

Queensland



CHILD CARE AMENDMENT ACT 2000

Act No. 38 of 2000



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Queensland



Child Care Amendment Act 2000

Act No. 38 of 2000

An Act to amend the *Child Care Act 1991*

[Assented to 13 October 2000]

The Parliament of Queensland enacts—

Short title

1. This Act may be cited as the *Child Care Amendment Act 2000*.

Commencement

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

Act amended

3. This Act amends the *Child Care Act 1991*.

Amendment of s 3 (Definitions)

4. Section 3—

insert—

‘ “independent home-based care” see section 73A.’.

Amendment of s 4 (Objects of Act)

5. Section 4(1)—

insert—

- ‘(i) to establish minimum safeguards for the provision of independent home-based care.’.

Amendment of s 41 (Application for review of chief executive’s decisions)

6. Section 41(1)—

insert—

- ‘(i) to give a person a prohibition notice under section 73H;’.

Insertion of new pt 8A

7. After section 73—

insert—

‘PART 8A—INDEPENDENT HOME-BASED CARE***‘Division 1—Preliminary*****‘Definitions for pt 8A**

‘73A. In this part—

“carer” means a person providing independent home-based care.

“disqualified person” means a person—

- (a) with a conviction for a disqualifying offence; or
- (b) for whom a prohibition notice is in force.

“disqualifying offence” means—

- (a) an offence against the Criminal Code, part 4 or 5;¹ or
- (b) an offence against the repealed *Children’s Services Act 1965*, section 69(1) or (1A);² or
- (c) an offence against a law outside Queensland that, if committed in Queensland, would be an offence against a law mentioned in paragraph (a) or (b).

“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 in relation to the child that,

¹ Criminal Code, part 4 (Acts injurious to the public in general) or 5 (Offences against the person and relating to marriage and parental rights and duties and against the reputation of individuals)

² *Children’s Services Act 1965*, section 69 (Offences in relation to the health of children)

by law, parents have in relation to their children;³

- (b) a person who has custody or guardianship of the child under a court order;
- (c) a carer of the child under the *Child Protection Act 1999*;
- (d) a person who is entitled to the care and custody of the child under the *Adoption of Children Act 1964*.

“home” means residential premises.

“independent home-based care” means care provided by a person to a child in the course of an independent home-based care service, but does not include—

- (a) care of a child of whom the person is a relative or guardian; or
- (b) care of a child in the child’s home.

“independent home-based care service” means an operation conducted for regularly providing care of 1 or more children in a home, for reward, but does not include—

- (a) an operation to provide child care under a licence; or
- (b) an operation principally conducted to provide instruction in a particular activity, for example, dance, music or a sport; or
- (c) a licensed care service under the *Child Protection Act 1999*.

“parent”, of a child, includes—

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

“prohibition notice” means a notice, given under division 3, prohibiting a person from providing independent home-based care.

³ See the *Family Law Act 1975* (Cwlth), part 7 (Children), division 2 (Parental responsibility).

“relative”, of a child—

- (a) means the child’s parent, grandparent, great grandparent, brother, sister, uncle, aunt, niece, nephew or cousin; and
- (b) for an Aboriginal child, includes a person who, under Aboriginal tradition, is regarded as a relative mentioned in paragraph (a); and
- (c) for a Torres Strait Islander child, includes a person who, under Island custom, is regarded as a relative mentioned in paragraph (a); and
- (d) for a child 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—

The daughter of a child’s step-parent is a relative of the child.

‘Division 2—Restrictions applying to independent home-based care

‘Disqualified person must not provide care

‘73B. A disqualified person must not provide independent home-based care.

Maximum penalty—

- (a) for a person with a conviction for a disqualifying offence or for whom a prohibition notice given under section 73G or 73H is in force—100 penalty units; or
- (b) otherwise—50 penalty units.

‘Homes in which care must not be provided

‘73C. A person (the **“first person”**) must not provide independent home-based care at a home if—

- (a) another person who ordinarily resides in the home is a disqualified person; and

- (b) the first person knows, or ought reasonably to know, the other person is a disqualified person.

Maximum penalty—

- (a) if the other person is a person with a conviction for a disqualifying offence or a person for whom a prohibition notice given under section 73G or 73H is in force—100 penalty units; or
- (b) otherwise—50 penalty units.

‘Carers must be adults

‘73D.(1) A person must not conduct an independent home-based care service for which any of the carers is a child.

Maximum penalty—50 penalty units.

‘(2) It is a defence to a charge of an offence against subsection (1) to prove the person sighted reasonable evidence that the relevant carer was an adult.

‘Maximum numbers of children receiving care

‘73E.(1) This section applies to a person while the person is providing independent home-based care at a home.

‘(2) The person must not care, at one time, for—

- (a) more than 6 children of less than 12 years; or
- (b) more than 4 children of less than 6 years.

Maximum penalty—100 penalty units.

‘(3) For subsection (2), the number of children for whom the person is caring at a particular time—

- (a) does not include the person’s own children who are at least 6 years; but
- (b) otherwise—
 - (i) includes all of the children the person is caring for at the time, even if the care being provided to some of the children by the person is not independent home-based care; and

- (ii) includes all the children at the home being provided with independent home-based care at the time, even if some of the care is being provided by someone else.

Examples—

In each of the following examples, all of the children are less than 12 years and are being cared for at someone's home.

1. At a particular time, X is caring for 7 children, all of whom are relatives. X is not contravening subsection (2)(a).
2. At a particular time, X is caring for 7 children, all of whom are relatives. At the same time, X is also providing independent home-based care for 1 other child. None of the children is X's own child. X is contravening subsection (2)(a).
3. At a particular time, X is providing independent home-based care for 6 children. At the same time, X is providing care for 2 of X's own children, both of whom are more than 6 years. X is not contravening subsection (2)(a).
4. At a particular time, X is providing independent home-based care for 6 children. At the same time, X is providing care for 2 of X's own children, one of whom is less than 6 years. X is contravening subsection (2)(a).
5. At a particular time, X is providing independent home-based care for 5 children. At the same time, X is caring for 2 other children, for which X does not receive any reward. None of the children is X's own child. X is contravening subsection (2)(a).
6. At a particular time, X and Y are providing independent home-based care for 7 children at X's home. X is mainly caring for 3 of the children and Y is mainly caring for the other 4 children. Both X and Y are contravening subsection (2)(a).
7. At a particular time, X is providing independent home-based care for 3 children at X's home. Y is also at X's home caring for 4 of Y's own children. X is not caring for Y's children. Neither X nor Y is contravening subsection (2)(a).

‘Public liability insurance

‘73F. A person must not provide independent home-based care unless the person ensures there is a policy of public liability insurance, for at least

\$5 million, in force for the care.

Maximum penalty—40 penalty units.

Division 3—Monitoring and disqualifications

‘Criminal history checks

‘73G.(1) An authorised person may ask someone (the **“respondent”**) who is an adult to give a written consent to a criminal history check if the authorised person knows, or reasonably suspects, that the respondent—

- (a) is providing, or from time to time provides, independent home-based care; or
- (b) ordinarily resides in a home at which independent home-based care is provided.

‘(2) The consent must be given by completing and signing the approved form.

‘(3) When asking for the consent, the authorised person must warn the respondent that, if the respondent does not give the consent, the authorised person must give the respondent a prohibition notice.

‘(4) If the respondent refuses to give the consent, the authorised person must give the respondent a prohibition notice.

‘(5) The chief executive must cancel the prohibition notice if—

- (a) the respondent later gives the consent; and
- (b) the chief executive does not learn, by conducting a criminal history check, that the respondent has a conviction for a disqualifying offence; and
- (c) the chief executive does not decide to disqualify the respondent under section 73H.

‘Disqualification of person charged with disqualifying offences

‘73H.(1) This section applies if—

- (a) the chief executive conducts a criminal history check of a person

who has given consent under this division; and

- (b) the person does not have a conviction for a disqualifying offence but has, at any time, been charged with a disqualifying offence.

‘(2) The chief executive may give the person a prohibition notice if the chief executive is satisfied it is an exceptional case in which it would not be in the best interests of children for independent home-based care to be provided by the person or provided at the home in which the person ordinarily resides.

‘(3) In making a decision about a person under subsection (2), the chief executive must have regard to—

- (a) the number of charges in the person’s criminal history; and
- (b) for each of the charges—
 - (i) the seriousness of the offence and its relevance to the provision of independent home-based care; and
 - (ii) when the offence was alleged to have been committed; and
 - (iii) whether the person was convicted, found guilty or acquitted, or whether the prosecution process ended in another way or has not ended.

‘(4) Before giving a person a prohibition notice under this section, the chief executive—

- (a) must give the person a written notice—
 - (i) stating the information about the person’s criminal history, relating to each disqualifying offence, of which the chief executive is aware; and
 - (ii) inviting the person to give the chief executive, within a stated time, a submission about the information or about the appropriateness of independent home-based care being provided by the person or provided at the home in which the person ordinarily resides; and
- (b) must consider any submission received from the person within the stated time.

‘(5) The time stated for giving the submission must be reasonable and, in any case, at least 7 days after the chief executive gives the notice to the person.

‘Checks about insurance cover

‘**73I.(1)** If an authorised person knows, or reasonably suspects, someone (the **“respondent”**) is providing independent home-based care, the authorised person may ask the respondent to produce to the authorised person, within a stated time of at least 2 business days, an insurance compliance document relating to the care.

‘(2) When making the request, the authorised person must warn the respondent that, if the respondent fails to comply with the request, the authorised person must give the respondent a prohibition notice.

‘(3) If the respondent fails to comply with the request, the authorised person must give the respondent a prohibition notice.

‘(4) If the respondent later produces an insurance compliance document relating to the care, the chief executive must cancel the prohibition notice given because of the failure and notify the respondent of the cancellation.

‘(5) In this section—

“insurance compliance document”, relating to independent home-based care, means a document evidencing that there is a policy of public liability insurance, mentioned in section 73F,⁴ in force for the care.

‘Notification about a person’s disqualification

‘**73J.(1)** Subsection (2) applies if—

- (a) a person (the **“first person”**) is a disqualified person; and
- (b) an authorised person knows, or reasonably suspects, that another person (the **“second person”**) ordinarily resides in, or provides independent home-based care at, the home in which the first person ordinarily resides.

⁴ Section 73F (Public liability insurance)

‘(2) The authorised person may notify the second person that the first person is a disqualified person.

‘(3) If, after the second person is notified, the first person stops being a disqualified person, the authorised person must notify the second person as soon as practicable unless, after reasonable inquiries, the authorised person can not locate the second person.

‘Checks on age of carers

‘73K.(1) This section applies if an authorised person reasonably suspects—

- (a) an independent home-based care service is being conducted in contravention of section 73D;⁵ and
- (b) someone (the **“respondent”**)—
 - (i) is a carer in the service; and
 - (ii) is not an adult.

‘(2) The authorised person may—

- (a) require the respondent to state the respondent’s age; and
- (b) if the respondent states an age that the authorised person reasonably suspects is false, require the respondent to give evidence of the correctness of the stated age within a stated reasonable time.

‘(3) When making a requirement under subsection (2), the authorised person must warn the respondent that, if the respondent fails to comply with the requirement, the authorised person must give the respondent a prohibition notice.

‘(4) If the respondent fails to comply with the requirement, the authorised person must give the respondent a prohibition notice.

‘(5) If the respondent later complies with the requirement, the chief executive must cancel the prohibition notice given because of the failure and notify the respondent of the cancellation.’.

⁵ Section 73D (Carers must be adults)

Amendment of s 75 (Disclosure of criminal history)**8.(1)** Section 75(1)—*insert—*

- ‘(i) a person who consents to a criminal history check under section 73G.⁶’.

(2) Section 75(2), after ‘a person’—*insert—*

- ‘mentioned in subsection (1)(a) to (h)’.

(3) Section 75—*insert—*

‘**(2A)** The criminal history of a person mentioned in subsection (1)(i) consists of the following—

- (a) each charge made against the person for a disqualifying offence;
- (b) whether the person was convicted, found guilty or acquitted of the offence, or whether the prosecution process ended in another way or has not ended;
- (c) the date, and a brief description of the circumstances, of each conviction or charge for a disqualifying offence.’.

(4) Section 75—*insert—*

- ‘**(4)** In this section—

“disqualifying offence” has the meaning given in section 73A.’.

Insertion of new s 82A**9.** After section 82—*insert—*

⁶ Section 73G (Criminal history checks)

‘Advertising that unlicensed care is registered or approved

‘82A.(1) This section applies if—

- (a) a person advertises that the person provides, or is willing to provide, care of children, or holds himself or herself out as providing, or being willing to provide, care of children; and
- (b) the care is not child care provided under a licence.

‘(2) In the advertisement or in the course of the holding out, the person must not make a false or misleading statement about the extent to which, or the way in which—

- (a) the person is registered or approved by a government entity to provide the care; or
- (b) the care is approved by a government entity.

Maximum penalty—40 penalty units.

‘(3) In this section—

“government entity” means the State, the Commonwealth or a department of government or agency of the State or the Commonwealth.’.

Amendment of s 84 (Regulations)

10. Section 84(2)—

insert—

- ‘(l)** health or safety requirements relating to independent home-based care.’.

SCHEDULE

MINOR AMENDMENTS

section 3

1. Section 3, definitions “approved panel” and “chief executive”—

omit.

2. Section 14(2)(b), ‘association’—

omit, insert—

‘association—’.

3. Section 35(7), penalty—

omit, insert—

‘Maximum penalty for subsection (7)—10 penalty units.’.

4. Section 62(4), penalty—

omit, insert—

‘Maximum penalty for subsection (4)—10 penalty units.’.

5. Section 75, ‘Commissioner of Police’—

omit, insert—

‘commissioner of the police service’.

6. Section 79, ‘local authority’—

omit, insert—

‘local government’.

SCHEDULE (continued)

7. Section 82(5), penalty—*omit, insert—*

‘Maximum penalty for subsection (5)—40 penalty units.’.

8. Section 84, heading—*omit, insert—***‘Regulation-making power’.**