



Queensland

Police Legislation Amendment Act 2010

Act No. 45 of 2010



Queensland

Police Legislation Amendment Act 2010

Contents

		Page
Part 1	Preliminary	
1	Short title	6
Part 2	Amendment of Police Powers and Responsibilities Act 2000	
2	Act amended	6
3	Amendment of s 394 (Duty of police officer receiving custody of person arrested for offence)	6
Part 3	Amendment of Police Service Administration Act 1990	
4	Act amended	7
5	Amendment of s 10.2AA (Definition for sdiv 2)	7
6	Amendment of s 10.2A (Disclosure of criminal history for employment screening under commercial or other arrangement)	7
7	Insertion of new s 10.2BA	8
	10.2BA Disclosure of criminal history to assess suitability of records for s 10.2A purposes	8
8	Amendment of s 10.2C (Misuse of information obtained under ss 10.2A–10.2B)	8
9	Amendment of s 10.2E (Relationship to other laws)	9
10	Amendment of s 10.2I (Giving information to an IPSP to enable use of approved information by police services and law enforcement agencies for particular purposes)	9
Part 4	Amendment of Prostitution Act 1999	
11	Act amended	10
12	Amendment of s 19 (The licence)	10
13	Insertion of new ss 24A and 24B	10
	24A Payment of fee by payment plan	10
	24B Automatic suspension of licence	11
14	Amendment of s 25 (Automatic cancellation of licence)	11
15	Insertion of new ss 27A and 27B	12

Contents

	27A	Authority may conduct disciplinary inquiry by hearing or on correspondence	12
	27B	Disciplinary inquiry notice.	12
16		Replacement of s 28 (Starting disciplinary action)	13
	28	Starting disciplinary inquiry	13
	28A	Procedure for disciplinary inquiry by hearing	14
	28B	Power of Authority to continue disciplinary inquiry in particular circumstances	15
	28C	Failure to take oath or answer question	16
	28D	Authority may require information relevant to disciplinary inquiry	16
	28E	Attendance notice.	17
	28F	Substituted service on licensee or relevant person	18
17		Insertion of new ss 50A and 50B	18
	50A	Payment of fee by payment plan	18
	50B	Automatic suspension of certificate	19
18		Amendment of s 51 (Automatic cancellation of certificate)	19
19		Insertion of new ss 53A and 53B	20
	53A	Authority may conduct disciplinary inquiry by hearing or on correspondence	20
	53B	Disciplinary inquiry notice.	20
20		Replacement of s 54 (Starting disciplinary action)	21
	54	Starting disciplinary inquiry	22
	54A	Procedure for disciplinary inquiry by hearing	23
	54B	Power of Authority to continue disciplinary inquiry in particular circumstances	23
	54C	Failure to take oath or answer question	24
	54D	Authority may require information relevant to disciplinary inquiry	24
	54E	Attendance notice.	25
	54F	Substituted service on approved manager or relevant person	26
21		Insertion of new pt 7, div 1, hdg	26
22		Insertion of new pt 7, div 2 and sdiv 1, hdgs	26
23		Amendment of s 102 (Membership)	27
24		Replacement of s 105 (Disqualifications for appointment)	27
	105	Disqualifications for appointment	27
25		Insertion of new pt 7, div 2, sdiv 2, and div 3, hdg	28

	Subdivision 2	Assessing suitability for appointment	
	108AA	Subdivision does not apply to exempt member	28
	108AB	Extended criminal history checks	28
	108AC	Disclosure of changes in extended criminal history . .	29
	108AD	Disclosure must not be false, misleading or incomplete	30
	108AE	Use of information obtained under this subdivision . .	30
26		Renumbering of ss 108AA–108D	31
27		Insertion of new pt 7A, div 2, sdiv 1, hdg	31
28		Amendment of s 110B (Appointment of executive director)	31
29		Insertion of new pt 7A, div 2, sdiv 2	31
	Subdivision 2	Assessing suitability for appointment	
	110KA	Extended criminal history checks	32
	110KB	Disclosure of changes in extended criminal history . .	33
	110KC	Disclosure must not be false, misleading or incomplete	34
	110KD	Use of information obtained under this subdivision . .	34
30		Insertion of new pt 7A, div 3, sdiv 1, hdg	35
31		Insertion of new pt 7A, div 3, sdiv 2	35
	Subdivision 2	Assessing suitability to be engaged as staff member	
	110M	Application of sdiv 2	35
	110N	Executive director may obtain extended criminal history	35
	110O	Failure to consent to obtaining extended criminal history	36
	110P	Obtaining extended criminal history with consent . . .	36
	110Q	Assessment of suitability using extended criminal history	37
	110R	Staff member to disclose change in extended criminal history	37
	110S	Failing to make disclosure or making false, misleading or incomplete disclosure	38
	110T	Executive director may obtain report from commissioner	38
	110U	Use of information obtained under this subdivision . .	39
	110V	Person to be advised of information obtained from commissioner	40
32		Amendment of s 111 (Licence and certificate register)	40

Contents

33	Amendment of s 131 (Offences about false or misleading information or documents)	40
34	Amendment of s 132 (Evidentiary provision)	40
35	Insertion of new s 133A	41
	133A Confidentiality	41
36	Insertion of new pt 9, div 7	42
	Division 7 Provisions for Police Legislation Amendment Act 2010	
	156 Definition for pt 9, div 7	42
	157 Conduct of disciplinary inquiry started but not dealt with as at commencement	42
	158 Disciplinary inquiry notice not given to licensee as at commencement	42
	159 Disciplinary inquiry notice not given to approved manager as at commencement	43
	160 Disqualifications for appointment—particular members of Authority	43
	161 Extended criminal history checks—particular members of Authority	43
	162 Extended criminal history checks—executive director	43
	163 Executive director may obtain extended criminal history	44
	164 Transitional provision for Police Legislation Amendment Act 2010	44
37	Amendment of sch 4 (Dictionary)	44
Part 5	Amendment of Prostitution Regulation 2000	
38	Regulation amended	45
39	Amendment of s 3 (Definitions)	46
40	Amendment of s 5A (Conditions of licence—annual licence fee and annual licence return fee—Act, s 19(5)(d)(i))	46
41	Amendment of s 5B (Conditions of licence—annual return—Act, s 19(5)(d)(ii))	46
42	Amendment of s 6A (Conditions of certificate—approved manager’s annual certificate fee and annual return fee—Act, s 44(4)(d)(i))	46
43	Amendment of s 6B (Conditions of certificate—annual return—Act, s 44(4)(d)(ii))	47



Queensland

Police Legislation Amendment Act 2010

Act No. 45 of 2010

An Act to amend the Police Powers and Responsibilities Act 2000, Police Service Administration Act 1990, Prostitution Act 1999 and Prostitution Regulation 2000 for particular purposes

[Assented to 5 November 2010]

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Police Legislation Amendment Act 2010*.

Part 2 Amendment of Police Powers and Responsibilities Act 2000

2 Act amended

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

3 Amendment of s 394 (Duty of police officer receiving custody of person arrested for offence)

(1) Section 394(2)(ca), ‘committed, or reasonably suspected by the arresting police officer of having been committed, in the prescribed area’—

omit.

(2) Section 394(5)—

omit.

(3) Section 394(6), definition *associated offence*, ‘(whether committed within or outside the prescribed area)’—

omit.

(4) Section 394(6), definition *prescribed area*—

[s 7]

- (3) Section 10.2A(3), before ‘only with’—
insert—
‘for disclosure to the third party’.

7 Insertion of new s 10.2BA

Before section 10.2B—

insert—

‘10.2BA Disclosure of criminal history to assess suitability of records for s 10.2A purposes

- ‘(1) For the purpose of enabling disclosure under section 10.2A, the commissioner may disclose a person’s criminal history to a relevant agency if—
- (a) the criminal history has been given to CrimTrac under section 10.2I; and
 - (b) the disclosure is for the purpose of assessing the suitability of records for release under section 10.2A.
- ‘(2) To remove any doubt, it is declared that there is no requirement to comply with section 10.2A(3) before the commissioner can disclose a person’s criminal history under subsection (1).
- ‘(3) In this section—
criminal history has the meaning given by section 10.2G.’.

8 Amendment of s 10.2C (Misuse of information obtained under ss 10.2A–10.2B)

- (1) Section 10.2C(1), ‘This section’—
omit, insert—
‘Subsection (2)’.
- (2) Section 10.2C—
insert—

-
- ‘(3) Subsection (4) applies in relation to a disclosure of information made to a relevant agency under section 10.2BA.
- ‘(4) The relevant agency must not use the information for a purpose other than the purpose for which the information is disclosed.
- Maximum penalty—100 penalty units.’.

9 Amendment of s 10.2E (Relationship to other laws)

Section 10.2E—

insert—

- ‘(2) However, subsection (1)(b) does not apply to a disclosure made to a relevant agency under 10.2BA.’.

10 Amendment of s 10.2I (Giving information to an IPSP to enable use of approved information by police services and law enforcement agencies for particular purposes)

Section 10.2I—

insert—

- ‘(1A) The commissioner may use information given under this section to the head of an IPSP for a purpose for which the information may be used under an Act whether or not the purpose is the same purpose for which the information was given under this section to the head of the IPSP.
- ‘(1B) The head of an IPSP may transfer information from the database mentioned in subsection (1) administered by the head of the IPSP to another database administered by the head of the IPSP for a purpose permitted under an Act.’.

taken to have paid the annual licence fee or the annual licence return fee by the prescribed day.

‘(6) In this section—

exceptional circumstances means unforeseen circumstances that adversely affect the premises stated in the licensee’s licence as the premises where the licensee is authorised to operate a brothel.

Example of unforeseen circumstances—

natural disaster or fire

‘24B Automatic suspension of licence

‘(1) This section applies if a licensee—

- (a) has failed to pay the annual licence fee or the annual licence return fee for the licence by the prescribed day; and
- (b) has not entered into a payment plan decided by the Authority under section 24A.

‘(2) The licensee’s licence is automatically suspended for 28 days (the *suspension period*) starting the day after the prescribed day.

‘(3) The suspension of the licence ends if—

- (a) the annual licence fee or the annual licence return fee for the licence is paid during the suspension period; or
- (b) the licensee enters into a payment plan decided by the Authority under section 24A.’.

14 Amendment of s 25 (Automatic cancellation of licence)

Section 25—

insert—

- ‘(c) fails to pay the annual licence fee or the annual licence return fee for the licensee’s licence during the suspension period for the licence; or

[s 15]

- (d) if the licensee has entered into a payment plan decided by the Authority under section 24A—fails to pay the annual licence fee or the annual licence return fee for the licence under the payment plan.’.

15 Insertion of new ss 27A and 27B

After section 27—

insert—

‘27A Authority may conduct disciplinary inquiry by hearing or on correspondence

‘The Authority may conduct a disciplinary inquiry by hearing or on correspondence.

‘27B Disciplinary inquiry notice

- ‘(1) If the Authority decides to conduct a disciplinary inquiry, it must give notice of its intention to conduct the inquiry (a *disciplinary inquiry notice*) to—
 - (a) the licensee; and
 - (b) any person who makes an application under section 26(2).
- ‘(2) A disciplinary inquiry notice must—
 - (a) be in the approved form; and
 - (b) state all of the following—
 - (i) the ground for the disciplinary action against the licensee;
 - (ii) the facts and circumstances forming the basis for the ground;
 - (iii) whether the Authority will be conducting the inquiry by hearing or on correspondence;
 - (iv) if the Authority will be conducting the inquiry by hearing—the date of the hearing;

-
- (v) if the Authority will be conducting the inquiry on correspondence that—
 - (A) the licensee may give the Authority a written submission about the ground; and
 - (B) the submission must be made within the stated period for making a submission;
 - (vi) that if the licensee fails to attend on the date of the hearing stated in the notice, or does not make a submission in accordance with subparagraph (v), the Authority may—
 - (A) continue the inquiry; and
 - (B) make a decision about whether the ground for disciplinary action is established.
- ‘(3) For subsection (2)(b)(v)(B), the stated period for making a submission must be at least 30 days from the day the notice is given to the licensee unless—
- (a) the Authority is satisfied—
 - (i) urgent circumstances exist for the submission to be made within that time; and
 - (ii) it is reasonable in the circumstances; or
 - (b) any person who made an application under section 26(2) applies to the Authority for the submission to be made within that time and the Authority is satisfied it is reasonable in the circumstances.’.

16 Replacement of s 28 (Starting disciplinary action)

Section 28—

omit, insert—

‘28 Starting disciplinary inquiry

- ‘(1) If the Authority decides to conduct a disciplinary inquiry in relation to a licensee by hearing, the Authority must not start the inquiry before the date of the hearing stated in the

[s 16]

disciplinary inquiry notice given under section 27B for the inquiry.

- ‘(2) The date of the hearing must be at least 30 days from the day the notice is given to the licensee unless—
- (a) the Authority is satisfied—
 - (i) urgent circumstances exist for the inquiry to be started within that time; and
 - (ii) it is reasonable in the circumstances; or
 - (b) any person who made an application under section 26(2) applies to the Authority for the inquiry to be started within that time and the Authority is satisfied it is reasonable in the circumstances.
- ‘(3) Subsection (4) applies if—
- (a) a licensee is given a disciplinary inquiry notice under section 27B for a disciplinary inquiry in relation to the licensee; and
 - (b) the licensee applies in the approved form to the Authority for the inquiry to be started before the date stated in the notice as the date of the hearing of the inquiry.
- ‘(4) The Authority may start the inquiry before the date stated in the notice as the date of the hearing of the inquiry if the Authority—
- (a) is satisfied that it is reasonable in the circumstances; and
 - (b) gives notice of the date of the hearing decided by the Authority under this subsection to—
 - (i) the licensee; and
 - (ii) any person who made an application under section 26(2).

‘28A Procedure for disciplinary inquiry by hearing

- ‘(1) If the Authority decides to conduct a disciplinary inquiry by hearing, the hearing must be closed to the public.

-
- ‘(2) The Authority must decide the matter in the way it considers appropriate, but must—
- (a) observe natural justice; and
 - (b) act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues.
- ‘(3) The Authority—
- (a) is not bound by the rules of evidence; and
 - (b) may inform itself in the way, and to the extent, the Authority considers appropriate; and
 - (c) may decide the procedures to be followed for the proceedings; and
 - (d) may receive evidence on oath or by statutory declaration.
- ‘(4) The chairperson of the Authority, or a member of the Authority permitted by the chairperson, may administer an oath to a person appearing before the Authority.

‘28B Power of Authority to continue disciplinary inquiry in particular circumstances

- ‘(1) This section applies if a licensee does not—
- (a) if the licensee is given a notice under section 27B stating the Authority will be conducting a disciplinary inquiry in relation to the licensee by hearing—attend the hearing on the date of the hearing stated in the notice; or
 - (b) if the licensee is given a notice under section 27B stating the Authority will be conducting a disciplinary inquiry in relation to the licensee on correspondence—make a submission in accordance with the requirements stated in the notice under section 27B(2)(b)(v); or
 - (c) if the licensee is given a notice under section 28D—give the information required by the notice.
- ‘(2) The Authority may—

[s 16]

- (a) continue the disciplinary inquiry; and
- (b) make a decision about whether the ground for disciplinary action is established.

'28C Failure to take oath or answer question

- '(1) At a hearing of a disciplinary inquiry in relation to a licensee, the licensee must not—
 - (a) fail to take an oath or make an affirmation when required by the Authority; or
 - (b) fail, without reasonable excuse, to answer a question the Authority requires the licensee to answer.

Maximum penalty—60 penalty units.

- '(2) For subsection (1)(b), it is a reasonable excuse for a licensee to fail to answer a question, if answering the question might tend to incriminate the licensee.

'28D Authority may require information relevant to disciplinary inquiry

- '(1) For conducting a disciplinary inquiry, the Authority may, by notice given to the licensee or another person, require the licensee or person to give the Authority information, including a document, relevant to the inquiry.
- '(2) If a document is given to the Authority under subsection (1), the Authority may make a copy of, or take an extract from, it.
- '(3) A person given a notice under subsection (1) must not fail, without a reasonable excuse, to give the Authority the information the person is required to give by the notice.

Maximum penalty—60 penalty units.

- '(4) For subsection (3), it is a reasonable excuse for an individual to fail to give information, if giving the information might tend to incriminate the individual.

‘28E Attendance notice

- ‘(1) The Authority may, by notice given to a relevant person (an *attendance notice*), require the person—
- (a) to attend a hearing at a stated time and place to give evidence; or
 - (b) to produce stated documents or other things at a hearing.
- ‘(2) For subsection (1), the Authority may act on its own initiative or on the application, in the approved form, of a licensee.
- ‘(3) If a document is given to the Authority under subsection (1), the Authority may make a copy of, or take an extract from, it.
- ‘(4) A person given an attendance notice must not fail, without reasonable excuse—
- (a) to attend as required by the notice; or
 - (b) to continue to attend as required by the Authority until excused from further attendance.

Maximum penalty—60 penalty units.

- ‘(5) Also, at a hearing, a person appearing as a witness must not—
- (a) fail to take an oath or make an affirmation when required by the Authority; or
 - (b) fail, without reasonable excuse, to answer a question the Authority requires the person to answer; or
 - (c) fail, without reasonable excuse, to produce a document or other thing the person is required to produce by an attendance notice.

Maximum penalty—60 penalty units.

- ‘(6) It is a reasonable excuse for an individual to fail to answer a question or to produce a document or other thing, if answering the question or producing the document or thing might tend to incriminate the individual.
- ‘(7) In this section—

[s 17]

relevant person means a person the Authority considers has information relevant to the disciplinary inquiry conducted about a licensee.

‘28F Substituted service on licensee or relevant person

- ‘(1) If the Authority is satisfied service of a notice given to a licensee under section 27B or relevant person under section 28E can not be effected on the licensee or relevant person under the provision, the Authority may order substituted service of the notice.
- ‘(2) Substituted service may be effected in any way ordered, including, for example, by facsimile or telephone.
- ‘(3) If the licensee or relevant person is served with a notice as ordered by the Authority under subsection (1), the notice is taken to have been given to the licensee under section 27B or relevant person under section 28E.’.

17 Insertion of new ss 50A and 50B

After section 50—

insert—

‘50A Payment of fee by payment plan

- ‘(1) This section applies if, due to financial hardship caused by exceptional circumstances, an approved manager is unable to pay the annual certificate fee or the annual return fee for the approved manager’s certificate by the prescribed day.
- ‘(2) Despite section 44(4)(d)(i), the approved manager may apply to the Authority to pay the annual certificate fee or the annual return fee under a payment plan decided by the Authority.
- ‘(3) An application under subsection (2) must be in the approved form.
- ‘(4) The Authority may enter into a payment plan with the approved manager if the Authority is satisfied that, having regard to financial hardship caused by exceptional circumstances, the approved manager is unable to pay the

annual certificate fee or the annual return fee for the approved manager's certificate by the prescribed day.

'(5) If the approved manager pays the annual certificate fee or the annual return fee under the payment plan, the approved manager is taken to have paid the annual certificate fee or the annual return fee by the prescribed day.

'(6) In this section—

exceptional circumstances means unforeseen circumstances that adversely affect premises stated in the approved manager's certificate as premises of a licensed brothel for the approved manager.

Example of unforeseen circumstances—

natural disaster or fire

'50B Automatic suspension of certificate

'(1) This section applies if an approved manager—

- (a) has failed to pay the annual certificate fee or the annual return fee for the certificate by the prescribed day; and
- (b) has not entered into a payment plan decided by the Authority under section 50A.

'(2) The approved manager's certificate is automatically suspended for 28 days (the *suspension period*) starting the day after the prescribed day.

'(3) The suspension of the certificate ends if—

- (a) the annual certificate fee or the annual return fee for the certificate is paid during the suspension period; or
- (b) the approved manager enters into a payment plan decided by the Authority under section 50A.'

18 Amendment of s 51 (Automatic cancellation of certificate)

Section 51—

insert—

[s 19]

- ‘(c) fails to pay the annual certificate fee or the annual return fee for the certificate during the suspension period for the certificate; or
- (d) if the approved manager has entered into a payment plan decided by the Authority under section 50A—fails to pay the annual certificate fee or the annual return fee for the certificate under the payment plan.’.

19 Insertion of new ss 53A and 53B

After section 53—

insert—

‘53A Authority may conduct disciplinary inquiry by hearing or on correspondence

‘The Authority may conduct a disciplinary inquiry by hearing or on correspondence.

‘53B Disciplinary inquiry notice

- ‘(1) If the Authority decides to conduct a disciplinary inquiry, it must give notice of its intention to conduct the inquiry (a *disciplinary inquiry notice*)—
 - (a) to the approved manager; and
 - (b) any person who makes an application under section 52(2).
- ‘(2) A disciplinary inquiry must—
 - (a) be in the approved form; and
 - (b) state all of the following—
 - (i) the ground for the disciplinary action against the approved manager;
 - (ii) the facts and circumstances forming the basis for the ground;
 - (iii) whether the Authority will be conducting the inquiry by hearing or on correspondence;

-
- (iv) if the Authority will be conducting the inquiry by hearing—the date of the hearing;
 - (v) if the Authority will be conducting the inquiry on correspondence, that—
 - (A) the approved manager may give the Authority a written submission about the ground; and
 - (B) the submission must be made within the stated period for making a submission;
 - (vi) that if the approved manager fails to attend on the date of the hearing stated in the notice, or does not make a submission in accordance with subparagraph (v), the Authority may—
 - (A) continue the inquiry; and
 - (B) make a decision about whether the ground for disciplinary action is established.
- ‘(3) For subsection (2)(b)(v)(B), the stated period for making a submission must be at least 30 days from the day the notice is given to the approved manager unless—
- (a) the Authority is satisfied—
 - (i) urgent circumstances exist for the submission to be made within that time; and
 - (ii) it is reasonable in the circumstances; or
 - (b) any person who made an application under section 52(2) applies to the Authority for the submission to be made within that time and the Authority is satisfied it is reasonable in the circumstances.’

20 Replacement of s 54 (Starting disciplinary action)

Section 54—

omit, insert—

‘54 Starting disciplinary inquiry

- ‘(1) If the Authority decides to conduct a disciplinary inquiry in relation to an approved manager by hearing, the Authority must not start the inquiry before the date of the hearing stated in the disciplinary inquiry notice given under section 53B for the inquiry.
- ‘(2) The date of the hearing must be at least 30 days from the day the notice is given to the approved manager unless—
- (a) the Authority is satisfied—
 - (i) urgent circumstances exist for the inquiry to be started within that time; and
 - (ii) it is reasonable in the circumstances; or
 - (b) any person who made an application under section 52(2) applies to the Authority for the inquiry to be started within that time and the Authority is satisfied it is reasonable in the circumstances.
- ‘(3) Subsection (4) applies if—
- (a) an approved manager is given a disciplinary inquiry notice under section 53B for a disciplinary inquiry in relation to the approved manager; and
 - (b) the approved manager applies in the approved form to the Authority for the inquiry to be started before the date stated in the notice as the date of the hearing of the inquiry.
- ‘(4) The Authority may start the inquiry before the date stated in the notice as the date of the hearing of the inquiry if the Authority—
- (a) is satisfied that it is reasonable in the circumstances; and
 - (b) gives notice of the date of the hearing decided by the Authority under this subsection to—
 - (i) the approved manager; and
 - (ii) any person who made an application under section 52(2).

‘54A Procedure for disciplinary inquiry by hearing

- ‘(1) If the Authority decides to conduct a disciplinary inquiry by hearing, the hearing must be closed to the public.
- ‘(2) The Authority must decide the matter in the way it considers appropriate, but must—
 - (a) observe natural justice; and
 - (b) act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues.
- ‘(3) The Authority—
 - (a) is not bound by the rules of evidence; and
 - (b) may inform itself in the way, and to the extent, the Authority considers appropriate; and
 - (c) may decide the procedures to be followed for the proceedings; and
 - (d) may receive evidence on oath or by statutory declaration.
- ‘(4) The chairperson of the Authority, or a member of the Authority permitted by the chairperson, may administer an oath to a person appearing before the Authority.

‘54B Power of Authority to continue disciplinary inquiry in particular circumstances

- ‘(1) This section applies if an approved manager does not—
 - (a) if the approved manager is given a notice under section 53B stating the Authority will be conducting a disciplinary inquiry in relation to the approved manager by hearing—attend the hearing on the date of the hearing stated in the notice; or
 - (b) if the approved manager is given a notice under section 53B stating the Authority will be conducting a disciplinary inquiry in relation to the approved manager on correspondence—make a submission in accordance

[s 20]

with the requirements stated in the notice under section 53B(2)(b)(v); or

- (c) if the approved manager is given a notice under section 54D—give the information required by the notice.

‘(2) The Authority may—

- (a) continue the disciplinary inquiry; and
(b) make a decision about whether the ground for disciplinary action is established.

‘54C Failure to take oath or answer question

‘(1) At a hearing of a disciplinary inquiry in relation to an approved manager, the approved manager must not—

- (a) fail to take an oath or make an affirmation when required by the Authority; or
(b) fail, without reasonable excuse, to answer a question the Authority requires the approved manager to answer.

Maximum penalty—60 penalty units.

‘(2) For subsection (1)(b), it is a reasonable excuse for an approved manager to fail to answer a question, if answering the question might tend to incriminate the approved manager.

‘54D Authority may require information relevant to disciplinary inquiry

‘(1) For conducting a disciplinary inquiry, the Authority may, by notice given to the approved manager or another person, require the approved manager or other person to give the Authority information, including a document, relevant to the inquiry.

‘(2) If a document is given to the Authority under subsection (1), the Authority may make a copy of, or take an extract from, it.

‘(3) A person given a notice under subsection (1) must not fail, without a reasonable excuse, to give the Authority the information the person is required to give by the notice.

Maximum penalty—60 penalty units.

- ‘(4) For subsection (3), it is a reasonable excuse for an individual to fail to give information, if giving the information might tend to incriminate the individual.

‘54E Attendance notice

- ‘(1) The Authority may, by notice given to a relevant person (an *attendance notice*), require the person—
- (a) to attend a hearing at a stated time and place to give evidence; or
 - (b) to produce stated documents or other things at a hearing.
- ‘(2) For subsection (1), the Authority may act on its own initiative or on the application, in the approved form, of an approved manager.
- ‘(3) If a document is given to the Authority under subsection (1), the Authority may make a copy of, or take an extract from, it.
- ‘(4) A person given an attendance notice must not fail, without reasonable excuse—
- (a) to attend as required by the notice; or
 - (b) to continue to attend as required by the Authority until excused from further attendance.

Maximum penalty—60 penalty units.

- ‘(5) Also, at a hearing, a person appearing as a witness must not—
- (a) fail to take an oath or make an affirmation when required by the Authority; or
 - (b) fail, without reasonable excuse, to answer a question the Authority requires the person to answer; or
 - (c) fail, without reasonable excuse, to produce a document or other thing the person is required to produce by an attendance notice.

Maximum penalty—60 penalty units.

[s 21]

‘(6) It is a reasonable excuse for an individual to fail to answer a question or to produce a document or other thing, if answering the question or producing the document or thing might tend to incriminate the individual.

‘(7) In this section—

relevant person means a person the Authority considers has information relevant to the disciplinary inquiry conducted about an approved manager.

‘54F Substituted service on approved manager or relevant person

‘(1) If the Authority is satisfied service of a notice given to an approved manager under section 53B or relevant person under section 54E can not be effected on the approved manager or relevant person under the provision, the Authority may order substituted service of the notice.

‘(2) Substituted service may be effected in any way ordered, including, for example, by facsimile or telephone.

‘(3) If the approved manager or relevant person is served with a notice as ordered by the Authority under subsection (1), the notice is taken to have been given to the approved manager under section 53B or relevant person under section 54E.’

21 Insertion of new pt 7, div 1, hdg

Before section 100—

insert—

‘Division 1 Establishment’.

22 Insertion of new pt 7, div 2 and sdiv 1, hdgs

After section 101—

insert—

‘Division 2 Membership

‘Subdivision 1 Appointment’.

23 Amendment of s 102 (Membership)

Section 102(2), after ‘Governor in Council’—

insert—

‘on the recommendation of the Minister’.

24 Replacement of s 105 (Disqualifications for appointment)

Section 105—

omit, insert—

‘105 Disqualifications for appointment

‘A person is not qualified to be recommended for appointment or continue as a member of the Authority if—

(a) the person—

(i) is an insolvent under administration; or

(ii) is convicted of—

(A) an offence against this Act or a corresponding law; or

(B) an indictable offence; or

(iii) becomes incapable of discharging the duties of a member because of physical or mental incapacity; or

(iv) has an interest in a brothel; or

(b) the Minister, having regard to information about the person under subdivision 2, decides the person should not continue or be recommended for appointment as a member of the Authority.’.

[s 25]

25 Insertion of new pt 7, div 2, sdiv 2, and div 3, hdg

After section 108—

insert—

‘Subdivision 2 Assessing suitability for appointment

‘108AA Subdivision does not apply to exempt member

‘This subdivision does not apply to an exempt member.

‘108AB Extended criminal history checks

- ‘(1) This section applies in relation to the following persons—
- (a) a member of the Authority;
 - (b) a person who is being considered for appointment as a member of the Authority (a *prospective member*).
- ‘(2) The Minister may ask the commissioner for a written report about the person’s extended criminal history.
- ‘(3) However, if the request relates to a prospective member, the Minister may make the request only if the person has given the Minister written consent for the request.
- ‘(4) The commissioner must comply with the request.
- ‘(5) However, subsection (4) applies only to information in the commissioner’s possession or to which the commissioner has access.
- ‘(6) Before using information obtained under subsection (2) to decide whether a person should continue or be recommended for appointment as member of the Authority, the Minister must—
- (a) disclose the information to the person; and
 - (b) allow the person a reasonable opportunity to make representations to the Minister about the information.

-
- ‘(7) The Minister must ensure a report given under this section is destroyed as soon as practicable after it is no longer needed for the purpose for which it was requested.
 - ‘(8) The *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the asking for, or giving of, the information mentioned in subsection (2).
 - ‘(9) To remove any doubt, it is declared that, despite the *Youth Justice Act 1992*, part 9, the commissioner may disclose information to which that part applies to the Minister for complying with a request under subsection (2).

‘108AC Disclosure of changes in extended criminal history

- ‘(1) If there is a change in the extended criminal history of a member of the Authority, the member must, unless the member has a reasonable excuse, immediately disclose the change to the Minister.

Maximum penalty—100 penalty units or 2 years imprisonment.

- ‘(2) For a member of the Authority who does not have an extended criminal history, there is taken to be a change in the member’s extended criminal history if the member acquires an extended criminal history.
- ‘(3) To comply with subsection (1), the information disclosed by the member of the Authority about a conviction for an offence or charge in the member’s extended criminal history must include the following—
 - (a) the existence of the conviction or charge;
 - (b) when the offence was committed or alleged to have been committed;
 - (c) details adequate to identify the offence or alleged offence;
 - (d) for a conviction—
 - (i) whether or not a conviction was recorded; and

[s 25]

(ii) the sentence imposed on the member.

‘(4) The *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the disclosure of information under this section.

‘108AD Disclosure must not be false, misleading or incomplete

‘(1) The disclosure under section 108C(1) must be in the approved form.

‘(2) A member of the Authority must not give the Minister an approved form under subsection (1) that is false, misleading or incomplete in a material particular.

Maximum penalty—100 penalty units or 2 years imprisonment.

‘(3) Subsection (2) does not apply to a member of the Authority in relation to particular information that the member is unable to provide if the member—

- (a) indicates in the approved form the information that the member is unable to provide; and
- (b) otherwise gives the information in the approved form to the best of the member’s ability.

‘108AE Use of information obtained under this subdivision

‘(1) The information about a person received under this subdivision must not be used for any purpose other than for making a decision about whether the person should continue or be recommended for appointment as a member of the Authority.

‘(2) When making the decision mentioned in subsection (1), the Minister must have regard to the following matters relating to information about the commission, or alleged or possible commission, of an offence by the person—

- (a) when the offence was committed, is alleged to have been committed or may possibly have been committed;

- (b) the nature of the offence and its relevance to the person's appointment as a member of the Authority;
- (c) anything else the Minister considers relevant to whether the person should continue or be recommended for appointment as a member of the Authority.

'Division 3 Status'.

26 Renumbering of ss 108AA–108D

Sections 108AA to 108D—

renumber as sections 108A to 108I.

27 Insertion of new pt 7A, div 2, sdiv 1, hdg

Before section 110B—

insert—

'Subdivision 1 Appointment'.

28 Amendment of s 110B (Appointment of executive director)

Section 110B(2), after 'Governor in Council'—

insert—

'on the recommendation of the Minister'.

29 Insertion of new pt 7A, div 2, sdiv 2

After section 110K—

insert—

‘Subdivision 2 Assessing suitability for appointment

‘110KA Extended criminal history checks

- ‘(1) This section applies in relation to the following persons—
 - (a) the executive director;
 - (b) a person who is being considered for appointment as the executive director (a *prospective executive director*).
- ‘(2) The Minister may ask the commissioner for a written report about the person’s extended criminal history.
- ‘(3) However, if the request relates to a prospective executive director, the Minister may make the request only if the prospective executive director has given the Minister written consent for the request.
- ‘(4) The commissioner must comply with the request.
- ‘(5) However, subsection (4) applies only to information in the commissioner’s possession or to which the commissioner has access.
- ‘(6) Before using information obtained under subsection (2) to decide whether a person should continue or be recommended for appointment as the executive director, the Minister must—
 - (a) disclose the information to the person; and
 - (b) allow the person a reasonable opportunity to make representations to the Minister about the information.
- ‘(7) The Minister must ensure a report given under this section is destroyed as soon as practicable after it is no longer needed for the purpose for which it was requested.
- ‘(8) The *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the asking for, or giving of, the information mentioned in subsection (2).
- ‘(9) To remove any doubt, it is declared that, despite the *Youth Justice Act 1992*, part 9, the commissioner may disclose

information to which that part applies to the Minister for complying with a request under subsection (2).

‘110KB Disclosure of changes in extended criminal history

- ‘(1) If there is a change in the extended criminal history of the executive director, the executive director must, unless the executive director has a reasonable excuse, immediately disclose the change to the Minister.

Maximum penalty—100 penalty units or 2 years imprisonment.

- ‘(2) For the executive director who does not have an extended criminal history, there is taken to be a change in the executive director’s extended criminal history if the executive director acquires an extended criminal history.
- ‘(3) To comply with subsection (1), the information disclosed by the executive director about a conviction for an offence or charge in the executive director’s extended criminal history must include the following—
- (a) the existence of the conviction or charge;
 - (b) when the offence was committed or alleged to have been committed;
 - (c) details adequate to identify the offence or alleged offence;
 - (d) for a conviction—
 - (i) whether or not a conviction was recorded; and
 - (ii) the sentence imposed on the executive director.
- ‘(4) The *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the disclosure of information under this section.

[s 29]

‘110KC Disclosure must not be false, misleading or incomplete

- ‘(1) The disclosure under section 110KB(1) must be in the approved form.
- ‘(2) The executive director must not give the Minister an approved form under subsection (1) that is false, misleading or incomplete in a material particular.

Maximum penalty—100 penalty units or 2 years imprisonment.

- ‘(3) Subsection (2) does not apply to the executive director in relation to particular information that the executive director is unable to provide if the executive director—
 - (a) indicates in the approved form the information that the executive director is unable to provide; and
 - (b) otherwise gives the information in the approved form to the best of the executive director’s ability.

‘110KD Use of information obtained under this subdivision

- ‘(1) The information about a person received under this subdivision must not be used for any purpose other than for deciding whether the person should continue or be recommended for appointment as the executive director.
- ‘(2) When making the decision mentioned in subsection (1), the Minister must have regard to the following matters relating to information about the commission, or alleged or possible commission, of an offence by the person—
 - (a) when the offence was committed, is alleged to have been committed or may possibly have been committed;
 - (b) the nature of the offence and its relevance to the person’s appointment as the executive director;
 - (c) anything else the Minister considers relevant to whether the person should continue or be recommended for appointment as the executive director.’

30 Insertion of new pt 7A, div 3, sdiv 1, hdg

After part 7A, division 3, heading—

insert—

‘Subdivision 1 Employment’.

31 Insertion of new pt 7A, div 3, sdiv 2

After section 110L—

insert—

‘Subdivision 2 Assessing suitability to be engaged as staff member

‘110M Application of sdiv 2

- ‘(1) This subdivision applies to duties to be performed in the office if, under a part 6 directive, the executive director decides that, because of the nature of the particular duties (*relevant duties*), it may be necessary to have regard to the extended criminal history of anyone engaged to perform the relevant duties to ensure the person so engaged is suitable to perform them.
- ‘(2) To remove any doubt, the *Public Service Act 2008*, chapter 5, part 6 applies only to the extent a part 6 directive may be made for that part under that Act.

Note—

Under the *Public Service Act 2008*, section 194, an appeal may be made to the chief executive of the Public Service Commission against a decision to take, or not take, action under a directive.

‘110N Executive director may obtain extended criminal history

- ‘(1) If the executive director proposes to engage a person as a staff member (a *prospective staff member*), the executive director may, under a part 6 directive, ask the prospective staff member for written consent for the executive director to obtain the prospective staff member’s extended criminal history.

[s 31]

- ‘(2) Subsection (1) applies even if the prospective staff member is a public service employee at the time the executive director proposes to engage the prospective staff member as a staff member.

‘1100 Failure to consent to obtaining extended criminal history

‘If a prospective staff member does not consent, or withdraws his or her consent, to the executive director obtaining the prospective staff member’s extended criminal history, the executive director is not required to consider the prospective staff member for engagement with the office.

‘110P Obtaining extended criminal history with consent

- ‘(1) If a prospective staff member gives written consent to the executive director obtaining the prospective staff member’s extended criminal history, the executive director may ask the commissioner for a written report about the prospective staff member’s extended criminal history.
- ‘(2) The request may include the following—
- (a) the prospective staff member’s name and any other name the executive director believes the prospective staff member may use or may have used;
 - (b) the prospective staff member’s date and place of birth, gender and address.
- ‘(3) Subject to subsection (4), the commissioner must comply with the request.
- ‘(4) The duty imposed on the commissioner to comply with the request applies only to information in the commissioner’s possession or to which the commissioner has access.
- ‘(5) The executive director must destroy a report given to the executive director under this section as soon as practicable after it is no longer needed for the purpose for which it was requested.

-
- ‘(6) The *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the asking for, or giving of, the information mentioned in subsection (1).
 - ‘(7) To remove any doubt, it is declared that, despite the *Youth Justice Act 1992*, part 9, the commissioner may disclose information to which that part applies to the executive director for complying with a request under subsection (1).

‘110Q Assessment of suitability using extended criminal history

‘After the prospective staff member’s extended criminal history is given to the executive director, the executive director must consider the prospective staff member’s extended criminal history in making an assessment about the prospective staff member’s suitability for engagement as a staff member.

‘110R Staff member to disclose change in extended criminal history

- ‘(1) This section applies if there is a change in the extended criminal history of a staff member.
- ‘(2) The staff member must immediately disclose the details of the change to the executive director.
- ‘(3) The disclosure under subsection (2) must be in the approved form.
- ‘(4) Information disclosed in the approved form by the staff member about a conviction or charge for an offence in the staff member’s extended criminal history must include—
 - (a) the existence of the conviction or charge; and
 - (b) when the offence was committed or alleged to have been committed; and
 - (c) the details of the offence or alleged offence; and
 - (d) for a conviction—whether or not a conviction was recorded and the sentence imposed on the staff member.

[s 31]

- ‘(5) For a staff member who does not have an extended criminal history, there is taken to be a change in the staff member’s extended criminal history if the staff member acquires an extended criminal history.
- ‘(6) The *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the disclosure of information under this section.

‘110S Failing to make disclosure or making false, misleading or incomplete disclosure

- ‘(1) A staff member must not—
 - (a) fail to give the executive director a disclosure as required under section 110R, unless the staff member has a reasonable excuse; or
 - (b) give the executive director an approved form under section 110R that is false, misleading or incomplete in a material particular.

Maximum penalty—100 penalty units or 2 years imprisonment.

- ‘(2) Subsection (1)(b) does not apply to a staff member in relation to particular information that the staff member is unable to provide if the staff member—
 - (a) indicates in the approved form the information that the staff member is unable to provide; and
 - (b) otherwise gives the information in the approved form to the best of the staff member’s ability.

‘110T Executive director may obtain report from commissioner

- ‘(1) This section applies to a staff member.
- ‘(2) The executive director may ask the commissioner for a written report about the staff member’s extended criminal history.

-
- ‘(3) Subject to subsection (4), the commissioner must comply with the request.
 - ‘(4) The duty imposed on the commissioner to comply with the request applies only to information in the commissioner’s possession or to which the commissioner has access.
 - ‘(5) The executive director must destroy a report given to the executive director under this section as soon as practicable after it is no longer needed for the purpose for which it was requested.
 - ‘(6) The *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the asking for, or giving of, the information mentioned in subsection (2).
 - ‘(7) To remove any doubt, it is declared that, despite the *Youth Justice Act 1992*, part 9, the commissioner may disclose information to which that part applies to the executive director for complying with a request under subsection (2).

‘110U Use of information obtained under this subdivision

- ‘(1) This section applies to the executive director in considering information about a person received under this subdivision.
- ‘(2) The information must not be used for any purpose other than assessing the person’s suitability to be or continue to be engaged as a staff member.
- ‘(3) When making the assessment, the executive director must have regard to the following matters relating to information about the commission, or alleged or possible commission, of an offence by the person—
 - (a) when the offence was committed, is alleged to have been committed or may possibly have been committed;
 - (b) the nature of the offence and its relevance to the person’s proposed duties or duties under the engagement;
 - (c) anything else the executive director considers relevant to the assessment of the person’s suitability.

[s 32]

‘110V Person to be advised of information obtained from commissioner

- ‘(1) This section applies if, after having regard to the matters mentioned in section 110U(3) about a person, the executive director considers the person may not be suitable to be or continue to be engaged by the office to perform relevant duties.
- ‘(2) The executive director must—
- (a) disclose the information to the person; and
 - (b) allow the person a reasonable opportunity to make representations to the executive director about the information.’.

32 Amendment of s 111 (Licence and certificate register)

Section 111(1)(b) and (d), after ‘the granting,’—
insert—
‘giving,’.

33 Amendment of s 131 (Offences about false or misleading information or documents)

Section 131, ‘or 98’—
omit, insert—
‘, 98, 108D(2), 110KC(2) or 110S’.

34 Amendment of s 132 (Evidentiary provision)

Section 132(5)—
insert—
‘(e) that an annual licence fee or an annual licence return fee was not paid by the prescribed day;
(f) that an annual certificate fee or an annual return fee was not paid by the prescribed day.’.

35 Insertion of new s 133A

After section 133—

insert—

‘133A Confidentiality

‘(1) This section applies to a relevant person who, in the capacity as relevant person, acquired information, or gained access to a document, under this Act about someone else’s extended criminal history for assessing the person’s suitability for—

- (a) appointment as a member of the Authority; or
- (b) appointment as the executive director; or
- (c) engagement as a staff member.

‘(2) The person must not disclose the acquired information, or give access to the document, to anyone else.

Maximum penalty—100 penalty units.

‘(3) Subsection (2) does not apply to the disclosure of acquired information, or giving of access to a document, about a person—

- (a) to the Minister for the purpose of assessing the person’s suitability for the appointment in relation to which the information or document was acquired; or
- (b) to a member of the Authority for the purpose of assessing the person’s suitability for appointment as the executive director or engagement as a staff member; or
- (c) to the executive director or a selection panel member for the purpose of assessing the person’s suitability for engagement as a staff member; or
- (d) with the person’s consent; or
- (e) if the disclosure or giving of access is otherwise required under an Act.

‘(4) In this section—

relevant person means a person who is or has been—

- (a) the Minister; or

[s 36]

- (b) a member of the Authority; or
- (c) the executive director; or
- (d) a staff member or a selection panel member.

selection panel member means a member of a panel formed to make a recommendation to the executive director about engaging a person as a staff member.’.

36 Insertion of new pt 9, div 7

Part 9—

insert—

‘Division 7 Provisions for Police Legislation Amendment Act 2010

‘156 Definition for pt 9, div 7

‘In this division—

commencement means the commencement of this division.

‘157 Conduct of disciplinary inquiry started but not dealt with as at commencement

- ‘(1) This section applies to a disciplinary inquiry that has started but is not complete as at the commencement.
- ‘(2) The Authority must continue to conduct the inquiry under the Act as in force immediately before the commencement.

‘158 Disciplinary inquiry notice not given to licensee as at commencement

- ‘(1) This section applies if the Authority—
 - (a) decides, before the commencement, to conduct a disciplinary inquiry in relation to a licensee; and
 - (b) has not, as at the commencement, started the inquiry.

-
- ‘(2) The Authority must conduct the inquiry under the Act as in force from the commencement.

‘159 Disciplinary inquiry notice not given to approved manager as at commencement

- ‘(1) This section applies if the Authority—
- (a) decides, before the commencement, to conduct a disciplinary inquiry in relation to an approved manager; and
 - (b) has not, as at the commencement, started the inquiry.
- ‘(2) The Authority must conduct the inquiry under the Act as in force from the commencement.

‘160 Disqualifications for appointment—particular members of Authority

- ‘(1) This section applies to a member of the Authority, other than an exempt member, as at the commencement.
- ‘(2) Section 105(b) as at the commencement applies to the member.

‘161 Extended criminal history checks—particular members of Authority

- ‘(1) This section applies to a member of the Authority, other than an exempt member, as at the commencement.
- ‘(2) Sections 108B and 108E apply in relation to the member.
- ‘(3) Sections 108C and 108D apply to the member.

‘162 Extended criminal history checks—executive director

- ‘(1) This section applies to the executive director as at the commencement of this section.

[s 37]

‘(2) Sections 110KA and 110KD apply in relation to the executive director.

‘(3) Sections 110KB and 110KC apply to the executive director.

‘163 Executive director may obtain extended criminal history

‘(1) This section applies to a staff member as at the commencement of this section.

‘(2) Sections 110R and 110S apply to the staff member.

‘(3) Sections 110T, 110U and 110V apply in relation to the staff member.

‘164 Transitional provision for Police Legislation Amendment Act 2010

‘The amendment of the *Prostitution Regulation 2000* by the *Police Legislation Amendment Act 2010* does not affect the power of the Governor in Council to further amend the regulation or to repeal it.’

37 Amendment of sch 4 (Dictionary)

Schedule 4—

insert—

‘commencement, for part 9, division 7, see section 156.

disciplinary inquiry notice, for a disciplinary inquiry—

(a) in relation to a licensee—see section 27B; or

(b) in relation to an approved manager—see section 53B.

engage, a person, includes appoint, employ, promote, redeploy or second the person within or to the office.

exempt member means a member of the Authority mentioned in section 102(1)(b) or (c).

[s 39]

39 Amendment of s 3 (Definitions)

- (1) Section 3, definition *certificate anniversary day*, ‘grant’—
omit, insert—
‘giving under section 43 of the Act’.
- (2) Section 3, definition *licence anniversary day*, ‘grant’—
omit, insert—
‘giving under section 18 of the Act’.

40 Amendment of s 5A (Conditions of licence—annual licence fee and annual licence return fee—Act, s 19(5)(d)(i))

Section 5A, ‘at least 3 months’—
omit, insert—
‘on or’.

41 Amendment of s 5B (Conditions of licence—annual return—Act, s 19(5)(d)(ii))

Section 5B, ‘at least 3 months’—
omit, insert—
‘on or’.

42 Amendment of s 6A (Conditions of certificate—approved manager’s annual certificate fee and annual return fee—Act, s 44(4)(d)(i))

Section 6A, ‘at least 3 months’—
omit, insert—
‘on or’.

43 Amendment of s 6B (Conditions of certificate—annual return—Act, s 44(4)(d)(ii))

Section 6B, ‘at least 3 months’—

omit, insert—

‘on or’.

© State of Queensland 2010