



Queensland

Commission for Children and Young People and Child Guardian and Another Act Amendment Act 2008

Act No. 18 of 2008



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Commission for Children and Young People and Child Guardian and Another Act Amendment Act 2008

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Queensland

Commission for Children and Young People and Child Guardian and Another Act Amendment Act 2008

Act No. 18 of 2008

An Act to amend the *Commission for Children and Young People and Child Guardian Act 2000* and the *Police Powers and Responsibilities Act 2000*, and for related purposes

[Assented to 23 April 2008]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Commission for Children and Young People and Child Guardian and Another Act Amendment Act 2008*.

2 Commencement

This Act commences on 2 June 2008 immediately after the commencement of the *Child Protection (Offender Prohibition Order) Act 2008*.

Part 2 Amendment of Commission for Children and Young People and Child Guardian Act 2000

3 Act amended in pt 2

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

4 Amendment of s 99C (What is a *serious offence*)

Section 99C(1)(a) to (e)—

omit, insert—

‘(a) an offence against a provision of an Act mentioned in schedule 2 or 2A, column 1, subject to any qualification

relating to the provision mentioned opposite in column 3; or

- (b) any offence under a law of another jurisdiction that, if it had been committed in Queensland, would have constituted a serious offence of a kind mentioned in paragraph (a); or
- (c) an offence of counselling or procuring the commission of an offence of a kind mentioned in paragraph (a); or
- (d) an offence of attempting, or of conspiring, to commit an offence of a kind mentioned in paragraph (a); or
- (e) an offence that has, as an element, an intention to commit an offence of a kind mentioned in paragraph (a); or
- (f) an offence that, at the time it was committed was an offence of a kind mentioned in paragraph (a); or
- (g) 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.’.

5 Omission of ss 99D and 99E

Sections 99D and 99E—

omit.

6 Amendment of s 100 (Application for notice—regulated employment)

(1) Section 100—

insert—

- ‘(1C) If an employer asks an employee to sign an application under subsection (1) about the employee, the employer must warn the employee that it is an offence for a disqualified person to sign the application as a relevant person.

Maximum penalty—10 penalty units.’.

(2) Section 100(3)(d)—

renumber as section 100(3)(f).

(3) Section 100(3)—

insert—

‘(d) a declaration by the employer that the employer has given the employee a warning as required under subsection (1C); and

(e) a declaration by the relevant person that he or she is not a disqualified person; and’.

(4) Section 100—

insert—

‘(3A) The approved form must include—

(a) a warning that it is an offence for a disqualified person to sign the application as a relevant person; and

(b) a statement about applying for an eligibility declaration.’.

(5) Section 100(8), definition *prescribed person*—

omit.

7 Amendment of s 101 (Application for notice—regulated business)

(1) Section 101(3)—

insert—

‘(c) a declaration by the person that he or she is not a disqualified person.’.

(2) Section 101—

insert—

‘(3A) 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.’.
- (3) Section 101(6)—
omit, insert—
- ‘(6) The person is taken to have withdrawn the application if the following applies—
 - (a) the commissioner gives the person a notice—
 - (i) asking the person to provide, within a reasonable stated time, either or both of the following—
 - (A) stated information that the commissioner reasonably needs to establish the person’s identity;
 - (B) stated information, including by way of a submission, about a stated matter that the commissioner reasonably believes is relevant to the person’s application; 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;
 - (b) the person does not comply with the request within the stated time;
 - (c) if the commissioner had requested stated information to establish the person’s identity—the commissioner can not establish with certainty the person’s identity;
 - (d) the commissioner gives the person a notice stating that the person is taken to have withdrawn the application.’.
- (4) Section 101(7)(a)—
omit, insert—
- ‘(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 made after the date of the application for the prescribed notice; and

Note—

See section 102(6)(b) if the person is subject to a final offender prohibition order.’.

- (5) Section 101(8)—

omit.

8 Amendment of s 102 (Decision on application)

- (1) Section 102(3), ‘subsection (4)’—

omit, insert—

‘subsections (4) and (6A)’.

- (2) Section 102(3)(b)(iii) and (iv), ‘an excluding’—

omit, insert—

‘a disqualifying’.

- (3) Section 102(3)(b)(iv), note, ‘excluding’—

omit, insert—

‘disqualifying’.

- (4) Section 102(3)—

insert—

‘(d) has, under section 118, cancelled a negative notice issued to the relevant person; or

(e) has issued an eligibility declaration to the relevant person under section 120H and the eligibility declaration has not expired.’.

(5) Section 102(6)—

omit, insert—

‘(6) Subject to subsections (3) and (7), the commissioner must issue a negative notice to the relevant person if the commissioner is aware the relevant person—

(a) is a relevant disqualified person, other than only because the person is subject to a temporary offender prohibition order; or

(b) is a person, other than a person mentioned in paragraph (a), who has at any time been a relevant disqualified person; or

(c) has been convicted of a serious offence.

‘(6A) Subject to subsection (7), the commissioner must also issue a negative notice to a relevant person to whom subsection (3)(d) or (e) applies if the commissioner is aware of any police information or disciplinary information about the relevant person, other than information known to the commissioner at the time of taking the action mentioned in the paragraph that applies to the person.’

(6) Section 102(7), after ‘(6)(b)’—

insert—

‘or (c) or (6A)’.

9 Amendment of s 102A (Decision-making under s 102 in relation to discretionary matters)

Section 102A(2)(a)(ii), ‘an excluding’—

omit, insert—

‘a disqualifying’.

10 Amendment of s 102B (Actions of commissioner after making decision on application)

Section 102B(3A) and (5), ‘102(6)(a)’—

omit, insert—

‘102(6)(a) or (b)’.

11 Amendment of s 104 (Currency of prescribed notice and positive notice blue card)

Section 104(2), ‘under division 4’—

omit.

12 Amendment of s 107 (Prohibited employment)

(1) Section 107(2)—

insert—

‘(d) the employer has been given a notice in relation to the employee under—

(i) section 119E(4) or 120E(3)(a); or

(ii) section 122B(3) because of a change in police information mentioned in section 122B(3)(g).’.

(2) Section 107(2), penalty, paragraph (b)—

omit, insert—

‘(b) otherwise—200 penalty units or 2 years imprisonment.’.

13 Amendment of s 108 (Person holding negative notice, or who has withdrawn consent to employment screening, not to apply for, or start or continue in, regulated employment)

Section 108(2)—

omit, insert—

‘(2) If—

(a) an application about the person was made under section 100; and

- (b) before a prescribed notice was issued, the application was withdrawn under section 123(2) or (3B) because the person's consent to employment screening under this part was withdrawn;

the person must not start or continue in regulated employment unless a positive notice is issued to the person.

Maximum penalty—

- (a) if an application is withdrawn under section 123(2)—100 penalty units or 1 year's imprisonment; or
(b) otherwise—500 penalty units or 5 years imprisonment.'

14 Replacement of pt 6, div 3, sdiv 3 hdg (Changes in criminal history)

Part 6, division 3, subdivision 3, heading—

omit, insert—

'Subdivision 3 Changes in police information'.

15 Replacement of s 110 (Acquiring a criminal history)

Section 110—

omit, insert—

'110 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.'

16 Amendment of s 111 (Effect of conviction for serious offence or charge for excluding offence)

- (1) Section 111, heading, from 'or charge'—

omit.

(2) Section 111(1), from ‘serious’—

omit, insert—

‘serious offence.’.

17 Replacement of s 112 (Change in criminal history of employee)

Section 112—

omit, insert—

‘112 Change in police information of 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 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 part, it is not a requirement that the employer stop employing the person on receiving the disclosure.’.

18 Replacement of s 113 (Change in criminal history of person carrying on regulated business)

Section 113—

omit, insert—

‘113 Change in police information of person carrying on a regulated business

‘(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.’.

19 Amendment of s 114 (Change in criminal history of other persons)

(1) Section 114, ‘criminal history’—

omit, insert—

‘police information’.

(2) Section 114(3), from ‘applying’ to ‘person’—

omit, insert—

‘notifying the commissioner, in the approved form, of the change in police information’.

(3) Section 114(4), from ‘apply’ to ‘notice’—

omit, insert—

‘notify the commissioner, in the approved form, of the change in police information’.

20 Amendment of s 117 (Return of positive notice and any positive notice blue card to commissioner)

Section 117(1)(b), from ‘the notice’—

omit, insert—

‘the notice.’.

21 Amendment of s 118 (Cancellation of negative notice and issuing of positive notice)

(1) Section 118, heading, ‘and issuing of positive notice’—

omit.

(2) Section 118—

insert—

‘(1A) However, this section does not apply to the person if the person is a relevant disqualified person.’.

(3) Section 118(3)—

omit, insert—

‘(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) Section 118(7), ‘and issue a positive notice to the person’—

omit.

22 Amendment of s 119 (Commissioner may cancel a prescribed notice and substitute another prescribed notice)

(1) Section 119(1)(b)—

omit, insert—

‘(b) subject to section 119C, it is appropriate to cancel the positive notice having regard to—

- (i) disciplinary information, or information received under section 122 or 122A, 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.’.
- (2) Section 119(2)—
omit, insert—
- ‘(2) The commissioner may cancel a negative notice (the **cancelled notice**) about a person and substitute 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 complete information, the commissioner should issue the positive notice; 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; 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.’.
- (3) Section 119(4), ‘section 126B(2)’—
omit, insert—
‘section 126B’.
- (4) Section 119(6)—
omit, insert—
- ‘(6) The commissioner may exercise a power—
 - (a) under subsection (1) or (2)—on the commissioner’s own initiative; or

- (b) under subsection (2)(a) or (b)—on application under section 118 by the person to whom the cancelled notice was issued.’.

23 Amendment of s 119A (Cancellation if conviction for excluding offence and imprisonment or disqualification order)

- (1) Section 119A, heading—

omit, insert—

‘119A Cancellation if relevant disqualified person’.

- (2) Section 119A(1)—

omit, insert—

- ‘(1) This section applies if a person who is the holder of a positive notice, including a positive notice that is suspended under section 119C, becomes a relevant disqualified person other than only because the person is subject to a temporary offender prohibition order.’.

- (3) Section 119A(3)(b) and (c)—

omit, insert—

‘(b) the person can not apply under section 118 for the cancellation of the negative notice, even after 2 years, except as provided for in section 118(3).’.

- (4) Section 119A(6), ‘section 126B(2)’—

omit, insert—

‘section 126B’.

24 Omission of s 119B (Cancellation if conviction for excluding offence but no imprisonment or disqualification order)

Section 119B—

omit.

25 Amendment of s 119C (Effect of charge for excluding offence pending charge being dealt with)

(1) Section 119C, heading—

omit, insert—

‘119C Suspension of a positive notice’.

(2) Section 119C(1)—

omit, insert—

‘(1) This section applies if a person who is the holder of a positive notice—

(a) is charged with a disqualifying offence; or

(b) becomes a relevant disqualified person because the person is subject to a temporary offender prohibition order.

‘(1A) The commissioner must, by written notice given to the person, suspend the person’s positive notice.’.

(3) Section 119C(2)(e), ‘notice is’—

omit, insert—

‘notice about the suspension is’.

(4) Section 119C(3) and (4), ‘subsection (1)’—

omit, insert—

‘subsection (1A)’.

(5) Section 119C(3), penalty—

omit, insert—

‘Maximum penalty—500 penalty units or 5 years imprisonment.’.

(6) Section 119C(6), ‘section 126B(2)’—

omit, insert—

‘section 126B’.

26 Amendment of s 119D (Cancellation of suspension and issue of further prescribed notice)

- (1) Section 119D(2)(a), ‘or 119B(2)’—
omit.
- (2) Section 119D(2)(b)—
omit, insert—
‘(b) the commissioner cancels the suspended notice and issues a further positive notice or a negative notice for the person—
 - (i) on the commissioner’s own initiative; or
 - (ii) on application by the person for cancellation of the suspension.’.
- (3) Section 119D(3) and (3A)—
omit.
- (4) Section 119D(4), ‘under subsection (3)’—
omit, insert—
‘to cancel the suspended notice and issue a further positive notice or a negative notice’.
- (5) Section 119D(5), ‘section 126B(2)’—
omit, insert—
‘section 126B’.
- (6) Section 119D—
insert—
- ‘(7) 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
- (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 or a disqualification 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.’.

27 Insertion of new s 119E

After section 119D—

insert—

‘119E Request to cancel suspended positive notice

- ‘(1) A person who is given a notice under section 119C(1A) (the *relevant person*) may, by written notice given to the commissioner, 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 or carry on a regulated business.

- ‘(3) The relevant person must not perform work that is regulated employment unless the commissioner issues a further positive notice to the person.

Maximum penalty—500 penalty units or 5 years imprisonment.

Note—

See section 109 for the offence of carrying on a regulated business without a current positive notice.

- ‘(4) The commissioner must give written notice about the cancellation of the relevant person’s positive notice to any person to whom the commissioner gave written notice as mentioned in section 119C(5) and (6).
- ‘(5) A notice under subsection (4) must state that a person to whom the notice is given must not allow the relevant person to perform work that is regulated employment.’.

28 Amendment of s 120A (Change of details for prescribed notice or positive notice blue card)

- (1) Section 120A(1), ‘or negative notice’—

omit, insert—

‘, or the holder of a negative notice who has applied for its cancellation,’.

- (2) Section 120A—

insert—

- ‘(1A) This section also applies if the holder of a positive notice that is not suspended does either of the following (each of which is also a **relevant change**)—
- (a) ends or changes the person’s employment;
- (b) stops carrying on a regulated business or starts another regulated business.’.

29 Insertion of new pt 6, div 4A

After section 120A—

insert—

‘Division 4A Disqualified persons

‘120B What is a *disqualifying offence*

- ‘(1) A *disqualifying offence* is an offence against a provision of an Act mentioned in schedule 2B or 2C, column 1, subject to any qualification relating to the provision mentioned opposite in column 3.

Note—

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

- ‘(2) A disqualifying offence mentioned in subsection (1) also includes—
- (a) any offence under a law of another jurisdiction that, if it had been committed in Queensland, would have constituted a disqualifying offence of a kind mentioned in subsection (1); 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 subsection (1); or
 - (d) an offence that has, as an element, intention to commit an offence of a kind mentioned in subsection (1); or
 - (e) an offence that, at the time it was committed was an offence of a kind mentioned in subsection (1).
- ‘(3) For this section, it is immaterial if a provision mentioned in schedule 2B or 2C, column 1 has been amended from time to time or that the provision was previously numbered with a different number.

‘120C 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) reporting obligations under the Offender Reporting Act; or
 - (ii) an offender prohibition order; or
 - (iii) a disqualification 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.

‘120D 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) reporting obligations under the Offender Reporting Act; or
 - (ii) an offender prohibition order; or
 - (iii) a disqualification order.

‘120E Offences for disqualified person

- ‘(1) A disqualified person must not—
- (a) sign an application as a relevant person under section 100; or
 - (b) make an application under section 101; or
 - (c) apply for, or start or continue in, regulated employment.

Maximum penalty—500 penalty units or 5 years imprisonment.

Note—

Under section 109 it is an offence for a person to carry on a regulated business unless the person has a current positive notice.

- ‘(2) If a person signs or makes an application as mentioned in subsection (1) and the commissioner decides the person is a disqualified person, the commissioner must give written notice to the person stating the following—
- (a) the commissioner has decided 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 notice as mentioned in subsection (4) to the following—
- (a) if the person has applied for, or started or continued in, regulated employment—the employer;
 - (b) if the person is a trainee student of an education provider—the education provider;
 - (c) if the commissioner is aware that the person is a licensee, the nominee of a licensee, or an adult occupant of a carer’s home that is a licensed home based service, under the *Child Care Act 2002*—the chief executive of the department in which that Act is administered;
 - (d) 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;
 - (e) 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).

- ‘(4) A notice given under subsection (3) must state that the commissioner has decided that the stated person for whom the application for a prescribed notice has been made is a disqualified person and—
- (a) the person to whom the notice is given must not allow the stated person to start or continue to perform work that is regulated employment; or
 - (b) the stated person must not start or continue to carry on a regulated business.
- ‘(5) Also, the commissioner must consider whether notice as mentioned in subsection (4) must be given under section 126B.
- ‘(6) Subsection (1)(c) applies even though it may not be an offence for a person to employ the disqualified person in regulated employment.

‘120F Application for an eligibility declaration

- ‘(1) The purpose of this section 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 as a relevant person under section 100; or
 - (b) to make an application under section 101.

Note—

Under section 120E it is an offence for a person to sign an application as a relevant person or to make an application, if the person is a disqualified person. However, it is not an offence to make an application under this section.

- ‘(2) A person may make an application (*eligibility application*) to the commissioner for an eligibility declaration stating that the person is eligible—

- (a) to sign an application as a relevant person under section 100; or
 - (b) to make an application under section 101.
- ‘(3) 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 eligibility application was based on wrong or incomplete information; or
 - (b) the eligibility declaration was refused because the person was a relevant disqualified person and the person is no longer a relevant disqualified person.
- ‘(4) The eligibility application must be—
- (a) in the approved form; and
 - (b) signed by the person; and
 - (c) accompanied by the prescribed fee.
- ‘(5) The approved form must include provision for—
- (a) identifying information about the person; and
 - (b) certification by a prescribed person that the prescribed person has sighted the documents, relating to proof of the person’s identity, prescribed under a regulation.

‘120G 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 issues an eligibility declaration or a notice relating to the application under section 120H.
- ‘(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.

‘120H Commissioner’s decision on eligibility application

- ‘(1) The commissioner may only issue an eligibility declaration for a person who has been convicted of a disqualifying offence.
- ‘(2) The commissioner must refuse a person’s eligibility application if the person is a relevant disqualified person.
- ‘(3) If the person has been convicted of a disqualifying offence and is not a relevant disqualified person, the commissioner must decide the eligibility application as if it were a decision about an application for a prescribed notice and, for that purpose, sections 102, 102A and 103 apply to the decision.
- ‘(4) For subsection (3), sections 102 and 103 apply as if—
 - (a) a reference in the provisions to issuing a positive notice were a reference to issuing an eligibility declaration; and
 - (b) a reference in the provisions to issuing a negative notice were a reference to refusing to issue an eligibility declaration.
- ‘(5) If the eligibility application is granted, the commissioner must issue the eligibility declaration to the person.
- ‘(6) 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 as mentioned in section 121C(2) to a Magistrates Court about only the investigative information; and
 - (ii) how the person may appeal to the Magistrates Court.
- ‘(7) 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 an application may be made under section 100 or 101 for the person;
- (d) that the eligibility application will not be further dealt with by the commissioner.

‘120I 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 issued to the person.

‘120J Withdrawing eligibility application

- ‘(1) A person may withdraw an eligibility application at any time before the commissioner issues an eligibility declaration or a notice relating to the application under section 120H.
- ‘(2) A person is taken to have withdrawn an eligibility application if the following applies—
 - (a) the commissioner gives the person a notice—
 - (i) asking the person to provide, within a reasonable stated time, either or both of the following—
 - (A) stated information that the commissioner reasonably needs to establish the person’s identity;
 - (B) stated information, including by way of a submission, about a stated matter that the

commissioner reasonably believes is relevant to the person's application; 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;
- (b) the person does not comply with the request within the stated time;
- (c) if the commissioner had requested stated information to establish the person's identity—the commissioner can not establish with certainty the person's identity;
- (d) the commissioner gives the person a notice stating that the person is taken to have withdrawn the eligibility application.

'120K 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
- (b) any positive notice held by the person is cancelled.

'120L 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 120H 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.’.

30 Amendment of s 121 (Person may apply for review of decision)

- (1) Section 121(1), after ‘A person’—
insert—
‘who is not a disqualified person’.
- (2) Section 121(1)(a), ‘section 102(4) or (7), 119B(2) or 119D(3)’—
omit, insert—
‘section 102(4) or (7)’.
- (3) Section 121(1)(b), ‘an excluding’—
omit, insert—
‘a disqualifying’.
- (4) Section 121(1)(b), ‘section 119C(1)’—
omit, insert—
‘section 119C(1A)’.
- (5) Section 121(1A), ‘relevant excluding’—
omit, insert—
‘disqualifying’.
- (6) Section 121(3)—
omit, insert—
- ‘(3) To remove any doubt, it is declared that there is no appeal, or review, under this Act against a decision of the commissioner—

- (a) to issue, or refuse to cancel, a negative notice about a person other than a decision mentioned in subsection (1); or
- (b) to refuse an application for an eligibility declaration.’.

31 Insertion of new s 121AA

After section 121—

insert—

‘121AA Effect of applicant under s 121 becoming a disqualified person

- ‘(1) This section applies if a disqualified person made an application under section 121 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 the Children Services Tribunal, even if the dismissal would be contrary to a direction of the District Court.
- ‘(3) Any appeal by the person from a decision of the Children Services Tribunal on the application must be dismissed.’.

32 Amendment of s 121A (Police commissioner may decide that information about a person is investigative information)

Section 121A(1)(a), ‘a serious child-related sexual’—

omit, insert—

‘an offence that is a disqualifying’.

33 Amendment of s 121B (Police commissioner not to delegate power under s 121A)

Section 121B, after ‘121A’—

insert—

‘other than to a police officer of at least the rank of superintendent’.

34 Amendment of s 122 (Commissioner may obtain information from police commissioner)

(1) Section 122(1)—

insert—

‘(d) the commissioner has received an eligibility application about the person and—

(i) the commissioner has not given the person written notice under section 120E(2) or 120H(6); or

(ii) the application has not been withdrawn under section 120J; or

(e) the commissioner has issued an eligibility declaration to the relevant person and the eligibility declaration has not expired; or

(f) the commissioner has issued a negative notice to the relevant person and—

(i) the relevant person has made an application under section 121 that has not been decided; or

(ii) an appeal to a court has been made in relation to an application under section 121 and the appeal has not been decided.’.

(2) Section 122—

insert—

‘(2B) The police commissioner must give the commissioner the following information about a person who is or has been a relevant disqualified person—

- (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.
- ‘(2C) The police commissioner must give the commissioner the following information 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—
- (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.’

35 Amendment of s 122A (Notice of change in police information about a person)

- (1) Section 122A(1)—
omit, insert—

- ‘(1) This section applies if, for a person in relation to whom any of the following happens, the police commissioner reasonably suspects the person is a person mentioned in section 122(1)(a) to (f)—
- (a) the person’s criminal history changes;
 - (b) the police commissioner decides, under section 121A, 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) Section 122A—
insert—
- ‘(1B) If an event mentioned in subsection (1)(c) or (d) happens in relation to the person, the police commissioner must notify the commissioner of the happening of the event.’.
- (3) Section 122A(2)(c)—
omit, insert—
‘(c) the information mentioned in section 122(2B) and (3).’.
- (4) Section 122A—
insert—
- ‘(3A) 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.’.

36 Replacement of s 122B (Commissioner to give notice to employer about making employment-screening decision about employee)

Section 122B—

omit, insert—

‘122B Commissioner to give notice to particular entities about a change in police information about a relevant person

- ‘(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 the change is that—
- (a) the relevant person has been charged with or convicted of a disqualifying offence; or
 - (b) the relevant person has become a relevant disqualified person; or
 - (c) both of the following have happened—
 - (i) 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) an application for a prescribed notice about the relevant person has been made under section 100 or 101 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 written notice to each entity mentioned in section 123A(2)(a) to (e) 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 section 102 about the relevant person;

- (d) a reminder of the risk management requirements under section 99G;
 - (e) an employer may not dismiss the relevant person solely or mainly because the employer is given a notice under this subsection;
 - (f) if the change in police information is a change in criminal history, whether it is a charge or conviction and whether or not it is a serious offence;
 - (g) if the change in police information is a conviction for a serious offence, that it is an offence for—
 - (i) the relevant person to perform work that is regulated employment or carry on a regulated business; and
 - (ii) an employer to allow the relevant person to perform work that is regulated employment.
- ‘(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—
- accreditation board** means the Non-State Schools Accreditation Board established under the *Education (Accreditation of Non-State Schools) Act 2001*, section 105.
- director**, of a school’s governing body, see the *Education (Accreditation of Non-State Schools) Act 2001*, schedule 3.
- relevant person** means—
- (a) the holder of a positive notice, other than a positive notice that is suspended under section 119C(1A); or
 - (b) a person about whom an application for a prescribed notice made under section 100 or 101 has not been decided or withdrawn.’.

37 Amendment of s 123 (Withdrawal of employee's consent to employment screening)

(1) Section 123(3)(a)(i)—

omit, insert—

‘(i) asking the employee to provide, within a reasonable stated time, either or both of the following—

(A) stated information that the commissioner reasonably needs to establish the employee's identity;

(B) stated information, including by way of a submission, about a stated matter that the commissioner reasonably believes is relevant to the application; and’.

(2) Section 123(3B)(a)—

omit, insert—

‘(a) the employee gives the commissioner, or the commissioner gives the employee, written notice that the employee—

(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 made after the date of the application for the prescribed notice; and’.

38 Amendment of s 123A (Notice about withdrawal of application or negative notice)

Section 123A(3)(b), ‘119A—the section’—

omit, insert—

‘(b)—the provision’.

39 Amendment of s 124 (Compliance with requirement to end, or not start, a person's regulated employment)

Section 124(4), from 'regulated employment'—
omit, insert—
'regulated employment.'

40 Amendment of s 126A (Commissioner must give police commissioner a person's current address)

(1) Section 126A(1)(b)—

omit, insert—

'(b) either of the following applies—

- (i) the police commissioner is, under this part, 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 part.'

(2) Section 126A(2), from 'except'—

omit, insert—

'other than a purpose mentioned in subsection (1)(b).'

41 Insertion of new s 126AA

After section 126A—

insert—

'126AA 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 part;

- (b) the *Child Protection (Offender Prohibition Order) Act 2008*;
 - (c) the *Child Protection (Offender Reporting) Act 2004*;
 - (d) the *Police Powers and Responsibilities Act 2000*, section 789A.
- ‘(2) Section 122(9) to (11) applies to the giving of the information under this section.
- ‘(3) This section does not limit section 126A or 153.’.

42 Amendment of s 126B (Commissioner may give information to accreditation board about director of school’s governing body)

Section 126B—

insert—

- ‘(2A) Also, if an application is made for a prescribed notice for a director whom the commissioner decides under section 120E(2) is a disqualified person, the commissioner must notify the accreditation board about the commissioner’s decision and that the application is invalid.’.

43 Replacement of ss 126C and 126D

Sections 126C and 126D—

omit, insert—

‘126C 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 either—
- (a) that the person may not hold a positive notice, or apply for a prescribed notice, for a stated period; or
 - (b) that the person may never hold a positive notice or apply for a prescribed notice.
- ‘(3) However, the court may make the disqualification order only if the court considers it would not be in the interests of children for the commissioner to issue a positive 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.’.

44 Amendment of s 146 (Indictable and summary offences)

Section 146(1)—

omit, insert—

- ‘(1) An offence against section 108, 109, 111, 119C(3), 119E and 120E is an indictable offence.’

45 Insertion of new pt 9, div 11

Part 9—

insert—

**‘Division 11 Transitional provisions for
Commission for Children and
Young People and Child Guardian
and Another Act Amendment Act
2008**

‘217 Definition for div 11

‘In this division—

commencement means the commencement of this section.

**‘218 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.

‘219 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—

- (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.

‘220 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.

‘221 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.

‘222 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).
- ‘(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.

‘223 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.

‘224 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.

‘225 Notice by commissioner of withdrawal of application under this division

- ‘(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).

‘226 Notice by commissioner of cancellation of positive notice under this division

- ‘(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.

‘227 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.

‘228 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.

‘229 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.

‘230 Transitional regulation-making power

- ‘(1) A regulation (a *transitional regulation*) may make provision about a matter for which—
- (a) it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the operation of this Act as in force immediately before the commencement to the operation of this Act after the commencement; and
 - (b) this Act does not make provision or sufficient provision.
- ‘(2) A transitional regulation may have retrospective operation to a day not earlier than the day this section commences.
- ‘(3) A transitional regulation must declare it is a transitional regulation.
- ‘(4) This section and any transitional regulation expires 12 months after the day this section commences.’.

46 Amendment of sch 2 (Current serious offences)

- (1) Schedule 2, item 4, entry for Criminal Code, section 419, column 3, ‘section 419(3)(b)(i) and (ii)’—
omit, insert—
‘section 419(3)(b)(i) or (ii)’.
- (2) Schedule 2—
insert—

‘6 *Crimes Act 1914* (Cwlth)

| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|-------------------------|--|---|
| 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
- 50DA Benefiting from offence against this Part
- 50DB Encouraging offence against this Part

7 Criminal Code (Cwlth)

| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|-------------------------|---|---|
| 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’.

47 Replacement of schs 2B and 2C

Schedules 2B and 2C—

omit, insert—

‘Schedule 2B Current disqualifying offences

section 120B(1)

1 *Classification of Computer Games and Images Act 1995*

| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|-------------------------|--|---|
| 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*

| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|-------------------------|---|---|
| 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*

| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|-------------------------|--|---|
| 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 | Producing prohibited publication | only if an offender was or could have been liable as mentioned in section 17(1), penalty, paragraph (c), or 17(2), penalty, paragraph (c) or the offence is an offence under section 17(3) or (4) |
| 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

| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|-------------------------|---|---|
| 208 | Unlawful sodomy | if the offence was committed against a child |
| 209 | Attempted sodomy | if the offence was committed against a child |
| 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 intellectually impaired persons | if the offence was committed against a child |
| 217 | Procuring young person etc. for carnal knowledge | if the offence was committed against a child |
| 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)*

| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|-------------------------|--|---|
| 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
- 50DA Benefiting from offence against this Part
- 50DB Encouraging offence against this Part

6 Criminal Code (Cwlth)

| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|-------------------------|---|---|
| 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)

| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|-------------------------|---|---|
| 233BAB | Special offences relating to tier 2 goods | if the offence involved child pornography or child abuse material |

‘Schedule 2C Repealed or expired disqualifying offences

section 120B(1)

Criminal Code

| Provision of Act | Relevant heading | Qualification relating to the provision of the Act |
|-------------------------|--|---|
| 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 |

| | | |
|-----|------------------------|---|
| 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’. |

48 Amendment of sch 4 (Dictionary)

(1) Schedule 4, definitions *disqualification order, excluding offence, imprisonment order and serious child-related sexual offence*—
omit.

(2) Schedule 4—
insert—

‘**CPOPOA disqualification order** means a disqualification order made under the *Child Protection (Offender Prohibition Order) Act 2008*, section 24A.

disqualification order means—

- (a) an order under section 126C; or
- (b) a CPOPOA disqualification order.

disqualified person see section 120C.

disqualifying offence see section 120B.

eligibility application see section 120F(2).

eligibility declaration see section 120F(1).

final offender prohibition order means a final order under the Offender Prohibition Order Act.

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*.

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*.

prescribed person means a justice, commissioner for declarations, lawyer or police officer.

relevant disqualified person see section 120D.

temporary offender prohibition order means a temporary order under the Offender Prohibition Order Act.

- (3) Schedule 4, definition *commencement*—
insert—
'(c) for part 9, division 11—see section 217.'
- (4) Schedule 4, definition *police information*—
insert—
'(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.'

Part 3 **Amendment of Police Powers and Responsibilities Act 2000**

49 Act amended in pt 3

This part amends the *Police Powers and Responsibilities Act 2000*.

50 Insertion of new ch 23, pt 1A

Chapter 23, before part 1—
insert—

‘Part 1A

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

‘789A Power to demand production of CCYPCG document

- ‘(1) This section applies if a police officer knows or reasonably suspects—
- (a) a person is the holder of a CCYPCG document; and
 - (b) any of the following apply to the person—
 - (i) the person has been charged with a disqualifying offence;
 - (ii) the person is a relevant disqualified person.
- ‘(2) The police officer may require the person to immediately give the CCYPCG document to the police officer.
- ‘(3) The person must comply with the requirement under subsection (2), unless the person has a reasonable excuse.
- Maximum penalty—100 penalty units.
- ‘(4) A police officer who is given a person’s CCYPCG document under subsection (2) must give the person a receipt for the document.
- ‘(5) A police officer must give the CCYPCG document to the children’s commissioner.
- ‘(6) A police officer may retain the CCYPCG document until it is given to the children’s commissioner under subsection (5).
- ‘(7) For exercising a power under subsection (2), the police officer is taken to be investigating a matter as mentioned in section 19.
- ‘(8) In this section—

CCYPCG Act means the *Commission for Children and Young People and Child Guardian Act 2000*.

Schedule Consequential amendments of other Acts

section 51

Child Protection Act 1999

**1 Sections 141H(1)(b) and (e)(i) and 141I(1)(b), ‘an
 excluding’—**

omit, insert—

‘a disqualifying’.

**1A Sections 141H(1)(c) and 141I(1)(c), ‘apply for a further
 prescribed notice’—**

omit, insert—

‘notify the children’s commissioner of a change in police
information within the meaning of that Act’.

2 Schedule 3, definition *excluding offence*—

omit, insert—

‘*disqualifying offence* means a disqualifying offence under the
Commissioner’s Act.’.

Education (Queensland College of Teachers) Act 2005

1 Section 48, heading, ‘excluding’—

omit, insert—

‘disqualifying’.

2 Section 48(1), ‘an excluding’—

omit, insert—

‘a disqualifying’.

3 Section 56, heading, ‘excluding’—

omit, insert—

‘disqualifying’.

4 Section 56(1)(a), ‘an excluding’—

omit, insert—

‘a disqualifying’.

5 Section 56(4)(c)(ii), ‘the excluding’—

omit, insert—

‘the disqualifying’.

6 Sections 57(1)(b)(i), 58(1)(a) and 92(1)(a)(i), ‘an excluding’—

omit, insert—

‘a disqualifying’.

7 Section 92(2)(a), ‘the excluding’—

omit, insert—

‘the disqualifying’.

8 Section 92(5), definition *dealt with*, ‘an excluding’—

omit, insert—

‘a disqualifying’.

9 Insertion of new ch 12, pt 9

After section 329—

insert—

**‘Part 9 Transitional provisions for
Commission for Children and
Young People and Child
Guardian and Another Act
Amendment Act 2008**

‘330 Existing section 48 suspensions

- ‘(1) On the commencement, an existing section 48 suspension—
- (a) continues in force according to its terms; and
 - (b) is taken to have been made in relation to a charge for a disqualifying offence.

- ‘(2) In this section—

commencement means the commencement of this section.

existing section 48 suspension means a suspension of a teacher’s registration or permission to teach—

- (a) made under section 48 as in force immediately before the commencement; and
- (b) for which the period of suspension had not ended before the commencement.

10 Schedule 3, definition *excluding offence*—

omit, insert—

‘disqualifying offence see the *Commission for Children and Young People and Child Guardian Act 2000*, section 120B.’.

Transport Operations (Road Use Management) Act 1995

**1 Section 122, definition *disqualifying offence*, paragraph
(a), ‘serious child-related sexual’—**

omit, insert—

‘disqualifying’.

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