitable person for child-related employment, the relevant applicant is to be issued, under section 102(2)(b) of this Act, with a negative notice.
- (5) On the issuing of a positive notice as mentioned in subsection (3), or a negative notice as mentioned in subsection (4), this Act, and not the pre-amended Act, applies.
- (6) Despite subsection (5), if a negative notice is issued—
  - (a) the relevant applicant may only apply under section 121 of the pre-amended Act for a review of the decision under section 102 of the pre-amended Act; and

- (b) the pre-amended Act applies to the application for review, the review and any appeal relating to the decision on review.

### **433 Circumstances, after commencement, in which this Act applies to outstanding relevant application**

This Act, and not the pre-amended Act, applies to all matters relating to a relevant application, and any decision relating to the relevant application, if—

- (a) a decision under section 102(1) of the pre-amended Act about the relevant application had not been made before 17 January 2005; and
- (b) before the commencement, the commissioner had not issued a prescribed notice to the relevant applicant; and
- (c) on or after 17 January 2005, police information or disciplinary information about the relevant applicant was received by the commissioner.

### **434 Relevant applications dealt with before commencement**

- (1) This section applies to a relevant application if a decision in relation to the relevant application was made on or after 17 January 2005 and before the commencement.
- (2) If the commissioner dealt with the relevant application by applying the pre-amended Act, it is declared that—
  - (a) the relevant application has been validly dealt with by applying the pre-amended Act; and
  - (b) a decision of the commissioner in relation to the relevant application is not invalid only because the decision involved the application of the pre-amended Act; and
  - (c) this Act, and not the pre-amended Act, applies to all matters relating to the decision after the decision is made.

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- (3) Despite subsection (2)(c), if the decision is to issue a negative notice—
    - (a) the relevant applicant may only apply under section 121 of the pre-amended Act for a review of the decision under section 102 of the pre-amended Act; and
    - (b) the pre-amended Act applies to the application for review, the review and any appeal relating to the decision on review.
  - (4) If the commissioner dealt with the relevant application by applying the post-amended Act, it is declared that—
    - (a) the relevant application has been validly dealt with by applying the post-amended Act; and
    - (b) a decision of the commissioner in relation to the relevant application is not invalid only because the decision involved the application of the post-amended Act; and
    - (c) this Act, and not the pre-amended Act, applies to all matters relating to the decision.

**435 Application of ss 122 and 122A in particular circumstances**

- (1) For the application of sections 122 and 122A to a relevant application and the relevant applicant, the relevant application is taken to be an application for a prescribed notice that has not been withdrawn and the relevant applicant is taken not to have withdrawn his or her consent to employment screening under part 6.
- (2) Subsection (1) does not prevent a relevant application from being withdrawn before the commissioner decides the relevant application.

**436 Circumstances, after commencement, relating to ss 118 and 119 of pre-amended Act**

- (1) This section applies if—

- (a) before 17 January 2005, the commissioner—
    - (i) had received an application under section 118(2) of the pre-amended Act to cancel a negative notice (a *previous section 118 application*); or
    - (ii) had received or otherwise become aware of information that may have allowed the commissioner to exercise a power as mentioned in section 119(1) or (1A) of the pre-amended Act (the *previous section 119 power*) in relation to a suitability notice; and
  - (b) before the commencement, the commissioner had not decided whether or not to grant the previous section 118 application or to exercise the previous section 119 power.
- (2) The pre-amended Act applies in relation to the previous section 118 application or the exercise of the previous section 119 power and, subject to subsection (6), the commissioner may grant or refuse the previous section 118 application or exercise or not exercise the previous section 119 power.
  - (3) After a decision is made about whether or not to grant the previous section 118 application, or to exercise the previous section 119 power, this Act, and not the pre-amended Act, applies.
  - (4) However, if the decision under subsection (2) is a decision to issue a negative notice to a person, or a decision refusing a person's application to cancel a negative notice—
    - (a) the person may only apply under section 121 of the pre-amended Act for a review of the decision; and
    - (b) the pre-amended Act applies to the application for review, the review and any appeal relating to the decision on review.
  - (5) Despite subsections (1) to (4), subsection (6) applies if, on or after 17 January 2005, the commissioner received or receives information that allowed or allows the commissioner to

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exercise a power as mentioned in section 119(1) or (2) of this Act in relation to a suitability notice—

- (a) that is the subject of a previous section 118 application;  
or
  - (b) to which a previous section 119 power may be exercised.
- (6) This Act, and not the pre-amended Act, applies to all matters relating to the suitability notice mentioned in subsection (5).

**437 Circumstances, before commencement, relating to ss 118 and 119 of pre-amended Act**

- (1) If, on or after 17 January 2005 and before the commencement, the commissioner cancelled or refused to cancel a suitability notice, whether under section 118 or 119 of the pre-amended Act or post-amended Act, the cancellation or refusal is declared to have been validly dealt with by applying the pre-amended Act or post-amended Act.
- (2) If the cancellation or refusal has been dealt with by applying the pre-amended Act, the cancellation or refusal may only be reviewed on an application for review under section 121 of the pre-amended Act and the pre-amended Act applies to the application for review, the review and any appeal relating to the decision on review.
- (3) Subject to subsection (2), this Act, and not the pre-amended Act, applies to all matters relating to the cancellation or refusal.

**438 Circumstances where pre-amended Act applies to application for review made before commencement**

- (1) If, before the commencement, there was no final decision in relation to a previous application for review, the pre-amended Act applies to the previous application for review, the review and any appeal relating to the decision on review.

- (2) If, before the commencement, the tribunal had started to hear a previous application for review but had not made a final decision, the tribunal may, for the purposes of subsection (1), exercise its powers under the *Children Services Tribunal Act 2000* and issue directions in relation to the previous application for review and the hearing.
- (3) If, before the commencement, a final decision in relation to a previous application for review had been made, the pre-amended Act applies to the following—
  - (a) if, under the *Children Services Tribunal Act 2000*, section 38(1)(c), the tribunal had set aside the commissioner's decision that was the subject of the previous application for review and returned it to the commissioner for reconsideration—the reconsideration;
  - (b) otherwise—any appeal relating to the final decision.
- (4) In this section—

***final decision*** means a decision of the tribunal under the *Children Services Tribunal Act 2000*, section 38.

***previous application for review*** means an application to the tribunal for a review of a decision made before 17 January 2005 to issue a negative notice or to refuse to cancel a negative notice.

***tribunal*** means the Children Services Tribunal.

#### **439 Circumstances where this Act applies to notices issued before the commencement**

- (1) This section applies to each of the following notices—
  - (a) a suitability notice issued under the pre-amended Act and in force immediately before 17 January 2005;
  - (b) a prescribed notice issued on or after 17 January 2005 and before the commencement.
- (2) It is declared that this Act applies in relation to the notice unless—



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- (a) a provision of this part provides that the pre-amended Act applies; or
  - (b) part 7 otherwise provides.

#### **440 References to prescribed notice**

It is declared that in an Act or document, a reference to a prescribed notice may, if the context permits, be taken to include a reference to a suitability notice.

## **Part 9 Transitional provisions for Child Safety (Carers) Amendment Act 2006**

#### **441 Definition for pt 9**

In this part—

*commencement* means the day on which the provision in which the term is used commences.

#### **442 Regulated employment—volunteers**

- (1) This section applies if, immediately before the commencement—
  - (a) a person (the *employee*) was employed or was continuing to be employed by another person (the *employer*) in employment that, after the commencement, is regulated employment mentioned in schedule 1, section 6G(1) or (2); and
  - (b) the person does not have a positive notice.
- (2) Section 127(2) does not apply to the employment of the employee.

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- (3) Despite subsection (2), the employee may continue in the regulated employment and the employer may continue to employ the employee in the regulated employment until—
  - (a) if an application for a prescribed notice about the person is made within 6 months after the commencement and is not withdrawn—the day a prescribed notice is issued to the person; or
  - (b) if an application for a prescribed notice about the person is made within 6 months after the commencement and is withdrawn—the day the application is withdrawn; or
  - (c) if an application for a prescribed notice about the person is not made within 6 months after the commencement—6 months after the commencement.
- (4) Also, despite subsection (2), section 112 does not apply to the person until the first application for a prescribed notice about the person is made after the commencement.

#### **443 Regulated employment—other persons**

- (1) This section applies if, immediately before the commencement—
  - (a) a person (the *employee*) was employed or was continuing to be employed by another person (the *employer*) in employment that, after the commencement, is regulated employment mentioned in schedule 1, section 6G(3); and
  - (b) the person does not have a positive notice.
- (2) Section 127(2) does not apply to the employment of the employee.
- (3) Despite subsection (2), the employee may continue in the regulated employment, and the employer may continue to employ the employee in the regulated employment until—
  - (a) if an application for a prescribed notice about the person is made within 6 months after the commencement and is

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- not withdrawn—the day a prescribed notice is issued to the person; or
- (b) if an application for a prescribed notice about the person is made within 6 months after the commencement and is withdrawn—the day the application is withdrawn; or
  - (c) if an application for a prescribed notice about the person is not made within 6 months after the commencement—6 months after the commencement.
- (4) Also, despite subsection (2), section 112 does not apply to the person until the first application for a prescribed notice about the person is made after the commencement.

#### **444 Carrying on regulated business**

- (1) This section applies if, immediately before the commencement—
  - (a) a person was carrying on a business that, after the commencement, is a regulated business mentioned in schedule 1, section 16; and
  - (b) the person does not have a positive notice.
- (2) Section 109 does not apply to the carrying on of the business until—
  - (a) if the person applies for a prescribed notice within 6 months after the commencement and does not withdraw the application—the day a prescribed notice is issued to the person; or
  - (b) if the person applies for a prescribed notice within 6 months after the commencement and withdraws the application—the day of the withdrawal; or
  - (c) if the person does not apply for a prescribed notice within 6 months after the commencement—6 months after the commencement.
- (3) Section 113 does not apply to the person until the person first applies for a prescribed notice after the commencement.

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**445 Particular certificates of approval under Child Protection Act 1999**

- (1) This section applies if—
  - (a) before the commencement, a person has applied for a certificate of approval and the application has not been decided; and
  - (b) after the commencement, the person is issued with the certificate of approval.
- (2) Despite section 104B, a relevant person may be employed in regulated employment mentioned in schedule 1, section 6G(1) or (2) until—
  - (a) if an application for a prescribed notice about the person is made within 6 months after the commencement and is not withdrawn—the day a prescribed notice is issued to the person; or
  - (b) if an application for a prescribed notice about the person is made within 6 months after the commencement and is withdrawn—the day the application is withdrawn; or
  - (c) if an application for a prescribed notice about the person is not made within 6 months after the commencement—6 months after the commencement.
- (3) Also, section 112 does not apply to a relevant person until the first application for a prescribed notice about the person is made after the commencement.

- (4) In this section—

***certificate of approval*** means a certificate of approval under the *Child Protection Act 1999*.

***relevant person*** means each of the following persons if the person does not have a positive notice—

- (a) the applicant for the certificate of approval;
- (b) a person who is an adult member of the applicant's household when the certificate of approval is issued.

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**446 Particular licences under Child Protection Act 1999**

- (1) This section applies if—
  - (a) before the commencement, a person has applied for a licence under the *Child Protection Act 1999* and the application has not been decided; and
  - (b) after the commencement, the person is issued with the licence.
- (2) Section 109 does not apply to a relevant person until—
  - (a) if the person applies for a prescribed notice within 6 months after the commencement and does not withdraw the application—the day a prescribed notice is issued to the person; or
  - (b) if the person applies for a prescribed notice within 6 months after the commencement and withdraws the application—the day of the withdrawal; or
  - (c) if the person does not apply for a prescribed notice within 6 months after the commencement—6 months after the commencement.
- (3) Section 113 does not apply to a relevant person until the person first applies for a prescribed notice after the commencement.
- (4) In this section—

***relevant person*** means each of the following persons if, immediately before the commencement, the person does not have a positive notice—

  - (a) the nominee for the licence under the *Child Protection Act 1999*;
  - (b) an executive officer of the licensee.

## **Part 10**

# **Transitional and validation provisions for Commission for Children and Young People and Child Guardian Amendment Act 2007**

### **447 Definitions for pt 10**

In this part—

*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.

### **448 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.

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- (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).

**449 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—

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- (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).

**450 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



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application must continue to be dealt with on the basis that the decision is not invalid as mentioned in subsection (2).

## **Part 11**

# **Transitional provisions for Commission for Children and Young People and Child Guardian and Another Act Amendment Act 2008**

### **451 Definition for pt 11**

In this part—

*commencement* means the commencement of this section.

### **452 Applications by disqualified persons who are not relevant disqualified persons**

- (1) This section applies in relation to a person who is a disqualified person but who is not a relevant disqualified person.
- (2) If—
  - (a) an application for a prescribed notice about the person was made before the commencement; and
  - (b) the application had not been decided before the commencement; and
  - (c) at the time of the application, the person did not hold a positive notice, including a positive notice that is suspended under section 119C;

the application is taken to have been withdrawn.

- (3) If—

- (a) an application for a prescribed notice about the person was made before the commencement; and
- (b) the application had not been decided before the commencement; and
- (c) at the time of the application, the person held a positive notice that was not suspended under section 119C;

the person is taken to have been issued with an eligibility declaration and the commissioner must decide the application under this Act.

- (4) For deciding the application mentioned in subsection (3), section 102(3)(e) does not apply.
- (5) If, before the commencement—
  - (a) the person made an application for cancellation of a negative notice or for cancellation of a suspension of a positive notice; and
  - (b) the application had not been decided;the commissioner must decide the application under this Act.

#### **453 Applications by relevant disqualified persons**

- (1) This section applies in relation to a person who is a relevant disqualified person.
- (2) If—
  - (a) an application for a prescribed notice about the person was made before the commencement; and
  - (b) the application had not been decided before the commencement; and
  - (c) at the time of the application, the person did not hold a positive notice, including a positive notice that is suspended under section 119C;the application is taken to have been withdrawn.
- (3) If—

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- (a) an application for a prescribed notice about the person was made before the commencement; and
  - (b) the application had not been decided before the commencement; and
  - (c) at the time of the application, the person held a positive notice including a positive notice that is suspended under section 119C;

the application is taken to have been withdrawn and the positive notice is taken to have been cancelled.

(4) If, before the commencement—

- (a) the person made an application for cancellation of a negative notice; and
  - (b) the application had not been decided;
- the application is taken to have been refused.

(5) If, before the commencement—

- (a) the person made an application for cancellation of a suspension of a positive notice; and
  - (b) the application had not been decided;
- the application is taken to have been withdrawn and the positive notice is taken to have been cancelled.

#### **454 Applications by persons who are not disqualified persons**

(1) This section applies in relation to a person—

- (a) who is not a disqualified person; and
- (b) for whom an application for a prescribed notice, for cancellation of a negative notice or for cancellation of a suspension of a positive notice, was made before the commencement.

*Editor's note—*

An application may have been made under section 100, 101, 118, 119 or 119D.

- (2) This Act applies to the application and, if the application complied with this Act before the commencement, the application is not invalid only because it does not comply with this Act on the commencement.

**455 Existing applications for review or appeal**

- (1) This section applies to a person who, before the commencement, made—
  - (a) an application for a review under section 121; or
  - (b) in relation to a decision of the Children Services Tribunal—an appeal to a court.
- (2) If the application or appeal has not been decided before the commencement, the tribunal or court must—
  - (a) if the person is a disqualified person—on its own initiative or on application by the commissioner, dismiss the application or appeal; or
  - (b) otherwise—apply this Act in relation to the matter of the application or appeal.

**456 Positive notices held by disqualified persons who are not relevant disqualified persons**

- (1) This section applies in relation to a person who is a disqualified person but who is not—
  - (a) a relevant disqualified person; or
  - (b) a person in relation to whom the commissioner started, before the commencement, to exercise a power under section 119; or
  - (c) a person who is taken to have been issued with an eligibility declaration under section 218(3).

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- (2) If, on the commencement, the person is the holder of a positive notice—
- (a) that is not suspended under section 119C, the person is taken to have been issued with an eligibility declaration; or
  - (b) that is suspended under section 119C, this Act applies to the positive notice.

*Note—*

See section 119D(2).

- (3) If—
- (a) after the commencement, the commissioner is to make a decision about an application under section 100 or 101 for a prescribed notice about a person mentioned in subsection (2)(a); and
  - (b) it is the first time after the commencement that the commissioner is to make a decision under section 102 about the person;

section 102(3)(e) does not apply to the commissioner for deciding the application.

#### **457 Positive notices held by relevant disqualified persons**

- (1) This section applies if, on the commencement, a person—
- (a) is a relevant disqualified person; and
  - (b) is the holder of a positive notice, whether or not the positive notice is suspended under section 119C; and
  - (c) is not a person mentioned in section 219(3).
- (2) The positive notice is cancelled.

#### **458 Continuation if commissioner acting on own initiative**

If, before the commencement, the commissioner had started on the commissioner's own initiative to exercise a power in

relation to a person or a prescribed notice and the commissioner may, on the commencement, exercise the power under this Act, the commissioner may continue to exercise the power under this Act in relation to the person or prescribed notice.

**459 Notice by commissioner of withdrawal of application under this part**

- (1) This section applies if an application for a prescribed notice about a person, for cancellation of a person's negative notice or for cancellation of a suspension of a person's positive notice is taken to have been withdrawn under section 218 or 219.
- (2) The commissioner must give written notice to the person about the withdrawal of the application and must otherwise give notice as mentioned in section 123A(2).
- (3) A notice under subsection (2) is taken to be a notice about a withdrawal as mentioned in section 123(3B).

**460 Notice by commissioner of cancellation of positive notice under this part**

- (1) This section applies if a person's positive notice is taken to have been cancelled under section 219 or 223.
- (2) The commissioner must give written notice to the person about the cancellation and must otherwise give notice as mentioned in section 123A(2) as if a negative notice had been issued to the person.
- (3) A written notice mentioned in subsection (2) is taken, for sections 107 and 108, to be a notice that a negative notice has been issued.

*Note—*

A person whose positive notice is cancelled must comply with section 117.

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#### **461 Application of ss 120B, 120C and 120D**

For section 120B, 120C(1)(a) and 120D, it is immaterial as to when the offence mentioned in the provision was committed or when the person to whom the provision applies was convicted.

*Example—*

An offence may have been committed, and the person convicted of the offence, before the commencement.

#### **462 Application of s 120E**

- (1) This section applies in relation to a person who—
  - (a) is a disqualified person; and
  - (b) at the commencement, is employed in regulated employment; and
  - (c) is not a person in relation to whom section 218, 219 or 222 applies.
- (2) To remove any doubt, it is declared that, on the commencement, section 120E(1)(c) applies to the person even if it is not an offence for a person to employ the disqualified person in regulated employment.

#### **463 No retrospective criminal liability**

- (1) A provision of this Act as amended by the amending part is not effective to impose criminal liability on a person retrospectively.
- (2) In this section—

*amending part* means the *Commission for Children and Young People and Child Guardian and Another Act Amendment Act 2008*, part 2.

[s 464]

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## **Part 12**                      **Transitional provision for Criminal Code and Other Acts Amendment Act 2008**

### **464**      **References in schs 2 and 4 to Criminal Code offence**

Schedules 2 and 4 apply as if a reference to the Criminal Code, section 208 included a reference to the Criminal Code, section 209 as in force at any time before its repeal by the *Criminal Code and Other Acts Amendment Act 2008*.

## **Part 13**                      **Transitional provisions for Criminal History Screening Legislation Amendment Act 2010**

### **Division 1**                      **Preliminary**

#### **465**      **Definitions for pt 13**

In this part—

*amending Act* means the *Criminal History Screening Legislation Amendment Act 2010*.

*commencement* means the commencement of this section.

*disability services regulated business* means a business that is a regulated business because the usual activities of the business include, or are likely to include, the provision of a service at a child-related service outlet of a funded non-government service provider.

*disability services regulated employment* means employment that is regulated employment because—



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- (a) the employer is a funded non-government service provider; and
  - (b) 1 or more of the usual functions of the employment are carried out, or are likely to be carried out, at a child-related service outlet of the funded non-government service provider.

***health student regulated business*** means a business that is a regulated business because the usual activities of the business include, or are likely to include, a health student providing a service to a child in the health student's capacity as a health student.

***health student regulated employment*** means employment that is regulated employment because the usual functions of the employment include, or are likely to include, a health student providing a service to a child in the health student's capacity as a health student.

***new disqualified person*** means a person who is a disqualified person only because—

- (a) the person has been or is convicted of a new disqualifying offence; or
- (b) the person is subject to a sexual offender order; or
- (c) both of paragraphs (a) and (b) apply to the person.

***new disqualifying offence*** means an offence that is a disqualifying offence under this Act but was not a disqualifying offence under this Act immediately before the commencement.

***new local government regulated business*** means a business that is a regulated business under section 156 but was not a regulated business under previous section 97, and is carried on by a local government.

***new local government regulated employment*** means employment that is regulated employment under section 156 but was not regulated employment under previous section 97, if the employer is a local government.

***new relevant disqualified person*** means a person who is a relevant disqualified person only because—

- (a) the person has been or is convicted of a new disqualifying offence for which an imprisonment order was or is imposed; or
- (b) the person is subject to a sexual offender order; or
- (c) both of paragraphs (a) and (b) apply to the person.

***other new regulated business*** means a business that is a regulated business under section 156 but was not a regulated business under previous section 97, and is not any of the following—

- (a) a disability services regulated business;
- (b) a health student regulated business;
- (c) a new local government regulated business.

***other new regulated employment*** means employment that is regulated employment under section 156 but was not regulated employment under previous section 97, and is not any of the following—

- (a) disability services regulated employment;
- (b) health student regulated employment;
- (c) new local government regulated employment.

***prescribed police information*** means a report or other information mentioned in section 136(2) of the unamended Act.

***previous section 97*** means section 97 of this Act as in force immediately before the commencement.

***staff member*** has the meaning under section 129 of the unamended Act.

***unamended Act*** means this Act as in force from time to time before the commencement.

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## Division 2                      Transitional provisions relating to chapter 8

### 466      **Existing applications for prescribed notice about employment that is no longer regulated employment**

- (1) This section applies to an application for a prescribed notice made under section 100 of the unamended Act that—
  - (a) has not been decided or withdrawn at the commencement; and
  - (b) relates to the employment of a person in former regulated employment.
- (2) The application is taken to have been withdrawn.
- (3) The commissioner must—
  - (a) give written notice of the withdrawal to—
    - (i) the person; and
    - (ii) each notifiable person for the person; and
  - (b) refund any fee paid for the application.
- (4) In this section—

*former regulated employment* means employment that is not regulated employment under section 156 but was regulated employment under previous section 97.

### 467      **Existing applications for prescribed notice about a business that is no longer a regulated business**

- (1) This section applies to an application for a prescribed notice made under section 101 of the unamended Act that—
  - (a) has not been decided or withdrawn at the commencement; and
  - (b) relates to carrying on a former regulated business.
- (2) The application is taken to have been withdrawn.

- (3) The commissioner must—
  - (a) give written notice of the withdrawal to—
    - (i) the person; and
    - (ii) each notifiable person for the person; and
  - (b) refund any fee paid for the application.
- (4) In this section—

*former regulated business* means a business that is not a regulated business under section 156 but was a regulated business under previous section 97.

#### **468 Existing applications for prescribed notice about person convicted of new disqualifying offence**

- (1) This section applies to an application for a prescribed notice made under section 100 or 101 of the unamended Act that—
  - (a) has not been decided or withdrawn at the commencement; and
  - (b) relates to a person who has been or is convicted of a new disqualifying offence but who is not a new relevant disqualified person.
- (2) If, at the time of the application, the person did not hold a positive notice or held a positive notice that was suspended under section 119C of the unamended Act—
  - (a) the application is taken to have been withdrawn; and
  - (b) the commissioner must give written notice of the withdrawal to—
    - (i) the person; and
    - (ii) each notifiable person for the person.
- (3) If, at the time of the application, the person held a positive notice that was not suspended under section 119C of the unamended Act—

- (a) the person is taken to have been issued with an eligibility declaration other than for section 223(1)(b); and
- (b) the commissioner must decide the application under this Act.

**469 Existing applications for prescribed notice about new relevant disqualified person**

- (1) This section applies to an application for a prescribed notice made under section 100 or 101 of the unamended Act that—
  - (a) has not been decided or withdrawn at the commencement; and
  - (b) relates to a person who is a new relevant disqualified person.
- (2) The application is taken to have been withdrawn.
- (3) The commissioner must give written notice of the withdrawal to—
  - (a) the person; and
  - (b) each notifiable person for the person.

**470 Other existing applications for prescribed notice**

- (1) This section applies to an application for a prescribed notice (*existing application*) that—
  - (a) was made under section 100 or 101 of the unamended Act; and
  - (b) has not been decided or withdrawn at the commencement; and
  - (c) is not an application to which section 466, 467, 468 or 469 applies.
- (2) The application is taken to be a prescribed notice application under the relevant provision (*chapter 8 application*) and,

subject to subsection (5), chapter 8, part 4 applies to the application.

- (3) Subject to subsection (4), anything done or existing in relation to the existing application is taken to have been done or existing in relation to the chapter 8 application.

*Examples for subsection (3)—*

- 1 The commissioner has given the person about whom the existing application is made a notice asking for stated information, including by way of a submission. The notice is taken to have been given in relation to the chapter 8 application.
  - 2 The commissioner has requested police information about the person about whom the existing application is made from the police commissioner. The request is taken to have been made in relation to the chapter 8 application.
- (4) Subsection (3) applies only to the extent the thing can be done or in existence in relation to the chapter 8 application.
- (5) Despite section 231(2), a prescribed notice issued under this section remains current for 2 years after it is issued, unless it is earlier cancelled under chapter 8, part 4, division 11.
- (6) In this section—

*relevant provision* means—

- (a) for an application under section 100 of the unamended Act—section 199; or
- (b) for an application under section 101 of the unamended Act—section 211.

#### **471 Existing positive notices held by new relevant disqualified person because of interim order**

- (1) This section applies in relation to a positive notice issued under section 102(2)(a) of the unamended Act (including a positive notice that, immediately before the commencement, is suspended under section 119C of the unamended Act) to a person who is a new relevant disqualified person only because the person is subject to an interim sexual offender order.

- (2) If the positive notice is not suspended under section 119C of the unamended Act immediately before the commencement, the commissioner must, by written notice given to the person, suspend the person's positive notice.
- (3) The written notice must state the matters mentioned in section 240(3).
- (4) If the positive notice is suspended under section 119C of the unamended Act immediately before the commencement and the suspension has not ended at the commencement, the suspension continues subject to subsection (5).
- (5) Sections 240 and 241 apply to the suspended positive notice as if the notice were suspended under section 240(2).

**472 Existing positive notices held by other new relevant disqualified persons**

- (1) This section applies in relation to a positive notice issued under section 102(2)(a) of the unamended Act (including a positive notice that, immediately before the commencement, is suspended under section 119C of the unamended Act) to a person who is a new relevant disqualified person other than a person mentioned in section 471(1).
- (2) The positive notice is cancelled.
- (3) If, immediately before the commencement, the positive notice is suspended under section 119C of the unamended Act, any application for the cancellation of the suspension under section 119D of the unamended Act that has not been decided or withdrawn at the commencement is taken to have been withdrawn.
- (4) The commissioner must give notice of the cancellation of the positive notice to—
  - (a) the person; and
  - (b) each notifiable person for the person.
- (5) A notice mentioned in subsection (4)—

- (a) must state that the positive notice is cancelled and the date the positive notice is cancelled; and
- (b) is taken, for sections 194, 195, 256 and 257, to be a notice that a negative notice has been issued to the person on the date the positive notice is cancelled.

**473 Other existing positive notices and positive notice blue cards**

- (1) This section applies in relation to a positive notice issued under section 102(2)(a) of the unamended Act that is current under this Act immediately before the commencement, other than a positive notice to which section 471 or 472 applies.
- (2) The positive notice—
  - (a) is taken to be a positive notice issued under section 220(a); and
  - (b) remains current for 2 years after it was issued under section 102(2)(a) of the unamended Act, unless it is earlier cancelled under chapter 8, part 4, division 11.
- (3) Any positive notice blue card issued under the unamended Act for the positive notice—
  - (a) continues to be a positive notice blue card relating to the positive notice; and
  - (b) remains current for the same period as the positive notice.
- (4) If the holder of the positive notice is a new disqualified person (but not a new relevant disqualified person), the person is taken to have been issued with an eligibility declaration, subject to subsection (5).
- (5) If, after the commencement, the commissioner is to make, under chapter 8, part 4, division 9 (including as applied under other provisions of chapter 8), a decision about the holder of a positive notice who is a new disqualified person, and it is the first time the commissioner is to make a decision under that division about the person after the commencement, section



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223(1)(b) does not apply to the commissioner making the decision.

**474 Existing negative notices**

- (1) A negative notice issued under section 102(2)(b) of the unamended Act that is current under the unamended Act immediately before the commencement is taken to be a negative notice issued under section 220(b).
- (2) For subsection (1), the 2 year period mentioned in section 236(3) runs from the date the negative notice was issued under section 102(2)(b) of the unamended Act.

**475 Application of ch 8 to police officers and registered teachers**

- (1) Section 173 and chapter 8, part 5 do not take effect until 3 months after the commencement (the *exemption notice regime commencement date*).
- (2) Chapter 8, part 4 applies in relation to a police officer or registered teacher until the exemption notice regime commencement date—
  - (a) with any necessary changes; and
  - (b) subject to this part.
- (3) A prescribed notice application about a police officer or registered teacher that has not been decided or withdrawn at the exemption notice regime commencement date must be decided under chapter 8, part 4 despite section 173.
- (4) An eligibility application made by a police officer or registered teacher that has not been decided or withdrawn at the exemption notice regime commencement date is taken to have been withdrawn, and the commissioner must give written notice of the withdrawal to the police officer or registered teacher.

- (5) A current positive notice or current negative notice held by a police officer or registered teacher at the exemption notice regime commencement date, or issued under this part, continues in effect despite section 173, and section 247 applies in relation to the notice.
- (6) Without limiting subsection (2)(a), until the exemption notice regime commencement date, sections 36 and 243 apply as if they provided for the issue of a prescribed notice, instead of an exemption notice, to a person who is a police officer or registered teacher.

#### **476 Application of ch 8 to disability services regulated employment**

- (1) Chapter 8 does not apply to the employment of a person in disability services regulated employment until 3 months after the commencement (*disability services commencement date*).
- (2) Subsection (3) applies to a person who, at the disability services commencement date—
  - (a) is employed in disability services regulated employment; and
  - (b) does not have a current positive notice; and
  - (c) either—
    - (i) has a current positive notice under the *Disability Services Act 2006* (*DSA positive notice*); or
    - (ii) has an application for a prescribed notice under the *Disability Services Act 2006* that has not been decided or withdrawn (*DSA application*).
- (3) The relevant regulatory provisions do not apply in relation to the employment of the person until—
  - (a) for a person who has a DSA positive notice—the earlier of the following—

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- (i) the expiry or cancellation of the person's DSA positive notice under the *Disability Services Act 2006*;
  - (ii) 12 months after the disability services commencement date; or
  - (b) for a person who has a DSA application—
    - (i) if the person is issued with a DSA positive notice—12 months after the disability services commencement date; or
    - (ii) if the person is issued with a negative notice under the *Disability Services Act 2006*—the day the negative notice is issued; or
    - (iii) if the person's DSA application is withdrawn before it is decided—the day the DSA application is withdrawn.

*Note—*

See, however, sections 194 to 196 and 256 to 258.

(4) Section 323 does not apply to a person mentioned in subsection (2) until the first prescribed notice application or exemption notice application about the person is made after the disability services commencement date.

(5) In this section—

***relevant regulatory provisions*** means—

- (a) for a person who is not a police officer or registered teacher and is employed in disability services regulated employment as a volunteer—section 188; or
- (b) for a person who is not a police officer or registered teacher and is employed in disability services regulated employment other than as a volunteer—sections 191 to 193; or
- (c) for a police officer or registered teacher—sections 251 and 253 to 255.

**477 Application of ch 8 to disability services regulated businesses**

- (1) Chapter 8 does not apply to the carrying on of a disability services regulated business until 3 months after the commencement (*disability services commencement date*).
- (2) Subsection (3) applies to a person who, at the disability services commencement date—
  - (a) is carrying on a disability services regulated business; and
  - (b) does not have a current positive notice or current negative notice; and
  - (c) either—
    - (i) has a current positive notice under the *Disability Services Act 2006* (*DSA positive notice*); or
    - (ii) has an application for a prescribed notice under the *Disability Services Act 2006* that has not been decided or withdrawn (*DSA application*).
- (3) Sections 197 and 259 do not apply to the person carrying on the disability services regulated business until—
  - (a) if the person holds a DSA positive notice—the earlier of the following—
    - (i) the expiry or cancellation of the person’s DSA positive notice under the *Disability Services Act 2006*;
    - (ii) 12 months after the disability services commencement date; or
  - (b) for a person who has a DSA application—
    - (i) if the person is issued with a DSA positive notice—12 months after the disability services commencement date; or
    - (ii) if the person is issued with a negative notice under the *Disability Services Act 2006*—the day the negative notice is issued; or

- (iii) if the person's DSA application is withdrawn before it is decided—the day the DSA application is withdrawn.
- (4) Section 323 does not apply to a person mentioned in subsection (2) until the first prescribed notice application or exemption notice application about the person is made after the disability services commencement date.

#### **478 Application of ch 8 to new local government regulated employment**

- (1) Chapter 8 does not apply to the employment of a person in new local government regulated employment until 3 months after the commencement (*local government commencement date*).
- (2) Subsections (3) to (5) apply to a person who, at the local government commencement date—
  - (a) is employed in new local government regulated employment; and
  - (b) does not have a current positive notice.
- (3) If the person is not a police officer or registered teacher and is employed in the new local government regulated employment as a volunteer, section 188 does not apply in relation to the employment of the person until—
  - (a) if a prescribed notice application about the person is made before or during the transitional period and is not withdrawn—the day a prescribed notice is issued to the employee; or
  - (b) if a prescribed notice application about the person is made before or during the transitional period and is withdrawn—the day the application is withdrawn; or
  - (c) if a prescribed notice application about the person is not made before or during the transitional period—the transitional period ends.

*Note—*

See, however, sections 195 and 196.

- (4) If the person is not a police officer or registered teacher and is employed in the new local government regulated employment other than as a volunteer and the person does not have a current positive notice, sections 191 to 193 do not apply in relation to the employment of the person until the transitional period ends.

*Note—*

See, however, sections 194 to 196.

- (5) If the person is a police officer or registered teacher, sections 251 and 253 to 255 do not apply in relation to the employment of the person until the transitional period ends.

*Note—*

See, however, sections 256 to 258.

- (6) Section 323 does not apply to a person mentioned in subsection (2) until the first prescribed notice application or exemption notice application about the person is made after the commencement.

- (7) In this section—

*transitional period* means the period—

- (a) starting on the local government commencement date;  
and  
(b) ending 12 months after the local government commencement date.

#### **479 Application of ch 8 to new local government regulated business**

- (1) Chapter 8 does not apply to the carrying on of a new local government regulated business until 3 months after the commencement (*local government commencement date*).
- (2) Subsections (3) and (4) apply to a person who, at the local government commencement date—

- (a) is carrying on a new local government regulated business; and
  - (b) does not have a current positive notice or current negative notice.
- (3) If the person is not a police officer or registered teacher, section 197 does not apply to the person carrying on the local government regulated business until—
- (a) if the person applies for a prescribed notice before or during the transitional period and does not withdraw the application—the day a prescribed notice is issued to the person; or
  - (b) if the person applies for a prescribed notice before or during the transitional period and withdraws the application—the day of the withdrawal; or
  - (c) if the person does not apply for a prescribed notice before or during the transitional period—the transitional period ends.
- (4) If the person is a police officer or registered teacher, section 259 does not apply to the person carrying on the local government regulated business until the transitional period ends.
- (5) Section 323 does not apply to a person mentioned in subsection (2) until the first prescribed notice application or exemption notice application about the person is made after the commencement.
- (6) In this section—
- transitional period*** means the period—
- (a) starting on the local government commencement date; and
  - (b) ending 12 months after the local government commencement date.

#### **480 Employing persons in other new regulated employment**

- (1) Subsections (2) and (3) apply if, immediately before the commencement—
  - (a) a person (the *employee*) was employed or was continuing to be employed by another person (the *employer*) in other new regulated employment as a volunteer; and
  - (b) at the commencement, the person does not have a current positive notice.
- (2) If the employee is not a police officer or registered teacher, section 188 does not apply in relation to the employment of the employee until—
  - (a) if a prescribed notice application about the person is made before or during the transitional period and is not withdrawn—the day a prescribed notice is issued to the employee; or
  - (b) if a prescribed notice application about the person is made before or during the transitional period and is withdrawn—the day the application is withdrawn; or
  - (c) if a prescribed notice application about the person is not made before or during the transitional period—the transitional period ends.

*Note—*

See, however, sections 195 and 196.

- (3) If the employee is a police officer or registered teacher, section 251 does not apply in relation to the employment of the employee until the transitional period ends.

*Note—*

See, however, sections 257 and 258.

- (4) Subsections (5) and (6) apply if, immediately before the commencement—
  - (a) a person (the *employee*) was employed or was continuing to be employed by another person (the



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*employer*) in other new regulated employment other than as a volunteer; and

- (b) at the commencement, the person does not have a current positive notice.
- (5) If the employee is not a police officer or registered teacher, sections 191 to 193 do not apply in relation to the employment of the employee until the transitional period ends.

*Note—*

See, however, sections 194 to 196.

- (6) If the employee is a police officer or registered teacher, sections 253 to 255 do not apply in relation to the employment of the employee until the transitional period ends.

*Note—*

See, however, sections 256 to 258.

- (7) Section 323 does not apply to an employee mentioned in subsection (1) or (4) until the first prescribed notice application or exemption notice application about the person is made after the commencement.

- (8) In this section—

*transitional period* means—

- (a) if the employer for the other new regulated employment is a government entity—the period starting at the commencement and ending 12 months after the commencement; or
- (b) otherwise—the period starting at the commencement and ending 6 months after the commencement.

#### **481 Carrying on other new regulated business**

- (1) This section applies if, immediately before the commencement—
  - (a) a person was carrying on an other new regulated business; and

- (b) at the commencement, the person does not have a current positive notice or current negative notice.
- (2) If the person is not a police officer or registered teacher, section 197 does not apply to the person carrying on the other new regulated business until—
  - (a) if the person applies for a prescribed notice before or during the transitional period and does not withdraw the application—the day a prescribed notice is issued to the person; or
  - (b) if the person applies for a prescribed notice before or during the transitional period and withdraws the application—the day of the withdrawal; or
  - (c) if the person does not apply for a prescribed notice before or during the transitional period—the transitional period ends.
- (3) If the person is a police officer or registered teacher, section 259 does not apply to the person carrying on the other new regulated business until the transitional period ends.
- (4) Section 323 does not apply to a person mentioned in subsection (1) until the first prescribed notice application or exemption notice application about the person is made after the commencement.
- (5) In this section—

***transitional period*** means—

  - (a) if the person carrying on the other new regulated business is a government entity—the period starting at the commencement and ending 12 months after the commencement; or
  - (b) otherwise—the period starting at the commencement and ending 6 months after the commencement.

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**482 Effect of conviction for serious offence**

- (1) This section applies in relation to a person with a positive notice who is convicted of a serious offence before the commencement if, at the commencement, the person has not been issued a further prescribed notice as mentioned in section 111 of the unamended Act.
- (2) Section 322 applies to the person as if the conviction happened immediately after the commencement.
- (3) For subsection (2), if the person has given the person's positive notice to the commissioner under section 117(2) of the unamended Act, the person is taken to have given the positive notice to the commissioner under section 322(2).
- (4) In this section—  
*serious offence* means serious offence as defined under the unamended Act.

**483 Existing applications to cancel negative notice**

- (1) This section applies if—
  - (a) a person has applied for a cancellation of the person's negative notice under section 118 of the unamended Act; and
  - (b) the application has not been decided or withdrawn at the commencement.
- (2) If the application was made by a new relevant disqualified person—
  - (a) the application is taken to have been withdrawn; and
  - (b) the commissioner must give written notice of the withdrawal to the person.
- (3) If the application is made by a person other than a new relevant disqualified person, the application is taken to have been made under section 236, and must be decided under that section.

#### **484 Existing suspensions of positive notice**

- (1) This section applies if—
  - (a) the commissioner has given a notice under section 119C of the unamended Act (*suspension notice*) suspending a person's positive notice; and
  - (b) the suspension has not ended at the commencement.
- (2) The person's positive notice is taken to have been suspended under section 240(2) and sections 240 and 241 apply to the suspended positive notice.
- (3) If the person has applied for the positive notice to be cancelled and a further positive notice or negative notice to be issued to the person under section 119D of the unamended Act, the application is taken to have been made under section 241 and the commissioner must decide the application under that section.
- (4) This section is subject to sections 471 and 472.

#### **485 Continuation if commissioner acting on own initiative**

- (1) This section applies if—
  - (a) before the commencement, the commissioner had started on the commissioner's own initiative to exercise a power in relation to a person or a prescribed notice; and
  - (b) the commissioner may, immediately after the commencement, exercise the power under chapter 8.
- (2) The commissioner may continue to exercise the power under chapter 8 in relation to the person or prescribed notice.
- (3) Subsection (2) applies even if the matters to which the commissioner may or must have regard in exercising the power, or any other powers that the commissioner may exercise in relation to exercising the power, are different under chapter 8.

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**486 Effect of conviction or charge for new disqualifying offence**

- (1) For applying section 169(1)(a) or 170(a) in relation to a person convicted of a new disqualifying offence, it is immaterial as to when the offence was committed or when the person was convicted of the offence.

*Example—*

A new disqualifying offence may have been committed, and the person convicted of the offence, before the commencement.

- (2) Section 240 applies in relation to a person who holds a current positive notice who is charged with a new disqualifying offence even if the charge, or the acts or omissions constituting the alleged offence, happened before the commencement.

**487 Replacement of positive notice or positive notice blue card**

- (1) This section applies if—
- (a) a person's current positive notice or current positive notice blue card is lost or stolen 14 days or less before the commencement; and
  - (b) at the commencement, the person has not applied for a replacement notice or card as required under section 120 of the unamended Act.
- (2) Section 120 of the unamended Act does not apply to the person.
- (3) Section 347 applies to the person as if the reference to 14 days after the loss or theft were a reference to the later of the following—
- (a) 14 days after the loss or theft;
  - (b) 7 days after the commencement.

#### **488 Existing eligibility application by new relevant disqualified person**

- (1) This section applies to an application for an eligibility declaration that—
  - (a) was made under section 120F of the unamended Act by a new relevant disqualified person; and
  - (b) has not been decided or withdrawn at the commencement.
- (2) The application is taken to have been withdrawn.
- (3) The commissioner must give written notice of the withdrawal to the person.

#### **489 Other existing eligibility applications**

- (1) This section applies to an application for an eligibility declaration (*existing application*) that—
  - (a) was made under section 120F of the unamended Act by a person other than a new relevant disqualified person; and
  - (b) has not been decided or withdrawn at the commencement.
- (2) The existing application is taken to be an eligibility application under section 178 (*section 178 application*) and chapter 8, part 4, division 2 applies to the application.
- (3) Anything done or existing in relation to the existing application is taken to have been done or existing in relation to the section 178 application.

*Examples for subsection (3)—*

- 1 The commissioner has given the applicant a notice asking for stated information, including by way of a submission. The notice is taken to have been given in relation to the section 178 application.
- 2 The commissioner has requested police information about the applicant from the police commissioner. The request is taken to have been made in relation to the section 178 application.

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- (4) Subsection (3) applies only to the extent the thing can be done or in existence in relation to the section 178 application under chapter 8, part 4, division 2.

#### **490 Existing decisions on eligibility applications**

- (1) An eligibility declaration issued under section 120H of the unamended Act to a new relevant disqualified person is cancelled.
- (2) An eligibility declaration issued under section 120H of the unamended Act to a person other than a new relevant disqualified person is taken to be an eligibility declaration issued under section 180.
- (3) The reference to a refusal of an eligibility application in section 178(2) is taken to include a reference to a refusal of an eligibility application under section 120H of the unamended Act.
- (4) Section 186 applies to a refusal under section 120H of the unamended Act of an eligibility application made by a person other than a new relevant disqualified person.

#### **491 Existing reviews and appeals by new disqualified person**

- (1) This section applies if—
- (a) before the commencement, a person—
- (i) applied for a review of a decision of the commissioner under section 121 of the unamended Act; or
- (ii) appealed under the QCAT Act against a decision of QCAT relating to a review of a decision under section 121 of the unamended Act; and
- (b) the review or appeal has not been decided at the commencement; and
- (c) the person is a new disqualified person.

- (2) The entity hearing the review or appeal, or any proceeding relating to the review or appeal, must dismiss the review or appeal or the proceeding.

## **492 Other existing reviews and appeals**

- (1) This section applies if—
  - (a) before the commencement, a person—
    - (i) applied for a review of a decision of the commissioner under section 121 of the unamended Act; or
    - (ii) appealed under the QCAT Act against a decision of QCAT relating to a review of a decision under section 121 of the unamended Act; and
  - (b) the review or appeal has not been decided at the commencement; and
  - (c) section 491 does not apply to the review or appeal.
- (2) The entity hearing the review or appeal must apply this Act in relation to the matter the subject of the review or appeal.
- (3) Without limiting subsection (2), the entity may exercise a power of the commissioner under chapter 8, part 6, divisions 6 and 7 for deciding a review of or appeal against a decision of the commissioner as to whether or not there is an exceptional case for a person.
- (4) Subsection (5) applies if a disqualified person applied for the review or the review to which the appeal relates before the person became a disqualified person.
- (5) The entity hearing the review or appeal, or any proceeding in relation to the review or appeal, must dismiss the review or appeal, or the proceeding, on its own initiative or on application by the commissioner.



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**493 Person may apply for a review of a decision**

- (1) This section applies to a decision of the commissioner made before the commencement if—
  - (a) immediately before the commencement, a person could have, but has not, applied for a review of the decision under section 121 of the unamended Act; and
  - (b) the period within which the person could have applied for the review (the *review period*) has not passed; and
  - (c) the person is not a disqualified person.
- (2) The person may apply for a review of the decision under section 354 within the review period.
- (3) To remove any doubt, it is declared that section 355 applies in relation to the application for the review.

**494 Police commissioner's decision that information is investigative information**

- (1) This section applies in relation to an offence (*new investigative information offence*) that—
  - (a) is a schedule 6 offence; but
  - (b) was not an offence mentioned in section 121A(1)(a) of the unamended Act.
- (2) Section 305 applies in relation to a positive notice holder's acts or omissions constituting a new investigative information offence even if the acts were committed or omissions were made before the commencement.

**495 Appeals against police commissioner's decision that information is investigative information**

- (1) Sections 121C to 121E of the unamended Act continue to apply in relation to a decision of the police commissioner that information about a person is investigative information made before the commencement as if the amending Act had not been enacted.

- (2) An appeal against a decision mentioned in subsection (1) must be decided under the unamended Act.

#### **496 Notice about withdrawal of application or negative notice**

- (1) This section applies if—
  - (a) under section 123A of the unamended Act, the commissioner was required to give someone written notice about the withdrawal of an application or that a particular person has a current negative notice; and
  - (b) at the commencement, the notice has not been given.
- (2) The commissioner must give the notice under section 123A of the unamended Act as if the amending Act had not been enacted.

#### **497 Dealing with information**

- (1) Information obtained by the commissioner under part 6 of the unamended Act is taken to have been obtained under chapter 8.
- (2) Without limiting subsection (1), section 345 applies to the information as if the reference to using the information under chapter 8 in the section included a reference to using the information under part 6 of the unamended Act.

#### **498 Disqualification orders for acts done or omissions made before commencement**

A court may make a disqualification order under section 357 in relation to a person convicted of an offence after the commencement arising out of an act done or omission made before the commencement.

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## **Division 3                      Transitional provisions relating to previous part 7**

### **499      Notice about change in criminal history not given at the commencement**

- (1) This section applies if—
  - (a) before the commencement, there is a change in a staff member's criminal history; and
  - (b) at the commencement, the staff member has not disclosed the details of the change to the commissioner as required by section 133 of the unamended Act.
- (2) Despite section 133 of the unamended Act, the person is no longer required to give the details.

### **500      Request for prescribed police information not complied with at the commencement**

- (1) This section applies if—
  - (a) the commissioner has, under section 136 of the unamended Act, asked the police commissioner for prescribed police information about a person; and
  - (b) at the commencement, the police commissioner has not given the prescribed police information to the commissioner.
- (2) Despite section 136(3) of the unamended Act, the police commissioner is no longer required to comply with the commissioner's request.

### **501      Particular prescribed police information obtained but not used before commencement**

- (1) This section applies if—
  - (a) before the commencement, the police commissioner gave the commissioner a person's prescribed police

information under section 136 of the unamended Act;  
and

- (b) at the commencement, the commissioner has not, in relation to the prescribed police information, made an assessment about the person's suitability to be, or continue to be, a staff member under section 138 of the unamended Act.
- (2) The commissioner must immediately—
- (a) destroy the prescribed police information; and
  - (b) stop making the assessment.

## **502 Notice not given by prosecuting authority at the commencement**

- (1) This section applies if—
- (a) before the commencement, a staff member is charged with an indictable offence; and
  - (b) at the commencement, the police commissioner or director of public prosecutions (a *prosecuting authority*) has not given information about the charge to the commissioner as required by section 137 of the unamended Act.
- (2) Despite section 137 of the unamended Act, the prosecuting authority is no longer required to give the information.

## **503 Use of particular information obtained before commencement**

Section 138(2) of the unamended Act continues to apply in relation to information about a person received by the commissioner under part 7 of the unamended Act as if the amending Act had not been enacted.

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## Division 4                      Other transitional provision

### 504      References to Youth Justice Act 1992

- (1) This section applies to a reference to the *Youth Justice Act 1992* in a provision of this Act if the provision commences before the JJA short title amendment commences.
- (2) Until the JJA short title amendment commences, the reference is taken to be a reference to the *Juvenile Justice Act 1992*.
- (3) In this section—

*JJA short title amendment* means the *Juvenile Justice and Other Acts Amendment Act 2009*, section 9.

## Part 14                              Transitional provisions for Child Protection and Other Acts Amendment Act 2010

### 505      Application of s 349

- (1) This section applies if, before the commencement—
  - (a) a relevant change within the meaning of previous section 349 happened in relation to the holder of a positive notice or positive exemption notice that was not suspended; and
  - (b) the commissioner had not cancelled the previously held positive notice, positive notice blue card or positive exemption notice under previous section 349.
- (2) Previous section 349 continues to apply in relation to the relevant change as if the *Child Protection and Other Acts Amendment Act 2010* had not been enacted.
- (3) In this section—

[s 506]

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*commencement* means the commencement of this section.

*previous section 349* means section 349 as in force before the commencement.

## **506 Application of s 350**

- (1) This section applies if, before the commencement—
  - (a) a relevant change within the meaning of previous section 350 happened in relation to the holder of a positive notice that was not suspended; and
  - (b) the commissioner had not cancelled the previously held positive notice or positive notice blue card under previous section 350.
- (2) Previous section 350 continues to apply in relation to the relevant change as if the *Child Protection and Other Acts Amendment Act 2010* had not been enacted.
- (3) In this section—

*commencement* means the commencement of this section.

*previous section 350* means section 350 as in force before the commencement.

## **507 Fee not payable under s 350 if a fee previously paid**

Section 350(7) does not apply to the holder of a positive notice if the holder has paid a prescribed application fee in relation to the positive notice under section 350 as in force before the commencement.

## **508 Persons being considered for engagement by the commission at the commencement**

- (1) Chapter 8A applies in relation to a person who, at the commencement, is being considered for engagement by the commission or is engaged by the commission.

- (2) For subsection (1), a person is being considered for engagement by the commission at the commencement if—
- (a) the person applied or otherwise expressed an interest in being engaged by the commission before the commencement; and
  - (b) at the commencement, the commissioner has not finished making an assessment of the person's suitability for the engagement.
- (3) In this section—
- commencement*** means the commencement of this section.

# **Schedule 1      Regulated employment and businesses for employment screening**

section 156

## **Part 1                      Regulated employment**

### **1                      Residential facilities**

- (1) Employment is regulated employment if any of the usual functions of the employment is carried out, or is likely to be carried out, inside—
  - (a) a residential facility; or
  - (b) another place, other than a residential facility, at which a child accommodation service is provided under funding provided by the Commonwealth or by the department in which the *Education (General Provisions) Act 2006* is administered.
- (2) However, employment mentioned in subsection (1) is not regulated employment if the employment is part of a licensed care service.

### **2                      Schools—boarding facilities**

Employment is regulated employment if—

- (a) any of the usual functions of the employment is carried out, or is likely to be carried out, inside a boarding facility at a school; and
- (b) the employee is not an approved teacher.

### **3                      Schools—employees other than teachers and parents**

- (1) Employment is regulated employment if the usual functions of the employment include or are likely to include—



- 
- (a) providing services at a school that are directed mainly towards children; or
  - (b) conducting activities at a school that mainly involve children.
- (2) However, employment mentioned in subsection (1) is not regulated employment if the employee is—
- (a) an approved teacher; or
  - (b) a volunteer who is a parent of a child attending the school.

#### **4 Child care services and similar employment**

- (1) Employment is regulated employment if—
- (a) it is employment as a carer in, or staff member of, a child care service; and
  - (b) the employee is not a volunteer who is a parent of a child to whom child care is regularly provided in the course of the service.
- (2) Employment is regulated employment if—
- (a) any of the usual functions of the employment is carried out, or is likely to be carried out, at a child care centre while child care is being provided at the centre; and
  - (b) the employee is not a volunteer who is a parent of a child to whom child care is regularly provided at the centre.
- (3) Employment is regulated employment if—
- (a) the usual functions of the employment include, or are likely to include, providing child care in the course of a commercial service other than a child care service; and
- Examples of a service mentioned in paragraph (a)—*
- 1 babysitting service
  - 2 nanny service
  - 3 a service, conducted by a hotel or resort, to provide child care to children who are short term guests

4 a service for providing adjunct care

- (b) the employee is not a volunteer who is a parent of a child to whom child care is regularly provided in the course of the service.

#### **4A Education and care services and similar employment**

- (1) Employment is regulated employment if—
  - (a) it is employment as an educator in, or staff member of, an education and care service; and
  - (b) the employee is not a volunteer who is a parent of a child to whom education and care is regularly provided as part of the service.
- (2) Employment is regulated employment if—
  - (a) any of the usual functions of the employment is carried out, or is likely to be carried out, at education and care service premises while children are being educated and cared for at the premises; and
  - (b) the employee is not a volunteer who is a parent of a child to whom education and care is regularly provided as part of the service.
- (3) Employment is regulated employment if—
  - (a) the usual functions of the employment include, or are likely to include, providing education and care to children in the course of a commercial service other than an education and care service; and

*Examples of a service mentioned in paragraph (a)—*

- 1 babysitting service
  - 2 nanny service
  - 3 a service, conducted by a hotel or resort, to provide education and care to children who are short term guests
  - 4 a service for providing adjunct care
- (b) the employee is not a volunteer who is a parent of a child to whom education and care is regularly provided as part of the service.

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**5 Churches, clubs and associations involving children**

- (1) Employment is regulated employment if—
- (a) the usual functions of the employment include, or are likely to include—
    - (i) providing services directed mainly towards children; or
    - (ii) conducting activities mainly involving children; and
  - (b) the services are provided, or the activities are conducted, by or within a church, club, association or similar entity.
- (2) However, employment mentioned in subsection (1) is not regulated employment if—
- (a) the employment is unpaid; and
  - (b) the employee is a parent of a child who—
    - (i) if subsection (1)(a)(i) applies—receives the services to which the employment relates or similar services provided by someone else within the church, club, association or other entity; or
    - (ii) if subsection (1)(a)(ii) applies—participates in the activities to which the employment relates or similar activities conducted by someone else within the church, club, association or other entity.

*Examples—*

- 1 A sporting club has teams for adults and children of various ages. A person is employed by the club, as a volunteer, to coach one of the children's teams. The person does not have any children. Under subsection (1), the coaching is regulated employment.
- 2 Same facts as in example 1, except that the person has a child on the team that the person is coaching. Under subsection (2), the coaching is not regulated employment because the child is participating in the sporting activities conducted at the club to which the coaching relates.
- 3 Same facts as in example 1, except that the person has a child on another of the club's teams, which is coached by another employee of the club. Under subsection (2), the person's coaching is not regulated employment because the child is participating in sporting

activities, conducted by someone else at the club, that are similar to the activities to which the person's coaching relates.

- 4 Same facts as in example 1, except that the person has a child who receives child-minding services provided by another employee of the club. In this case, the coaching is regulated employment. Subsection (2) does not apply because the services the child is receiving (child-minding) are not similar to the activities to which the coaching relates.

## 6 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 providing 1 or more of the following—

- (a) a health service to a child at a health facility—

- (i) if services provided at the facility are provided only or mainly to children; or

*Examples of health facilities for subparagraph (i)—*

a children's hospital, a child health clinic

- (ii) if the employee's employment involves providing services only or mainly to children;

*Examples for subparagraph (ii)—*

- a person whose employment involves only or mainly providing a health service in the paediatric section of a hospital
- a person whose employment involves only or mainly operating child health screening at a community health facility

- (b) a health service to a child other than at a health facility—

- (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;

- (c) 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

- (d) 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 (d)—*

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

- (2) Also, employment is regulated employment if—
  - (a) the employer is a funded non-government service provider; and
  - (b) any of the usual functions of the employment are carried out, or are likely to be carried out, at a child-related service outlet of the funded non-government service provider.
- (3) 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 an approved 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—
- (i) a consumer at a child-related service outlet of a funded non-government service provider, even if the consumer carries out work at the outlet; or
  - (ii) a volunteer who—
    - (A) is a relative of a person with a disability who is receiving disability services at a child-related service outlet of a funded non-government service provider; and
    - (B) is at the service outlet only to help with the care of the person.

(4) In this section—

**consumer**, in relation to a child-related service outlet of a funded non-government service provider, means a person with a disability who is provided with disability services at the outlet.

**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, including, for example, the following—
  - (i) 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
    - services provided by an assistant in a ward of a hospital, including lifting and turning bedridden patients and moving patients from a place to another place
  - (ii) a service providing respite care;

- (iii) a service provided by a practitioner of hypnosis, naturopathy, acupuncture or another form of natural or alternative health care;
- (iv) a massage service, including a massage service for relaxation;
- (v) a service provided by a health student in the student's capacity as a health student;
- (b) a service prescribed under a regulation to be a health service.

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

## **7 Private teaching, coaching or tutoring**

- (1) Employment is regulated employment if the usual functions of the employment include or are likely to include prescribed teaching.
- (2) However, employment mentioned in subsection (1) is not regulated employment if the employer is an education provider.
- (3) In this section—

*prescribed teaching* means teaching, coaching or tutoring 1 child, or more than 1 child at the same time, on a commercial basis.

## **8 Education programs conducted outside of school**

- (1) Employment is regulated employment if the usual functions of the employment include, or are likely to include, providing services or conducting activities for—
  - (a) an educational program under the *Education (General Provisions) Act 2006*, section 286(2), 291 or 304; or
  - (b) a program, provided by an entity, under arrangements approved under the *Education (General Provisions) Act 2006*, section 182 or 183.

- (2) However, employment mentioned in subsection (1) is not regulated employment if the employer is a provider under the *Education (General Provisions) Act 2006*, section 232.

## **9 Child accommodation services including home stays**

- (1) Employment is regulated employment if the usual functions of the employment include, or are likely to include, a child accommodation service.
- (2) If accommodation constituting a child accommodation service is provided, or is to be provided, by a person in the person's home (a *home stay provider*), each adult residing in that home, other than the home stay provider, is taken to be a volunteer who is engaged in regulated employment.
- (3) However, employment mentioned in subsection (1) or (2) is not regulated employment if the home stay provider is a relative of the child who receives the child accommodation service to which the employment relates.
- (4) In this section—  
*home*, of a person, includes the person's principal place of residence and any holiday home of the person.

## **10 Religious representatives**

Employment is regulated employment if—

- (a) the employee is a religious representative; and
- (b) the usual functions of the employment include, or are likely to include—
- (i) providing services, as a religious representative, directed mainly towards children; or
  - (ii) conducting activities, as a religious representative, mainly involving children.

## **11 Sport and active recreation**

- (1) Employment is regulated employment if—



- 
- (a) the usual functions of the employment include, or are likely to include—
    - (i) providing services directed mainly towards children; or
    - (ii) conducting activities mainly involving children; and
  - (b) the services are provided, or the activities are conducted, as part of sport or active recreation.
- (2) However, employment mentioned in subsection (1) is not regulated employment if—
- (a) the employment takes place at an amusement park; or
  - (b) the employee is a volunteer who is a parent of a child to whom the services are provided, or in relation to whom the activities are conducted, as part of the sport or active recreation; or
  - (c) the services are provided, or the activities are conducted, by or within a church, club, association or similar entity, as mentioned in section 5(1)(b) of this schedule.

## 12 Emergency services cadet program

- (1) Employment is regulated employment if the usual functions of the employment include or are likely to include—
- (a) undertaking the role of an adult member in the cadet program managed by the department responsible for emergency services; and
  - (b) prescribed teaching.
- (2) In this section—

***prescribed teaching*** means teaching, coaching or tutoring 1 child, or more than 1 child at the same time.

## 13 School crossing supervisors

Employment is regulated employment if the usual functions of the employment include, or are likely to include, providing services as a crossing supervisor within the meaning of the

*Transport Operations (Road Use Management) Act 1995*,  
section 122A(1)(b).

#### **14 Care of children under Child Protection Act 1999**

- (1) Employment is regulated employment if the usual functions of the employment include, or are likely to include, providing care for a child as an approved carer, other than a provisionally approved carer.
- (2) If a person provides, or is likely to provide, care for a child in the person's capacity as an approved carer, other than a provisionally approved carer, each adult member of the person's household is taken to be a volunteer who is engaged in regulated employment.
- (3) Employment is regulated employment if—
  - (a) any of the usual functions of the employment is carried out, or is likely to be carried out, inside a licensed residential facility; or
  - (b) the employee is employed by a licensed care service and any of the usual functions of the employment includes or is likely to include providing support for an approved carer.
- (4) Without limiting subsection (3), each of the following persons is taken to be engaged in regulated employment under the subsection—
  - (a) a person who is responsible for directly managing a licensed care service;
  - (b) a person who is engaged in relation to the provision of care to a child by a licensed care service.

#### **15 Regulation about usual functions of employment**

- (1) For this part, a regulation may make provision about whether a function of employment is a usual function.
- (2) Without limiting subsection (1), a regulation may—

- 
- (a) state the employment, or type of employment, to which the regulation applies; and
  - (b) declare that a stated function of the employment is, or is not, a usual function of the employment.
- (3) A regulation under this section may describe a function of employment by reference to the frequency with which it is carried out, or in another way.

## **Part 2                      Regulated businesses**

### **16      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 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;
  - (d) a service at a child-related service outlet of a funded non-government service provider.

Schedule 1

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(2) However, a business mentioned in subsection (1) is not a regulated business if the business is a licensed care service.

(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, including, for example, the following—

(i) 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
- services provided by an assistant in a ward of a hospital, including lifting and turning bedridden patients and moving patients from a place to another place

(ii) a service providing respite care;

(iii) a service provided by a practitioner of hypnosis, naturopathy, acupuncture or another form of natural or alternative health care;

(iv) a massage service, including a massage service for relaxation;

(v) a service provided by a health student in the student's capacity as a health student;

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

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

**17 Private teaching, coaching or tutoring**

- (1) A business is a regulated business if the usual activities of the business include, or are likely to include, teaching, coaching or tutoring 1 child, or more than 1 child at the same time, on a commercial basis.
- (2) However, a business mentioned in subsection (1) is not a regulated business if the business is conducted by an education provider.

**18 Child care services and similar businesses**

A business is a regulated business if the usual activities of the business include, or are likely to include—

- (a) conducting a child care service or another commercial service that includes providing child care; or
- (b) carrying out activities in premises or a vehicle in which there are children to whom child care is being provided.

**18A Education and care services and similar businesses**

A business is a regulated business if the usual activities of the business include, or are likely to include—

- (a) operating an education and care service or another commercial service that includes providing education and care to children; or
- (b) carrying out activities in premises or a vehicle in which there are children to whom education and care is being provided.

**19 Educational programs conducted outside of school**

A business is a regulated business if—

- (a) the usual activities of the business include, or are likely to include, providing services or conducting activities for—

- (i) an educational program under the *Education (General Provisions) Act 2006*, section 286(2), 291 or 304; or
  - (ii) a program provided, by the entity carrying on the business, under arrangements approved under the *Education (General Provisions) Act 2006*, section 182 or 183; and
- (b) the entity carrying on the business is not a provider under the *Education (General Provisions) Act 2006*, section 232.

## **20 Religious representatives**

A business is a regulated business if the usual activities of the business include, or are likely to include, a religious representative—

- (a) providing services, as a religious representative, directed mainly towards or involving children; or
- (b) conducting activities, as a religious representative, directed mainly towards or involving children.

## **21 Child accommodation services including home stays**

- (1) A business is a regulated business if the usual activities of the business include, or are likely to include, a child accommodation service and—
- (a) the person who carries on the business provides the accommodation that constitutes the child accommodation service in the person's home; or
  - (b) the person who carries on the business provides the child accommodation service under an arrangement organised by a government service provider.
- (2) However, a business mentioned in subsection (1) is not a regulated business if the business is conducted at a boarding facility, residential facility or another place of the type mentioned in section 1(1)(b) of this schedule.
- (3) In this section—

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*home*, of a person, includes the person's principal place of residence and any holiday home of the person.

## **22 Sport and active recreation**

- (1) A business is a regulated business if the usual activities of the business include, or are likely to include, sport or active recreation activities directed mainly towards or involving children.
- (2) However, a business mentioned in subsection (1) is not a regulated business if—
  - (a) the business takes place at an amusement park; or
  - (b) the activities are conducted by or within a church, club, association or similar entity, as mentioned in section 5(1)(b) of this schedule.

## **23 Hostel for children other than residential facility**

A business is a regulated business if the usual activities of the business include, or are likely to include, operating a place, other than a residential facility, at which a child accommodation service is provided under funding provided by the Commonwealth or by the department in which the *Education (General Provisions) Act 2006* is administered.

## **24 Businesses relating to licensed care service under Child Protection Act 1999**

- A business is a regulated business if—
- (a) the usual activities of the business include, or are likely to include, a licensed care service; or
  - (b) the usual activities of the business include, or are likely to include, carrying out activities or providing services inside a licensed residential facility.

**25 Non-State schools—directors of governing bodies and authorised persons**

The *Education (Accreditation of Non-State Schools) Act 2001*, sections 15 and 140 provide for particular persons who are taken to be carrying on a regulated business.

**Part 3 Employment, or carrying on of a business, to which chapter 8 of this Act does not apply**

**26 Person engaged in employment for the police service**

Chapter 8 of this Act does not apply to the employment of a person who, within the meaning of the *Police Service Administration Act 1990*, section 5AA.3, is a person engaged by the service, to the extent the person is performing a function mentioned in the *Police Service Administration Act 1990*, section 2.3.

**27 Employment of relevant person under the *Corrective Services Act 2006***

Chapter 8 of this Act does not apply to the employment of a person who is a person mentioned in the *Corrective Services Act 2006*, section 327, definition *relevant person*, to the extent the employment relates to the person's functions under that Act.

**28 Registered health practitioners**

Chapter 8 of this Act does not apply to the employment or carrying on of a business of a person who is a registered health practitioner to the extent the activities performed or services provided relate to the person's functions as a registered health practitioner.



**29 Person providing only help or guidance to child employee**

- (1) Chapter 8 of this Act does not apply to the employment of a person only because the person gives help or guidance to a child as part of the child's employment.
- (2) However, chapter 8 of this Act does apply to the employment of the person if the employment is otherwise regulated employment under part 1 of this schedule.

**30 Ambulance officers**

Chapter 8 of this Act does not apply to the employment of a person as an ambulance officer under the *Ambulance Service Act 1991*, section 13 or 14 to the extent the employment relates to the person's functions under that Act.

**Schedule 2      Current serious offences**

section 167

*1 Classification of Computer Games and Images Act 1995*

<b>Provision of Act</b>	<b>Relevant heading</b>	<b>Qualification relating to the provision of the Act</b>
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*

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

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 3 *Classification of Publications Act 1991*

<b>Provision of Act</b>	<b>Relevant heading</b>	<b>Qualification relating to the provision of the Act</b>
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(1)	Producing prohibited publication	only if an offender was or could have been liable as mentioned in section 17(1), penalty, paragraph (c)
17(2)	Producing prohibited publication	only if an offender was or could have been liable as mentioned in section 17(2), penalty, paragraph (c)
17(3) and (4)	Producing prohibited publication	

Schedule 2

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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

<b>Provision of Act</b>	<b>Relevant heading</b>	<b>Qualification relating to the provision of the Act</b>
208	Unlawful 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 persons with an impairment of the mind	
217	Procuring young person etc. for carnal knowledge	

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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	
229B	Maintaining a sexual relationship with a child	
229G	Procuring prostitution	only if an offender was or could have been liable as mentioned in section 229G(2)

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229H	Knowingly participating in provision of prostitution	only if an offender was or could have been liable as mentioned in section 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 section 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	
317	Acts intended to cause grievous bodily harm and other malicious acts	
320A	Torture	

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322	Administering poison with intent to harm	only if an offender was or could have been liable for a penalty as mentioned in section 322, penalty, paragraph (a)
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	
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)

Schedule 2

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419	Burglary	only if an offender was or could have been liable as mentioned in section 419(3)(b)(i) or (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*

<b>Provision of Act</b>	<b>Relevant heading</b>	<b>Qualification relating to the provision of the Act</b>
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)

6 *Crimes Act 1914 (Cwlth)*

<b>Provision of Act</b>	<b>Relevant heading</b>	<b>Qualification relating to the provision of the Act</b>
50BA	Sexual intercourse with child under 16	
50BB	Inducing child under 16 to engage in sexual intercourse	
50BC	Sexual conduct involving child under 16	



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- 50BD Inducing child under 16 to be involved in sexual conduct
- 50DA Benefiting from offence against this Part
- 50DB Encouraging offence against this Part

## 7 Criminal Code (Cwlth)

<b>Provision of Act</b>	<b>Relevant heading</b>	<b>Qualification relating to the provision of the Act</b>
270.6	Sexual servitude offences	only if an offender was or could have been liable as mentioned in section 270.8
270.7	Deceptive recruiting for sexual services	only if an offender was or could have been liable as mentioned in section 270.8
474.19	Using a carriage service for child pornography material	
474.20	Possessing, controlling, producing, supplying or obtaining child pornography material for use through a carriage service	

Schedule 2

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- 474.22 Using a carriage service for child abuse material
- 474.23 Possessing, controlling, producing, supplying or obtaining child abuse material for use through a carriage service
- 474.26 Using a carriage service to procure persons under 16 years of age
- 474.27 Using a carriage service to “groom” persons under 16 years of age

8 *Customs Act 1901* (Cwlth)

<b>Provision of Act</b>	<b>Relevant heading</b>	<b>Qualification relating to the provision of the Act</b>
233BAB	Special offence relating to tier 2 goods	if the offence involved child pornography or child abuse material

## Schedule 3 Repealed or expired serious offences

section 167

### Criminal Code

<b>Provision of Act</b>	<b>Relevant heading</b>	<b>Qualification relating to the provision of the Act</b>
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 3

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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 <sup>a</sup>
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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 4      Current disqualifying offences

section 168

### 1 *Classification of Computer Games and Images Act 1995*

<b>Provision of Act</b>	<b>Relevant heading</b>	<b>Qualification relating to the provision of the Act</b>
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*

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

*3 Classification of Publications Act 1991*

<b>Provision of Act</b>	<b>Relevant heading</b>	<b>Qualification relating to the provision of the Act</b>
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	only if an offender was or could have been liable as mentioned in section 15, penalty, paragraph (c)
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(1)	Producing prohibited publication	only if an offender was or could have been liable as mentioned in section 17(1), penalty, paragraph (c)
17(2)	Producing prohibited publication	only if an offender was or could have been liable as mentioned in section 17(2), penalty, paragraph (c)
17(3) and (4)	Producing prohibited publication	

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

<b>Provision of Act</b>	<b>Relevant heading</b>	<b>Qualification relating to the provision of the Act</b>
208	Unlawful sodomy	for an offence committed before 1 July 1997, only if committed against a child or a person with an impairment of the mind
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 persons with an impairment of the mind	
217	Procuring young person etc. for carnal knowledge	

Schedule 4

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218	Procuring sexual acts by coercion etc.	if the offence was committed against a child
218A	Using internet etc to procure children under 16	
219	Taking child for immoral purposes	
221	Conspiracy to defile	if the offence was committed against a child
222	Incest	if the offence was committed against a child
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	
229B	Maintaining a sexual relationship with a child	
229G	Procuring prostitution	only if an offender was or could have been liable as mentioned in section 229G(2)



229H	Knowingly participating in provision of prostitution	only if an offender was or could have been liable as mentioned in section 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 section 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 and was committed against a child
349	Rape	if the offence was committed against a child
350	Attempt to commit rape	if the offence was committed against a child
351	Assault with intent to commit rape	if the offence was committed against a child
352	Sexual assaults	if the offence was committed against a child

#### 5 *Crimes Act 1914* (Cwlth)

<b>Provision of Act</b>	<b>Relevant heading</b>	<b>Qualification relating to the provision of the Act</b>
50BA	Sexual intercourse with child under 16	
50BB	Inducing child under 16 to engage in sexual intercourse	

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- 50BC Sexual conduct involving child under 16
- 50BD Inducing child under 16 to be involved in sexual conduct
- 50DA Benefiting from offence against this Part
- 50DB Encouraging offence against this Part

6 Criminal Code (Cwlth)

<b>Provision of Act</b>	<b>Relevant heading</b>	<b>Qualification relating to the provision of the Act</b>
270.6	Sexual servitude offences	only if an offender was or could have been liable as mentioned in section 270.8
270.7	Deceptive recruiting for sexual services	only if an offender was or could have been liable as mentioned in section 270.8
474.19	Using a carriage service for child pornography material	

- 474.20 Possessing, controlling, producing, supplying or obtaining child pornography material for use through a carriage service
- 474.22 Using a carriage service for child abuse material
- 474.23 Possessing, controlling, producing, supplying or obtaining child abuse material for use through a carriage service
- 474.26 Using a carriage service to procure persons under 16 years of age
- 474.27 Using a carriage service to “groom” persons under 16 years of age

7 *Customs Act 1901* (Cwlth)

<b>Provision of Act</b>	<b>Relevant heading</b>	<b>Qualification relating to the provision of the Act</b>
233BAB	Special offence relating to tier 2 goods	if the offence involved child pornography or child abuse material

## Schedule 5      Repealed or expired disqualifying offences

section 168

### Criminal Code

<b>Provision of Act</b>	<b>Relevant heading</b>	<b>Qualification relating to the provision of the Act</b>
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> only if, at the time of the offence, the person in relation to whom the offence was committed was a child

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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> only if, at the time of the offence, the person in relation to whom the offence was committed was a child
344	Aggravated assaults	as the provision was in force from 20 December 1946 to 30 June 1997 if— (a) 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; and (b) at the time of the offence, the person in relation to whom the offence was committed was a child

## **Schedule 6      Offences that may form basis of investigative information**

section 305(3) and (4)

### *1 Classification of Computer Games and Images Act 1995*

<b>Provision of Act</b>	<b>Relevant heading</b>	<b>Qualification relating to the provision of the Act</b>
23	Demonstration of an objectionable computer game before a minor	
28	Obtaining minor for objectionable computer game	

### *2 Classification of Films Act 1991*

<b>Provision of Act</b>	<b>Relevant heading</b>	<b>Qualification relating to the provision of the Act</b>
43	Procurement of minor for objectionable film	

### *3 Classification of Publications Act 1991*

<b>Provision of Act</b>	<b>Relevant heading</b>	<b>Qualification relating to the provision of the Act</b>
18	Procurement of minor for RC publication or child abuse photograph	

## 4 Criminal Code

<b>Provision of Act</b>	<b>Relevant heading</b>	<b>Qualification relating to the provision of the Act</b>
208	Unlawful sodomy	for an offence committed before 1 July 1997, only if committed against a child or a person with an impairment of the mind
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 persons with an impairment of the mind	
217	Procuring young person etc. for carnal knowledge	
218	Procuring sexual acts by coercion etc.	if the offence was committed against a child or a person with a disability
219	Taking child for immoral purposes	
221	Conspiracy to defile	if the offence was committed against a child or a person with a disability
222	Incest	if the offence was committed against a child or a person with a disability

Schedule 6

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228A	Involving child in making child exploitation material	
229B	Maintaining a sexual relationship with a child	
229G	Procuring prostitution	only if an offender was or could have been liable as mentioned in section 229G(2)
229H	Knowingly participating in provision of prostitution	only if an offender was or could have been liable as mentioned in section 229H(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 and was committed against a child or a person with a disability
349	Rape	if the offence was committed against a child or person with a disability
350	Attempt to commit rape	if the offence was committed against a child or a person with a disability
351	Assault with intent to commit rape	if the offence was committed against a child or a person with a disability
352	Sexual assaults	if the offence was committed against a child or a person with a disability



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 5 *Crimes Act 1914* (Cwlth)

<b>Provision of Act</b>	<b>Relevant heading</b>	<b>Qualification relating to the provision of the Act</b>
50BA	Sexual intercourse with child under 16	
50BB	Inducing child under 16 to engage in sexual intercourse	
50BC	Sexual conduct involving child under 16	
50BD	Inducing child under 16 to be involved in sexual conduct	

6 *Criminal Code* (Cwlth)

<b>Provision of Act</b>	<b>Relevant heading</b>	<b>Qualification relating to the provision of the Act</b>
270.6	Sexual servitude offences	only if an offender was or could have been liable as mentioned in section 270.8 or if the offence is committed against a person with a disability
270.7	Deceptive recruiting for sexual services	only if an offender was or could have been liable as mentioned in section 270.8 or if the offence is committed against a person with a disability

## Schedule 7 Dictionary

### section 3

**accreditation board** means the Non-State Schools Accreditation Board established under the *Education (Accreditation of Non-State Schools) Act 2001*, section 105.

**active recreation**, for schedule 1, means a form of physical exertion or activity engaged in for the purpose of relaxation or enjoyment, that is not based on formal competition.

**adjunct care** means child care, or education and care, provided to a child—

- (a) in conjunction with a meeting, function or other activity involving a relative or guardian of the child other than the paid employment of the relative or guardian; and
- (b) on the premises in which the meeting, function or other activity is taking place; and
- (c) for not more than 3 hours on each occasion the child care or education and care is provided.

**advisory committee** means a committee established under chapter 7.

**advocacy entity** means an entity that provides advocacy services for, or otherwise represents—

- (a) particular children; or
- (b) the interests of children generally.

**alternative certifications**, relating to an employee, means—

- (a) a certification, in the approved form, by a prescribed person that the prescribed person has sighted the employee's proof of identity documents; and
- (b) a certification, in the approved form, by the employer that the employer did not sight the documents only because—

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- (i) the employee's usual place of residence is more than 50km from the employer's business address; or
  - (ii) the employee is a person with a disability that affects mobility.

**amending Act**, for chapter 11, part 13, see section 465.

**amusement park**, for schedule 1, includes a park that is permanent or temporary but does not include an amusement arcade.

**appointed members**, for chapter 6, part 1, see section 115.

**approved carer** means an approved carer under the *Child Protection Act 1999*.

**approved form** means a form approved under section 400.

**approved foster carer** means an approved foster carer under the *Child Protection Act 1999*.

**approved teacher** means—

- (a) a person who holds full registration or provisional registration under the *Education (Queensland College of Teachers) Act 2005*; or
- (b) a person who holds a permission to teach under the *Education (Queensland College of Teachers) Act 2005*.

**assistant commissioner** means the assistant commissioner appointed under section 34.

**business** includes a business or organisation in which profit is not the primary purpose of the activity constituting the business.

**carer**—

- (a) in relation to a child residing in a visitable home, means a person in whose care the child has been placed; or
- (b) in relation to a child care service, see the *Child Care Act 2002*, section 56.

**CDCRC**, for chapter 6, part 1, see section 115.

**CDCRC member**, for chapter 6, part 1, see section 115.

**chapter 8 reviewable decision** see section 353.

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

- (a) a charge on an arrest;
- (b) a notice to appear served under the *Police Powers and Responsibilities Act 2000*, section 382;
- (c) a complaint under the *Justices Act 1886*;
- (d) a charge by a court under the *Justices Act 1886*, section 42(1A), or another provision of an Act;
- (e) an indictment.

**chief executive (child care)** means the chief executive of the department in which the *Child Care Act 2002* is administered.

**chief executive (child safety)** means the chief executive of the child safety department.

**chief executive (disability services)** means the chief executive of the department in which the *Disability Services Act 2006* is administered.

**chief executive (education and care)** means the chief executive of the department in which the Education and Care Services National Law (Queensland) is administered.

**child accommodation service** means a service for which the main purpose is to provide accommodation for children but does not include—

- (a) the care of children by an approved carer under the *Child Protection Act 1999* acting in that capacity; or
- (b) the provision of accommodation to children under residential tenancy agreements under the *Residential Tenancies and Rooming Accommodation Act 2008*.

**child care** means care of a child provided—

- (a) by someone other than a relative or guardian of the child; and
- (b) for reward; and

- (c) in the course of a service for regularly providing care of children.

**child care centre** means the premises in which child care is provided under a licence for a centre based service under the *Child Care Act 2002*.

**child care service** see the *Child Care Act 2002*, section 5.

**child guardian functions**, of the commissioner, see section 17(2).

**child-related duties**, for chapter 8A, see section 357I(2).

**child-related employment decision** see section 358.

**child-related service outlet** means a place at which disability services are provided to children.

**child safety department** means the department in which the *Child Protection Act 1999* is administered.

**child safety system** see the definition in the *child safety system*.

**college of teachers** means the Queensland College of Teachers established under the *Education (Queensland College of Teachers) Act 2005*, section 229.

**commencement**—

- (a) for chapter 11, part 5—see section 413; or
- (b) for chapter 11, part 9—see section 441; or
- (c) for chapter 11, part 11—see section 451; or
- (d) for chapter 11, part 13—see section 465.

**commercial service** means a service operated on a commercial basis.

**commission** means the Commission for Children and Young People and Child Guardian.

**commissioner** means the Commissioner for Children and Young People and Child Guardian.

**community visitor** means a person appointed as a community visitor under this Act.

**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 Quality and Complaints Commission under the *Health Quality and Complaints Commission Act 2006*;
- (e) the adult guardian under the *Guardianship and Administration Act 2000*.

**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.

**constituting members**, for chapter 9, part 1, see section 358.

**conviction** means a finding of guilt by a court, or the acceptance of a plea of guilty by a court, whether or not a conviction is recorded.

**cousin** includes second cousin.

**CPOPOA disqualification order** means a disqualification order made under the Offender Prohibition Order Act, section 25.

**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**—

- (a) for a prescribed notice—means current under section 231; or
- (b) for an exemption notice—means current under section 289.

**dealt with**, in relation to a charge of an offence, means any of the following—

- (a) the person who is charged is convicted or acquitted of the charge;
- (b) the person who is charged is convicted of another offence in relation to which the acts or omissions were substantially the same as the acts or omissions of the charge of the offence;
- (c) the charge has been withdrawn or dismissed;
- (d) a nolle prosequi or no true bill is presented in relation to the charge.

**detention centre** means a detention centre established under the *Youth Justice Act 1992*, section 262.

**director**, of a school's governing body, see the *Education (Accreditation of Non-State Schools) Act 2001*, schedule 3.

**disability services** see the *Disability Services Act 2006*, section 12.

**disability services regulated business**, for chapter 11, part 13, see section 465.

**disability services regulated employment**, for chapter 11, part 13, see section 465.

**disciplinary information** means information received by the commissioner—

- (a) under the *Child Care Act 2002*, section 50A or 107A; or
- (b) under the *Education and Care Services National Law (Queensland) Act 2011*, section 20 or 21; or
- (c) under the *Education and Care Services National Law (Queensland)*, section 271; or

- (d) under the *Child Protection Act 1999*, section 140A; or
- (e) under the *Education (Queensland College of Teachers) Act 2005*, section 285, or the repealed *Education (Teacher Registration) Act 1988*, section 71B; or
- (f) under the *Education (Queensland College of Teachers) Act 2005*, section 285A in relation to a matter mentioned in subsection (1)(a)(ii) to (v) of that section; or
- (g) under the *Health Practitioners (Professional Standards) Act 1999*, section 384A.

***disqualification order*** means—

- (a) an order under section 357; or
- (b) a CPOPOA disqualification order.

***disqualified person*** see section 169.

***disqualifying offence*** see section 168.

***education and care service*** see the Education and Care Services National Law (Queensland), section 5(1).

***education and care service premises*** see the Education and Care Services National Law (Queensland), section 5(1).

***education provider*** means—

- (a) each of the following, within the meaning given by the *Higher Education (General Provisions) Act 2008*, schedule 2—
  - (i) a non self-accrediting higher education institution;
  - (ii) a self-accrediting higher education institution;
  - (iii) an interstate self-accrediting higher education institution that holds a recognised self-accrediting authority under that Act;
  - (iv) a university;
  - (v) a specialised university;
  - (vi) a university college;
  - (vii) a specialised university college;



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- (viii) an interstate university, interstate specialised university, interstate university college or interstate specialised university college, that holds a recognised authority under that Act;
  - (ix) an overseas higher education institution for which an approval is held under part 5 of that Act; or
  - (b) the university company within the meaning of the *Bond University Act 1987*; or
  - (c) a registered training organisation within the meaning of the *Vocational Education, Training and Employment Act 2000*.

**educator** see the Education and Care Services National Law (Queensland), section 5(1).

**eligibility application** see section 178.

**eligibility declaration** see section 177.

**employment**—

- (a) in relation to the engagement of a person under the *Child Care Act 2002*—see section 163; or
- (b) in relation to a trainee student—see sections 161 and 162; or
- (c) in relation to regulated employment mentioned in schedule 1, section 14(1) or (2)—includes employment by the State in the circumstances mentioned in section 164; or
- (d) otherwise for chapter 8, chapter 11, part 7 or schedule 1—see section 161.

**employment-screening decision**, in relation to a person, means a decision about—

- (a) whether a positive notice or a negative notice should be issued to the person, including a decision about—
  - (i) whether a person's positive notice should be cancelled and substituted with a negative notice or negative exemption notice; and

Schedule 7

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- (ii) whether a person's negative notice should be cancelled and, if so, whether a positive notice should be issued to the person; and
  - (iii) whether a person's negative notice should be cancelled and substituted with a positive notice or positive exemption notice; and
  - (iv) whether a person's suspended positive notice should be cancelled and a further prescribed notice or an exemption notice issued to the person; or
- (b) whether a positive exemption notice or negative exemption notice should be issued to the person, including a decision about—
- (i) whether a person's positive exemption notice should be cancelled and substituted with a negative exemption notice; and
  - (ii) whether a person's negative exemption notice should be cancelled and, if so, whether a positive exemption notice or positive notice should be issued to the person; and
  - (iii) whether a person's negative exemption notice should be cancelled and substituted with a positive exemption notice or positive notice; or
  - (iv) whether a person's suspended positive exemption notice should be cancelled and a further exemption notice or a prescribed notice issued to the person; or
- (c) whether an eligibility declaration should be issued to the person.

**engage**, a person, for chapter 8A, includes the following—

- (a) engage the person (whether or not the person is appointed under the *Public Service Act 2008*) within the meaning of that Act, section 150;
- (b) engage the person under a contract for services;
- (c) engage the person on a voluntary basis;

- (d) engage the person under an arrangement to provide the person with practical experience.

**exceptional case** means exceptional case as mentioned in section 221(2), 222(2), 223(4) or 225(2).

**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.

**exemption notice** means a notice issued under section 282.

**exemption notice application** means an application for an exemption notice under chapter 8, part 5, division 6 or 7.

**final offender prohibition order** means a final order under the Offender Prohibition Order Act.

**final sexual offender order** means a division 3 order under the *Dangerous Prisoners (Sexual Offenders) Act 2003*.

**funded non-government service provider** see the *Disability Services Act 2006*, section 17.

**government entity** means a government entity under the *Public Service Act 2008*, section 24, and includes the police service to the extent it is not a government entity under that section.

**government service provider** see section 10.

**guardian**, of a child, means any of the following persons—

- (a) a person who is recognised in law as having all the duties, powers, responsibilities and authority relating to the child that, by law, parents have relating to their children;

*Editor's note—*

See the *Family Law Act 1975* (Cwlth), part VII (Children), division 2 (Parental responsibility).

- (b) a person in whose favour a parenting order is in force under the *Family Law Act 1975* (Cwlth);
- (c) a carer of the child under the *Child Protection Act 1999*;

- (d) a person who is entitled to the custody of the child under the *Adoption Act 2009*.

**guardian**, of a person with a disability, means a guardian appointed for the person under the *Guardianship and Administration Act 2000*.

**harm** has the meaning given in the *Child Protection Act 1999*, section 9.

*Editor's note—*

*Child Protection Act 1999*, section 9—

**9 What is harm**

- (1) **Harm**, to a child, is any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing.
- (2) It is immaterial how the harm is caused.
- (3) Harm can be caused by—
  - (a) physical, psychological or emotional abuse or neglect; or
  - (b) sexual abuse or exploitation.
- (4) Harm can be caused by—
  - (a) a single act, omission or circumstance; or
  - (b) a series or combination of acts, omissions or circumstances.

**health facility—**

- (a) means a hospital, nursing home, community health facility or another similar place; and
- (b) includes a place that is used as a hospital, nursing home or community health facility on a temporary basis.

**health professional** means—

- (a) a registered health practitioner; or
- (b) a health care worker; or
- (c) an assistant to a health practitioner.

*Examples for paragraph (c)—*

dental assistant, nurses aide

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**health student** means a person to whom education or training is being provided at a health facility if the education or training enables the person to whom it is provided—

- (a) to obtain the necessary education or qualification to become a health professional; or
- (b) to obtain the necessary registration, enrolment or other authorisation (however called) to practise as a health professional; or
- (c) to complete a course of study for paragraph (b).

**health student regulated business**, for chapter 11, part 13, see section 465.

**health student regulated employment**, for chapter 11, part 13, see section 465.

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

**imprisonment order**—

- (a) means either of the following orders—
  - (i) an order of a court that convicts a person for an offence, if the order includes a penalty that includes imprisonment for the offence, whether wholly or partially suspended;
  - (ii) an intensive correction order under the *Penalties and Sentences Act 1992* or an order of another jurisdiction that substantially corresponds to an intensive correction order; but
- (b) does not include an order of imprisonment that is imposed as a consequence of a breach of a community service order or probation order within the meaning of the *Penalties and Sentences Act 1992*.

**influence** includes attempt to influence.

**interim sexual offender order** means an interim detention order or interim supervision order under the *Dangerous Prisoners (Sexual Offenders) Act 2003*.

**in the child safety system** see section 13.

***investigative information*** see section 305.

***issue***, for chapter 8, part 7, division 3, see section 353.

***jurisdiction***, other than in relation to this jurisdiction, means the Commonwealth, a State or a foreign jurisdiction.

***licensed care service*** means a licensed care service under the *Child Protection Act 1999*.

***licensed residential facility*** means a licensed residential facility under the *Child Protection Act 1999*.

***licensee***, for chapter 3, see section 39(b).

***member***, of a person's household, see the *Child Protection Act 1999*, schedule 3.

***minimum frequency for regulated employment*** means—

- (a) at least 8 consecutive days; or
- (b) at least once a week for each week during a period of 4 weeks; or
- (c) at least once a fortnight for each fortnight during a period of 8 weeks; or
- (d) at least once a month for each month during a period of 6 months.

***monitoring functions***, of the commissioner, see section 18.

***negative exemption notice*** see section 282(b).

***negative notice*** see section 220(b).

***new disqualified person***, for chapter 11, part 13, see section 465.

***new disqualifying offence***, for chapter 11, part 13, see section 465.

***new local government regulated business***, for chapter 11, part 13, see section 465.

***new local government regulated employment***, for chapter 11, part 13, see section 465.

***new relevant disqualified person***, for chapter 11, part 13, see section 465.

**notice for information** see section 67(1).

**notice of deemed withdrawal** means a written notice stating—

- (a) for a prescribed notice application or exemption notice application about a person made by someone else—that the person is taken to have withdrawn his or her consent to employment screening under chapter 8; or
- (b) for a prescribed notice application or exemption notice application about a person made by the person—that the person is taken to have withdrawn the application.

**notifiable person**, for a person—

- (a) means—
  - (i) if the person has applied for, started or is continuing in, regulated employment—the person's employer; or
  - (ii) if the person is a trainee student of an education provider—the education provider; or
  - (iii) if the commissioner is aware that the person is a licensee or the nominee of a licensee under the *Child Care Act 2002*—the chief executive (child care); or
  - (iv) if the commissioner is aware that the person is an adult occupant of a home in which child care is provided in the course of a licensed home based service under the *Child Care Act 2002*—the licensee of the home based service under that Act; or
  - (v) if the commissioner is aware that the person is an adult occupant of a home in which stand alone child care is provided under the *Child Care Act 2002*—the chief executive (child care); or
  - (vi) if the commissioner is aware that the person is an approved provider under the Education and Care Services National Law (Queensland)—the chief executive (education and care); or

- (vii) if the commissioner is aware that the person is an adult occupant of a home in which education and care is provided in the course of an approved family day care service under the Education and Care Services National Law (Queensland)—the approved provider of the family day care service under that Law; or
  - (viii) if the commissioner is aware that the person is carrying on a regulated business as a religious representative—an entity within the relevant organised or recognised religious group that the commissioner reasonably considers has responsibility for supervising or disciplining the person; or
  - (ix) if the commissioner is aware that the person is the nominee for, or an executive officer of an applicant for or holder of, a licence under the *Child Protection Act 1999*—the chief executive (child safety); and
- (b) for chapter 8, part 5 other than sections 298 to 300—includes—
- (i) if the person is a police officer—the police commissioner; or
  - (ii) if the person is a registered teacher—the college of teachers.

***obstruct*** includes hinder, resist and attempt to obstruct.

***offender prohibition order*** means an offender prohibition order under the Offender Prohibition Order Act.

***Offender Prohibition Order Act*** means the *Child Protection (Offender Prohibition Order) Act 2008*.

***Offender Reporting Act*** means the *Child Protection (Offender Reporting) Act 2004*.

***offender reporting obligations*** means reporting obligations under the Offender Reporting Act.

***original reviews***, for chapter 6, part 1, see section 115.



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***other new regulated business***, for chapter 11, part 13, see section 465.

***other new regulated employment***, for chapter 11, part 13, see section 465.

***parent*** see section 390.

***person with a disability*** means a person with a disability within the meaning of the *Disability Services Act 2006*, section 11.

***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;
- (c) information as to whether the person is or has been—
  - (i) a relevant disqualified person; or
  - (ii) the subject of an application for a disqualification order; or
  - (iii) named as the respondent to an application for an offender prohibition order.

***police service*** means the Queensland Police Service.

***policies***, for chapter 6, part 1, see section 115.

***positive exemption notice*** see section 282(a).

***positive notice*** see section 220(a).

***positive notice blue 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) a registration number for the person;
- (c) an expiry date for the positive notice;

- (d) the signature, or an electronic version of the signature, of the person to whom the positive notice is issued.

***prescribed department*** means—

- (a) the department responsible for the care and protection of children; or
- (b) the department responsible for community services; or
- (c) the department responsible for disability services; or
- (d) the department responsible for mental health.

***prescribed fee*** means fee prescribed under a regulation.

***prescribed notice*** means a notice issued under section 220.

***prescribed notice application*** means an application for a prescribed notice under chapter 8, part 4, division 7 or 8.

***prescribed period***, for chapter 8, part 7, division 3, see section 353.

***prescribed person*** means a justice, commissioner for declarations, lawyer or police officer.

***prescribed police information***, for chapter 11, part 13, see section 465.

***previous section 97***, for chapter 11, part 13, see section 465.

***private service provider*** see section 11.

***proof of identity documents***, for a person, means the documents, relating to proof of the person's identity, prescribed under a regulation.

***provisionally approved carer*** means a provisionally approved carer under the *Child Protection Act 1999*.

***QCAT child-related employment review***, for chapter 9, part 1, see section 358.

***QCAT president***, for chapter 9, part 1, see section 358.

***registered health practitioner*** means a person registered under any 1 of the following—

- *Dental Technicians Registration Act 2001*

- Health Practitioner Regulation National Law, other than as a student
- *Speech Pathologists Registration Act 2001*.

**registered teacher** means a person who holds full registration or provisional registration under the *Education (Queensland College of Teachers) Act 2005* and whose full or provisional registration is not suspended under section 48 or 49 of that Act.

**regulated business** see section 156.

**regulated employment** see section 156.

**relative**, of a person—

- (a) means the person's parent, grandparent, great grandparent, brother, sister, uncle, aunt, niece, nephew or first 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.

**relevant disqualified person** see section 170.

**relevant disqualified person decision**, for chapter 8, part 7, division 3, see section 353.

**relevant provider**, for chapter 4, see section 61(1)(a).

**relevant review and appeal information**, for a decision about a person, means the following information—

- (a) if the reasons for the decision do not include investigative information—the circumstances in which

- the person may apply to QCAT for a review of the decision under chapter 8, part 7, division 3; and
- (b) if the reasons for the decision include investigative information—
    - (i) the right of the person to appeal, under section 307, to a Magistrates Court about the police commissioner's decision that the information is investigative information; and
    - (ii) the circumstances in which the person may apply to QCAT for a review of the decision under section 309(3);
  - (c) the period within which the person must apply to QCAT for the review or appeal to a Magistrates Court;
  - (d) how the person may apply for the review to QCAT or appeal to a Magistrates Court;
  - (e) there is no review or appeal under this Act in relation to the decision other than as mentioned in paragraph (a) or (b).

***relevant service providers***, for chapter 3, see section 39.

***religious representative*** means a person—

- (a) who is a member of—
  - (i) an organised religion; or
  - (ii) a religious group even if the group is not part of, or does not consider itself to be part of, an organised religion; and
- (b) who, because of the way the organised religion or religious group operates—
  - (i) holds a position in the religion or group that is supported by the religion or group, including financial support, in a way that allows the person—
    - (A) to devote himself or herself to promoting the religion's or group's objects or values; and
    - (B) to hold himself or herself out as a representative of the religion or group; or

- (ii) is training to hold a position mentioned in subparagraph (i).

**repealed Act** means the *Children's Commissioner and Children's Services Appeals Tribunals Act 1996*.

**residential facility** means a place at which a child accommodation service is provided—

- (a) by a prescribed department; or
- (b) under funding provided by a prescribed department; or
- (c) under funding provided by the Commonwealth and administered by a prescribed department; or
- (d) under a licence under the *Child Protection Act 1999*; or
- (e) to children who are, under the *Child Protection Act 1999*, in the custody or guardianship of the chief executive of the department in which that Act is administered, if the place is prescribed under a regulation made for this paragraph.

**reviewable decision**, for chapter 10, part 1, see section 369.

**review criteria**, for chapter 6, part 1, see section 115.

**school** means—

- (a) a State school within the meaning of the *Education (General Provisions) Act 2006*; or
- (b) a school that is provisionally accredited, or accredited, under the *Education (Accreditation of Non-State Schools) Act 2001*.

**section 93A transcript** has the meaning it has under the *Evidence Act 1977*, section 93AA.

**serious offence** see section 167.

**service provider** see section 9.

**sexual offender order** means a division 3 order, interim detention order or interim supervision order under the *Dangerous Prisoners (Sexual Offenders) Act 2003*.

**sport** means a form of human activity capable of achieving a result requiring physical exertion or physical skill that,

because of its nature or organisation, is competitive and is generally recognised as sport.

**staff member**—

- (a) of a visitable site, means—
  - (i) a person in charge of the site; or
  - (ii) another person who is concerned with, or takes part in, the management of the site; or
  - (iii) another person who is a member of the staff at the site; or
- (b) in relation to an education and care service—means an individual employed, appointed or engaged to work in or as part of the service, whether as a family day care co-ordinator, educator or otherwise, and includes the nominated supervisor and a person employed, appointed or engaged as a volunteer; or
- (c) in relation to a child care service—see the *Child Care Act 2002*, section 57; or
- (d) for chapter 11, part 13—see section 465.

**State Coroner** means the State Coroner under the *Coroners Act 2003*.

**temporary offender prohibition order** means a temporary order under the Offender Prohibition Order Act.

**trainee student**, of an education provider, means a person undertaking a course of study with the education provider.

**transitioning person**, for chapter 8, part 5, means a person who is a police officer or registered teacher who holds a current positive notice that was issued to the person—

- (a) before chapter 8, part 5 took effect under section 475; or
- (b) under section 468(3) or 470; or
- (c) before the person became a police officer or registered teacher.

**unamended Act**, for chapter 11, part 13, see section 465.

***unit of public administration*** means a unit of public administration under the *Crime and Misconduct Act 2001*.

***visitable home*** see section 88.

***visitable site*** see section 87.

***volunteer*** see section 165.

***woman*** includes any female.

***work***, for chapter 8, includes the provision of a service, or the conduct of an activity—

- (a) as part of providing a child accommodation service; or
- (b) in the course of a religious vocation.

## Endnotes

### 1 Index to 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 17 September 2012. Future amendments of the Commission for Children and Young People and Child Guardian Act 2000 may be made in accordance with this reprint under the Reprints Act 1992, section 49.



### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No. [X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
num	= numbered	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

### 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments to	Effective	Reprint date
0A	none	2 February 2001	9 February 2001
1	2001 Act No. 16	1 May 2001	6 July 2001
1A	2001 Act No. 60	1 October 2001	12 October 2001
1B	2001 Act No. 73	3 December 2001	7 December 2001
1C	2001 Act No. 73	1 January 2002	4 January 2002
1D	2001 Act No. 73	1 February 2002	1 February 2002
1E	2001 Act No. 73	1 March 2002	1 March 2002
1F	2001 Act No. 73	1 May 2002	10 May 2002
1G	2001 Act No. 73	12 May 2002	24 May 2002
2	2001 Act No. 73	12 May 2002	7 June 2002

Reprint No.	Amendments included	Effective	Notes
2A	2003 Act No. 19	9 May 2003	

Commission for Children and Young People and Child Guardian Act 2000

Endnotes

Reprint No.	Amendments included	Effective	Notes
2B rv	1992 Act No. 44 (amd 2002 Act No. 39) 2002 Act No. 39	1 July 2003	
2C	2002 Act No. 55	1 September 2003	
2D	2003 Act No. 55 2003 Act No. 88	5 January 2004	
2E	2003 Act No. 88	27 January 2004	
2F	2004 Act No. 13	1 August 2004	
2G	2004 Act No. 13	1 September 2004	R2G withdrawn, see R3
3	—	1 September 2004	
4	2004 Act No. 49	17 January 2005	Revision noticed issued for R4
4 rv	2004 Act No. 49 2006 Act No. 17	17 January 2005	Electronic version only incl. revision notice issued for R4
4A rv	2005 Act No. 9	4 April 2005	
4B rv	2004 Act No. 36	30 April 2005	
4C rv	2005 Act No. 47	1 January 2006	
4D rv	2005 Act No. 48	16 January 2006	
4E rv	2005 Act No. 48	1 March 2006	
4F	2006 Act No. 17	2 May 2006	
4G	2005 Act No. 40 2006 Act No. 17	31 May 2006	
4H	2006 Act No. 25	1 July 2006	
4I	2005 Act No. 49	7 July 2006	
4J	2000 Act No. 5 (amd 2006 Act No. 26)	21 July 2006	
4K	2006 Act No. 29	28 August 2006	
4L	2006 Act No. 39	30 October 2006	R4L withdrawn, see R5
5	—	30 October 2006	
5A	2007 Act No. 36	29 August 2007	
5B	2007 Act No. 40	11 September 2007	
5C	2008 Act No. 18	2 June 2008	
5D	2008 Act No. 38	1 July 2008	
5E	2008 Act No. 25	1 August 2008	
6	2008 Act No. 55	1 December 2008	
6A	—	3 June 2009	prov exp 2 June 2009
6B	2008 Act No. 73 2009 Act No. 9	1 July 2009	
6C	2009 Act No. 25	2 November 2009	
7	2009 Act No. 24	1 December 2009	
7A	2009 Act No. 29	1 February 2010	
7B	2009 Act No. 34	29 March 2010	
8	2010 Act No. 5	1 April 2010	
8A	2010 Act No. 14	1 July 2010	
8B	2010 Act No. 33	1 October 2010	

Reprint No.	Amendments included	Effective	Notes
8C	2011 Act No. 38	1 January 2012	
8D	2012 Act No. 11	29 June 2012	
8E	2011 Act No. 32 (amd 2012 Act No. 9) 2012 Act No. 10	1 July 2012	
8F	2012 Act No. 5	17 September 2012	

## 5 List of legislation

### **Commission for Children and Young People and Child Guardian Act 2000 No. 60 (prev Commission for Children and Young People Act 2000)**

date of assent 24 November 2000

ss 1–2 commenced on date of assent

pt 6 (except for ss 101, 109, 111(2)(c), 113, 114(4)) commenced 1 May 2001 (2001 SL No. 1)

ss 101, 111(2)(c), 114(4) commenced 1 October 2001 (2001 SL No. 1)

ss 109, 113 commenced 1 February 2002 (2001 SL No. 1)

sch 1 commenced 1 May 2001 (2001 SL No. 1)

remaining provisions commenced 2 February 2001 (2001 SL No. 1)

amending legislation—

### **Chiropractors Registration Act 2001 No. 3 ss 1–2, 241 sch 2**

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 May 2002 (2002 SL No. 73)

### **Dental Practitioners Registration Act 2001 No. 4 ss 1–2, 267 sch 2**

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2002 (2001 SL No. 258)

### **Dental Technicians and Dental Prosthetists Registration Act 2001 No. 5 ss 1–2, 247 sch 2**

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 May 2002 (2002 SL No. 74)

### **Medical Practitioners Registration Act 2001 No. 7 ss 1–2, 302 sch 2**

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 March 2002 (2002 SL No. 30)

### **Medical Radiation Technologists Registration Act 2001 No. 8 ss 1–2, 237 sch 2**

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 12 May 2002 (automatic commencement under AIA s 15DA(2))

**Occupational Therapists Registration Act 2001 No. 9 ss 1–2, 239 sch 2**

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 February 2002 (2001 SL No. 259)

**Optometrists Registration Act 2001 No. 10 ss 1–2, 237 sch 2**

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 February 2002 (2001 SL No. 260)

**Pharmacists Registration Act 2001 No. 12 ss 1–2, 245 sch 2**

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 February 2002 (2001 SL No. 261)

**Physiotherapists Registration Act 2001 No. 13 ss 1–2, 242 sch 2**

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 February 2002 (2001 SL No. 262)

**Podiatrists Registration Act 2001 No. 14 ss 1–2, 238 sch 2**

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 May 2002 (2002 SL No. 76)

**Psychologists Registration Act 2001 No. 15 ss 1–2, 255 sch 2**

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 May 2002 (2002 SL No. 77)

**Speech Pathologists Registration Act 2001 No. 16 ss 1–2, 236 sch 2**

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 February 2002 (2001 SL No. 263)

**Education (Accreditation of Non-State Schools) Act 2001 No. 60 ss 1, 2(2), 218 sch 1**

date of assent 21 September 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2002 (see s 2(2))

**Crime and Misconduct Act 2001 No. 69 ss 1–2, 378 sch 1**

date of assent 8 November 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2002 (2001 SL No. 221)

**Ombudsman Act 2001 No. 73 ss 1–2, 96 sch 1**

date of assent 13 November 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 3 December 2001 (2001 SL No. 224)

**Juvenile Justice Amendment Act 2002 No. 39 pts 1, 6**

date of assent 29 August 2002

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2003 (2002 SL No. 350)

**Juvenile Justice Act 1992 No. 44 s 341(3) (prev s 262(3)) sch 3 (this Act is amended, see amending legislation below)**

amending legislation—

**Juvenile Justice Amendment Act 2002 No. 39 ss 1–2, 115, 118 (amends 1992 No. 44 above)**

date of assent 29 August 2002

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2003 (2002 SL No. 350)

**Child Care Act 2002 No. 55 ss 1–2, 196 sch 1**

date of assent 1 November 2002

ss 1–2 commenced on date of assent

sch 1, amdt 7 commenced 2 November 2003 (automatic commencement under AIA s 15DA(2) (amdt could not be given effect))

remaining provisions commenced 1 September 2003 (2003 SL No. 188)

**Statute Law (Miscellaneous Provisions) Act 2003 No. 19 ss 1, 3 sch**

date of assent 9 May 2003

commenced on date of assent

**Evidence (Protection of Children) Amendment Act 2003 No. 55 pts 1, 4**

date of assent 18 September 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 5 January 2004 (2003 SL No. 280)

**Education and Other Legislation (Student Protection) Amendment Act 2003 No. 88 pts 1–2**

date of assent 18 November 2003

ss 1–2 commenced on date of assent

pt 2 hdg, ss 3, 6 (other than to the extent it ins new s 119(1A)(a)) commenced 5 January 2004 (2003 SL No. 345)

remaining provisions commenced 27 January 2004 (2003 SL No. 345)

**Child Safety Legislation Amendment Act 2004 No. 13 ss 1–2(1), pt 5, s 30 sch 1**

date of assent 24 June 2004

ss 1–2 commenced on date of assent

ss 59–78, 87(1) (to the extent it om defs “carer” and “visitable site”), 87(2) (to the extent it ins defs “carer”, “visitable home” and “visitable site”) commenced 1 September 2004 (2004 SL No. 141)

remaining provisions commenced 1 August 2004 (2004 SL No. 141)

**Child Safety Legislation Amendment Act (No. 2) 2004 No. 36 pts 1, 5**

date of assent 27 October 2004

ss 1–2 commenced on date of assent

remaining provisions commenced 30 April 2005 (2005 SL No. 62)

**Commission for Children and Young People and Child Guardian Amendment Act 2004 No. 49 ss 1–52**

date of assent 29 November 2004

Endnotes

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ss 1–2 commenced on date of assent  
remaining provisions commenced 17 January 2005 (2004 SL No. 282)

**Criminal Code (Child Pornography and Abuse) Amendment Act 2005 No. 9 pts 1, 4**

date of assent 18 March 2005  
ss 1–2 commenced on date of assent  
remaining provisions commenced 4 April 2005 (2005 SL No. 48)

**Child Safety Legislation Amendment Act 2005 No. 40 ss 1–2, 69 sch**

date of assent 1 September 2005  
ss 1–2 commenced on date of assent  
remaining provisions commenced 31 May 2006 (2006 SL No. 97)

**Education (Queensland College of Teachers) Act 2005 No. 47 ss 1–2, 329 sch 2**

date of assent 2 November 2005  
ss 1–2 commenced on date of assent  
remaining provisions commenced 1 January 2006 (see s 2)

**Public Health Act 2005 No. 48 ss 1–2, 492 sch 1**

date of assent 2 November 2005  
ss 1–2 commenced on date of assent  
sch 1 amdts 1–2 commenced 1 March 2006 (2006 SL No. 21)  
remaining provisions commenced 16 January 2006 (2005 SL No. 280)

**Transport Legislation Amendment Act 2005 No. 49 ss 1–2, 89 sch**

date of assent 2 November 2005  
ss 1–2, 89 commenced on date of assent  
remaining provision commenced 7 July 2006 (2006 SL No. 180)

**Child Safety (Carers) Amendment Act 2006 No. 17 pts 1, 4**

date of assent 2 May 2006  
ss 40, 42 commenced 17 January 2005 (see s 2(1))  
ss 30–39, 41, 43–44, 46–47, 53, 55–57 commenced 31 May 2006 (see s 2(2))  
remaining provisions commenced on date of assent

**Health Quality and Complaints Commission Act 2006 No. 25 ss 1–2(1), 241(1) sch 3**

date of assent 29 May 2006  
ss 1–2 commenced on date of assent  
remaining provisions commenced 1 July 2006 (see s 2(1))

**Police Powers and Responsibilities Act 2000 No. 5 s 810 sch 4 (prev s 459A sch 3A)  
(this Act is amended, see amending legislation below)**

amending legislation—

**Police Powers and Responsibilities and Other Acts Amendment Act 2006  
No. 26 ss 1–2, 84, 86 (amends 2000 No. 5 above)**

date of assent 1 June 2006  
ss 1–2 commenced on date of assent  
remaining provisions commenced 21 July 2006 (2006 SL No. 185)

**Corrective Services Act 2006 No. 29 ss 1, 2(2), 518 sch 3**

date of assent 1 June 2006

ss 1–2 commenced on date of assent  
remaining provisions commenced 28 August 2006 (2006 SL No. 213)

**Education (General Provisions) Act 2006 No. 39 ss 1, 2(3), 512(1) sch 1**

date of assent 11 August 2006  
ss 1–2 commenced on date of assent  
remaining provisions commenced 30 October 2006 (2006 SL No. 247)

**Statute Law (Miscellaneous Provisions) Act 2007 No. 36**

date of assent 29 August 2007  
commenced on date of assent

**Commission for Children and Young People and Child Guardian Amendment Act 2007 No. 40**

date of assent 11 September 2007  
commenced on date of assent

**Commission for Children and Young People and Child Guardian and Another Act Amendment Act 2008 No. 18 pts 1–2**

date of assent 23 April 2008  
ss 1–2 commenced on date of assent  
remaining provisions commenced 2 June 2008 immediately after the commencement of the Child Protection (Offender Prohibition Order) Act 2008 No. 17 (see s 2)

**Higher Education (General Provisions) Act 2008 No. 25 ss 1–2, 164 sch 1**

date of assent 9 May 2008  
ss 1–2 commenced on date of assent  
remaining provisions commenced 1 August 2008 (2008 SL No. 242)

**Public Service Act 2008 No. 38 ss 1–2, 252 sch 3**

date of assent 11 June 2008  
ss 1–2 commenced on date of assent  
remaining provisions commenced 1 July 2008 (2008 SL No. 208)

**Criminal Code and Other Acts Amendment Act 2008 No. 55 ss 1–2, 150 sch**

date of assent 23 October 2008  
ss 1–2 commenced on date of assent  
remaining provisions commenced 1 December 2008 (2008 SL No. 386)

**Residential Tenancies and Rooming Accommodation Act 2008 No. 73 ss 1–2, 554 sch 1**

date of assent 11 December 2008  
ss 1–2 commenced on date of assent  
remaining provisions commenced 1 July 2009 (2009 SL No. 40)

**Financial Accountability Act 2009 No. 9 ss 1, 2(2), 136 sch 1**

date of assent 28 May 2009  
ss 1–2 commenced on date of assent  
remaining provisions commenced 1 July 2009 (2009 SL No. 80)

Endnotes

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**Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009 No. 24 ss 1–2, ch 2 pt 4**

date of assent 26 June 2009

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 2009 (2009 SL No. 252)

**Criminal Code and Other Legislation (Misconduct, Breaches of Discipline and Public Sector Ethics) Amendment Act 2009 No. 25 pt 1, s 83 sch**

date of assent 11 August 2009

ss 1–2 commenced on date of assent

remaining provisions commenced 2 November 2009 (2009 SL No. 241)

**Adoption Act 2009 No. 29 ss 1–2, 368 sch 2**

date of assent 26 August 2009

ss 1–2 commenced on date of assent

remaining provisions commenced 1 February 2010 (2009 SL No. 217)

**Juvenile Justice and Other Acts Amendment Act 2009 No. 34 ss 1, 2(2), 45 sch pt 1 amdt 9 (this Act is amended, see amending legislation below)**

date of assent 17 September 2009

ss 1–2 commenced on date of assent

remaining provisions commenced 29 March 2010 (2010 SL No. 37)

amending legislation—

**Criminal History Screening Legislation Amendment Act 2010 No. 5 pts 1, 18 (amends 2009 No. 34 above)**

date of assent 4 March 2010

ss 1–2 commenced on date of assent

remaining provisions commenced 1 April 2010 (2010 SL No. 53)

Note—Part 18 does not apply because sch 2 of this Act did not commence before the Juvenile Justice and Other Acts Amendment Act 2009 No. 34 s 9 commenced (see 2010 No. 5 s 246(2) and 2010 SL No. 37)

**Criminal History Screening Legislation Amendment Act 2010 No. 5 pts 1, 5, s 56 sch 1–2**

date of assent 4 March 2010

ss 1–2 commenced on date of assent

remaining provisions commenced 1 April 2010 (2010 SL No. 53)

**Health Legislation (Health Practitioner Regulation National Law) Amendment Act 2010 No. 14 ss 1, 124 sch**

date of assent 21 April 2010

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2010 (see s 2)

**Child Protection and Other Acts Amendment Act 2010 No. 33 ss 1, 2(3), pt 3**

date of assent 8 September 2010

ss 1–2 commenced on date of assent

remaining provisions commenced 1 October 2010 (2010 SL No. 272)



**Hospital and Health Boards Act 2011 No. 32 ss 1–2, 332 sch 1 pt 2 (prev Health and Hospitals Network Act 2011) (this Act is amended, see amending legislation below)**

date of assent 28 October 2011

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2012 (2012 SL No. 61 item 3) (previous proclamation 2012 SL No. 23 item 3 was rep (2012 SL No. 61))

amending legislation—

**Health and Hospitals Network and Other Legislation Amendment Act 2012 No. 9 ss 1–2(1), 47 (amends 2011 No. 32 above)**

date of assent 27 June 2012

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2012 (see s 2(1))

**Education and Care Services National Law (Queensland) Act 2011 No. 38 ss 1–2, pt 5 div 4**

date of assent 24 November 2011

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2012 (2011 SL No. 277)

**Domestic and Family Violence Protection Act 2012 No. 5 ss 1–2, 230 sch 1 pt 2**

date of assent 17 February 2012

ss 1–2 commenced on date of assent

remaining provisions commenced 17 September 2012 (see s 2)

**Health Legislation (Health Practitioner Regulation National Law) Amendment Act 2012 No. 10 pts 1, 4**

date of assent 27 June 2012

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2012 (see s 2)

**Vocational Education and Training (Commonwealth Powers) Act 2012 No. 11 pt 1, s 43 sch pt 2**

date of assent 27 June 2012

ss 1–2 commenced on date of assent

remaining provisions commenced 29 June 2012 (see s 2)

**6 List of annotations****Long title** amd 2004 No. 13 s 31**CHAPTER 1—PRELIMINARY****ch hdg** (prev pt 1 hdg) sub 2010 No. 5 s 56(3) sch 2 amdt 1**PART 1—INTRODUCTION****pt hdg** (prev pt 1 div 1 hdg) sub 2010 No. 5 s 56(3) sch 2 amdt 1**Short title****s 1** amd 2004 No. 13 s 32

Endnotes

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**Dictionary**

s 3 amd 2010 No. 5 s 56(3) sch 2 amdt 2

**Notes in text**

s 4A ins 2004 No. 13 s 33  
om 2010 No. 5 s 56(2) sch 1 amdt 1

**PART 2—OBJECT, UNDERLYING PRINCIPLES AND SCOPE OF ACT**

pt hdg (prev pt 1 div 2 hdg) sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Object of Act**

s 5 amd 2004 No. 13 s 34

**Principles for administering this Act**

prov hdg sub 2004 No. 13 s 35(1)  
s 6 amd 2004 No. 13 s 35(2)–(5)

**Scope of Act relating to children in the child safety system**

s 8 (prev s 7A) ins 2004 No. 13 s 36  
amd 2004 No. 36 s 38; 2010 No. 5 s 56(3) sch 2 amdts 3–4  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**PART 3—SERVICE PROVIDERS**

pt hdg (prev pt 1 div 3 hdg) sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Meaning of “service provider”**

s 9 (prev s 8) renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Meaning of “government service provider”**

s 10 (prev s 9) renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Meaning of “private service provider”**

s 11 (prev s 10) renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Services provided by a service provider**

s 12 (prev s 11) renum 2010 No. 5 s 56(3) sch 2 amdt 68

**PART 4—CHILDREN IN THE CHILD SAFETY SYSTEM**

pt hdg (prev pt 1 div 4 hdg) ins 2004 No. 13 s 37  
sub 2010 No. 5 s 56(3) sch 2 amdt 1

**When is a child in the child safety system**

s 13 (prev s 11A) ins 2004 No. 13 s 37  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**CHAPTER 2—COMMISSIONER, ASSISTANT COMMISSIONER AND COMMISSION**

ch hdg (prev pt 2 hdg) sub 2004 No. 13 s 38; 2010 No. 5 s 56(3) sch 2 amdt 1

**PART 1—ESTABLISHMENT**

pt hdg (prev pt 2 div 1 hdg) sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Establishment of commissioner, assistant commissioner and commission**

s 14 (prev s 12) sub 2004 No. 13 s 39  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Control of commission**

s 15 (prev s 13) renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Application of other Acts**

s 16 (prev s 14) amd 2001 No. 69 s 378 sch 1; 2009 No. 9 s 136 sch 1  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**PART 2—FUNCTIONS AND POWERS**

pt hdg (prev pt 2 div 2 hdg) sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Commissioner's functions**

s 17 (prev s 15) amd 2004 No. 13 s 40; 2004 No. 49 s 4; 2004 No. 36 s 39; 2010  
No. 5 s 56(3) sch 2 amdts 5–10  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Monitoring functions**

s 18 (prev s 15AA) ins 2004 No. 36 s 40  
amd 2010 No. 5 s 56(3) sch 2 amdts 11–12  
renum 2010 No. 5 s 56(3) sch 2 amdt 68  
amd 2012 No. 5 s 230 sch 1 pt 2

**Role of assistant commissioner**

s 19 (prev s 15A) ins 2004 No. 13 s 41  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Commissioner's powers**

s 20 (prev s 16) amd 2004 No. 13 s 42; 2010 No. 5 s 56(3) sch 2 amdt 13  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Assistant commissioner's powers**

s 21 (prev s 16A) ins 2004 No. 13 s 43  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Commissioner must act independently etc.**

s 22 (prev s 17) amd 2010 No. 5 s 56(3) sch 2 amdt 14  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Way in which commissioner is to perform commissioner's functions**

s 23 (prev s 18) amd 2004 No. 13 s 44; 2004 No. 36 s 41  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Commissioner may use expert advisers or cooperate with other entities**

s 24 (prev s 19) renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Referral of matters or offences to other persons**

s 25 (prev s 20) amd 2001 No. 69 s 378 sch 1; 2004 No. 13 ss 45, 30 sch 1  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**PART 3—APPOINTMENT OF COMMISSIONER AND RELATED PROVISIONS**

pt hdg (prev pt 2 div 3 hdg) sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Appointment of commissioner**

s 26 (prev s 21) amd 2009 No. 25 s 83 sch; 2010 No. 5 s 56(3) sch 2 amdt 8  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

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**Duration of appointment**

s 27 (prev s 22) amd 2010 No. 5 s 56(3) sch 2 amdt 15  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Terms and conditions of appointment**

s 28 (prev s 23) renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Preservation of rights**

s 29 (prev s 24) renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Leave of absence**

s 30 (prev s 25) renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Resignation**

s 31 (prev s 26) renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Termination of appointment**

s 32 (prev s 27) renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Acting commissioner**

s 33 (prev s 28) amd 2010 No. 5 s 56(3) sch 2 amdt 16  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**PART 4—APPOINTMENT OF ASSISTANT COMMISSIONER**

pt hdg (prev pt 2 div 3A hdg) ins 2004 No. 13 s 46  
sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Appointment of assistant commissioner**

s 34 (prev s 28A) ins 2004 No. 13 s 46  
amd 2010 No. 5 s 56(3) sch 2 amdt 17–18  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**PART 5—COMMISSION'S STAFF**

pt hdg (prev pt 2 div 4 hdg) sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Commission's staff**

s 35 (prev s 29) amd 2009 No. 25 s 83 sch; 2010 No. 5 s 56(3) sch 2 amdt 19  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Screening of commission's staff**

s 36 (prev s 30) sub 2010 No. 5 s 57  
renum 2010 No. 5 s 56(3) sch 2 amdt 68  
sub 2010 No. 33 s 95

**Staff subject only to direction of commissioner**

s 37 (prev s 31) renum 2010 No. 5 s 56(3) sch 2 amdt 68

**CHAPTER 3—POWERS AND OBLIGATIONS RELATING TO THE  
COMMISSIONER'S MONITORING FUNCTIONS**

ch hdg (prev pt 2A hdg) ins 2004 No. 13 s 47  
sub 2010 No. 5 s 56(3) sch 2 amdt 1

**PART 1—OPERATION OF CH 3**

pt hdg (prev pt 2A div 1 hdg) ins 2004 No. 13 s 47  
sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Powers relate to monitoring functions**

- s 38** (prev s 31A) ins 2004 No. 13 s 47  
amd 2010 No. 5 s 56(3) sch 2 amdt 20  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Services to which this chapter applies**

- prov hdg** sub 2010 No. 5 s 56(3) sch 2 amdt 1
- s 39** (prev s 31B) ins 2004 No. 13 s 47  
amd 2004 No. 36 s 42; 2010 No. 5 s 56(3) sch 2 amdt 20  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**PART 2—POWERS AND OBLIGATIONS**

- pt hdg** (prev pt 2A div 2 hdg) ins 2004 No. 13 s 47  
sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Power to require information or documents**

- s 40** (prev s 31C) ins 2004 No. 13 s 47  
amd 2004 No. 36 s 43  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Access to information and documents of the child safety department**

- prov hdg** amd 2004 No. 36 s 44(1)
- s 41** (prev s 31D) ins 2004 No. 13 s 47  
amd 2004 No. 36 s 44(2)–(5); 2010 No. 5 s 56(2)–(3) sch 1 amds 2–3, sch 2  
amds 21–22  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Access to information and documents of a relevant service provider other than the child safety department**

- s 42** (prev s 31DA) ins 2004 No. 36 s 45  
amd 2010 No. 5 s 56(2)–(3) sch 1 amdt 3, sch 2 amds 21, 23  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Exempt information and documents**

- s 43** (prev s 31DB) ins 2004 No. 36 s 45  
amd 2010 No. 5 s 56(3) sch 2 amdt 21  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Help to obtain information or documents from a licensee**

- s 44** (prev s 31E) ins 2004 No. 13 s 47  
amd 2010 No. 5 s 56(3) sch 2 amds 21–22  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Protection from liability for giving information**

- s 45** (prev s 31EA) ins 2004 No. 36 s 46  
amd 2006 No. 39 s 512(1) sch 1; 2010 No. 5 s 56(2) sch 1 amdt 4  
renum 2010 No. 5 s 56(3) sch 2 amdt 68  
amd 2011 No. 32 s 332 sch 1 pt 2 (amd 2012 No. 9 s 47)

**Restricted use of confidential information accessed under this chapter**

- prov hdg** sub 2010 No. 5 s 56(3) sch 2 amdt 1
- s 46** (prev s 31EB) ins 2004 No. 36 s 46

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amd 2010 No. 5 s 56(3) sch 2 amdts 24–25  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Commissioner to advise on-disclosure**

**s 47** (prev s 31EC) ins 2004 No. 36 s 46  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Periodic reporting**

**s 48** (prev s 31F) ins 2004 No. 13 s 47  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Review of service**

**s 49** (prev s 31G) ins 2004 No. 13 s 47  
amd 2004 No. 36 s 47; 2010 No. 5 s 56(3) sch 2 amdt 22  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Recommendations**

**s 50** (prev s 31H) ins 2004 No. 13 s 47  
amd 2004 No. 36 s 48; 2010 No. 5 s 56(3) sch 2 amdt 26  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Report to Ministers about noncompliance**

**prov hdg** amd 2004 No. 36 s 49(1)  
**s 51** (prev s 31I) ins 2004 No. 13 s 47  
amd 2004 No. 36 s 49(2); 2010 No. 5 s 56(3) sch 2 amdts 27–29  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Noncompliance not an offence**

**s 52** (prev s 31J) ins 2004 No. 13 s 47  
amd 2010 No. 5 s 56(3) sch 2 amdt 27  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**CHAPTER 4—COMPLAINTS AND INVESTIGATIONS**

**ch hdg** (prev pt 3 hdg) amd 2004 No. 13 s 48  
sub 2010 No. 5 s 56(3) sch 2 amdt 1

**PART 1—PRELIMINARY**

**pt hdg** (prev pt 3 div 1AA hdg) ins 2004 No. 13 s 49  
sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Operation of ch 4**

**prov hdg** sub 2010 No. 5 s 56(3) sch 2 amdt 1  
**s 53** (prev s 31K) ins 2004 No. 13 s 49  
amd 2010 No. 5 s 56(3) sch 2 amdt 20  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**PART 2—MAKING COMPLAINTS**

**pt hdg** (prev pt 3 div 1 hdg) sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Subject matter of complaints**

**s 54** (prev s 32) amd 2002 No. 39 s 143; 1992 No. 44 s 341 sch 3 (ins 2002 No. 39 s 115, 118); 2004 No. 13 s 50; 2009 No. 34 s 45(1) sch pt 1; 2010 No. 5 s 56(3) sch 2 amdt 20

renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Basis of complaints and who may complain**

s 55 (prev s 33) renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Time limit for making complaint**

s 56 (prev s 34) renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Identity of complainant**

s 57 (prev s 35) renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Complaint may be made in writing or orally**

s 58 (prev s 36) renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Initiation of complaints in name of commissioner**

s 59 (prev s 37) amd 2010 No. 5 s 56(3) sch 2 amdt 27  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**PART 3—ASSESSING COMPLAINTS AND DECIDING FURTHER ACTION**

pt hdg (prev pt 3 div 2 hdg) sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Assessment of complaint**

s 60 (prev s 38) renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Action following assessment**

s 61 (prev s 39) amd 2010 No. 5 s 56(3) sch 2 amdt 30–31  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Grounds for not dealing with complaint**

s 62 (prev s 40) amd 2009 No. 24 s 30; 2010 No. 5 s 56(2) sch 1 amdt 5  
renum 2010 No. 5 s 56(3) sch 2 amdt 68  
amd 2010 No. 33 s 96

**PART 4—INVESTIGATIONS**

pt hdg (prev pt 3 div 3 hdg) sub 2004 No. 13 s 51; 2010 No. 5 s 56(3) sch 2 amdt 1

**Division 1—Starting an investigation**

div hdg (prev pt 3 div 3 sdiv 1 hdg) sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Investigation of complaint**

prov hdg sub 2004 No. 13 s 52

s 63 (prev s 41) (2)–(3) (prev s 42(1)–(2)) renum and reloc 2004 No. 13 s 53(2)  
amd 2010 No. 5 s 56(3) sch 2 amdt 32  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Other investigations**

prov hdg prev s 42 hdg om 2004 No. 13 s 53(1)

s 64 (prev s 42) ins 2004 No. 13 s 54  
amd 2010 No. 5 s 56(3) sch 2 amdt 20  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Division 2—Access to child and information for investigation**

div hdg (prev pt 3 div 3 sdiv 2 hdg) sub 2010 No. 5 s 56(3) sch 2 amdt 1

Endnotes

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**Access to child**

**s 65** (prev s 43) amd 2004 No. 13 s 55; 2010 No. 5 s 56(3) sch 2 amdt 33  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Security directions about visiting detention centres etc.**

**s 66** (prev s 44) amd 2009 No. 34 s 45(1) sch pt 1; 2010 No. 5 s 56(3) sch 2 amdt  
34  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Notice for information**

**s 67** (prev s 45) renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Identity of notifier under Child Protection Act 1999 or Public Health Act 2005**

**prov hdg** amd 2004 No. 36 s 50(1); 2005 No. 48 s 492 sch 1

**s 68** (prev s 46) amd 2004 No. 13 s 30 sch 1; 2004 No. 36 s 50(2)–(3); 2005 No. 48  
s 492 sch 1  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Division 3—Defences for failing to comply with notice for information**

**div hdg** (prev pt 3 div 3 sdiv 3 hdg) sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Application of div 3**

**prov hdg** sub 2010 No. 5 s 56(3) sch 2 amdt 1

**s 69** (prev s 47) amd 2010 No. 5 s 56(3) sch 2 amdt 35  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Witness privilege**

**s 70** (prev s 48) renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Notice for information given to law enforcement agency**

**s 71** (prev s 49) amd 2001 No. 69 s 378 sch 1  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Claim of unjustifiable exercise of power**

**s 72** (prev s 50) renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Supreme Court applications**

**s 73** (prev s 51) amd 2010 No. 5 s 56(3) sch 2 amdt 35–37  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Division 4—Other offences**

**div hdg** (prev pt 3 div 3 sdiv 4 hdg) sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Commissioner may require oath or affirmation**

**s 74** (prev s 52) renum 2010 No. 5 s 56(3) sch 2 amdt 68

**False or misleading statements**

**s 75** (prev s 53) renum 2010 No. 5 s 56(3) sch 2 amdt 68

**False or misleading documents**

**s 76** (prev s 54) renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Obstructing or improperly influencing investigation**

**s 77** (prev s 55) renum 2010 No. 5 s 56(3) sch 2 amdt 68



**Division 5—Matters at end of investigation**

**div hdg** (prev pt 3 div 3 sdiv 5 hdg) sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Ending an investigation in child's best interests**

**s 78** (prev s 56) amd 2004 No. 13 s 56  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Notice of complaint investigation result**

**prov hdg** amd 2004 No. 13 s 57  
**s 79** (prev s 57) amd 2010 No. 5 s 56(3) sch 2 amdt 38  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Report after investigation**

**s 80** (prev s 58) amd 2004 No. 13 s 58; 2010 No. 5 s 56(3) sch 2 amdt 38  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**No liability for defamation if report made in good faith**

**s 81** (prev s 59) renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Division 6—Reports and tabling them**

**div hdg** (prev pt 3 div 3 sdiv 6 hdg) sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Application of div 6**

**prov hdg** sub 2010 No. 5 s 56(3) sch 2 amdt 1  
**s 82** (prev s 60) amd 2010 No. 5 s 56(3) sch 2 amdt 35  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Commissioner may ask Minister to table report**

**s 83** (prev s 61) renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Confidential reports**

**s 84** (prev s 62) amd 2010 No. 5 s 56(3) sch 2 amdt 39  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Response to adverse comment**

**s 85** (prev s 63) amd 2010 No. 5 s 56(3) sch 2 amdt 40  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**CHAPTER 5—COMMUNITY VISITORS**

**ch hdg** (prev pt 4 hdg) sub 2010 No. 5 s 56(3) sch 2 amdt 1

**PART 1—PRELIMINARY**

**pt hdg** (prev pt 4 div 1 hdg) sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Purpose of ch 5**

**prov hdg** sub 2010 No. 5 s 56(3) sch 2 amdt 1  
**s 86** (prev s 64) sub 2004 No. 13 s 59  
amd 2005 No. 40 s 69 sch; 2010 No. 5 s 56(3) sch 2 amdt 20  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Meaning of “visitable site”**

**s 87** (prev s 64A) ins 2004 No. 13 s 59  
amd 2010 No. 5 s 56(3) sch 2 amdt 41  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

Endnotes

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**Meaning of “visitable home”**

- s 88** (prev s 64B) ins 2004 No. 13 s 59  
amd 2010 No. 5 s 56(3) sch 2 amdt 42  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**PART 2—VISITS TO VISITABLE SITES AND HOMES**

- pt hdg** (prev pt 4 div 2 hdg) amd 2004 No. 13 s 60  
sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Commissioner must arrange regular and frequent visits**

- s 89** prev s 89 om 2004 No. 13 s 79  
pres s 89 (prev s 65) amd 2004 No. 13 s 61  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Requirement to visit visitable site or communicate if asked**

- prov hdg** amd 2004 No. 13 s 62  
**s 90** (prev s 66) renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Requirement to visit visitable home or communicate if asked**

- s 91** (prev s 66A) ins 2004 No. 13 s 63  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Report after each visit**

- s 92** (prev s 67) amd 2004 No. 13 s 64  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**PART 3—FUNCTIONS AND POWERS**

- pt hdg** (prev pt 4 div 3 hdg) sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Division 1—Functions**

- div hdg** (prev pt 4 div 3 sdiv 1 hdg) sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Functions**

- s 93** (prev s 68) amd 2004 No. 13 s 65  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Division 2—Power of entry to visitable sites and visitable homes**

- div hdg** (prev pt 4 div 3 sdiv 2 hdg) amd 2004 No. 13 s 66  
sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Power of entry**

- s 94** (prev s 69) amd 2004 No. 13 s 67  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Consent to entry**

- s 95** prev s 95 sub 2004 No. 49 s 6  
om 2010 No. 5 s 58  
pres s 95 (prev s 70) amd 2004 No. 13 s 68; 2010 No. 5 s 56(3) sch 2 amdts  
27, 43  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Application for warrant**

- s 96** prev s 96 om 2010 No. 5 s 58  
pres s 96 (prev s 71) amd 2004 No. 13 s 69

renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Issue of warrant**

**s 97** prev s 97 amd 2004 No. 49 s 7; 2007 No. 40 s 3  
om 2010 No. 5 s 58  
pres s 97 (prev s 72) amd 2004 No. 13 s 70; 2010 No. 5 s 56(3) sch 2 amdt 27  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Warrants—procedure before entry**

**s 98** (prev s 73) sub 2004 No. 13 s 71  
amd 2010 No. 5 s 56(3) sch 2 amdt 35  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**This part does not apply to person engaged in employment for the police service**

**s 98A** prev s 98A ins 2004 No. 49 s 8  
om 2010 No. 5 s 58

**Declaration relating to exemption to category of regulated employment or regulated business**

**s 98B** prev s 98A ins 2004 No. 49 s 8  
om 2010 No. 5 s 58

**Division 3—Other powers**

**div hdg** (prev pt 4 div 3 sdiv 3 hdg) sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Related powers for visitable sites**

**prov hdg** amd 2004 No. 13 s 72  
**s 99** prev s 99 amd 2004 No. 49 s 9  
om 2010 No. 5 s 58  
pres s 99 (prev s 74) renum 2010 No. 5 s 56(3) sch 2 amdt 68

**What is employment when education provider arranges trainee student to carry out work for someone else**

**s 99A** prev s 99A ins 2004 No. 49 s 10  
om 2010 No. 5 s 58

**What is employment in child care**

**s 99B** prev s 99B ins 2004 No. 49 s 10  
om 2010 No. 5 s 58

**Matters about particular regulated employment**

**s 99BA** prev s 99BA ins 2006 No. 17 s 30  
om 2010 No. 5 s 58

**What is a “serious offence”**

**s 99C** prev s 99C ins 2004 No. 49 s 10  
amd 2008 No. 18 s 4  
om 2010 No. 5 s 58

**What is a “serious child-related sexual offence”**

**s 99D** prev s 99D ins 2004 No. 49 s 10  
om 2008 No. 18 s 5

Endnotes

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**What is an “excluding offence”**

s 99E prev s 99E ins 2004 No. 49 s 10  
amd 2005 No. 9 s 11  
om 2008 No. 18 s 5

**Who is a “volunteer”**

s 99F prev s 99F ins 2004 No. 49 s 10  
amd 2006 No. 17 s 31  
om 2010 No. 5 s 58

**Risk management strategies about regulated businesses and persons employed in regulated employment**

s 99G prev s 99G ins 2004 No.49 s 11  
om 2010 No. 5 s 58

**Powers in relation to staff of visitable sites**

prov hdg amd 2004 No. 13 s 73  
s 100 prev s 100 amd 2004 No. 49 s 13; 2006 No. 17 s 32; 2008 No. 18 s 6  
om 2010 No. 5 s 58  
pres s 100 (prev s 75) amd 2010 No. 5 s 56(3) sch 2 amdt 44  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Power to require staff of visitable site to produce documents**

prov hdg sub 2004 No. 13 s 74  
s 101 prev s 101 amd 2004 No. 49 s 14; 2006 No. 17 s 33; 2008 No. 18 s 7  
om 2010 No. 5 s 58  
pres s 101 (prev s 76) renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Notice of change of employment, or name and contact details in application under s 100 or 101**

prov hdg amd 2007 No. 36 s 2 sch  
s 101A prev s 101A ins 2004 No. 49 s 15  
om 2010 No. 5 s 58

**Powers relating to visitable homes**

s 102 prev s 102 amd 2003 No. 88 s 4  
sub 2004 No. 49 s 15  
amd 2008 No. 18 s 8  
om 2010 No. 5 s 58  
pres s 102 (prev s 76A) ins 2004 No. 13 s 75  
amd 2010 No. 5 s 56(3) sch 2 amdt 45  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Decision-making under s 102 in relation to discretionary matters**

s 102A prev s 102A ins 2004 No. 49 s 15  
amd 2008 No. 18 s 9  
om 2010 No. 5 s 58

**Actions of commissioner after making decision on application**

s 102B prev s 102B ins 2004 No. 49 s 15  
amd 2006 No. 17 s 34; 2007 No. 36 s 2 sch; 2008 No. 18 s 10; 2009 No. 24 s  
32

om 2010 No. 5 s 58

#### **Division 4—Exercise of powers**

**div hdg** (prev pt 4 div 3 sdiv 4 hdg) sub 2010 No. 5 s 56(3) sch 2 amdt 1

#### **Child's views and wishes**

**prov hdg** prev s 103 prov hdg amd 2003 No. 88 s 5(1)

**s 103** prev s 103 amd 2003 No. 88 s 5(2); 2004 No. 49 s 16

om 2010 No. 5 s 58

pres s 103 (prev s 77) amd 2004 No. 13 s 76; 2010 No. 5 s 56(3) sch 2 amdt 46

renum 2010 No. 5 s 56(3) sch 2 amdt 68

#### **Community visitor to respect privacy**

**prov hdg** prev s 104 prov hdg amd 2004 No. 49 s 17(1)

pres s 104 prov hdg amd 2004 No. 13 s 77(1)

**s 104** prev s 104 amd 2004 No. 49 s 17(2); 2008 No. 18 s 11

om 2010 No. 5 s 58

pres s 104 (prev s 78) amd 2004 No. 13 s 77(2)

renum 2010 No. 5 s 56(3) sch 2 amdt 68

#### **Application of sdiv 1**

**prov hdg** amd 2007 No. 36 s 2 sch

**s 104A** prev s 104A ins 2004 No. 49 s 18

om 2010 No. 5 s 58

#### **Starting employment**

**s 104B** prev s 104B ins 2004 No. 49 s 18

sub 2006 No. 17 s 35

om 2010 No. 5 s 58

#### **Currency of prescribed notice for person continuing employment**

**s 104BA** prev s 104BA ins 2006 No. 17 s 35

om 2010 No. 5 s 58

#### **Application of sdiv 1A**

**prov hdg** amd 2007 No. 36 s 2 sch

**s 104C** prev s 104C ins 2004 No. 49 s 18

om 2010 No. 5 s 58

#### **Commissioner's directions about the exercise of powers**

**s 105** prev s 105 amd 2004 No. 49 s 19

om 2010 No. 5 s 58

pres s 105 (prev s 79) renum 2010 No. 5 s 56(3) sch 2 amdt 68

#### **Security directions about visiting detention centres**

**s 106** prev s 106 amd 2004 No. 49 s 20

om 2010 No. 5 s 58

pres s 106 (prev s 80) amd 2009 No. 34 S 45(1) sch pt 1

renum 2010 No. 5 s 56(3) sch 2 amdt 68

#### **Starting employment of new employees**

**s 106A** prev s 106A ins 2004 No. 49 s 21

om 2010 No. 5 s 58

**PART 4—APPOINTMENT OF COMMUNITY VISITORS**

**pt hdg** (prev pt 4 div 4 hdg) sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Appointment**

**s 107** prev s 107 amd 2004 No. 49 s 22; 2008 No. 18 s 12  
om 2010 No. 5 s 58  
pres s 107 (prev s 81) amd 2004 No. 13 s 30 sch 1, s 78; 2005 No. 40 s 69 sch;  
2006 No. 29 s 518 sch 3; 2009 No. 25 s 83 sch; 2010 No. 5 s 56(3) sch 2  
amdt 8  
renum 2010 No. 5 s 56(3) sch 2 amdt 68  
amd 2010 No. 33 s 97

**Duration of appointment**

**s 108** prev s 108 sub 2004 No. 49 s 23  
amd 2006 No. 17 s 36; 2008 No. 18 s 13  
om 2010 No. 5 s 58  
pres s 108 (prev s 82) amd 2010 No. 5 s 56(3) sch 2 amdt 47  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Terms of appointment**

**s 109** prev s 109 amd 2004 No. 49 s 24  
om 2010 No. 5 s 58  
pres s 109 (prev s 83) renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Currency of prescribed notice for person carrying on regulated business**

**s 109A** prev s 109A ins 2006 No. 17 s 37  
om 2010 No. 5 s 58

**PART 5—IDENTITY CARDS**

**pt hdg** (prev pt 4 div 5 hdg) sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Identity card**

**s 110** prev s 110 sub 2008 No. 18 s 15  
om 2010 No. 5 s 58  
pres s 110 (prev s 84) renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Failure to return identity card**

**prov hdg** prev s 111 prov hdg amd 2004 No. 49 s 25(1); 2008 No. 18 s 16(1)  
**s 111** prev s 111 amd 2004 No. 49 s 25(2)–(3); 2008 No. 18 s 16(2)  
om 2010 No. 5 s 58  
pres s 111 (prev s 85) renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Production or display of identity card**

**s 112** prev s 112 amd 2004 No. 49 s 26  
sub 2008 No. 18 s 17  
om 2010 No. 5 s 58  
pres s 112 (prev s 86) renum 2010 No. 5 s 56(3) sch 2 amdt 68

**PART 6—MISCELLANEOUS**

**pt hdg** (prev pt 4 div 6 hdg) sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Obstruction of visitor in exercise of powers**

**s 113** prev s 113 amd 2004 No. 49 s 27

sub 2008 No. 18 s 18  
 om 2010 No. 5 s 58  
 pres s 113 (prev s 87) renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Privacy of correspondence between community visitor and residents**

**prov hdg** prev s 114 prov hdg amd 2008 No. 18 s 19(1)  
**s 114** prev s 114 amd 2004 No. 49 s 28; 2008 No. 18 s 19  
 om 2010 No. 5 s 58  
 pres s 114 (prev s 88) renum 2010 No. 5 s 56(3) sch 2 amdt 68

**CHAPTER 6—CHILD DEATHS**

**ch hdg** (prev pt 4A hdg) ins 2004 No. 13 s 80  
 sub 2010 No. 5 s 56(3) sch 2 amdt 1

**PART 1—CHILD DEATH CASE REVIEW COMMITTEE**

**pt hdg** (prev pt 4A div 1 hdg) ins 2004 No. 13 s 80  
 sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Division 1—Preliminary**

**div hdg** (prev pt 4A div 1 sdiv 1 hdg) ins 2004 No. 13 s 80  
 sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Definitions for pt 1**

**prov hdg** pres s 115 prov hdg sub 2010 No. 5 s 56(3) sch 2 amdt 1  
**s 115** prev s 115 om 2010 No. 5 s 58  
 pres s 115 (prev s 89A) ins 2004 No. 13 s 80  
 amd 2010 No. 5 s 56(3) sch 2 amdt 27  
 renum 2010 No. 5 s 56(3) sch 2 amdt 68  
 def “**appointed members**” amd 2010 No. 5 s 56(3) sch 2 amdt 48  
 def “**CDCRC**” amd 2010 No. 5 s 56(3) sch 2 amdt 49  
 def “**CDCRC member**” amd 2010 No. 5 s 56(3) sch 2 amdt 50  
 def “**review criteria**” amd 2010 No. 5 s 56(3) sch 2 amdt 51

**Division 2—Establishment and functions**

**div hdg** (prev pt 4A div 1 sdiv 2 hdg) ins 2004 No. 13 s 80  
 sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Establishment**

**s 116** prev s 116 om 2010 No. 5 s 58  
 pres s 116 (prev s 89B) ins 2004 No. 13 s 80  
 renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Functions**

**prov hdg** prev s 117 prov hdg amd 2004 No. 49 s 29(1)  
**s 117** prev s 117 amd 2004 No. 49 s 29(2); 2008 No. 18 s 20  
 om 2010 No. 5 s 58  
 pres s 117 (prev s 89C) ins 2004 No. 13 s 80  
 amd 2010 No. 5 s 56(3) sch 2 amdt 20  
 renum 2010 No. 5 s 56(3) sch 2 amdt 68

**CDCRC must act independently**

**prov hdg** prev s 118 prov hdg sub 2004 No. 49 s 31(1)

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- amd 2008 No. 18 s 21(1)  
**s 118** prev s 118 amd 2004 No. 49 s 31(2)–(5); 2008 No. 18 s 21(2)–(4)  
om 2010 No. 5 s 58  
pres s 118 (prev s 89D) ins 2004 No. 13 s 80  
amd 2010 No. 5 s 56(3) sch 2 amdt 20  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**CDCRC may use expert advisors**

- prov hdg** prev s 119 prov hdg amd 2003 No. 88 s 6(1)  
**s 119** prev s 119 amd 2003 No. 88 s 6(2)–(3)  
sub 2004 No. 49 s 32  
amd 2008 No. 18 s 22  
om 2010 No. 5 s 58  
pres s 119 (prev s 89E) ins 2004 No. 13 s 80  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Cancellation if relevant disqualified person**

- prov hdg** sub 2008 No. 18 s 23(1)  
**s 119A** prev s 119A ins 2004 No. 49 s 32  
amd 2006 No. 17 s 38; 2008 No. 18 s 23(2)–(4)  
om 2010 No. 5 s 58

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

- s 119B** prev s 119B ins 2004 No. 49 s 32  
om 2008 No. 18 s 24

**Suspension of a positive notice**

- prov hdg** sub 2008 No. 18 s 25(1)  
**s 119C** prev s 119C ins 2004 No. 49 s 32  
amd 2006 No. 17 s 39; 2008 No. 18 s 25(2)–(6)  
om 2010 No. 5 s 58

**Cancellation of suspension and issue of further prescribed notice**

- s 119D** prev s 119D ins 2004 No. 49 s 32  
amd 2008 No. 18 s 26  
om 2010 No. 5 s 58

**Request to cancel suspended positive notice**

- s 119E** prev s 119E ins 2008 No. 18 s 27  
om 2010 No. 5 s 58

**Division 3—Membership**

- div hdg** (prev pt 4A div 1 sdiv 3 hdg) ins 2004 No. 13 s 80  
sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Membership**

- s 120** prev s 120 sub 2004 No. 49 s 32  
om 2010 No. 5 s 58  
pres s 120 (prev s 89F) ins 2004 No. 13 s 80  
renum 2010 No. 5 s 56(3) sch 2 amdt 68



**Change of details for prescribed notice or positive notice blue card**

**s 120A** prev s 120A ins 2004 No. 49 s 32  
amd 2008 No. 18 s 28  
om 2010 No. 5 s 58

**What is a “disqualifying offence”**

**s 120B** prev s 120B ins 2008 No. 18 s 29  
amd 2008 No. 38 s 252 sch 3  
om 2010 No. 5 s 58

**Who is a “disqualified person”**

**s 120C** prev s 120C ins 2008 No. 18 s 29  
om 2010 No. 5 s 58

**Who is a “relevant disqualified person”**

**s 120D** prev s 120D ins 2008 No. 18 s 29  
om 2010 No. 5 s 58

**Offences for disqualified person**

**s 120E** prev s 120E ins 2008 No. 18 s 29  
om 2010 No. 5 s 58

**Application for an eligibility declaration**

**s 120F** prev s 120F ins 2008 No. 18 s 29  
om 2010 No. 5 s 58

**Notice of change of name and contact details in eligibility application**

**s 120G** prev s 120G ins 2008 No. 18 s 29  
om 2010 No. 5 s 58

**Commissioner’s decision on eligibility application**

**s 120H** prev s 120H ins 2008 No. 18 s 29  
om 2010 No. 5 s 58

**Eligibility declaration taken to have been issued**

**s 120I** prev s 120I ins 2008 No. 18 s 29  
om 2010 No. 5 s 58

**Withdrawing eligibility application**

**s 120J** prev s 120J ins 2008 No. 18 s 29  
om 2010 No. 5 s 58

**Expiry of eligibility declaration**

**s 120K** prev s 120K ins 2008 No. 18 s 29  
om 2010 No. 5 s 58

**Reversal of decision refusing an eligibility declaration**

**s 120L** prev s 120L ins 2008 No. 18 s 29  
om 2010 No. 5 s 58

**Provision relating to appointment of State Coroner as appointed member**

**s 121** prev s 121 amd 2004 No. 49 s 33; 2006 No. 17 s 40 (retro); 2008 No. 18 s 30;  
2009 No. 24 s 33  
om 2010 No. 5 s 58

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pres s 121 (prev s 89G) ins 2004 No. 13 s 80  
amd 2010 No. 5 s 56(3) sch 2 amdts 52–53  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Effect of applicant under s 121 becoming a disqualified person**

**s 121AA** prev s 121AA ins 2008 No. 18 s 31  
amd 2009 No. 24 s 34  
om 2010 No. 5 s 58

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

**s 121A** prev s 121A ins 2004 No. 49 s 34  
amd 2008 No. 18 s 32  
om 2010 No. 5 s 58

**Police commissioner not to delegate power under s 121A**

**s 121B** prev s 121B ins 2004 No. 49 s 34  
amd 2008 No. 18 s 33  
om 2010 No. 5 s 58

**Decision by police commissioner that information is investigative information**

**s 121C** prev s 121C ins 2004 No. 49 s 34  
amd 2009 No. 24 s 35  
om 2010 No. 5 s 58

**Court to decide matters afresh**

**s 121D** prev s 121D ins 2004 No. 49 s 34  
om 2010 No. 5 s 58

**Consequence of decision on appeal**

**s 121E** prev s 121E ins 2004 No. 49 s 34  
amd 2009 No. 24 s 36  
om 2010 No. 5 s 58

**Minister may obtain report from police commissioner**

**s 122** prev s 122 amd 2004 No. 49 s 35; 2006 No. 17 s 41; 2008 No. 18 s 34  
om 2010 No. 5 s 58  
pres s 122 (prev s 89H) ins 2004 No. 13 s 80  
amd 2010 No. 5 s 56(3) sch 2 amdt 54  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Notice of change in police information about a person**

**prov hdg** amd 2004 No. 49 s 36(1)  
**s 122A** prev s 122A ins 2003 No. 55 s 8  
amd 2004 No. 49 s 36(2)–(4); 2006 No. 17 s 42 (retro); 2008 No. 18 s 35  
om 2010 No. 5 s 58

**Commissioner to give notice to particular entities about a change in police information about a relevant person**

**s 122B** prev s 122B ins 2004 No. 49 s 37  
amd 2007 No. 36 s 2 sch  
sub 2008 No. 18 s 36

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om 2010 No. 5 s 58

**Application of Criminal Law (Rehabilitation of Offenders) Act 1986**

**s 123** prev s 123 amd 2004 No. 49 s 38; 2006 No. 17 s 43; 2008 No. 18 s 37  
om 2010 No. 5 s 58  
pres s 123 (prev s 89I) ins 2004 No. 13 s 80  
amd 2010 No. 5 s 56(3) sch 2 amdt 55  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Notice about withdrawal of application or negative notice**

**s 123A** prev s 123A ins 2006 No. 17 s 44  
amd 2008 No. 18 s 38  
om 2010 No. 5 s 58

**Conditions of appointment**

**s 124** prev s 124 amd 2004 No. 49 s 39; 2008 No. 18 s 39  
om 2010 No. 5 s 58  
pres s 124 (prev s 89J) ins 2004 No. 13 s 80  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Vacation of office of appointed member**

**s 125** prev s 125 om 2010 No. 5 s 58  
pres s 125 (prev s 89K) ins 2004 No. 13 s 80  
amd 2010 No. 5 s 56(3) sch 2 amdt 56  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Removal from office of appointed members**

**prov hdg** prev s 126 prov hdg amd 2004 No. 49 s 40(1)  
**s 126** prev s 126 amd 2004 No. 49 s 40(2); 2006 No. 17 s 45  
om 2010 No. 5 s 58  
pres s 126 (prev s 89L) ins 2004 No. 13 s 80  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Commissioner must give police commissioner a person's current address**

**s 126A** prev s 126A ins 2002 No. 55 s 196 sch 1  
sub 2004 No. 49 s 41  
amd 2008 No. 18 s 40  
om 2010 No. 5 s 58

**Giving other information to police commissioner**

**s 126AA** prev s 126AA ins 2008 No. 18 s 41  
om 2010 No. 5 s 58

**Commissioner may give information to accreditation board about director of school's governing body**

**s 126B** prev s 126B ins 2004 No. 49 s 41  
amd 2006 No. 17 s 46; 2008 No. 18 s 42  
om 2010 No. 5 s 58

**Disqualification order**

**s 126C** prev s 126C ins 2004 No. 49 s 41  
sub 2008 No. 18 s 43

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om 2010 No. 5 s 58

**Notice of charge or conviction for serious offence**

**s 126D** prev s 126D ins 2006 No. 17 s 47  
om 2008 No. 18 s 43

**Division 4—Chairperson**

**div hdg** (prev pt 4A div 1 sdiv 4 hdg) ins 2004 No. 13 s 80  
sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Chairperson**

**prov hdg** prev s 127 prov hdg amd 2004 No. 49 s 42(1)  
**s 127** prev s 127 amd 2004 No. 49 s 42(2); 2007 No. 36 s 2 sch  
om 2010 No. 5 s 58  
pres s 127 (prev s 89M) ins 2004 No. 13 s 80  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Division 5—Conduct of business**

**div hdg** (prev pt 4A div 1 sdiv 5 hdg) ins 2004 No. 13 s 80  
sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Quorum**

**prov hdg** prev s 128 prov hdg amd 2004 No. 49 s 43(1)  
**s 128** prev s 128 amd 2004 No. 49 s 43(2)–(3)  
om 2010 No. 5 s 58  
pres s 128 (prev s 89N) ins 2004 No. 13 s 80  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Conduct of meetings**

**s 129** prev s 129 om 2010 No. 5 s 59  
pres s 129 (prev s 89O) ins 2004 No. 13 s 80  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Minutes**

**s 130** prev s 130 om 2010 No. 5 s 59  
pres s 130 (prev s 89P) ins 2004 No. 13 s 80  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Disclosure of interests**

**s 131** prev s 131 om 2010 No. 5 s 59  
pres s 131 (prev s 89Q) ins 2004 No. 13 s 80  
amd 2010 No. 5 s 56(3) sch 2 amdt 57–58  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Conduct of business**

**s 132** prev s 132 om 2010 No. 5 s 59  
pres s 132 (prev s 89R) ins 2004 No. 13 s 80  
amd 2010 No. 5 s 56(3) sch 2 amdt 27  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Division 6—Reviews and reports**

**div hdg** (prev pt 4A div 1 sdiv 6 hdg) ins 2004 No. 13 s 80  
sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Criteria to be used in carrying out review**

- s 133** prev s 133 om 2010 No. 5 s 59  
pres s 133 (prev s 89S) ins 2004 No. 13 s 80  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Carrying out review**

- s 134** prev s 134 om 2010 No. 5 s 59  
pres s 134 (prev s 89T) ins 2004 No. 13 s 80  
amd 2010 No. 5 s 56(2)–(3) sch 1 amdt 6, sch 2 amdt 59  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**CDCRC to give copy of its report to certain persons**

- s 135** prev s 135 om 2010 No. 5 s 59  
pres s 135 (prev s 89U) ins 2004 No. 13 s 80  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Division 7—Recommendations**

- div hdg** (prev pt 4A div 1 sdiv 7 hdg) ins 2004 No. 13 s 80  
sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Request to chief executive (child safety)**

- s 136** prev s 136 om 2010 No. 5 s 59  
pres s 136 (prev s 89V) ins 2004 No. 13 s 80  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**CDCRC may give report to Minister in certain circumstances**

- s 137** prev s 137 om 2010 No. 5 s 59  
pres s 137 (prev s 89W) ins 2004 No. 13 s 80  
amd 2010 No. 5 s 56(3) sch 2 amdt 60  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Division 8—Other provisions**

- div hdg** (prev pt 4A div 1 sdiv 8 hdg) ins 2004 No. 13 s 80  
sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Confidentiality of information**

- s 138** prev s 138 om 2010 No. 5 s 59  
pres s 138 (prev s 89X) ins 2004 No. 13 s 80  
amd 2010 No. 5 s 56(3) sch 2 amts 61–63  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**No liability for defamation if report made in good faith**

- s 139** prev s 139 om 2010 No. 5 s 59  
pres s 139 (prev s 89Y) ins 2004 No. 13 s 80  
amd 2010 No. 5 s 56(3) sch 2 amdt 20  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Information not to be given in evidence**

- s 140** prev s 140 om 2010 No. 5 s 59  
pres s 140 (prev s 89Z) ins 2004 No. 13 s 80  
amd 2010 No. 5 s 56(3) sch 2 amts 64–65  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

Endnotes

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**Annual report**

**s 141** (prev s 89ZA) ins 2004 No. 13 s 80  
amd 2004 No. 36 s 51; 2010 No. 5 s 56(3) sch 2 amdt 66  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Administrative support for CDCRC**

**s 142** (prev s 89ZB) ins 2004 No. 13 s 80  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**PART 2—COMMISSIONER’S FUNCTIONS RELATING TO CHILD DEATHS**

**pt hdg** (prev pt 4A div 2 hdg) ins 2004 No. 13 s 80  
sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Register**

**s 143** (prev s 89ZC) ins 2004 No. 13 s 80  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Access to information in the register for research purposes**

**s 144** (prev s 89ZD) ins 2004 No. 13 s 80  
amd 2005 No. 48 s 492 sch 1  
renum 2010 No. 5 s 56(3) sch 2 amdt 68  
amd 2011 No. 32 s 332 sch 1 pt 2 (amd 2012 No. 9 s 47)

**Other functions relating to information about child deaths**

**s 145** (prev s 89ZE) ins 2004 No. 13 s 80  
amd 2010 No. 5 s 56(3) sch 2 amdt 27  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Reports**

**s 146** (prev s 89ZF) ins 2004 No. 13 s 80  
amd 2010 No. 5 s 56(3) sch 2 amdt 67  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Government entity may enter into arrangement with commissioner**

**s 147** (prev s 89ZG) ins 2004 No. 13 s 80  
amd 2009 No. 24 s 31; 2010 No. 5 s 56(2)–(3) sch 1 amdt 7, sch 2 amdt 27  
renum 2010 No. 5 s 56(3) sch 2 amdt 68  
amd 2011 No. 32 s 332 sch 1 pt 2 (amd 2012 No. 9 s 47)

**Disclosure of information**

**s 148** (prev s 89ZH) ins 2004 No. 13 s 80  
amd 2010 No. 5 s 56(3) sch 2 amdt 27  
renum 2010 No. 5 s 56(3) sch 2 amdt 68

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**ch hdg** (prev pt 5 hdg) sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Establishment**

**s 149** (prev s 90) renum 2010 No. 5 s 56(3) sch 2 amdt 68

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**s 150** (prev s 91) renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Functions**

s 151 (prev s 92) renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Dissolution**

s 152 (prev s 93) renum 2010 No. 5 s 56(3) sch 2 amdt 68

**Other matters**

s 153 (prev s 94) renum 2010 No. 5 s 56(3) sch 2 amdt 68

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ch hdg (prev pt 6 hdg) sub 2004 No. 49 s 51; 2010 No. 5 s 58

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pt hdg ins 2010 No. 5 s 58

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div hdg ins 2010 No. 5 s 58

**Main purpose of ch 8**

s 154 ins 2010 No. 5 s 58

**Safety and wellbeing of children to be paramount consideration**

s 155 ins 2010 No. 5 s 58

**Division 2—Application of chapter**

div hdg ins 2010 No. 5 s 58

**Employment and businesses regulated by this chapter**

s 156 ins 2010 No. 5 s 58  
amd 2010 No. 33 s 98

**This chapter applies despite Criminal Law (Rehabilitation of Offenders) Act 1986**

s 157 ins 2010 No. 5 s 58

**Declaration relating to exemption to category of regulated employment**

s 158 ins 2010 No. 5 s 58

**Declaration relating to exemption to category of regulated business**

s 159 ins 2010 No. 5 s 58

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s 160 ins 2010 No. 5 s 58

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pt hdg ins 2010 No. 5 s 58

**What is employment**

s 161 ins 2010 No. 5 s 58

**What is employment when education provider arranges trainee student to carry out work for someone else**

s 162 ins 2010 No. 5 s 58

**What is employment in child care**

s 163 ins 2010 No. 5 s 58

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**Matters about particular regulated employment relating to care of children**  
s 164 ins 2010 No. 5 s 58

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s 165 ins 2010 No. 5 s 58

**Executive officers of a corporation carrying on a regulated business**  
s 166 ins 2010 No. 5 s 58

**What is a “serious offence”**  
s 167 ins 2010 No. 5 s 58

**What is a “disqualifying offence”**  
s 168 ins 2010 No. 5 s 58

**Who is a “disqualified person”**  
s 169 ins 2010 No. 5 s 58

**Who is a “relevant disqualified person”**  
s 170 ins 2010 No. 5 s 58

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pt hdg ins 2010 No. 5 s 58

**Risk management strategies about persons employed in regulated employment**  
s 171 ins 2010 No. 5 s 58

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s 172 ins 2010 No. 5 s 58

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pt hdg ins 2010 No. 5 s 58

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div hdg ins 2010 No. 5 s 58

**Part does not apply to police officers or registered teachers**  
s 173 ins 2010 No. 5 s 58

**Offences for disqualified person**  
s 174 ins 2010 No. 5 s 58

**Commissioner to give notice if person signing or making prescribed notice application is disqualified person**  
s 175 prev s 175 om R1 (see RA s 40)  
pres s 175 ins 2010 No. 5 s 58

**Giving notification under pt 4**  
s 176 ins 2010 No. 5 s 58  
amd 2010 No. 33 s 99

**Division 2—Eligibility declaration**  
div hdg ins 2010 No. 5 s 58

**Purpose of div 2**  
s 177 ins 2010 No. 5 s 58



**Application for an eligibility declaration**

s 178 ins 2010 No. 5 s 58  
amd 2010 No. 33 s 100

**Notice of change of name and contact details in eligibility application**

s 179 ins 2010 No. 5 s 58

**Commissioner's decision on eligibility application**

s 180 ins 2010 No. 5 s 58

**Eligibility declaration taken to have been issued**

s 181 ins 2010 No. 5 s 58

**Withdrawing eligibility application generally**

s 182 ins 2010 No. 5 s 58

**Deemed withdrawal of eligibility application if identity can not be established**

s 183 ins 2010 No. 5 s 58

**Deemed withdrawal of eligibility application if particular requests not complied with**

s 184 ins 2010 No. 5 s 58

**Expiry of eligibility declaration**

s 185 ins 2010 No. 5 s 58

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s 186 ins 2010 No. 5 s 58

**Division 3—Prescribed notice required for employment of volunteers in regulated employment**

div hdg ins 2010 No. 5 s 58

**Application of div 3**

s 187 ins 2010 No. 5 s 58

**Starting employment of volunteers**

s 188 ins 2010 No. 5 s 58

**Currency of prescribed notice for person continuing employment**

s 189 ins 2010 No. 5 s 58

**Division 4—Prescribed notice required for employment of other persons in regulated employment**

div hdg ins 2010 No. 5 s 58

**Application of div 4**

s 190 ins 2010 No. 5 s 58

**Continuing employment of certain regular employees**

s 191 ins 2010 No. 5 s 58

**Starting employment of certain regular employees**

s 192 ins 2010 No. 5 s 58

**Starting employment of new employees**

s 193 ins 2010 No. 5 s 58

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**Prohibited employment**

s 194 ins 2010 No. 5 s 58

**Division 5—Obligations if holder of negative notice or negative exemption notice, or prescribed notice application is withdrawn**

div hdg ins 2010 No. 5 s 58

**Person holding negative notice or negative exemption notice not to apply for, or start or continue in, regulated employment etc.**

s 195 ins 2010 No. 5 s 58

**Person who has withdrawn consent to employment screening not to start or continue in regulated employment**

s 196 ins 2010 No. 5 s 58

**Division 6—Prescribed notice required for regulated business**

div hdg ins 2010 No. 5 s 58

**Carrying on regulated business**

s 197 ins 2010 No. 5 s 58

**Currency of prescribed notice for person carrying on regulated business**

s 198 ins 2010 No. 5 s 58

**Division 7—Applying for prescribed notice for regulated employment**

div hdg ins 2010 No. 5 s 58

**Who makes application**

s 199 ins 2010 No. 5 s 58

**Form of application**

s 200 ins 2010 No. 5 s 58  
amd 2010 No. 33 s 101

**Commissioner may obtain further information**

s 201 ins 2010 No. 5 s 58

**Payment of fee for application**

s 202 ins 2010 No. 5 s 58

**Withdrawal of application generally**

s 203 ins 2010 No. 5 s 58

**Withdrawal of consent to employment screening generally**

s 204 ins 2010 No. 5 s 58

**Deemed withdrawal of consent to employment screening if identity can not be established**

s 205 ins 2010 No. 5 s 58

**Deemed withdrawal of consent to employment screening if particular requests not complied with**

s 206 ins 2010 No. 5 s 58

**Deemed withdrawal of consent to employment screening if employment changes**  
s 207 ins 2010 No. 5 s 58

**Deemed withdrawal of consent to employment screening if charged with disqualifying offence etc.**  
s 208 ins 2010 No. 5 s 58

**Effect of withdrawal of consent to employment screening**  
s 209 ins 2010 No. 5 s 58

**Notice about withdrawal of application or negative notice or negative exemption notice**  
s 210 ins 2010 No. 5 s 58

**Division 8—Applying for prescribed notice for regulated businesses**  
div hdg ins 2010 No. 5 s 58

**Who makes application**  
s 211 ins 2010 No. 5 s 58

**Form of application**  
s 212 ins 2010 No. 5 s 58  
amd 2010 No. 33 s 102

**Commissioner may obtain further information**  
s 213 ins 2010 No. 5 s 58

**Withdrawal of application generally**  
s 214 ins 2010 No. 5 s 58

**Deemed withdrawal of application if identity can not be established**  
s 215 ins 2010 No. 5 s 58

**Deemed withdrawal of application if particular requests not complied with**  
s 216 ins 2010 No. 5 s 58

**Deemed withdrawal of application if person charged with disqualifying offence etc.**  
s 217 ins 2010 No. 5 s 58

**Notice about withdrawal of application or negative notice or negative exemption notice**  
s 218 ins 2010 No. 5 s 58

**Division 9—Deciding prescribed notice application**  
div hdg ins 2010 No. 5 s 58

**Application of div 9**  
s 219 ins 2010 No. 5 s 58

**Positive notice or negative notice to be issued**  
s 220 ins 2010 No. 5 s 58

**Issuing prescribed notice to person with no conviction etc. or conviction for offence other than serious offence**  
s 221 ins 2010 No. 5 s 58

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**Issuing prescribed notice to previous holder of a positive exemption notice**

s 222 ins 2010 No. 5 s 58

**Issuing prescribed notice to person whose negative notice or negative exemption notice is cancelled or who holds eligibility declaration**

s 223 ins 2010 No. 5 s 58

**Issuing negative notice to relevant disqualified person except because of temporary or interim order**

s 224 ins 2010 No. 5 s 58

**Issuing prescribed notice to other persons**

s 225 ins 2010 No. 5 s 58

**Deciding exceptional case if conviction or charge**

s 226 ins 2010 No. 5 s 58

**Deciding exceptional case if investigative information exists**

s 227 ins 2010 No. 5 s 58

**Deciding exceptional case if disciplinary information exists**

s 228 ins 2010 No. 5 s 58

**Commissioner to invite submissions from person about particular information**

s 229 ins 2010 No. 5 s 58

**Commissioner to be notified of change of particular information**

s 230 prev s 230 ins 2008 No. 18 s 45  
exp 2 June 2009 (see s 230(4))  
pres s 230 ins 2010 No. 5 s 58

**Currency of prescribed notice and positive notice blue card**

s 231 ins 2010 No. 5 s 58

**Division 10—Steps after prescribed notice application decided**

div hdg ins 2010 No. 5 s 58

**Application of div 10**

s 232 ins 2010 No. 5 s 58

**Additional information to be given if negative notice issued**

s 233 ins 2010 No. 5 s 58

**Notifiable person to be notified of decision**

s 234 ins 2010 No. 5 s 58

**Department to be given particular advice**

s 235 ins 2010 No. 5 s 58

**Division 11—Cancellation or suspension of prescribed notices**

div hdg ins 2010 No. 5 s 58

**Cancelling negative notices etc. on holder's application**

s 236 ins 2010 No. 5 s 58

**Cancelling positive notice and substituting it with negative notice**

s 237 ins 2010 No. 5 s 58

**Cancelling negative notice and issuing positive notice**

s 238 ins 2010 No. 5 s 58

**Cancelling positive notice if relevant disqualified person**

s 239 ins 2010 No. 5 s 58

**Suspension of a positive notice if charged with disqualifying offence or subject to temporary or interim order**

s 240 ins 2010 No. 5 s 58

**Ending of suspension under s 240 and issue of further prescribed notice**

s 241 ins 2010 No. 5 s 58

**Suspension of a positive notice held by registered teacher if teacher registration suspended**

s 242 ins 2010 No. 5 s 58

**Ending of suspension under s 242 and issue of further prescribed notice or exemption notice**

s 243 ins 2010 No. 5 s 58

**Cancelling positive notice on holder's request**

s 244 ins 2010 No. 5 s 58

**Division 12—Return of prescribed notices etc.**

div hdg ins 2010 No. 5 s 58

**Return of previously held prescribed notice or exemption notice**

s 245 ins 2010 No. 5 s 58

**Return of cancelled positive notice**

s 246 ins 2010 No. 5 s 58

**Division 13—Persons who are police officers or registered teachers**

div hdg ins 2010 No. 5 s 58

**Prescribed notices held by police officers and registered teachers**

s 247 ins 2010 No. 5 s 58

**PART 5—EXEMPTION NOTICES**

pt hdg ins 2010 No. 5 s 58

**Division 1—Preliminary**

div hdg ins 2010 No. 5 s 58

**Part applies to police officers or registered teachers**

s 248 ins 2010 No. 5 s 58

**Giving notification under pt 5**s 249 ins 2010 No. 5 s 58  
amd 2010 No. 33 s 103

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**Division 2—Exemption notice required for employment of volunteers in regulated employment**

**div hdg** ins 2010 No. 5 s 58

**Application of div 2**

**s 250** ins 2010 No. 5 s 58

**Starting employment**

**s 251** ins 2010 No. 5 s 58

**Division 3—Exemption notice required for employment of other persons in regulated employment**

**div hdg** ins 2010 No. 5 s 58

**Application of div 3**

**s 252** ins 2010 No. 5 s 58

**Continuing employment of certain regular employees**

**s 253** ins 2010 No. 5 s 58

**Starting employment of certain regular employees**

**s 254** ins 2010 No. 5 s 58

**Starting employment of new employees**

**s 255** ins 2010 No. 5 s 58

**Prohibited employment**

**s 256** ins 2010 No. 5 s 58

**Division 4—Obligations if holder of negative notice or negative exemption notice, or exemption notice application is withdrawn**

**div hdg** ins 2010 No. 5 s 58

**Person holding negative notice or negative exemption notice not to apply for, or start or continue in, regulated employment etc.**

**s 257** ins 2010 No. 5 s 58

**Person who has withdrawn consent to employment screening not to start or continue in regulated employment**

**s 258** ins 2010 No. 5 s 58

**Division 5—Exemption notice required for regulated business**

**div hdg** ins 2010 No. 5 s 58

**Carrying on regulated business**

**s 259** ins 2010 No. 5 s 58

**Division 6—Applying for exemption notice for regulated employment**

**div hdg** ins 2010 No. 5 s 58

**Who makes application**

**s 260** ins 2010 No. 5 s 58

**Form of application**

**s 261** ins 2010 No. 5 s 58

amd 2010 No. 33 s 104

**Commissioner may obtain further information**

s 262 ins 2010 No. 5 s 58

**Withdrawal of application generally**

s 263 ins 2010 No. 5 s 58

**Withdrawal of consent to employment screening generally**

s 264 ins 2010 No. 5 s 58

**Deemed withdrawal of consent to employment screening if person ceases to be police officer or registered teacher**

s 265 ins 2010 No. 5 s 58

**Deemed withdrawal of consent to employment screening if identity can not be established**

s 266 ins 2010 No. 5 s 58

**Deemed withdrawal of consent to employment screening if particular requests not complied with**

s 267 ins 2010 No. 5 s 58

**Deemed withdrawal of consent to employment screening if employment changes**

s 268 ins 2010 No. 5 s 58

**Deemed withdrawal of consent to employment screening if charged with disqualifying offence etc.**

s 269 ins 2010 No. 5 s 58

**Effect of withdrawal of consent to employment screening**

s 270 ins 2010 No. 5 s 58

**Notice about withdrawal of application or negative exemption notice or negative notice**

s 271 ins 2010 No. 5 s 58

**Division 7—Applying for exemption notice for regulated businesses**

div hdg ins 2010 No. 5 s 58

**Who makes application**

s 272 ins 2010 No. 5 s 58

**Form of application**

s 273 ins 2010 No. 5 s 58  
amd 2010 No. 33 s 105

**Commissioner may obtain further information**

s 274 ins 2010 No. 5 s 58

**Withdrawal of application generally**

s 275 ins 2010 No. 5 s 58

**Deemed withdrawal of application if no longer police officer or registered teacher**

s 276 ins 2010 No. 5 s 58

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**Deemed withdrawal of application if identity can not be established**

s 277 ins 2010 No. 5 s 58

**Deemed withdrawal of application if particular requests not complied with**

s 278 ins 2010 No. 5 s 58

**Deemed withdrawal of application if charged with disqualifying offence etc.**

s 279 ins 2010 No. 5 s 58

**Notice about withdrawal of application or negative notice or negative exemption notice**

s 280 ins 2010 No. 5 s 58

**Division 8—Deciding exemption notice application**

div hdg ins 2010 No. 5 s 58

**Application of div 8**

s 281 ins 2010 No. 5 s 58

**Positive exemption notice or negative exemption notice to be issued**

s 282 ins 2010 No. 5 s 58

**Issuing positive exemption notice to police officer if further screening not required**

s 283 ins 2010 No. 5 s 58

**Issuing positive exemption notice to registered teacher if further screening not required**

s 284 ins 2010 No. 5 s 58

**Issuing exemption notice if ss 283 and 284 do not apply**

s 285 ins 2010 No. 5 s 58

**Obtaining advice from police commissioner**

s 286 ins 2010 No. 5 s 58

**Obtaining advice from college of teachers**

s 287 ins 2010 No. 5 s 58

**Commissioner to be notified of change of particular information**

s 288 ins 2010 No. 5 s 58

**Currency of exemption notice**

s 289 ins 2010 No. 5 s 58

**Division 9—Steps after exemption notice application decided**

div hdg ins 2010 No. 5 s 58

**Application of div 9**

s 290 ins 2010 No. 5 s 58

**Additional information to be given if negative exemption notice issued**

s 291 ins 2010 No. 5 s 58

**Notifiable person to be notified of decision**

s 292 ins 2010 No. 5 s 58



**Department to be given particular advice**

s 293 ins 2010 No. 5 s 58

**Division 10—Cancellation or suspension of exemption notices etc.**

div hdg ins 2010 No. 5 s 58

**Cancelling negative exemption notices etc. on holder's application**

s 294 ins 2010 No. 5 s 58

**Cancelling positive exemption notice and substituting it with negative exemption notice**

s 295 ins 2010 No. 5 s 58

**Cancelling negative exemption notice and issuing positive exemption notice**

s 296 ins 2010 No. 5 s 58

**Cancelling positive exemption notice if relevant disqualified person**

s 297 ins 2010 No. 5 s 58

**Suspension of a positive exemption notice if charged with disqualifying offence or subject to temporary or interim order**

s 298 ins 2010 No. 5 s 58

**Ending of suspension and issue of further exemption notice**

s 299 ins 2010 No. 5 s 58

**Notifying holder of expiry of positive exemption notice if no longer police officer or registered teacher**

s 300 ins 2010 No. 5 s 58

**Effect of negative exemption notice if person no longer police officer or registered teacher**

s 301 ins 2010 No. 5 s 58

**Cancelling positive exemption notice on holder's request**

s 302 ins 2010 No. 5 s 58

**Division 11—Return of exemption notices etc.**

div hdg ins 2010 No. 5 s 58

**Return of previously held exemption notice or prescribed notice**

s 303 ins 2010 No. 5 s 58

**Return of cancelled or expired positive exemption notice**

s 304 ins 2010 No. 5 s 58

**PART 6—PROVISIONS ABOUT OBTAINING OR DEALING WITH INFORMATION RELATING TO PRESCRIBED NOTICES AND EXEMPTION NOTICES**

pt hdg ins 2010 No. 5 s 58

**Division 1—Investigative information**

div hdg ins 2010 No. 5 s 58

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

s 305 ins 2010 No. 5 s 58

**Police commissioner not to delegate power under s 305**

s 306 ins 2010 No. 5 s 58

**Appeal against police commissioner's decision that information is investigative information**

s 307 ins 2010 No. 5 s 58

**Court to decide matters afresh**

s 308 ins 2010 No. 5 s 58

**Consequence of decision on appeal**

s 309 ins 2010 No. 5 s 58

**Division 2—Obtaining information from police commissioner**

div hdg ins 2010 No. 5 s 58

**Application of div 2**

s 310 ins 2010 No. 5 s 58

**Commissioner may ask police commissioner for information**

s 311 ins 2010 No. 5 s 58

**Police commissioner to comply with request**

s 312 ins 2010 No. 5 s 58

**Information to be given about relevant disqualified person**

s 313 ins 2010 No. 5 s 58

**Information to be given about person subject of application for disqualification order or offender prohibition order**

s 314 ins 2010 No. 5 s 58

**Police commissioner to notify person about investigative information given about the person**

s 315 ins 2010 No. 5 s 58

**Use of information given to police commissioner**

s 316 ins 2010 No. 5 s 58

**Notice of change in police information about a person**

s 317 ins 2010 No. 5 s 58

**Division 3—Obtaining police information from other State entities**

div hdg ins 2010 No. 5 s 58

**Obtaining information from director of public prosecutions**

s 318 ins 2010 No. 5 s 58

**Obtaining information from chief executive (corrective services)**

s 319 ins 2010 No. 5 s 58

**Division 4—Obtaining information from interstate police commissioner****div hdg** ins 2010 No. 5 s 58**Requesting further information about interstate convictions and charges****s 320** ins 2010 No. 5 s 58**Division 5—Changes in information or status****div hdg** ins 2010 No. 5 s 58**Acquiring police information****s 321** ins 2010 No. 5 s 58**Effect of conviction for serious offence****s 322** ins 2010 No. 5 s 58**Effect of change in police information about employee****s 323** ins 2010 No. 5 s 58**Person carrying on a regulated business to notify commissioner of change in police information****s 324** ins 2010 No. 5 s 58**Effect of change in police information about other persons****s 325** ins 2010 No. 5 s 58**Police commissioner to advise commissioner if person ceases to be police officer****s 326** ins 2010 No. 5 s 58**Effect of person ceasing to be police officer****s 327** ins 2010 No. 5 s 58**Effect of person ceasing to be registered teacher****s 328** ins 2010 No. 5 s 58**Division 6—Obtaining report about person's mental health****div hdg** ins 2010 No. 5 s 58**Application of div 6****s 329** ins 2010 No. 5 s 58**Commissioner may request person to undergo examination by registered health practitioner etc.****s 330** ins 2010 No. 5 s 58**Nominating registered health practitioner to conduct examination****s 331** ins 2010 No. 5 s 58**Registered health practitioner obtaining information from Mental Health Court****s 332** ins 2010 No. 5 s 58**Registered health practitioner obtaining information from Mental Health Review Tribunal****s 333** ins 2010 No. 5 s 58

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**Use of information obtained from Mental Health Court or Mental Health Review Tribunal**

s 334 ins 2010 No. 5 s 58

**Commissioner may obtain report about person's mental health from registered health practitioner**

s 335 ins 2010 No. 5 s 58

**Commissioner to bear medical costs**

s 336 ins 2010 No. 5 s 58

**Division 7—Obtaining other information about person's mental health**

div hdg ins 2010 No. 5 s 58

**Commissioner may obtain particular information from Mental Health Court**

s 337 ins 2010 No. 5 s 58

**Commissioner may obtain particular information from Mental Health Review Tribunal**

s 338 ins 2010 No. 5 s 58

**Division 8—Dealing with information**

div hdg ins 2010 No. 5 s 58

**Commissioner to give notice to particular entities about a change in police information**

s 339 ins 2010 No. 5 s 58

**Commissioner must give police commissioner a person's current address**

s 340 ins 2010 No. 5 s 58

**Giving other information to police commissioner**

s 341 ins 2010 No. 5 s 58

**Commissioner may give information about director of school's governing body to accreditation board**

s 342 ins 2010 No. 5 s 58

**Commissioner must give information about particular persons to college of teachers**

prov hdg amd 2010 No. 33 s 106(1)

s 343 ins 2010 No. 5 s 58  
amd 2010 No. 33 s 106(2)–(3)

**Commissioner must give information about particular holders to chief executive (disability services)**

s 344 ins 2010 No. 5 s 58

**Use of information obtained under this chapter about a person**

s 345 ins 2010 No. 5 s 58  
amd 2010 No. 33 s 107

**Guidelines for dealing with information**

s 346 ins 2010 No. 5 s 58

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**PART 7—MISCELLANEOUS PROVISIONS ABOUT PRESCRIBED NOTICES  
AND EXEMPTION NOTICES****pt hdg** ins 2010 No. 5 s 58**Division 1—Replacement notice****div hdg** ins 2010 No. 5 s 58**Replacement of lost or stolen notice or card****s 347** ins 2010 No. 5 s 58**Replacement notice if change of name or contact details****s 348** ins 2010 No. 5 s 58**Replacement notice if change in employment etc. details generally****s 349** ins 2010 No. 5 s 5  
amd 2010 No. 33 s 108**New notice if relevant change happens for volunteer or person carrying on business  
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**Division 1A—Interpretation**

**div hdg** ins 2004 No. 49 s 8  
om 2010 No. 5 s 58 (incl in prev pt 6)

**Division 1B—Risk management strategies**

**div hdg** ins 2004 No.49 s 11  
om 2010 No. 5 s 58 (incl in prev pt 6)

**Division 2—Issue of prescribed notices for regulated employment or regulated businesses**

**div hdg** sub 2004 No. 49 s 12  
om 2010 No. 5 s 58 (incl in prev pt 6)

**Division 3—Obligations and offences relating to prescribed notices**

**div hdg** sub 2004 No. 49 s 18  
om 2010 No. 5 s 58 (incl in prev pt 6)

**Subdivision 1—Regulated employment as volunteers**

**sdiv hdg** sub 2004 No. 49 s 18  
om 2010 No. 5 s 58 (incl in prev pt 6 div 3)

**Subdivision 1A—Regulated employment other than as volunteers**

**sdiv hdg** ins 2004 No. 49 s 18  
om 2010 No. 5 s 58 (incl in prev pt 6 div 3)

**Subdivision 1B—Obligations if holder of negative notice or application for prescribed notice is withdrawn**

**sdiv hdg** ins 2004 No. 49 s 23  
om 2010 No. 5 s 58 (incl in prev pt 6 div 3)

**Subdivision 2—Regulated business**

**sdiv hdg** om 2010 No. 5 s 58 (incl in prev pt 6 div 3)

**Subdivision 3—Changes in police information**

**sdiv hdg** sub 2008 No. 18 s 14  
om 2010 No. 5 s 58 (incl in prev pt 6 div 3)

**Subdivision 4—General**

**sdiv hdg** om 2010 No. 5 s 58 (incl in prev pt 6 div 3)

**Division 4—Cancellation and replacement of prescribed notices**

**div hdg** sub 2004 No. 49 s 30  
om 2010 No. 5 s 58 (incl in prev pt 6)

**Division 4A—Disqualified persons**

**div hdg** ins 2008 No. 18 s 29  
om 2010 No. 5 s 58 (incl in prev pt 6)

**Division 5—Miscellaneous**

**div hdg** om 2010 No. 5 s 58 (incl in prev pt 6)

**Division 6—Transitional**

**div hdg** om 2010 No. 5 s 58 (incl in prev pt 6)

**PART 7—CRIMINAL HISTORY CHECKS OF COMMISSION'S STAFF**

**pt hdg** prev pt 7 hdg om 2010 No. 5 s 59

**Division 1—Preliminary**

**div hdg** om 2010 No. 5 s 59 (incl in prev pt 7)

**Division 2—Disclosure of criminal history**

**div hdg** om 2010 No. 5 s 59 (incl in prev pt 7)

**Division 3—Commissioner may obtain information from other entities about criminal history and certain investigations**

**div hdg** om 2010 No. 5 s 59 (incl in prev pt 7)

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

**div hdg** om 2010 No. 5 s 59 (incl in prev pt 7)

**CHAPTER 8A—CRIMINAL HISTORY CHECKS, AND ASSESSING SUITABILITY, OF PERSONS ENGAGED BY THE COMMISSION**

**ch hdg** ins 2010 No. 33 s 110

**PART 1—PRELIMINARY**

**pt 1** (ss 357A–357C) ins 2010 No. 33 s 110

**PART 2—DISCLOSURE OF CRIMINAL HISTORY**

**pt 2** (ss 357D–357G) ins 2010 No. 33 s 110

**PART 3—EMPLOYMENT SCREENING OF PERSONS TO START OR CONTINUE IN REGULATED EMPLOYMENT**

**pt 3** (s 357H) ins 2010 No. 33 s 110

**PART 4—EMPLOYMENT SCREENING OF PERSONS ENGAGED, OR TO BE ENGAGED, IN CHILD-RELATED DUTIES**

**pt 4** (ss 357I–357N) ins 2010 No. 33 s 110

**PART 5—COMMISSIONER MAY OBTAIN INFORMATION FROM OTHER ENTITIES ABOUT CRIMINAL HISTORY AND CERTAIN INVESTIGATIONS**

**pt hdg** ins 2010 No. 33 s 110

**Division 1—Obtaining information from police commissioner on request**

**div 1** (ss 357O–357P) ins 2010 No. 33 s 110

**Division 2—Obtaining information about charges etc.**

**div 2** (s 357Q) ins 2010 No. 33 s 110

**PART 6—CONTROLS ON USE OF INFORMATION ABOUT CRIMINAL HISTORY AND CERTAIN INVESTIGATIONS**

**pt 6** (ss 357R–357T) ins 2010 No. 33 s 110

**CHAPTER 9—PROCEEDINGS ABOUT QCAT PROCEEDINGS**

**ch hdg** (prev pt 6A hdg) ins 2009 No. 24 s 37  
sub 2010 No. 5 s 56(3) sch 2 amdt 1

**PART 1—QCAT PROCEEDINGS ABOUT CHILD-RELATED EMPLOYMENT REVIEW**

**pt hdg** ins 2010 No. 5 s 56(3) sch 2 amdt 1

**Definitions for pt 1**

**prov hdg** sub 2010 No. 5 s 56(3) sch 2 amdt 1

**s 358** (prev s 128A) ins 2009 No. 24 s 37  
renum 2010 No. 5 s 56(3) sch 2 amdt 80  
def “**child-related employment decision**” amd 2010 No. 5 s 56(3) sch 2 amdt 69

**Application of pt 1**

**prov hdg** sub 2010 No. 5 s 56(3) sch 2 amdt 1

**s 359** (prev s 128B) ins 2009 No. 24 s 37  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Principle for reviewing child-related employment decision**

**s 360** (prev s 128C) ins 2009 No. 24 s 37  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Proceeding must always be held in private**

**s 361** (prev s 128D) ins 2009 No. 24 s 37  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Applications on behalf of children**

**s 362** (prev s 128E) ins 2009 No. 24 s 37  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Withdrawal of application for review**

**s 363** (prev s 128F) ins 2009 No. 24 s 37  
amd 2010 No. 5 s 56(3) sch 2 amdt 70  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Children must not be compelled to give evidence**

**s 364** (prev s 128G) ins 2009 No. 24 s 37  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Children giving evidence**

**s 365** (prev s 128H) ins 2009 No. 24 s 37  
amd 2010 No. 5 s 56(3) sch 2 amdt 71  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Questioning of children**

**s 366** (prev s 128I) ins 2009 No. 24 s 37  
amd 2010 No. 5 s 56(3) sch 2 amdt 71  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Provisions for QCAT child-related employment reviews**

**s 367** (prev s 128J) ins 2009 No. 24 s 37  
renum 2010 No. 5 s 56(3) sch 2 amdt 80



**PART 2—QCAT TO GIVE STATISTICAL INFORMATION TO COMMISSIONER**

**pt hdg** (prev pt 6B hdg) ins 2009 No. 24 s 37  
sub 2010 No. 5 s 56(3) sch 2 amdt 1

**QCAT's principal registrar to give statistical information to commissioner**

**s 368** (prev s 128K) ins 2009 No. 24 s 37  
renum 2010 No. 5 s 56(3) sch 2 amdt 80  
amd 2011 No. 38 s 60

**CHAPTER 10—GENERAL**

**ch hdg** (prev pt 7A hdg) ins 2004 No. 13 s 81  
sub 2010 No. 5 s 56(3) sch 2 amdt 1

**PART 1—REVIEW OF PARTICULAR DECISIONS**

**pt hdg** ins 2010 No. 5 s 56(3) sch 2 amdt 1

**Meaning of “reviewable decision” for pt 1**

**prov hdg** sub 2010 No. 5 s 56(3) sch 2 amdt 1  
**s 369** (prev s 140A) ins 2004 No. 13 s 81  
amd 2005 No. 40 s 69 sch; 2010 No. 5 s 56(3) sch 2 amdts 72–73  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Commissioner may apply for review of reviewable decisions**

**s 370** (prev s 140B) ins 2004 No. 13 s 81  
amd 2009 No. 24 s 38  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**PART 2—WHEN COMMISSIONER MAY GIVE NOTICE OTHER THAN IN WRITING**

**pt hdg** (prev pt 8 hdg) sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Division 1—When commissioner may give notice other than in writing**

**div hdg** om 2010 No. 5 s 56(3) sch 2 amdt 1 (incl in prev pt 8)

**Application of pt 2**

**prov hdg** sub 2010 No. 5 s 56(3) sch 2 amdt 1  
**s 371** (prev s 141) amd 2010 No. 5 s 56(3) sch 2 amdt 27  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Person asks for notice other than in writing**

**s 372** (prev s 142) renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Written notice inappropriate**

**s 373** (prev s 143) renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Commissioner must keep record**

**s 374** (prev s 144) amd 2010 No. 5 s 56(3) sch 2 amdt 27  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**PART 3—EVIDENCE AND LEGAL PROCEEDINGS**

**pt hdg** (prev pt 8 div 2 hdg) sub 2010 No. 5 s 56(3) sch 2 amdt 1

Endnotes

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**Positive notice blue card is evidence of holding positive notice**

s 375 (prev s 144A) ins 2004 No. 49 s 44  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Evidentiary provisions**

s 376 (prev s 145) amd 2004 No. 36 s 52  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Indictable and summary offences**

s 377 (prev s 146) amd 2004 No. 49 s 45; 2008 No. 18 s 44; 2010 No. 5 s 60  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Proceedings for indictable offences**

s 378 (prev s 147) renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Limitation on who may summarily hear indictable offence proceedings**

s 379 (prev s 148) renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Proceeding for offences**

s 380 (prev s 149) renum 2010 No. 5 s 56(3) sch 2 amdt 80

**When proceeding may start**

s 381 (prev s 150) renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Allegations of false or misleading information or statements**

s 382 (prev s 151) renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Executive officers must ensure corporation complies with Act**

s 383 (prev s 151A) ins 2004 No. 49 s 46  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**PART 4—CONFIDENTIALITY**

pt hdg (prev pt 8 div 3 hdg) sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Confidentiality of information about criminal history or related information**

prov hdg amd 2010 No. 5 s 61(1)  
s 384 (prev s 152) amd 2004 No. 36 s 53; 2006 No. 17 s 48; 2010 No. 5 s 61(2)–(12)  
renum 2010 No. 5 s 56(3) sch 2 amdt 80  
amd 2010 No. 33 s 111

**Confidentiality of other information**

s 385 (prev s 153) amd 2004 No. 36 s 54; 2006 No. 17 s 49; 2010 No. 5 s 56(3) sch  
2 amdts 74–75  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Disclosure of information about investigations**

s 386 (prev s 154) amd 2010 No. 5 s 56(3) sch 2 amdt 76  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**PART 5—REPRISALS**

pt hdg (prev pt 8 div 4 hdg) sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Meaning of “taking a reprisal”**

s 387 (prev s 155) renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Offence of taking a reprisal**

s 388 (prev s 156) renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Damages entitlement for reprisal**

s 389 (prev s 157) renum 2010 No. 5 s 56(3) sch 2 amdt 80

**PART 6—MISCELLANEOUS**

pt hdg (prev pt 8 div 5 hdg) sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Meaning of “parent”**

s 390 (prev s 158) amd 2004 No. 13 s 30 sch 1  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Relationship with complaints agencies**

s 391 (prev s 159) amd 2004 No. 13 s 82  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Complaints agency or other government service provider to inform commissioner about actions taken for complaint**

s 392 (prev s 160) renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Protection from liability**

s 393 (prev s 161) amd 2004 No. 13 s 83; 2004 No. 36 s 55; 2006 No. 17 s 50  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Whistleblowers’ protection**

s 394 (prev s 162) renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Other reports by commissioner**

s 395 (prev s 163) sub 2006 No. 17 s 51  
amd 2010 No. 5 s 56(3) sch 2 amdt 77  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Annual report by commission**

s 396 (prev s 163A) ins 2004 No. 13 s 84  
amd 2006 No. 17 s 52; 2009 No. 9 s 136 sch 1  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Commissioner may enter into arrangement about giving and receiving information with police commissioner**

s 397 (prev s 164) sub 2004 No. 49 s 47  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Commissioner may enter into arrangement with chief executive (child safety)**

s 398 (prev s 164A) ins 2006 No. 17 s 53  
amd 2010 No. 5 s 56(3) sch 2 amdt 78  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Delegation by commissioner or assistant commissioner**

prov hdg amd 2004 No. 13 s 85(1)  
s 399 (prev s 165) amd 2004 No. 13 s 85(2)–(3)  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

Endnotes

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**Approved forms**

s 400 (prev s 166) renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Regulation-making power**

s 401 (prev s 167) amd 2004 No. 49 s 48; 2010 No. 5 s 62  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**CHAPTER 11—TRANSITIONAL AND OTHER PROVISIONS**

ch hdg (prev pt 9 hdg) sub 2007 No. 40 s 4; sub 2010 No. 5 s 56(3) sch 2 amdt 1

ch 11 note ins 2010 No. 5 s 63

**PART 1—REPEAL**

pt hdg (prev pt 9 div 1 hdg) sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Repeal of Children’s Commissioner and Children’s Services Appeals Tribunals Act 1996**

s 402 (prev s 168) renum 2010 No. 5 s 56(3) sch 2 amdt 80

**PART 2—TRANSITIONAL PROVISIONS ON REPEAL OF CHILDREN’S COMMISSIONER AND CHILDREN’S SERVICES APPEALS TRIBUNALS ACT 1996**

pt hdg (prev pt 9 div 2 hdg) sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Meaning of commencing day**

s 403 (prev s 169) amd 2010 No. 5 s 56(3) sch 2 amdt 27  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Commissioner**

s 404 (prev s 170) renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Continuation of commission and staff**

s 405 (prev s 171) renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Continuation of certain complaints**

s 406 (prev s 172) renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Official visitors**

s 407 (prev s 173) renum 2010 No. 5 s 56(3) sch 2 amdt 80

**PART 3—TRANSITIONAL PROVISIONS FOR AMENDMENT OF JUVENILE JUSTICE ACT 1992**

pt hdg (prev pt 9 div 3 hdg) sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Official visitors**

s 408 (prev s 174) renum 2010 No. 5 s 56(3) sch 2 amdt 80

**PART 4—TRANSITIONAL PROVISIONS FOR CHILD CARE ACT 2002**

pt hdg (prev pt 9 div 4 hdg) ins 2002 No. 55 s 196 sch 1  
sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Meaning of “commencement day”**

s 409 (prev s 175) ins 2002 No. 55 s 196 sch 1  
amd 2010 No. 5 s 56(3) sch 2 amdt 27  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Carrying on licensed child care service**

**s 410** (prev s 176) ins 2002 No. 55 s 196 sch 1  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Carrying on other regulated child care business**

**s 411** (prev s 177) ins 2002 No. 55 s 196 sch 1  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Employment in child care**

**s 412** (prev s 178) ins 2002 No. 55 s 196 sch 1  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**PART 5—TRANSITIONAL PROVISIONS FOR EDUCATION AND OTHER  
LEGISLATION (STUDENT PROTECTION) AMENDMENT ACT 2003**

**pt hdg** (prev pt 9 div 5 hdg) ins 2003 No. 88 s 7  
sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Definitions for pt 5**

**prov hdg** sub 2010 No. 5 s 56(3) sch 2 amdt 1  
**s 413** (prev s 179) ins 2003 No. 88 s 7  
amd 2010 No. 5 s 56(3) sch 2 amdt 27  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Outstanding applications for suitability notice**

**s 414** (prev s 180) ins 2003 No. 88 s 7  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Employment mentioned in sch 1, s 6A**

**s 415** (prev s 181) ins 2003 No. 88 s 7  
amd 2007 No. 36 s 2 sch  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Carrying on business mentioned in sch 1, s 11**

**s 416** (prev s 182) ins 2003 No. 88 s 7  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**PART 6—TRANSITIONAL PROVISIONS FOR CHILD SAFETY LEGISLATION  
AMENDMENT ACT 2004**

**pt hdg** (prev pt 9 div 6 hdg) ins 2004 No. 13 s 86  
sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Commissioner**

**s 417** (prev s 183) ins 2004 No. 13 s 86  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Commission**

**s 418** (prev s 184) ins 2004 No. 13 s 86  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Child deaths**

**s 419** (prev s 185) ins 2004 No. 13 s 86  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

Endnotes

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**References to child safety department**

**s 420** (prev s 186) ins 2004 No. 13 s 86  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**First report under s 89ZA**

**s 421** (prev s 187) ins 2004 No. 13 s 86  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**PART 7—TRANSITIONAL PROVISIONS FOR THE COMMISSION FOR CHILDREN AND YOUNG PEOPLE AND CHILD GUARDIAN AMENDMENT ACT 2004**

**pt hdg** (prev pt 9 div 7 hdg) ins 2004 No. 49 s 49  
sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Volunteers**

**s 422** (prev s 188) ins 2004 No. 49 s 49  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Application of amendment of sch 1 to particular employment**

**s 423** (prev s 189) ins 2004 No. 49 s 49  
amd 2007 No. 36 s 2 sch  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Employment that becomes regulated employment other than employment mentioned in s 189(1)**

**s 424** (prev s 190) ins 2004 No. 49 s 49  
amd 2007 No. 36 s 2 sch  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Carrying on regulated business**

**s 425** (prev s 191) ins 2004 No. 49 s 49  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Provision because of the definition “serious offence”**

**s 426** (prev s 192) ins 2004 No. 49 s 49  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Issue of positive notice blue card before commencement**

**s 427** (prev s 193) ins 2004 No. 49 s 49  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Charge for excluding offence not to apply to particular holders of positive notices**

**s 428** (prev s 194) ins 2004 No. 49 s 49  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**References to suitability notice**

**s 429** (prev s 195) ins 2004 No. 49 s 49  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**PART 8—FURTHER TRANSITIONAL PROVISIONS FOR THE COMMISSION FOR CHILDREN AND YOUNG PEOPLE AND CHILD GUARDIAN AMENDMENT ACT 2004**

**pt hdg** (prev pt 9 div 8 hdg) sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Definitions for pt 8**

- prov hdg** sub 2010 No. 5 s 56(3) sch 2 amdt 1  
**s 430** (prev s 196) ins 2006 No. 17 s 54  
amd 2010 No. 5 s 56(3) sch 2 amdt 27  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Main purpose of pt 8**

- prov hdg** sub 2010 No. 5 s 56(3) sch 2 amdt 1  
**s 431** (prev s 197) ins 2006 No. 17 s 54  
amd 2010 No. 5 s 56(3) sch 2 amdt 27  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Circumstances, after commencement, in which pre-amended Act applies to outstanding relevant application**

- s 432** (prev s 198) ins 2006 No. 17 s 54  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Circumstances, after commencement, in which this Act applies to outstanding relevant application**

- s 433** (prev s 199) ins 2006 No. 17 s 54  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Relevant applications dealt with before commencement**

- s 434** (prev s 200) ins 2006 No. 17 s 54  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Application of ss 122 and 122A in particular circumstances**

- s 435** (prev s 201) ins 2006 No. 17 s 54  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Circumstances, after commencement, relating to ss 118 and 119 of pre-amended Act**

- s 436** (prev s 202) ins 2006 No. 17 s 54  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Circumstances, before commencement, relating to ss 118 and 119 of pre-amended Act**

- s 437** (prev s 203) ins 2006 No. 17 s 54  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Circumstances where pre-amended Act applies to application for review made before commencement**

- s 438** (prev s 204) ins 2006 No. 17 s 54  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Circumstances where this Act applies to notices issued before the commencement**

- s 439** (prev s 205) ins 2006 No. 17 s 54  
amd 2010 No. 5 s 56(3) sch 2 amdt 27  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**References to prescribed notice**

- s 440** (prev s 206) ins 2006 No. 17 s 54  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**PART 9—TRANSITIONAL PROVISIONS FOR CHILD SAFETY (CARERS)  
AMENDMENT ACT 2006**

**pt hdg** (prev pt 9 div 9 hdg) ins 2006 No. 17 s 55  
sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Definition for pt 9**

**prov hdg** sub 2010 No. 5 s 56(3) sch 2 amdt 1  
**s 441** (prev s 207) ins 2006 No. 17 s 55  
amd 2010 No. 5 s 56(3) sch 2 amdt 27  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Regulated employment—volunteers**

**s 442** (prev s 208) ins 2006 No. 17 s 55  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Regulated employment—other persons**

**s 443** (prev s 209) ins 2006 No. 17 s 55  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Carrying on regulated business**

**s 444** (prev s 210) ins 2006 No. 17 s 55  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Particular certificates of approval under Child Protection Act 1999**

**s 445** (prev s 211) ins 2006 No. 17 s 55  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Particular licences under Child Protection Act 1999**

**s 446** (prev s 212) ins 2006 No. 17 s 55  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**PART 10—TRANSITIONAL AND VALIDATION PROVISIONS FOR  
COMMISSION FOR CHILDREN AND YOUNG PEOPLE AND CHILD  
GUARDIAN AMENDMENT ACT 2007**

**pt hdg** prev pt 10 hdg om R1 (see RA s 40)  
(prev pt 9 div 10 hdg) ins 2007 No. 40 s 5  
sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Definitions for pt 10**

**prov hdg** sub 2010 No. 5 s 56(3) sch 2 amdt 1  
**s 447** (prev s 213) ins 2007 No. 40 s 5  
amd 2010 No. 5 s 56(3) sch 2 amdt 27  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Continuing employment in health, counselling or support services**

**s 448** (prev s 214) ins 2007 No. 40 s 5  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Carrying on regulated business providing health, counselling or support services**

**s 449** (prev s 215) ins 2007 No. 40 s 5  
renum 2010 No. 5 s 56(3) sch 2 amdt 80



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

**s 450** (prev s 216) ins 2007 No. 40 s 5  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**PART 11—TRANSITIONAL PROVISIONS FOR COMMISSION FOR CHILDREN AND YOUNG PEOPLE AND CHILD GUARDIAN AND ANOTHER ACT AMENDMENT ACT 2008**

**pt hdg** (prev pt 9 div 11 hdg) ins 2008 No. 18 s 45  
sub 2010 No. 5 s 56(3) sch 2 amdt 1

**Definition for pt 11**

**prov hdg** sub 2010 No. 5 s 56(3) sch 2 amdt 1  
**s 451** (prev s 217) ins 2008 No. 18 s 45  
amd 2010 No. 5 s 56(3) sch 2 amdt 27  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Applications by disqualified persons who are not relevant disqualified persons**

**s 452** (prev s 218) ins 2008 No. 18 s 45  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Applications by relevant disqualified persons**

**s 453** (prev s 219) ins 2008 No. 18 s 45  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Applications by persons who are not disqualified persons**

**s 454** (prev s 220) ins 2008 No. 18 s 45  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Existing applications for review or appeal**

**s 455** (prev s 221) ins 2008 No. 18 s 45  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Positive notices held by disqualified persons who are not relevant disqualified persons**

**s 456** (prev s 222) ins 2008 No. 18 s 45  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Positive notices held by relevant disqualified persons**

**s 457** (prev s 223) ins 2008 No. 18 s 45  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Continuation if commissioner acting on own initiative**

**s 458** (prev s 224) ins 2008 No. 18 s 45  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Notice by commissioner of withdrawal of application under this part**

**prov hdg** sub 2010 No. 5 s 56(3) sch 2 amdt 1  
**s 459** (prev s 225) ins 2008 No. 18 s 45  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Notice by commissioner of cancellation of positive notice under this part**

**prov hdg** sub 2010 No. 5 s 56(3) sch 2 amdt 1

Endnotes

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**s 460** (prev s 226) ins 2008 No. 18 s 45  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Application of ss 120B, 120C and 120D**

**s 461** (prev s 227) ins 2008 No. 18 s 45  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**Application of s 120E**

**s 462** (prev s 228) ins 2008 No. 18 s 45  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**No retrospective criminal liability**

**s 463** (prev s 229) ins 2008 No. 18 s 45  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**PART 12—TRANSITIONAL PROVISION FOR CRIMINAL CODE AND OTHER ACTS AMENDMENT ACT 2008**

**pt hdg** (prev pt 9 div 12 hdg) ins 2008 No. 55 s 150 sch  
sub 2010 No. 5 s 56(3) sch 2 amdt 1

**References in schs 2 and 4 to Criminal Code offences**

**prov hdg** amd 2010 No. 5 s 56(3) sch 2 amdt 79  
**s 464** (prev 231) ins 2008 No. 55 s 150 sch  
amd 2010 No. 5 s 56(3) sch 2 amdt 79  
renum 2010 No. 5 s 56(3) sch 2 amdt 80

**PART 13—TRANSITIONAL PROVISIONS FOR CRIMINAL HISTORY SCREENING LEGISLATION AMENDMENT ACT 2010**

**pt hdg** ins 2010 No. 5 s 64

**Division 1—Preliminary**

**div 1 (s 465)** ins 2010 No. 5 s 64

**Division 2—Transitional provisions relating to chapter 8**

**div 2 (ss 466–498)** ins 2010 No. 5 s 64

**Division 3—Transitional provisions relating to previous part 7**

**div hdg** ins 2010 No. 5 s 64

**Notice about change in criminal history not given at the commencement**

**s 499** ins 2010 No. 5 s 64

**Request for prescribed police information not complied with at the commencement**

**s 500** ins 2010 No. 5 s 64

**Particular prescribed police information obtained but not used before commencement**

**s 501** ins 2010 No. 5 s 64  
amd 2010 No. 33 s 112

**Notice not given by prosecuting authority at the commencement**

**s 502** ins 2010 No. 5 s 64

**Use of particular information obtained before commencement**

**s 503** ins 2010 No. 5 s 64

**Division 4—Other transitional provision**

**div 4 (s 504)** ins 2010 No. 5 s 64

**PART 14—TRANSITIONAL PROVISIONS FOR CHILD PROTECTION AND OTHER ACTS AMENDMENT ACT 2010**

**pt 14 (ss 505–508)** ins 2010 No. 33 s 113

**SCHEDULE 1—REGULATED EMPLOYMENT AND BUSINESSES FOR EMPLOYMENT SCREENING**

**sch hdg** amd 2010 No. 5 s 65(1)

**Residential facilities**

**s 1** sub 2004 No. 49 s 50(1)  
amd 2006 No. 17 s 56(1); 2006 No. 39 s 512(1) sch 1; 2010 No. 5 s 65(2)

**Schools—boarding facilities**

**s 2** amd 2010 No. 5 s 65(3)

**Schools—employees other than teachers and parents**

**s 3** sub 2004 No. 49 s 50(2)  
amd 2010 No. 5 s 65(3)

**Child care services and similar employment**

**prov hdg** sub 2011 No. 38 s 61(1)  
**s 4** (prev s 3A) ins 2002 No. 55 s 196 sch 1  
renum 2010 No. 5 s 65(28)

**Education and care services and similar employment**

**s 4A** ins 2011 No. 38 s 61(2)

**Churches, clubs and associations involving children**

**s 5** (prev s 4) amd 2002 No. 55 s 196 sch 1; 2010 No. 5 s 65(4)  
renum 2010 No. 5 s 65(28)

**Health, counselling and support services**

**s 6** (prev s 5) sub 2004 No. 49 s 50(3)  
amd 2006 No. 17 s 56(2)  
sub 2007 No. 40 s 6(1)  
amd 2010 No. 5 s 65(5)–(14)  
renum 2010 No. 5 s 65(28)

**Private teaching, coaching or tutoring**

**s 7** (prev s 6) sub 2004 No. 49 s 50(3)  
amd 2010 No. 5 s 65(15)  
renum 2010 No. 5 s 65(28)

**Education programs conducted outside of school**

**s 8** (prev s 6A) ins 2003 No. 88 s 8(1)  
sub 2004 No. 49 s 50(3)  
amd 2006 No. 39 s 512(1) sch 1; 2010 No. 5 s 65(16)  
renum 2010 No. 5 s 65(28)

**Child accommodation services including home stays**

**s 9** (prev s 6B) ins 2004 No. 49 s 50(3)

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amd 2010 No. 5 s 65(17)  
renum 2010 No. 5 s 65(28)

**Religious representatives**

**s 10** (prev s 6C) ins 2004 No. 49 s 50(3)  
renum 2010 No. 5 s 65(28)

**Sport and active recreation**

**s 11** (prev s 6D) ins 2004 No. 49 s 50(3)  
amd 2010 No. 5 s 65(18)–(20)  
renum 2010 No. 5 s 65(28)

**Emergency services cadet program**

**s 12** (prev s 6E) ins 2004 No. 49 s 50(3)  
renum 2010 No. 5 s 65(28)

**School crossing supervisors**

**s 13** (prev s 6F) ins 2004 No. 49 s 50(3)  
amd 2005 No. 49 s 89 sch  
renum 2010 No. 5 s 65(28)

**Care of children under Child Protection Act 1999**

**s 14** (prev s 6G) ins 2006 No. 17 s 56(3)  
renum 2010 No. 5 s 65(28)

**Regulation about usual functions of employment**

**s 15** (prev s 7) renum 2010 No. 5 s 65(28)

**Health, counselling and support services**

**s 16** (prev s 8) amd 2004 No. 49 s 50(4)  
sub 2007 No. 40 s 6(2)  
amd 2010 No. 5 s 65(21)–(25)  
renum 2010 No. 5 s 65(28)

**Private teaching, coaching or tutoring**

**s 17** (prev s 9) amd 2004 No. 49 s 50(5)–(6)  
renum 2010 No. 5 s 65(28)

**Child care services and similar businesses**

**prov hdg** sub 2011 No. 38 s 61(3)  
**s 18** (prev s 10) ins 2002 No. 55 s 196 sch 1  
renum 2010 No. 5 s 65(28)

**Education and care services and similar businesses**

**s 18A** ins 2011 No. 38 s 61(4)

**Educational programs conducted outside of school**

**s 19** (prev s 11) ins 2003 No. 88 s 8(2)  
sub 2006 No. 39 s 512(1) sch 1  
renum 2010 No. 5 s 65(28)

**Religious representatives**

**s 20** (prev s 12) ins 2004 No. 49 s 50(7)  
renum 2010 No. 5 s 65(28)

**Child accommodation services including home stays**

s 21 (prev s 13) ins 2004 No. 49 s 50(7)  
renum 2010 No. 5 s 65(28)

**Sport and active recreation**

s 22 (prev s 14) ins 2004 No. 49 s 50(7)  
amd 2010 No. 5 s 65(26)  
renum 2010 No. 5 s 65(28)

**Hostel for children other than residential facility**

s 23 (prev s 15) ins 2004 No. 49 s 50(7)  
amd 2006 No. 39 s 512(1) sch 1; 2010 No. 5 s 65(27)  
renum 2010 No. 5 s 65(28)

**Businesses relating to licensed care service under Child Protection Act 1999**

s 24 (prev s 16) ins 2006 No. 17 s 56(4)  
renum 2010 No. 5 s 65(28)

**Non-State schools—directors of governing bodies and authorised persons**

s 25 ins 2010 No. 5 s 65(29)

**PART 3—EMPLOYMENT, OR CARRYING ON OF A BUSINESS, TO WHICH  
CHAPTER 8 OF THIS ACT DOES NOT APPLY**

pt hdg ins 2010 No. 5 s 65(29)  
amd 2010 No. 33 s 114(1)

**Person engaged in employment for the police service**

s 26 ins 2010 No. 5 s 65(29)

**Employment of relevant person under the Corrective Services Act 2006**

s 27 ins 2010 No. 5 s 65(29)

**Registered health practitioners**

s 28 ins 2010 No. 5 s 65(29)  
amd 2010 No. 33 s 114(2)

**Person providing only help or guidance to child employee**

s 29 ins 2010 No. 5 s 65(29)

**Ambulance officers**

s 30 ins 2010 No. 33 s 114(3)

**SCHEDULE 2—CURRENT SERIOUS OFFENCES**

sch hdg amd 2010 No. 5 s 66(1)

sch 2 sub 2004 No. 49 s 51  
amd 2005 No. 9 s 12; 2008 No. 18 s 46; 2008 No. 55 s 150 sch; 2010 No. 5 s  
66(2)–(5)

**SCHEDULE 3—REPEALED OR EXPIRED SERIOUS OFFENCES**

sch hdg amd 2010 No. 5 s 67(1)

sch 3 prev sch 3 om R1 (see RA s 40)  
pres sch 3 (prev sch 2A) ins 2004 No. 49 s 51  
renum 2010 No. 5 s 67(2)

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**SCHEDULE 4—CURRENT DISQUALIFYING OFFENCES**

**sch hdg** amd 2010 No. 5 s 68(1)  
**sch 4** (prev sch 2B) ins 2004 No. 49 s 51  
sub 2008 No. 18 s 47  
amd 2008 No. 55 s 150 sch; 2010 No. 5 s 68(2)–(6)  
renum 2010 No. 5 s 68(7)

**SCHEDULE 5—REPEALED OR EXPIRED DISQUALIFYING OFFENCES**

**sch hdg** amd 2010 No. 5 s 69(1)  
**sch 5** (prev sch 2C) ins 2004 No. 49 s 51  
sub 2008 No. 18 s 47  
renum 2010 No. 5 s 69(2)

**SCHEDULE 6—OFFENCES THAT MAY FORM BASIS OF INVESTIGATIVE INFORMATION**

ins 2010 No. 5 s 70

**SCHEDULE 7—DICTIONARY**

(prev sch 4) renum 2010 No. 5 s 71(3)  
def “**accreditation board**” ins 2010 No. 5 s 71(2)  
def “**active recreation**” ins 2004 No. 49 s 52(2)  
def “**adjunct care**” ins 2002 No. 55 s 196 sch 1  
amd 2011 No. 38 s 62(2)–(3)  
def “**advisory committee**” amd 2010 No. 5 s 56(3) sch 2 amdt 83  
def “**alternative certifications**” ins 2010 No. 33 s 115  
def “**amending Act**” ins 2010 No. 5 s 71(2)  
def “**amusement park**” ins 2004 No. 49 s 52(2)  
def “**appointed members**” ins 2004 No. 13 s 87(2)  
sub 2010 No. 5 s 56(3) sch 2 amdts 81–82  
def “**approved carer**” ins 2005 No. 40 s 69 sch  
def “**approved form**” amd 2010 No. 5 s 56(3) sch 2 amdt 84  
def “**approved foster carer**” ins 2004 No. 13 s 87(2)  
def “**approved teacher**” ins 2010 No. 5 s 71(2)  
def “**assistant commissioner**” ins 2004 No. 13 s 87(2)  
amd 2010 No. 5 s 56(3) sch 2 amdt 85  
def “**business**” ins 2004 No. 49 s 52(2)  
def “**carer**” ins 2002 No. 55 s 196 sch 1  
sub 2004 No. 13 s 87(1)–(2)  
def “**CDCRC**” ins 2004 No. 13 s 87(2)  
sub 2010 No. 5 s 56(3) sch 2 amdts 81–82  
def “**CDCRC member**” ins 2004 No. 13 s 87(2)  
sub 2010 No. 5 s 56(3) sch 2 amdts 81–82  
def “**chapter 8 reviewable decision**” ins 2010 No. 5 s 71(2)  
def “**charge**” amd 2002 No. 55 s 196 sch 1 (amdt could not be given effect);  
2003 No. 19 s 3 sch; 2000 No. 5 s 810 sch 4 (amd 2006 No. 26 ss 84, 86)  
def “**chief executive (child care)**” ins 2010 No. 5 s 71(2)  
def “**chief executive (child safety)**” ins 2004 No. 13 s 87(2)  
def “**chief executive (disability services)**” ins 2010 No. 5 s 71(2)  
def “**chief executive (education and care)**” ins 2011 No. 38 s 62(1)  
def “**chief executive (families)**” om 2004 No. 13 s 87(1)

- def “**child accommodation service**” amd 2005 No. 40 s 69 sch; 2008 No. 73 s 554 sch 1
- def “**child care**” ins 2002 No. 55 s 196 sch 1
- def “**child care centre**” ins 2002 No. 55 s 196 sch 1
- def “**child care service**” ins 2002 No. 55 s 196 sch 1
- def “**child guardian functions**” ins 2004 No. 13 s 87(2)  
amd 2010 No. 5 s 56(3) sch 2 amdt 86
- def “**child-related duties**” ins 2010 No. 33 s 115
- def “**child-related employment decision**” ins 2009 No. 24 s 39(2)  
sub 2010 No. 5 s 56(3) sch 2 amdts 81–82
- def “**child-related service outlet**” ins 2010 No. 5 s 71(2)
- def “**Children Services Tribunal**” om 2009 No. 24 s 39(1)
- def “**child safety department**” ins 2004 No. 13 s 87(2)
- def “**child safety system**” ins 2004 No. 13 s 87(2)
- def “**college of teachers**” ins 2010 No. 5 s 71(2)
- def “**commencement**” ins 2006 No. 17 s 57(1)  
amd 2008 No. 18 s 48(3)  
sub 2010 No. 5 s 56(3) sch 2 amdts 81–82
- def “**commercial service**” ins 2002 No. 55 s 196 sch 1
- def “**commission**” sub 2004 No. 13 s 87(1)–(2)
- def “**commissioner**” sub 2004 No. 13 s 87(1)–(2)
- def “**complaints agency**” amd 2001 No. 69 s 378 sch 1; 2001 No. 73 s 96 sch 1; 2006 No. 25 s 241(1) sch 3
- def “**constituting members**” ins 2009 No. 24 s 39(2)  
sub 2010 No. 5 s 56(3) sch 2 amdts 81–82
- def “**cousin**” ins 2002 No. 55 s 196 sch 1
- def “**CPOPOA disqualification order**” ins 2008 No. 18 s 48(2)  
amd 2008 No. 38 s 252 sch 3  
sub 2010 No. 5 s 71(1)–(2)
- def “**current**” sub 2004 No. 49 s 52(1)–(2); 2010 No. 5 s 71(1)–(2)
- def “**dealt with**” ins 2004 No. 49 s 52(2)
- def “**detention centre**” amd 1992 No. 44 s 341 sch 3 (ins 2002 No. 39 ss 115, 118); 2009 No. 34 s 45(1) sch pt 1
- def “**director**” ins 2010 No. 5 s 71(2)
- def “**disability services**” ins 2010 No. 5 s 71(2)
- def “**disability services regulated business**” ins 2010 No. 5 s 71(2)
- def “**disability services regulated employment**” ins 2010 No. 5 s 71(2)
- def “**disciplinary information**” ins 2004 No. 49 s 52(2)  
amd 2005 No. 47 s 329 sch 2  
sub 2010 No. 5 s 71(1)–(2)  
amd 2010 No. 14 s 124 sch; 2011 No. 38 s 62(4)–(5)
- def “**disqualification order**” ins 2004 No. 49 s 52(2)  
sub 2008 No. 18 s 48(1)–(2); 2010 No. 5 s 71(1)–(2)
- def “**disqualified person**” ins 2008 No. 18 s 48(2)  
sub 2010 No. 5 s 71(1)–(2)
- def “**disqualifying offence**” ins 2008 No. 18 s 48(2)  
sub 2010 No. 5 s 71(1)–(2)
- def “**education and care service**” ins 2011 No. 38 s 62(1)

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- def “**education and care service premises**” ins 2011 No. 38 s 62(1)
- def “**education provider**” ins 2004 No. 49 s 52(2)
- amd 2008 No. 25 s 164 sch 1; 2012 No. 11 s 43 sch pt 2
- def “**educator**” ins 2011 No. 38 s 62(1)
- def “**eligibility application**” ins 2008 No. 18 s 48(2)
- sub 2010 No. 5 s 71(1)–(2)
- def “**eligibility declaration**” ins 2008 No. 18 s 48(2)
- sub 2010 No. 5 s 71(1)–(2)
- def “**employing**” om 2004 No. 49 s 52(1)
- def “**employment**” ins 2004 No. 49 s 52(2)
- amd 2006 No. 17 s 57(2)–(3)
- sub 2010 No. 5 s 71(1)–(2)
- def “**employment-screening decision**” sub 2004 No. 49 s 52(1)–(2); 2010 No. 5 s 71(1)–(2)
- def “**engage**” ins 2010 No. 33 s 115
- def “**exceptional case**” ins 2010 No. 5 s 71(2)
- def “**excluding offence**” ins 2004 No. 49 s 52(2)
- om 2008 No. 18 s 48(1)
- def “**executive officer**” ins 2004 No. 49 s 52(2)
- def “**exemption notice**” ins 2010 No. 5 s 71(2)
- def “**exemption notice application**” ins 2010 No. 5 s 71(2)
- def “**final offender prohibition order**” ins 2008 No. 18 s 48(2)
- def “**final sexual offender order**” ins 2010 No. 5 s 71(2)
- def “**funded non-government service provider**” ins 2010 No. 5 s 71(2)
- def “**government entity**” sub 2004 No. 36 s 56(1)
- amd 2009 No. 25 s 83 sch
- def “**government service provider**” sub 2010 No. 5 s 56(3) sch 2 amdts 81–82
- def “**guardian**”, of a child, ins 2002 No. 55 s 196 sch 1
- amd 2009 No. 29 s 368 sch 2
- def “**guardian**”, of a person with a disability, ins 2010 No. 5 s 71(2)
- def “**health facility**” ins 2010 No. 5 s 71(2)
- def “**health professional**” ins 2010 No. 5 s 71(2)
- def “**health student**” ins 2010 No. 5 s 71(2)
- def “**health student regulated business**” ins 2010 No. 5 s 71(2)
- def “**health student regulated employment**” ins 2010 No. 5 s 71(2)
- def “**hospital**” reloc from sch 1 s 5 2010 No. 5 s 65(13)
- def “**imprisonment order**” ins 2004 No. 49 s 52(2)
- sub 2008 No. 18 s 48(1)–(2)
- def “**interim sexual offender order**” ins 2010 No. 5 s 71(2)
- def “**in the child safety system**” ins 2004 No. 13 s 87(2)
- sub 2010 No. 5 s 56(3) sch 2 amdts 81–82
- def “**investigative information**” ins 2004 No. 49 s 52(2)
- sub 2010 No. 5 s 71(1)–(2)
- def “**issue**” ins 2010 No. 5 s 71(2)
- def “**jurisdiction**” ins 2004 No. 49 s 52(2)
- def “**licensed care service**” ins 2006 No. 17 s 57(1)
- def “**licensed residential facility**” ins 2006 No. 17 s 57(1)



- def “**licensee**” ins 2004 No. 13 s 87(2)  
sub 2010 No. 5 s 56(3) sch 2 amdts 81–82
- def “**member**” ins 2006 No. 17 s 57(1)
- def “**minimum frequency for regulated employment**” ins 2010 No. 5 s 71(2)
- def “**monitoring functions**” ins 2004 No. 13 s 87(2)  
amd 2004 No. 36 s 56(2); 2010 No. 5 s 56(3) sch 2 amdt 87
- def “**negative exemption notice**” ins 2010 No. 5 s 71(2)
- def “**negative notice**” sub 2004 No. 49 s 52(1)–(2); 2010 No. 5 s 71(1)–(2)
- def “**new disqualified person**” ins 2010 No. 5 s 71(2)
- def “**new disqualifying offence**” ins 2010 No. 5 s 71(2)
- def “**new local government regulated business**” ins 2010 No. 5 s 71(2)
- def “**new local government regulated employment**” ins 2010 No. 5 s 71(2)
- def “**new relevant disqualified person**” ins 2010 No. 5 s 71(2)
- def “**notice for information**” sub 2010 No. 5 s 56(3) sch 2 amdts 81–82
- def “**notice of deemed withdrawal**” ins 2010 No. 5 s 71(2)
- def “**notifiable person**” ins 2010 No. 5 s 71(2)  
amd 2011 No. 38 s 62(6)–(7)
- def “**offender prohibition order**” ins 2008 No. 18 s 48(2)
- def “**Offender Prohibition Order Act**” ins 2008 No. 18 s 48(2)
- def “**Offender Reporting Act**” ins 2008 No. 18 s 48(2)
- def “**offender reporting obligations**” ins 2010 No. 5 s 71(2)
- def “**original reviews**” ins 2004 No. 13 s 87(2)  
sub 2010 No. 5 s 56(3) sch 2 amdts 81–82
- def “**other new regulated business**” ins 2010 No. 5 s 71(2)
- def “**other new regulated employment**” ins 2010 No. 5 s 71(2)
- def “**parent**” sub 2010 No. 5 s 56(3) sch 2 amdts 81–82
- def “**person with a disability**” ins 2010 No. 5 s 71(2)
- def “**police information**” ins 2004 No. 49 s 52(2)  
amd 2008 No. 18 s 48(4)
- def “**police service**” ins 2004 No. 13 s 87(2)
- def “**policies**” ins 2004 No. 13 s 87(2)  
sub 2010 No. 5 s 56(3) sch 2 amdts 81–82
- def “**positive exemption notice**” ins 2010 No. 5 s 71(2)
- def “**positive notice**” sub 2004 No. 49 s 52(1)–(2); 2010 No. 5 s 71(1)–(2)
- def “**positive notice blue card**” ins 2004 No. 49 s 52(2)
- def “**prescribed department**” amd 2004 No. 13 s 87(3)–(4)
- def “**prescribed fee**” ins 2010 No. 5 s 71(2)
- def “**prescribed notice**” ins 2004 No. 49 s 52(2)  
sub 2010 No. 5 s 71(1)–(2)
- def “**prescribed notice application**” ins 2010 No. 5 s 71(2)
- def “**prescribed period**” ins 2010 No. 5 s 71(2)
- def “**prescribed person**” ins 2008 No. 18 s 48(2)
- def “**prescribed police information**” ins 2010 No. 5 s 71(2)
- def “**previous section 97**” ins 2010 No. 5 s 71(2)
- def “**private service provider**” sub 2010 No. 5 s 56(3) sch 2 amdts 81–82
- def “**proof of identity documents**” ins 2010 No. 33 s 115
- def “**provisionally approved carer**” ins 2006 No. 17 s 57(1)

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- def “**QCAT child-related employment review**” ins 2009 No. 24 s 39(2)  
sub 2010 No. 5 s 56(3) sch 2 amdts 81–82
- def “**QCAT president**” ins 2009 No. 24 s 39(2)  
sub 2010 No. 5 s 56(3) sch 2 amdts 81–82
- def “**registered health practitioner**” amd 2001 No. 3 s 241 sch 2; 2001 No. 4 s 267 sch 2; 2001 No. 5 s 247 sch 2; 2001 No. 7 s 302 sch 2; 2001 No. 8 s 237 sch 2; 2001 No. 9 s 239 sch 2; 2001 No. 10 s 237 sch 2; 2001 No. 12 s 245 sch 2; 2001 No. 13 s 242 sch 2; 2001 No. 14 s 238 sch 2; 2001 No. 15 s 255 sch 2; 2001 No. 16 s 236 sch 2  
sub 2010 No. 5 s 71(1)–(2); 2010 No. 14 s 124 sch  
amd 2012 No. 10 s 9
- def “**registered teacher**” sub 2005 No. 47 s 329 sch 2; 2010 No. 5 s 71(1)–(2)
- def “**regulated business**” sub 2010 No. 5 s 71(1)–(2)
- def “**regulated employment**” sub 2010 No. 5 s 71(1)–(2)
- def “**relative**” ins 2002 No. 55 s 196 sch 1  
sub 2010 No. 5 s 71(1)–(2)
- def “**relevant disqualified person**” ins 2008 No. 18 s 48(2)  
sub 2010 No. 5 s 71(1)–(2)
- def “**relevant disqualified person decision**” ins 2010 No. 5 s 71(2)
- def “**relevant provider**” sub 2010 No. 5 s 56(3) sch 2 amdts 81–82
- def “**relevant review and appeal information**” ins 2010 No. 5 s 71(2)
- def “**relevant service providers**” ins 2004 No. 13 s 87(2)  
sub 2010 No. 5 s 56(3) sch 2 amdts 81–82
- def “**religious representative**” ins 2004 No. 49 s 52(2)
- def “**reviewable decision**” ins 2004 No. 13 s 87(2)  
sub 2010 No. 5 s 56(3) sch 2 amdts 81–82
- def “**review criteria**” ins 2004 No. 13 s 87(2)  
sub 2010 No. 5 s 56(3) sch 2 amdts 81–82
- def “**school**” sub 2001 No. 60 s 218 sch 1  
amd 2006 No. 39 s 512(1) sch 1
- def “**section 93A transcript**” ins 2010 No. 5 s 71(2)
- def “**serious child-related sexual offence**” ins 2004 No. 49 s 52(2)  
om 2008 No. 18 s 48(1)
- def “**serious offence**” sub 2004 No. 49 s 52(1)–(2); 2010 No. 5 s 71(1)–(2)
- def “**serious offence involving a child**” om 2004 No. 49 s 52(1)
- def “**service provider**” sub 2010 No. 5 s 56(3) sch 2 amdts 81–82
- def “**sexual offender order**” ins 2010 No. 5 s 71(2)
- def “**sport**” ins 2004 No. 49 s 52(2)
- def “**staff member**” amd 2002 No. 55 s 196 sch 1  
sub 2010 No. 5 s 71(1)–(2)  
amd 2011 No. 38 s 62(8)–(9)
- def “**State Coroner**” ins 2004 No. 13 s 87(2)
- def “**suitability notice**” om 2004 No. 49 s 52(1)
- def “**teacher registration information**” ins 2003 No. 88 s 9  
om 2005 No. 47 s 329 sch 2
- def “**temporary offender prohibition order**” ins 2008 No. 18 s 48(2)
- def “**trainee student**” ins 2004 No. 49 s 52(2)
- def “**transitioning person**” ins 2010 No. 5 s 71(2)

def **“unamended Act”** ins 2010 No. 5 s 71(2)  
def **“unit of public administration”** sub 2001 No. 69 s 378 sch 1  
def **“visitable home”** ins 2004 No. 13 s 87(2)  
    sub 2010 No. 5 s 56(3) sch 2 amdts 81–82  
def **“visitable site”** sub 2004 No. 13 s 87(1)–(2)  
    sub 2010 No. 5 s 56(3) sch 2 amdts 81–82  
def **“volunteer”** ins 2004 No. 49 s 52(2)  
    sub 2010 No. 5 s 71(1)–(2)  
def **“woman”** ins 2004 No. 13 s 87(2)  
def **“work”** sub 2004 No. 49 s 52(1)–(2)  
    amd 2010 No. 5 s 56(3) sch 2 amdt 88

## 7           **Forms notified or published in the gazette**

Lists of forms are no longer included in reprints. Now see the separate forms document published on the website of the Office of the Queensland Parliamentary Counsel at <[www.legislation.qld.gov.au](http://www.legislation.qld.gov.au)> under Information—Current annotations. This document is updated weekly and the most recent changes are marked with a change bar.

## 8           **Information about retrospectivity**

Retrospective amendments that have been consolidated are noted in the list of legislation and list of annotations. Any retrospective amendment that has not been consolidated is noted in an editor’s note to the text.