



Queensland

Disability Services (Criminal History) Amendment Bill 2009



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Contents

		Page
1	Short title	4
2	Act amended	4
3	Amendment of s 123 (Register of persons engaged by funded non-government entities)	4
4	Insertion of new pt 10AA	4
	Part 10AA Carers with violent criminal histories	
	Division 1 Interpretation	
	123AA Definitions for pt 10AA	5
	Division 2 Prohibition on engagement of carers with violent criminal histories	
	123AB Service provider must not engage person with violent criminal history as a carer.	6
	123AC Person with violent criminal history must not apply for, or start or continue in, engagement as a carer. . .	6
	Division 3 Issue of carer prohibition notices	
	123AD Chief executive to issue carer prohibition notices. . . .	7
	123AE Review of decision about exceptional case	8
	123AF Period of carer prohibition notice	8
	Division 4 Criminal history screening process for non-funded service providers	
	123AG Application of div 4	9
	123AH Screening of people engaged, or proposed to be engaged, as carers by non-funded service providers	9
	123AI Disclosure obligations etc. of people engaged as a carer by non-funded service providers	10
	123AJ Register of persons engaged by non-funded service providers	10
5	Amendment of sch 7 (Dictionary)	11

2009

A Bill

for

An Act to amend the *Disability Services Act 2006* to prohibit people with violent criminal histories being engaged as carers of people with a disability

The Parliament of Queensland enacts— 1

Clause 1 Short title 2

This Act may be cited as the *Disability Services (Criminal History) Amendment Act 2009*. 3
4

Clause 2 Act amended 5

This Act amends the *Disability Services Act 2006*. 6

Clause 3 Amendment of s 123 (Register of persons engaged by funded non-government entities) 7
8

(1) Section 123(2)(c), after ‘notice’— 9

insert— 10

‘, or a carer prohibition notice under part 10AA,’. 11

(2) Section 123(2)(d), after ‘notice’— 12

insert— 13

‘and, if applicable, the carer prohibition notice’. 14

(3) Section 123(2)(f), after ‘notice’— 15

insert— 16

‘or a carer prohibition notice’. 17

Clause 4 Insertion of new pt 10AA 18

After part 10— 19

insert— 20

‘Part 10AA	Carers with violent criminal histories	1
		2
‘Division 1	Interpretation	3
‘123AA Definitions for pt 10AA		4
‘In this part—		5
7 year period means the 7 year period ending on the day a		6
person’s criminal history is considered by the chief executive		7
for the purpose of deciding whether to issue a carer		8
prohibition notice to the person.		9
carer means a person engaged by a service provider to care		10
for another person who needs ongoing support because of a		11
disability.		12
carer prohibition notice see section 123AD(2).		13
engaged person see section 123AD(1)(a).		14
non-funded service provider see section 123AG.		15
violent criminal history , of a person, means a criminal history		16
that includes a conviction or charge of the person for a violent		17
offence committed, or alleged to have been committed, within		18
the 7 year period.		19
violent offence means any offence involving violence against		20
a person.		21

[s 4]

‘Division 2	Prohibition on engagement of carers with violent criminal histories	1 2 3
‘123AB Service provider must not engage person with violent criminal history as a carer		4 5
‘(1) A service provider must not engage, or continue to engage, a person as a carer at a service outlet of the service provider, if—		6 7 8
(a) the service provider is aware that a carer prohibition notice has been issued to the person and is current; or		9 10
(b) for a non-funded service provider—		11
(i) the service provider has not made a request about the person under section 123AH(1); or		12 13
(ii) the service provider is aware the person has withdrawn, or is deemed to have withdrawn, his or her consent to screening under part 10 as applied by section 123AH before a decision about whether to issue a carer prohibition notice to the person was made.		14 15 16 17 18 19
Maximum penalty—		20
(a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 206—100 penalty units; or		21 22 23
(b) for the service provider—500 penalty units.		24
‘(2) This section applies despite any other provision in this Act.		25
‘123AC Person with violent criminal history must not apply for, or start or continue in, engagement as a carer		26 27
‘(1) A person must not apply for, or start or continue in, engagement as a carer by a service provider if—		28 29
(a) a carer prohibition notice is issued to the person and is current; or		30 31

-
- (b) the service provider is a non-funded service provider and—
 - (i) the service provider has not made a request about the person under section 123AH(1); or
 - (ii) the person withdrew the person's consent, or is taken to have withdrawn the person's consent, to screening under part 10 as applied by section 123AH before a decision about whether to issue a carer prohibition notice to the person was made.
 - Maximum penalty—500 penalty units or 5 years imprisonment.
 - ‘(2) This section applies despite any other provision in this Act.

‘Division 3 Issue of carer prohibition notices 13

‘123AD Chief executive to issue carer prohibition notices 14

- ‘(1) This section applies if—
 - (a) the chief executive obtains police information under part 9 or 10, including part 10 as applied by section 123AH, about a person (an *engaged person*) seeking to be engaged, or who is engaged, by a service provider as a carer; and
 - (b) the chief executive is satisfied the engaged person has a violent criminal history; and
 - (c) the chief executive does not propose to issue a negative notice under part 10 to the engaged person.
- ‘(2) The chief executive must give the engaged person a notice (a *carer prohibition notice*) stating the person can not be engaged by a service provider as a carer.
- ‘(3) However, subsection (2) does not apply if—
 - (a) the engaged person's criminal history does not include any convictions for violent offences; and

[s 4]

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- (b) the chief executive is satisfied it is an exceptional case in which it would not harm the best interests of people with a disability for the engaged person to be engaged by a service provider as a carer.
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 - ‘(4) For deciding whether or not there is an exceptional case as mentioned in subsection (3)(b), the chief executive must—
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 - 6
 - (a) have regard to the factors mentioned in section 86(2);
 - 7
 - 8
 - (b) comply with section 88 as if the chief executive was deciding whether there is an exceptional case as mentioned in section 85(4) or (7).
 - 9
 - 10
 - 11
 - ‘(5) If the chief executive issues a carer prohibition notice to the engaged person, the notice must be accompanied by—
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 - 13
 - (a) notice of the matters mentioned in section 87(2); and
 - 14
 - (b) a copy of section 123AE.
 - 15
 - ‘(6) For subsection (5), section 87(2) applies as if a reference in that section to an exceptional case mentioned in section 85(4) or (7) were a reference to an exceptional case mentioned in subsection (3)(b).
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- ‘123AE Review of decision about exceptional case**
 - 20
- ‘(1) A person may apply to the tribunal for a review of a decision by the chief executive as to whether or not there is an exceptional case as mentioned in section 123AD(3)(b) if, because of the decision, the chief executive issued a carer prohibition notice to the person.
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 - ‘(2) Section 108 applies for the application as if—
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 - (a) the application were made under section 108(1); and
 - 27
 - (b) a decision to issue a carer prohibition notice were a decision to issue a negative notice.
 - 28
 - 29
- ‘123AF Period of carer prohibition notice**
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- ‘(1) A carer prohibition notice remains current until the day that is 7 years from the date of the most recent violent offence
 - 31
 - 32

committed, or alleged to have been committed, by the engaged person.

‘(2) However, the chief executive may cancel the carer prohibition notice if the chief executive is satisfied that—

(a) the decision to issue the notice to the engaged person was based on wrong or incomplete information; and

(b) based on the correct or complete information, the chief executive should not have issued the notice.

‘(3) The chief executive may cancel the carer prohibition notice on the application of the engaged person or on the chief executive’s own initiative.

‘Division 4 Criminal history screening process for non-funded service providers

‘123AG Application of div 4

‘This division applies to a service provider (a *non-funded service provider*) other than a funded service provider.

‘123AH Screening of people engaged, or proposed to be engaged, as carers by non-funded service providers

‘(1) A non-funded service provider who proposes to start engaging, or continue engaging, a person as a carer at a service outlet of the service provider may ask the chief executive to obtain police information about the person under part 10 for the purpose of deciding whether to issue a carer prohibition notice to the person.

‘(2) For the making of a request under subsection (1) and the obtaining of police information about the person, the relevant provisions apply, with any necessary modifications, as if—

(a) the service provider were a funded non-government service provider; and

[s 4]

- (b) a request by the service provider under subsection (1) were an application made under section 83 for a prescribed notice; and
 - (c) for section 109, investigative information includes evidence of acts or omissions that, at the time of the acts or omissions, constituted violent offences; and
 - (d) a carer prohibition notice issued to the person were a negative notice; and
 - (e) a reference in section 113 to section 101 were a reference to section 123AF(3); and
 - (f) a reference in section 113 to a decision about an exceptional case as mentioned in section 85(4) or (7) were a reference to a decision about an exceptional case as mentioned in section 123AD(3)(b); and
 - (g) a reference in section 97 or 98 to part 10 included a reference to this part.
- ‘(3) For this section, the *relevant provisions* are sections 78 (other than subsection (4)), 83(2) to (5), 84, 109 and 111 to 117.

‘123AI Disclosure obligations etc. of people engaged as a carer by non-funded service providers

‘Sections 95, 97 and 98 apply to a person engaged by a non-funded service provider as a carer as if the person were engaged by a funded non-government service provider.

‘123AJ Register of persons engaged by non-funded service providers

- ‘(1) The chief executive must keep a register with up-to-date information for each person for whom a request is made under section 123AH(1).
- ‘(2) The register may include the matters decided by the chief executive but must include the following—
 - (a) the person’s name;
 - (b) the name of the service provider engaging the person;

- (c) whether a carer prohibition notice was issued and, if a notice was issued, the date of issue; 1
2
- (d) if the person withdraws, or is taken to have withdrawn, his or her consent to screening under part 10 as applied by section 123AH, the date of the withdrawal; 3
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5
- (e) if the person applies for a review of the chief executive's decision relating to a carer prohibition notice, details of the review and its outcome. 6
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- ‘(3) If a non-funded service provider proposes to start engaging a person at a service outlet of the service provider, the service provider may apply to the chief executive in the approved form for information contained in the register. 9
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- ‘(4) If a non-funded service provider asks the chief executive for information contained in the register, the chief executive must give the service provider the information.’. 13
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Clause 5 Amendment of sch 7 (Dictionary) 16

- (1) Schedule 7— 17
 - insert—* 18
 - ‘7 year period**, for part 10AA, see section 123AA. 19
 - carer**, for part 10AA, see section 123AA. 20
 - carer prohibition notice**, for part 10AA, see section 123AA. 21
 - non-funded service provider**, for part 10AA, see section 123AA. 22
23
 - violent criminal history**, for part 10AA, see section 123AA. 24
 - violent offence**, for part 10AA, see section 123AA.’. 25
- (2) Schedule 7, definition *engaged person*— 26
 - omit, insert—* 27
 - ‘engaged person—** 28
 - (a) for part 10, see section 83(1); or 29
 - (b) for part 10AA, see section 123AA.’. 30