

Queensland



EDUCATION (CAPITAL ASSISTANCE) ACT 1993

**Reprinted as in force on 2 January 2002
(includes amendments up to Act No. 60 of 2001)**

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Information about this reprint

This Act is reprinted as at 2 January 2002. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

Queensland



**EDUCATION (CAPITAL ASSISTANCE)
ACT 1993**

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EDUCATION (CAPITAL ASSISTANCE) ACT 1993

[as amended by all amendments that commenced on or before 2 January 2002]

An Act relating to the grant of capital assistance for capital projects to certain non-State schools, and for other purposes

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the *Education (Capital Assistance) Act 1993*.

2 Commencement

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

3 Definitions

In this Act—

“**approved authority**” of an eligible non-State school means the person or body declared under section 6 to be the approved authority of the school;

“**CAA**” means a corporation whose nomination under section 7 is acceptable to the Minister;

“**capital assistance**” means the provision of an amount under section 22;

“**Capital Assistance Fund**” of a CAA means the fund established by the CAA under section 12;

“**capital project**” has the meaning given by section 4;

“eligible non-State school” means a non-State school that is—

- (a) a school in receipt of a subsidy (within the meaning of the *Education (General Provisions) Act 1989*, section 134A(1)(b); and
- (b) listed with a CAA for the purposes of this Act;

“non-State school” means a school that is provisionally accredited, or accredited, under the *Education (Accreditation of Non-State Schools) Act 2001*.

“State school” has the meaning given by section 2 of the *Education (General Provisions) Act 1989*.

4 Meaning of “capital project”

(1) A **“capital project”** is a project that consists of work for—

- (a) educational facilities for students; or
- (b) boarding facilities for students including accommodation in the facilities for persons supervising students in the facilities; or
- (c) residential accommodation for teachers in a remote area of the State.

(2) A project mentioned in subsection (1)(c) is a capital project only if the Minister approves the particular project.

(3) A capital project, consisting of work for facilities or accommodation as mentioned in subsection (1), may include the following—

- (a) work relating to equipment or furniture to the extent the equipment or furniture is part of the facilities or accommodation;

Example—

Work for the installation of information technology equipment.

- (b) work for the purpose of complying with any conditions imposed by the local authority for the area in which the relevant non-State school is located, or is to be relocated, as part of the local authority’s approval relating to the capital project, whether the work is undertaken on the school’s land or other land.

Example—

Work relating to bus stops, bus shelters, or areas for students to be set-down or picked-up, located or to be located, outside of the school’s land.

(4) In this section—

“relevant non-State school” means the non-State school to which the capital project relates.

“work” means planning, construction, alteration, extension, renovation, relocation or upgrading.

5 Meaning of granting application “in part”

A reference in section 16, 17 or 18 to the granting of an application **“in part”** includes granting the application in relation to any of the following—

- (a) a part of the project concerned;
- (b) a part of the capital assistance sought.

6 Declaration of approved authority

The Minister may declare that a person or body is the approved authority of 1 or more eligible non-State schools.

PART 2—CAPITAL ASSISTANCE AUTHORITIES

7 CAAs

(1) The Queensland Catholic Education Commission may nominate a corporation to be a capital assistance authority.

(2) The Association of Independent Schools of Queensland Inc. may nominate a corporation to be a capital assistance authority.

(3) A nomination must be in writing and given to the Minister.

(4) A nomination is effective only if the nominee is acceptable to the Minister.

8 Funding of CAAs for administrative costs

(1) The Minister may pay amounts to a CAA on account of the administrative costs expected to be incurred by the CAA in performing its functions under this Act.

(2) The amounts are to be paid from the amounts appropriated by the Parliament for the purposes of this Act.

(3) The CAA may pay the administrative costs out of the amounts.

(4) Interest earned by a CAA on amounts paid under subsection (1) (including any interest on that interest) may only be used by the CAA—

- (a) to pay the administrative costs; or
- (b) to provide capital assistance.

9 Functions

The functions of a CAA are—

- (a) to receive and assess applications for capital assistance from approved authorities of eligible non-State schools listed with the CAA for the purposes of this Act (“**listed schools**”) and to make recommendations to the Minister in relation to the applications; and
- (b) to make payments under this Act to approved authorities of listed schools from amounts standing to the credit of the CAA’s Capital Assistance Fund; and
- (c) to carry out the other functions conferred on the CAA by this Act.

10 Listing with CAA

(1) It is the responsibility of each non-State school that is a school in receipt of a subsidy (within the meaning of the *Education (General Provisions) Act 1989*, section 134A(1)(b)) to become listed with a CAA.

(2) A CAA must give the Minister written notice of each non-State school listed with it for the purposes of this Act.

(3) The notice must be given as soon as practicable after the listing happens.

(4) A non-State school may be listed with only 1 CAA for the purposes of this Act.

11 Change of listing

(1) An eligible non-State school may change its listing from one CAA to the other CAA for the purposes of this Act only if the Minister has approved the change.

(2) An eligible non-State school may make written application to the Minister for an approval under subsection (1).

(3) Before deciding the application, the Minister must seek the views of the CAA with which the school wishes to become listed about the application.

(4) The Minister may grant or refuse the application after considering any views of the CAA mentioned in subsection (3).

(5) If the Minister approves the application, the Minister must determine the year from which the change of listing becomes effective.

(6) The change of listing becomes effective on 1 January in that year.

(7) The Minister must inform the applicant and each CAA in writing of the Minister's decision on the application.

(8) If the Minister refuses the application, the Minister must give the applicant written reasons for the decision.

12 CAAs to establish Capital Assistance Funds

(1) Each CAA must establish a fund called the (name of CAA) Capital Assistance Fund.

(2) Each CAA must pay into its Capital Assistance Fund—

- (a) amounts paid to the CAA under section 13; and
- (b) interest mentioned in section 8 that is to be used to provide capital assistance; and
- (c) amounts of capital assistance returned to the CAA by an approved authority under an agreement mentioned in section 22; and
- (d) interest earned on the amounts in the Fund.

(3) A CAA must deposit the amounts standing to the credit of its Capital Assistance Fund with—

- (a) a financial institution; or
- (b) a person, body or fund approved by the Treasurer.

(4) The CAA must keep the deposits separate from its other deposits with the financial institution or the person, body or fund.

(5) Amounts received by a CAA that are required to be paid into its Capital Assistance Fund are held by the CAA on behalf of the State.

(6) Amounts standing to the credit of a CAA's Capital Assistance Fund may be used by the CAA only to provide capital assistance.

PART 3—FUNDING FOR CAPITAL ASSISTANCE

13 Minister may provide funds

(1) The Minister may pay amounts to a CAA for the purpose of enabling the CAA to provide capital assistance.

(2) The amounts are to be paid from amounts appropriated by the Parliament for the purposes of this Act.

14 Certain projects must not be funded

(1) Capital assistance must not be provided for—

- (a) the acquisition of land; or
- (b) the planning, construction, alteration, extension, renovation, relocation or upgrading of—
 - (i) a facility that has religious worship as its sole or principal purpose; or
 - (ii) a facility of a type not usually provided by the State in State schools.

(2) Subsection (1)(b)(ii) does not apply to the provision of boarding facilities for students at an eligible non-State school including accommodation in the facilities for persons supervising students in the facilities if—

- (a) the facilities are to be or are situated in the school grounds; or
- (b) the Minister approves the provision of the facilities.

(3) For the purpose of subsection (1)(b)(ii), a facility is to be taken to be usually provided by the State only if the whole of its cost is usually borne—

- (a) by the State or the Commonwealth; or
- (b) partly by the State and the Commonwealth.

(4) Capital assistance must not be provided for a capital project if—

- (a) a contract for the project has been entered into; or
- (b) site work or other building work for the project has been started;

before the Minister grants an application for capital assistance for the project.

PART 4—APPLICATIONS FOR CAPITAL ASSISTANCE AND REVIEW

Division 1—Applications for capital assistance

15 Application

(1) The approved authority of an eligible non-State school may, before the day prescribed by regulation for the relevant year, apply to the Minister for capital assistance for a proposed capital project to be carried out at the school during the year or either or both of the 2 following years.

(2) The application must be made in writing through the CAA with which the school is listed.

(3) The application must specify the amount of capital assistance sought.

(4) The application must contain, or be accompanied by, the information that may be required by regulation.

16 Action by CAA

(1) On receipt of an application under section 15, the CAA must—

- (a) assess it, having regard to the criteria prescribed by regulation; and
- (b) recommend to the Minister whether it should be granted in whole or in part or refused.

(2) The recommendation must be in writing, give reasons for the recommendation and be given to the Minister by the day prescribed by regulation for the relevant year.

17 Minister to decide application

(1) On receipt of the recommendation and the application to which it relates, the Minister may grant the application in whole or part or refuse the application.

(2) In deciding the application, the Minister may have regard solely or principally to the CAA's recommendation.

(3) The Minister must inform the applicant and the CAA in writing of the decision.

(4) If the Minister grants the application only in part or refuses the application, the Minister must give the CAA written reasons for the decision.

(5) The CAA must give a copy of the reasons to the applicant.

Division 2—Applications for review

18 Making of application

(1) If an application for capital assistance is granted by the Minister (whether in whole or part), the approved authority of the eligible non-State school concerned may apply to the Minister to have the application reviewed with a view to having the amount of capital assistance increased.

(2) The application must be made in writing through the CAA with which the school is listed.

(3) The application must specify—

- (a) the amount of the increase; and
- (b) the reasons for which the increase is sought.

19 Action by CAA on a review

(1) On receipt of an application under section 18, the CAA must—

- (a) assess it having regard to the criteria prescribed by regulation; and
- (b) recommend to the Minister whether—
 - (i) the amount of capital assistance previously granted should be increased by the amount sought or a lesser amount; or
 - (ii) the application should be refused.

(2) The recommendation must be in writing, give reasons for the recommendation and be given by the CAA to the Minister as soon as practicable after the CAA decides the recommendation.

20 Power of Minister on a review

(1) On receipt of the recommendation and the application to which it relates, the Minister may—

- (a) approve that the amount of capital assistance previously granted be increased by the amount sought or a lesser amount; or
- (b) refuse the application.

(2) In deciding the application, the Minister may have regard solely or principally to the CAA's recommendation.

(3) The Minister must inform the applicant and the CAA in writing of the decision.

(4) If the Minister approves that the amount of capital assistance previously granted be increased by less than the amount sought or refuses the application, the Minister must give the CAA written reasons for the decision.

(5) The CAA must give a copy of the reasons to the applicant.

Division 3—Available funds**21 CAA to have regard to available funds**

(1) In making a recommendation to the Minister in relation to an application under section 15 or 18, a CAA must have regard to the amount

that is available to provide capital assistance to eligible non-State schools listed with the CAA (the “**available amount**”).

(2) The available amount is the amount advised to the CAA by the Minister for the purposes of this section.

PART 5—PROVISION OF CAPITAL ASSISTANCE

22 CAA may provide capital assistance

(1) If the Minister grants an application by the approved authority of an eligible non-State school for capital assistance for a proposed capital project, the CAA with which the school is listed must provide the approved authority with the amount granted for the project.

(2) However, the CAA must not provide the amount until—

- (a) the CAA and the approved authority have entered into a written agreement for the project; and
- (b) at least 25% of the value of the works relating to the project has been completed.

(3) The agreement must be in the form approved by the Minister for the project.

PART 6—MISCELLANEOUS

23 Return by eligible non-State schools

(1) In this section—

“**year**” means the period of 12 months beginning on 1 April.

(2) If the approved authority of an eligible non-State school receives or retains capital assistance in a year (the “**relevant year**”), the authority must, by the day prescribed by regulation for the following year, give to the CAA with which the school was listed when the assistance was provided a written return—

- (a) identifying the capital project to which the assistance relates; and
- (b) stating whether or not the project was completed in the relevant year; and
- (c) specifying the amount spent on the project as at the end of the relevant year; and
- (d) specifying the amount (if any) held on account of the project at the end of the relevant year; and
- (e) specifying the amounts, and sources of the amounts, used to fund the project; and
- (f) containing any other information required by regulation.

(3) The CAA must make the statement available for inspection to a person approved by the Minister for that purpose.

(4) The person may make a copy of, or take extracts from, the statement and for that purpose may retain it in the person's possession for a reasonable period.

24 Return by CAA

(1) A CAA must, by the day prescribed by regulation for each year, give to the Minister a written return for the previous year (the “**previous year**”)—

- (a) containing an audited statement of the amounts received by it under section 8 in the previous year, interest received on the amounts and the expenditure of the amounts; and
- (b) containing an audited statement of its Capital Assistance Fund showing details of the amounts paid to and from the Fund in the previous year and the financial position of the Fund at the beginning and end of the previous year; and
- (c) giving details of capital projects of which it has been advised under section 23; and
- (d) containing an assessment of the scheme provided for by this Act including the effectiveness of the assessment criteria mentioned in sections 16(1)(a) and 19(1)(a); and
- (e) stating any other information prescribed by regulation.

(2) The audit mentioned in subsection (1) must be carried out by a person registered as an auditor under Part 9.2 of the Corporations Act and approved by the Minister.

25 Regulations

The Governor in Council may make regulations for the purposes of this Act.

PART 7—VALIDATING AND TRANSITIONAL PROVISIONS

Division 1—Validation of certain payments for Act No. 37 of 1993

26 Validation etc.

(1) Amounts paid before the commencement of this section in relation to non-State schools under the schemes known as the Interest Assistance to Non-State Schools Scheme and the Capital Assistance Scheme are taken to be, and always to have been, lawfully paid.

(2) The Minister may continue to pay amounts under the schemes to meet commitments existing under the schemes at the commencement of this section.

(2A) An amount paid under subsection (2) may be increased by not more than the GST payable for a supply made by the recipient of the amount relating directly to the payment of the amount.

(3) Amounts mentioned in subsection (2), including the amounts as increased under subsection (2A), may be paid out of amounts appropriated by the Parliament for the purposes of this Act.

27 Certain other Parts do not apply

Parts 2 to 6 do not apply to an amount paid under section 26.

*Division 1A—Validation of other payments etc.***27A Capital project involving work of the type mentioned in section 4(3)**

(1) Subsection (2) applies if an amount was paid, before the commencement of this section, by a CAA to the approved authority of an eligible non-State school as capital assistance for a proposed capital project that involved work of the type mentioned in section 4(3) (“**other works**”).

(2) The following is taken to be, and always to have been, lawfully granted, paid and used—

- (a) the grant of the application for capital assistance for the proposed capital project;
- (b) the payment of the amount;
- (c) the use of the amount for other works.

(3) Subsection (4) applies if, before the commencement of this section—

- (a) the Minister granted an application for capital assistance for a proposed capital project that involved other works; and
- (b) the capital assistance has not been provided.

(4) The application is taken to have been lawfully granted and provision of the capital assistance may be made under section 22.

*Division 2—Transitional provisions for Education and Other Legislation Amendment Act 1999***28 References to affiliation with a CAA**

(1) A non-State school affiliated with a CAA immediately before the commencement of this section is taken to be listed with the CAA.

(2) If a non-State school applied to the Minister to change its affiliation from one CAA to another CAA and the Minister had not made a decision about the application before the commencement of this section, the application may be dealt with by the Minister as an application to change the school’s listing.

ENDNOTES

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 2 January 2002. Future amendments of the Education (Capital Assistance) Act 1993 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	prev	= previous
amd	= amended	(prev)	= previously
amdt	= amendment	proc	= proclamation
ch	= chapter	prov	= provision
def	= definition	pt	= part
div	= division	pubd	= published
exp	= expires/expired	R[X]	= Reprint No.[X]
gaz	= gazette	RA	= Reprints Act 1992
hdg	= heading	reloc	= relocated
ins	= inserted	renum	= renumbered
lap	= lapsed	rep	= repealed
notfd	= notified	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 1992
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered

4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	none	8 March 1994
1A	to Act No 17 of 1997	25 August 1997
1B	to Act No. 81 of 1999	2 January 2000
1C	to Act No. 20 of 2000	14 July 2000
1D	to Act No. 46 of 2000	1 November 2000
1E	to Act No. 45 of 2001	27 July 2001
1F	to Act No. 60 of 2001	28 September 2001

5 List of legislation

Education (Capital Assistance) Act 1993 No. 37

date of assent 7 September 1993

ss 1–2 commenced on date of assent

remaining provisions commenced 18 February 1994 (1994 SL No. 47)

as amended by—

Miscellaneous Acts (Non-bank Financial Institutions) Amendment Act 1997 No. 17

ss 1–2, 74 sch

date of assent 15 May 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1997 (1997 SL No. 163)

Education and Other Legislation Amendment Act 1999 No. 81 pts 1, 2

date of assent 14 December 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2000 (see s 2)

GST and Related Matters Act 2000 No. 20 ss 1, 2(4), 29 sch 3

date of assent 23 June 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2000 (see s 2(4))

Statute Law (Miscellaneous Provisions) Act 2000 No. 46 ss 1, 3 sch

date of assent 25 October 2000

commenced on date of assent

Corporations (Ancillary Provisions) Act 2001 No. 45 ss 1–2, 29 sch 3

date of assent 28 June 2001

ss 1–2 commenced on date of assent

sch 3 commenced 15 July 2001 (see s 2(2) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)

remaining provision commenced immediately before 15 July 2001 (see s 2(1) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc publ Cwlth of Australia gaz 13 July 2001, No. S285)

Education (Accreditation of Non-State Schools) Act 2001 No. 60 ss 1–2(1)(a), (c), (2), 218–219 schs 1–2

date of assent 21 September 2001

ss 1–2, 219 sch 2 commenced on date of assent (see s 2(1)(a), (c))

remaining provisions commenced 1 January 2002 (see s 2(2))

6 List of annotations

Definitions

- s 3** def “**eligible non-State school**” amd 1999 No. 81 s 4; 2000 No. 46 s 3 sch; 2001 No. 60 s 218 sch 1
 def “**non-State school**” amd 2000 No. 46 s 3 sch
 sub 2001 No. 60 s 218 sch 1
 def “**State school**” amd 2000 No. 46 s 3 sch

Meaning of “capital project”

- s 4** amd 2001 No. 60 s 219 sch 2

Functions

- s 9** amd 1999 No. 81 s 5

Listing with CAA

- prov hdg** amd 1999 No. 81 s 6(1)
s 10 amd 1999 No. 81 s 6(2)–(3); 2000 No. 46 s 3 sch; 2001 No. 60 s 218 sch 1

Change of listing

- prov hdg** amd 1999 No. 81 s 7(1)
s 11 amd 1999 No. 81 s 7

CAAs to establish Capital Assistance Funds

- s 12** amd 1997 No. 17 s 74 sch

Application

- s 15** amd 1999 No. 81 s 8

Making of application

- s 18** amd 1999 No. 81 s 9

CAA to have regard to available funds

- s 21** amd 1999 No. 81 s 10

CAA may provide capital assistance

- s 22** amd 1999 No. 81 s 11

Return by eligible non-State schools

- s 23** amd 1999 No. 81 s 12

Return by CAA

- s 24** amd 2001 No. 45 s 29 sch 3

PART 7—VALIDATING AND TRANSITIONAL PROVISIONS**pt hdg** sub 1999 No. 81 s 13; 2001 No. 60 s 219 sch 2**Division 1—Validation of certain payments for Act No. 37 of 1993****div hdg** ins 1999 No. 81 s 13**Validation etc.****s 26** amd 2000 No. 20 s 29 sch 3**Certain other Parts do not apply****s 27** amd 2001 No. 60 s 219 sch 2**Division 1A—Validation of other payments etc.****div 1A (s 27A)** ins 2001 No. 60 s 219 sch 2**Division 2—Transitional provisions for Education and Other Legislation
Amendment Act 1999****div hdg** ins 1999 No. 81 s 14**References to affiliation with a CAA****s 28** ins 1999 No. 81 s 14