



Criminal Law (Rehabilitation of Offenders) Act 1986

Current as at 27 October 2017

© State of Queensland 2019



This work is licensed under a Creative Commons Attribution 4.0 International License.



Queensland

Criminal Law (Rehabilitation of Offenders) Act 1986

Contents

| | | Page |
|----|---|------|
| 1 | Short title | 3 |
| 2 | Commencement | 3 |
| 3 | Interpretation | 3 |
| 4 | Construction of Act | 5 |
| 5 | Matter excluded from criminal history | 6 |
| 6 | Non-disclosure of convictions upon expiration of rehabilitation period | 6 |
| 7 | Section 6 not applicable in certain cases | 7 |
| 8 | Lawful to deny certain convictions | 8 |
| 9 | Duty to disregard certain convictions | 8 |
| 9A | Disclosure of particulars in special cases | 9 |
| 10 | Permit to disclose convictions | 15 |
| 11 | Revival of convictions | 15 |
| 12 | Offence provision | 16 |
| 13 | Regulations | 17 |
| 14 | Approved forms | 17 |
| 15 | Transitional provision for Penalties and Sentences (Drug and Alcohol Treatment Orders) and Other Legislation Amendment Act 2017 | 17 |

Criminal Law (Rehabilitation of Offenders) Act 1986

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

1 Short title

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

2 Commencement

- (1) Section 1 and this section shall commence on the date this Act is assented to for and on behalf of Her Majesty.
- (2) Except as is provided by subsection (1), the provisions of this Act shall commence on a date appointed by proclamation.
- (3) The date so appointed is referred to as the date of commencement of this Act.

3 Interpretation

- (1) In this Act—

approved form means a form approved under section 14.

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

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

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

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

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

indictment, for this subsection, definition *rehabilitation period*, paragraph (a), for a conviction recorded elsewhere than in Queensland, means a written charge preferred against an accused person before a court other than a court of like jurisdiction to a Magistrates Court exercising summary jurisdiction.

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

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

rehabilitation period means—

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

- (ii) where an order of a court made in relation to the conviction has not been satisfied within that period of 5 years—a period terminating on the date the order is satisfied;

whichever period is the later to expire.

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

simple offence means—

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

term of imprisonment see the *Penalties and Sentences Act 1992*, section 4.

- (2) A rehabilitation period applies in relation to a conviction of a person for an offence only if—
 - (a) no term of imprisonment is imposed on the person for the conviction; or
 - (b) a term of imprisonment of not more than 30 months is imposed on the person for the conviction.
- (2A) To remove any doubt, it is declared that, for subsection (2)(b), it is irrelevant whether or not the person is ordered to be imprisoned for any of the term of imprisonment imposed.
- (3) A provision of law or rule of legal practice that requires or authorises disclosure of convictions or charges made against any person shall be construed as requiring or authorising disclosure of the criminal history of that person.

4 Construction of Act

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

- (2) This Act shall be construed so as not to relieve any person from a responsibility that rests on the person to disclose his or her criminal history in connection with seeking admission to or offering himself or herself for selection for any profession, occupation or calling prescribed by regulation.
- (3) This Act shall not be construed to prohibit or hinder the provision by any person of particulars of the criminal history of any person to a Crown prosecutor, a police prosecutor or other person prosecuting upon a charge of an offence with a view to those particulars being disclosed to the court in the event of the defendant being convicted.

5 Matter excluded from criminal history

- (1) It is declared that a conviction that is set aside or quashed and a charge are not part of the criminal history of any person.
- (2) A person shall not be required or asked to disclose and, if so required or asked, shall not be obliged to disclose for any purpose a conviction that is not part of the person's criminal history or of the criminal history of another person or a charge made against the person or another person.
- (3) Subsection (2) does not apply where the requirement or request to disclose a conviction or charge therein referred to is made—
 - (a) for the purposes of an inquiry being conducted pursuant to authority conferred by or under an Act; or
 - (b) in criminal or civil proceedings before a court if the fact of the conviction or charge is relevant to an issue in the proceedings or the court has granted permission for the requisition or request to be made.

6 Non-disclosure of convictions upon expiration of rehabilitation period

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

rehabilitation period has expired, shall disclose the conviction unless—

- (a) being the person against whom the conviction is recorded—the person wishes to disclose the conviction; or
- (b) the person makes the disclosure under the authority of a permit granted under section 10 in accordance with the conditions (if any) of the permit; or
- (c) the person makes the disclosure in circumstances that constitute an exception to the operation of section 9(1) or that are expressed by section 9(2) to be a case to which the provisions of section 9(1) do not apply.

7 Section 6 not applicable in certain cases

- (1) The provisions of section 6 do not apply in relation to—
 - (a) a report of judicial proceedings in a recognised series of law reports;
 - (b) a report or commentary upon judicial proceedings made in good faith for educational, scientific or professional purposes or in the course of historical research or a lecture, course or discussion given or held for any such purpose;
 - (c) a report or disclosure made by any person who, pursuant to any provision of law, is required to make a report that includes reference to or a disclosure of a conviction referred to in section 6;
 - (d) a disclosure made in discharge of a duty under the *Public Records Act 2002*;
 - (e) a disclosure made under an Act of a record kept by a court or tribunal or an official record of a recording service.
- (2) The provisions of section 6 do not apply in relation to—
 - (a) the dissemination into, in or from Queensland by members of a police service (whether of Queensland or elsewhere) or by any other person in discharge of the

person's duties within a police department (whether of Queensland or elsewhere) of information concerning any person;

- (b) the filing and recording by members of the police service or any other person in discharge of the person's duties within the department that deals with police services of information in the possession of that police force;
 - (c) the use in police practice, with a view to the prevention of offences or the detection and punishment of offenders, of information in the possession of the police service.
- (3) In this section—

official record, of a recording service, means a record made under the *Recording of Evidence Act 1962*, section 4 by the recording service.

8 Lawful to deny certain convictions

- (1) Where the rehabilitation period has expired in relation to a conviction recorded against any person and the conviction has not been revived in respect of the person, it is lawful to claim, upon oath or otherwise, that the person has not suffered the conviction, except upon an occasion when, as provided by section 4, this Act is to be construed so as not to prejudice a provision of law or rule of legal practice or to relieve from a responsibility.
- (2) Where a person has made a claim declared lawful by subsection (1), evidence shall not be admissible in any proceeding to show the claim to be false.

9 Duty to disregard certain convictions

- (1) Subject to subsection (2), any person or authority charged with the function of assessing a person's fitness to be admitted to a profession, occupation or calling or for any other purpose shall disregard any conviction that is part of the person's criminal history in relation to which the rehabilitation period

has expired and which has not been revived in respect of the person unless—

- (a) the person to be assessed is expressly required by law to make disclosure of his or her criminal history; or
 - (b) the person or authority making the assessment is expressly required by law to have regard to the criminal history of the person to be assessed; or
 - (c) the person to be assessed is, by reason of section 4, not relieved from responsibility to disclose his or her criminal history.
- (2) The provisions of subsection (1) do not apply where an assessment is to be made of an offender with a view to a court, or the Parole Board Queensland established under the *Corrective Services Act 2006*, making an appropriate order in relation to the person.

9A Disclosure of particulars in special cases

- (1) Notwithstanding any other provision of this Act, a person who is an applicant for a position, office or status specified in column 1 of the following table and who is requested or required in furtherance of the person's application to furnish the information hereinafter in this subsection referred to shall disclose—
- (a) the person's criminal history concerning offences specified in column 2 and set opposite the position, office or status applied for; and
 - (b) convictions recorded against the person in respect of offences specified in column 2 and set opposite the position, office or status applied for, being convictions that pursuant to any law are to be deemed not to be convictions—

Table

| Column 1 Position, office or status | Column 2 Offences |
|---|---|
| 1 Police officer. | 1 Contraventions of or failures to comply with any provisions of law, whether committed in Queensland or elsewhere. |
| 1A Persons other than police officers who are engaged or employed in the Queensland Police Service. | Contraventions of or failure to comply with any provisions of law, whether committed in Queensland or elsewhere. |
| 1B External service providers within the meaning of the <i>Police Service Administration Act 1990</i> . | Contraventions of or failure to comply with any provisions of law, whether committed in Queensland or elsewhere. |
| 1C Applicants for employment in the Queensland Police Service. | Contraventions of or failure to comply with any provisions of law, whether committed in Queensland or elsewhere. |
| 1D Persons performing functions for the Queensland Police Service under a contract for services. | Contraventions of or failure to comply with any provisions of law, whether committed in Queensland or elsewhere. |
| 2 Person employed in the department in which the <i>Corrective Services Act 2006</i> is administered as a corrective services officer under that Act. | 2 Contraventions of or failures to comply with any provisions of law, whether committed in Queensland or elsewhere. |
| 3 Justice of the peace or commissioner for declarations. | 3 Contraventions of or failures to comply with any provision of law, whether committed in Queensland or elsewhere. |

| Column 1 Position, office or status | Column 2 Offences |
|---|---|
| 4 Licensee under the <i>Casino Control Act 1982</i> , part 4. | 4 Contraventions of or failures to comply with any provision of law, whether committed in Queensland or elsewhere. |
| 5(1) Employee in the Department of Education as— (a) a teacher; or (b) a teacher’s aide; or (c) a member of staff (administrative or ground) at a State school. | 5 Offences defined in the Criminal Code, chapter 22, 32, 33 or 34 or the <i>Drugs Misuse Act 1986</i> part 2, and contraventions, committed in Queensland or elsewhere, of any provision of law constituting an offence of a similar nature or involving an assault of a sexual nature. |
| (2) An elected member (other than an elected student member), or appointed member, of a school council, within the meaning of the <i>Education (General Provisions) Act 2006</i> . | |
| 6 A person registered, licensed or approved under the <i>Child Protection Act 1999</i> . | 6 Contraventions of any provision of law committed in Queensland or elsewhere. |
| 7A Person employed by TAFE Queensland under the <i>TAFE Queensland Act 2013</i> as— (a) an educational administrator; or (b) a teacher; or (c) an educational assistant; or (d) a member of TAFE Queensland’s administrative, building or ground staff. | 7A(1) An offence defined in the Criminal Code, chapter 22, 32, 33 or 34 or the <i>Drugs Misuse Act 1986</i> , part 2. (2) An offence of a similar nature committed in Queensland or elsewhere. (3) An offence of a sexual nature whether committed in Queensland or elsewhere. |

| Column 1 Position, office or status | Column 2 Offences |
|--|---|
| <p>8 Person employed at the Queensland Agricultural Training Colleges under the <i>Queensland Agricultural Training Colleges Act 2005</i> as—</p> <p>(a) the principal executive officer; or</p> <p>(b) a director; or</p> <p>(c) an instructor; or</p> <p>(d) a member of the administrative, building, domestic or ground staff.</p> | <p>8(1) An offence defined in the Criminal Code, chapter 22, 32, 33 or 34 or the <i>Drugs Misuse Act 1986</i>, part 2.</p> <p>(2) An offence of a similar nature committed in Queensland or elsewhere.</p> <p>(3) An offence of a sexual nature whether committed in Queensland or elsewhere.</p> |
| <p>9 Security provider within the meaning of the <i>Security Providers Act 1993</i>.</p> | <p>9 Contraventions of any law, whether committed in Queensland or elsewhere.</p> |
| <p>10 Security officer under the <i>State Buildings Protective Security Act 1983</i>.</p> | <p>10 Contraventions of any law, whether committed in Queensland or elsewhere.</p> |
| <p>11 An applicant for a licence or a licensee under the <i>Prostitution Act 1999</i>.</p> | <p>11 Contraventions of any law, whether committed in Queensland or elsewhere.</p> |
| <p>12 An applicant for an approved manager's certificate or an approved manager under the <i>Prostitution Act 1999</i>.</p> | <p>12 Contraventions of any law, whether committed in Queensland or elsewhere.</p> |
| <p>13 An applicant for an adult entertainment permit under the <i>Liquor Act 1992</i>.</p> | <p>13 Contraventions of any law, whether committed in Queensland or elsewhere.</p> |
| <p>14 An applicant for an approval to be a controller under the <i>Liquor Act 1992</i>.</p> | <p>14 Contraventions of any law, whether committed in Queensland or elsewhere.</p> |
| <p>15 Person employed in the Office of the Director of Public Prosecutions.</p> | <p>15 Contraventions of any law, whether committed in Queensland or elsewhere.</p> |

| Column 1 Position, office or status | Column 2 Offences |
|--|---|
| 16 An applicant for membership of a registered political party. | 16 Contraventions of a disqualifying electoral offence within the meaning of the <i>Electoral Act 1992</i> . |
| 17 A candidate for election to the office of chairperson, mayor, president, councillor or member of a local government. | 17(1) Contraventions of a disqualifying electoral offence within the meaning of the <i>Electoral Act 1992</i> . (2) Contraventions of an offence that would be a disqualifying electoral offence within the meaning of the <i>Electoral Act 1992</i> , except that the offender was convicted of the offence before the commencement of the <i>Electoral and Other Acts Amendment Act 2002</i> . |
| 18 A candidate for election as a member of the Legislative Assembly. | 18(1) Contraventions of a disqualifying electoral offence within the meaning of the <i>Electoral Act 1992</i> . (2) Contraventions of an offence that would be a disqualifying electoral offence within the meaning of the <i>Electoral Act 1992</i> , except that the offender was convicted of the offence before the commencement of the <i>Electoral and Other Acts Amendment Act 2002</i> . |
| 20 An applicant for admission to the legal profession under the admission rules made under the <i>Supreme Court of Queensland Act 1991</i> , section 85. | 20 Contraventions of any law, whether committed in Queensland or elsewhere. |

| Column 1 Position, office or status | Column 2 Offences |
|---|---|
| 21 An applicant for the consent of the Solicitors' Board to enter articles of clerkship under the <i>Solicitors' Admission Rules 1968</i> . | 21 Contraventions of any law, whether committed in Queensland or elsewhere. |
| 23 An applicant for appointment as an associate to a Supreme Court judge or a District Court judge. | 23 Contraventions of any law, whether committed in Queensland or elsewhere. |
| 24 An applicant for the grant of a practising certificate under the <i>Legal Profession Act 2007</i> . | 24 Contraventions of any law whether committed in Queensland or elsewhere. |
| | 25 Contraventions of any law whether committed in Queensland or elsewhere. |

- (2) Notwithstanding any other provision of this Act, the commissioner of the police service or a person delegated by the commissioner for the purpose, upon request made by a person having in the opinion of the commissioner or such delegated person a legitimate and sufficient interest in obtaining the information, shall disclose to the person making the request the criminal history and convictions (such as is or are referred to in subsection (1) and is or are contained in the commissioner's records) of a person referred to in subsection (1) where that person would be required by that subsection to disclose such criminal history and convictions.
- (3) No provision of this Act shall be construed to render any person liable to punishment or the Crown or any person liable to action at the suit of another—
- (a) on account of a disclosure referred to in subsection (2); or
 - (b) on account of any person having required or sought to be made a disclosure required by subsection (1) or (2) to be made; or

- (c) on account of any person having had regard to any particular furnished in a disclosure required by subsection (1) or (2) to be made.
- (4) Subsections (1) and (2) shall operate without prejudice to any other provision of this Act that authorises or excuses the disclosure of any particular or that preserves any disclosure of particulars from the operation of any provision of this Act.

10 Permit to disclose convictions

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

11 Revival of convictions

- (1) Subject to subsection (2), where a person who has incurred a conviction—
 - (a) in relation to which the rehabilitation period is running; or
 - (b) in relation to which the rehabilitation period has expired;is again convicted for an offence whether in Queensland or elsewhere—
 - (c) in the case referred to in provision (a)—the rehabilitation period in relation to that conviction shall commence again to run on the date the offender is again convicted and any part of the rehabilitation period that elapsed between that conviction and that date shall be disregarded; and
 - (d) in the case referred to in provision (b)—that conviction shall be taken to be revived and the rehabilitation period

in relation to that conviction shall commence again to run on the date of the revival of that conviction.

- (1A) However, if the subsequent conviction is quashed on appeal, the provisions of paragraph (c) or (d) (whichever is appropriate) shall be deemed to have had no application and the other provisions of this Act shall have application as if the subsequent conviction had not been incurred.
- (2) Subsection (1) shall not apply where the offence for which a person is subsequently convicted is a simple offence or a regulatory offence or an offence that if committed in Queensland would be a simple offence or a regulatory offence or an offence in respect of which the offender could be dealt with in summary proceedings unless the court by which the person is subsequently convicted is satisfied that, having regard to the public interest, previous convictions recorded against the person, or any of them, should be revived and pronounces accordingly in its order.
- (3) Where a court pronounces in its order that 1 or some only of several convictions recorded against a person are to be revived the provisions of subsection (1) shall apply in respect of that conviction or those convictions.

12 Offence provision

- (1) A person who contravenes any provision of this Act commits an offence against this Act and is liable, on summary conviction, to maximum penalty of 100 penalty units.
- (2) A prosecution for a contravention of any provision of this Act shall be upon the complaint of a person authorised in writing in that behalf by the Minister and of no other person.
- (3) A document purporting to be an authorisation referred to in subsection (2) shall, in all proceedings, be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein.

13 Regulations

- (1) The Governor in Council may make regulations for the purposes of this Act.
- (2) A regulation may prescribe fees payable for the purposes of the Act.

14 Approved forms

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

15 Transitional provision for Penalties and Sentences (Drug and Alcohol Treatment Orders) and Other Legislation Amendment Act 2017

- (1) Amended section 3 applies in relation to a conviction whether recorded before or after the commencement.
- (2) If, under amended section 3, no rehabilitation period applies in relation to a conviction recorded before the commencement—
 - (a) any rehabilitation period in relation to the conviction that would otherwise have been capable of running under the pre-amended Act before the commencement is taken not to have run; and
 - (b) any rehabilitation period in relation to the conviction that would otherwise have expired under the pre-amended Act before the commencement is taken not to have expired.
- (3) In this section—

amended section 3 means section 3 as amended by the *Penalties and Sentences (Drug and Alcohol Treatment Orders) and Other Legislation Amendment Act 2017*.

pre-amended Act means this Act as in force from time to time before the commencement.