

Queensland



**EDUCATION AND OTHER
LEGISLATION
AMENDMENT ACT 1997**

Act No. 83 of 1997



EDUCATION AND OTHER LEGISLATION AMENDMENT ACT 1997

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Queensland



**Education and Other Legislation Amendment
Act 1997**

Act No. 83 of 1997

An Act to amend legislation about education, and for other purposes

[Assented to 5 December 1997]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Education and Other Legislation Amendment Act 1997*.

Commencement

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

PART 2—AMENDMENT OF ASSOCIATIONS INCORPORATION ACT 1981

Act amended in pt 2

3. This part amends the *Associations Incorporation Act 1981*.

Amendment of s 5 (Eligibility for incorporation)

4. Section 5(1)(b)(v), ‘a parents’—

omit, insert—

‘a school council or parents’.

PART 3—AMENDMENT OF CRIMINAL LAW (REHABILITATION OF OFFENDERS) ACT 1986

Act amended in pt 3

5. This part amends the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

Amendment of s 9A (Disclosure of particulars in special cases)

6. Section 9A(1), table, column 1, section 5—

insert—

‘(3) An elected member (other than an elected student member), or appointed member, of a school council, within the meaning of the *Education (General Provisions) Act 1989*.’.

PART 4—AMENDMENT OF CRIMINAL LAW (SEXUAL OFFENCES) ACT 1978

Act amended in pt 4

7. This part amends the *Criminal Law (Sexual Offences) Act 1978*.

Amendment of s 8 (Exempted reports)

8.(1) Section 8(1)(c), ‘Department of Justice, the Police Department’

omit, insert—

‘Department of Justice and Attorney-General, the commissioner of the Police Service, the Board of Teacher Registration’.

(2) Section 8(1)(c), ‘of the department’

omit, insert—

‘of the department or other entity’.

PART 5—AMENDMENT OF EDUCATION (GENERAL PROVISIONS) ACT 1989

Act amended in pt 5

9. This part amends the *Education (General Provisions) Act 1989*.

Amendment of s 3 (Interpretation)

10.(1) Section 3(1), definitions “**disabled person**”, “**preschool education**”, “**special education**”, “**State preschool centre**” and “**State school**”—

omit.

(2) Section 3(1)—

insert—

“**alternative association member**”, for the president of an association formed for a school, means a member of the association appointed by the president, under the association’s constitution, as a person to attend meetings of the school council established for the school in the place of the president.

“**annual report**”, of the department, means the department’s annual report under the *Financial Administration and Audit Act 1977*.

“**appointed member**” see section 30ZB(11).

“**basic allocation**” see section 3C(1).

“**casual vacancy**” means a vacancy arising for a reason other than because a member has completed the member’s term of office.

“**continuing student**” means a person was a student at a State educational institution before the end of semester 2 in 1997 and applies to enrol in a State educational institution.

“**coopted student member**” see section 30ZB(11).

“**elected member**” means—

- (a) an elected parent member; or
- (b) an elected staff member; or

(c) an elected student member.

“elected parent member” see section 30ZB(11).

“elected staff member” see section 30ZB(11).

“elected student member” see section 30ZB(11).

“extra semester”, for a student, means a semester of State education granted by the principal of a State educational institution to the student, under part 6, division 3.

“further semester”, for a student, means a semester of State education granted by the chief executive to the student, under part 6, division 5.

“model constitution”, for a school council, see section 30ZH.

“official member”, of a school council, means—

(a) the school’s principal; or

(b) if there is an association formed for the school—the president of the association.

“person with a disability” see section 3A(1).

“preschool education” means educational programs appropriate to the needs of children below the age of compulsory attendance and before enrolment in year 1.

“principal’s supervisor” means the officer employed in the department who holds the position as the principal’s supervisor.

“remaining allocation” see section 3C(3).

“school year” means all the days in a calendar year that are school days.

“semester” means semester 1 or semester 2.

“semester 1” means the period notified in the Education Office gazette as semester 1.

“semester 2” means the period notified in the Education Office gazette as semester 2.

“special education” see section 3A.

“special education developmental centre” see section 3A(5).

“State preschool centre” means the part of a primary school’s premises at

which preschool education is provided by the State.

“**State school**” means a school at which primary, secondary or special education is provided by the State.’.

(3) Section 3(3)—

omit.

Insertion of new ss 3A–3C

11. In part 1, after section 3—

insert—

‘Definitions relating to special education

‘**3A.(1)** For this Act, a “**person with a disability**” is a person who, in the opinion of the Minister, is unlikely to attain the levels of development of which the person is capable unless the person receives special educational programs and services appropriate to the needs of the person.

‘**(2)** “**Special education**” is the educational programs and services appropriate to the needs of persons with a disability.

‘**(3)** Special education for persons with a disability is additional to, or otherwise different from, educational programs generally available to persons of that age who do not have a disability.

‘**(4)** Also, special education may be provided to persons with a disability who are below the age of compulsory attendance.

‘**(5)** A “**special education developmental centre**” is a facility (howsoever described) that provides special education to persons with a disability who are below the age of compulsory attendance.

‘References to student when student is a minor or under other legal disability

‘**3B.(1)** This section applies to a provision in part 6 or 8 that states a student may appeal, make an application or submission, must be told about a decision or must be given a notice, and the relevant student is—

(a) under 18 years; or

(b) otherwise under a legal disability.

‘(2) The person who may appeal or make the application or submission for the student, who must be told about the decision or to whom a notice must be given, is—

(a) if a parent has care and control of the student—the parent; or

(b) if another adult has care and control of the student—the adult.

‘(3) In deciding who may appeal or make an application or submission, who must be told about a decision or to whom a notice must be given, the relevant State educational institution’s records may be relied on to decide—

(a) if a parent, or another adult, has care and control of the student;
and

(b) the current residential address of the parent or adult.

‘Meaning of “basic allocation”, “remaining allocation” etc.

‘3C.(1) **“Basic allocation”** is the allocation of 24 semesters of State education.

‘(2) Some students do not have the basic allocation but another number of semesters of State education is allocated to the student by the principal of a State educational institution.

‘(3) **“Remaining allocation”**, for a student, is—

(a) if the student was a student with a basic allocation—the basic allocation less the number of semesters of State education provided to the student; or

(b) if the student did not have a basic allocation—the number of semesters allocated to the student less the number of semesters of State education provided to the student.

‘(4) Neither “basic allocation” nor “remaining allocation” includes an extra semester or further semester.’

Amendment of s 6 (Power of Minister to be member of committees etc.)

12. Section 6(1), (3) and (4), ‘council,’—

omit.

Amendment of s 10 (Delegation by Minister)

13.(1) Section 10, ‘a person’—

omit, insert—

‘an appropriately qualified person’.

(2) Section 10, ‘and 6(1)(a)(ii)’—

omit, insert—

‘, 6(1)(a)(ii) and 56H¹’.

(3) Section 10—

insert—

‘**(2)** In subsection (1)—

“appropriately qualified person” includes having the qualifications, experience or standing appropriate to exercise the power.

Example of ‘standing’—

A person’s classification level in the department.’.

Amendment of s 12 (Provision of State education)

14. Section 12(2), (3) and (4)—

omit, insert—

‘**(2)** The duration of the program of instruction must be based on the basic allocation to a student.’.

Insertion of new s 12A

15. In part 3, division 1, after section 12—

insert—

¹ Section 3 (Interpretation), section 6 (Power of Minister to be member of committees etc.) and section 56H (Dealing with submissions against removal)

‘Special education

‘12A.(1) The Minister may provide, or contribute to, special education for persons with a disability who are—

- (a) of the age of compulsory attendance; and
- (b) enrolled in a non-State school or receiving instruction by another method approved by the Minister for the purpose.

‘(2) If special education is provided, or contributed to, by the Minister to a person with a disability under subsection (1), the governing body or person in charge of the non-State school or method of instruction must report to the Minister on the special education provided at the school or by the method.

‘(3) The report must be made at the times, in the way and contain the particulars, required by the Minister.

‘(4) Subject to the agreement of the parent of a person with a disability who is below the age of compulsory attendance, special education may be provided to the person in a way provided for in this section or section 12.’.

Amendment of s 15 (Establishment of school support centres, student hostels and residential colleges and other State educational institutions)

16. Section 15(1), ‘, in accordance with guidelines approved by the Governor in Council’—

omit.

Amendment of s 19 (Use of State educational institutions)

17.(1) Section 19(1), ‘, subject’ to ‘regulations’—

omit.

(2) Section 19—

insert—

‘(1A) Permission may be given under subsection (1) on conditions the Minister or officer considers appropriate on reasonable grounds.’.

Amendment of s 22 (State educational institutions may be discontinued)

18.(1) Section 22(1), ‘Subject to subsection (2), any’—

omit, insert—

‘A’.

(2) Section 22(2)—

omit.

Amendment of s 28 (School records and reports)

19. Section 28(1)—

omit, insert—

‘**28.(1)** The principal of a State school must comply with the chief executive’s written directions to the principal about the following matters—

- (a) the school records that must be kept;
- (b) the reports about the school that must be given to the chief executive;
- (c) the times by which, and the way in which, the records must be kept or the reports given.’.

Omission of s 29 (Hours of instruction)

20. Section 29—

omit.

Insertion of new pt 3B

21. After part 3A—

insert—

‘PART 3B—SCHOOL COUNCILS

‘Division 1—Object of part

‘Object

‘30W.(1) The object of this part is to improve student learning outcomes by providing for the establishment and operation of school councils.

‘(2) A school council has specified functions for guiding the broad strategic direction of the school for which it is established.

‘Division 2—Establishment, name, functions and other matters**‘Establishment**

‘30X.(1) The chief executive may, by notice in the Education Office gazette, establish a school council for a State school.²

‘(2) The school council may be established with functions only about the school for which the council is established.

‘Name

‘30Y. The school council established for a school is named as follows—

- (a) if the name of the school ends with ‘school’—the council is called ‘. . . (*insert name of school*) Council’;
- (b) otherwise—the council is called ‘. . . (*insert name of school*) School Council’.

‘Functions

‘30Z.(1) A school council has the following functions for the school for which it is established—

- (a) monitoring the school’s strategic direction;
- (b) approving—
 - (i) plans and school policies of a strategic nature;

² Section 30ZT (Initial constitution) provides that ‘The chief executive must not establish a school council until the chief executive has approved its constitution.’

- (ii) other documents affecting strategic matters, including the annual estimate of revenue and expenditure for the school;
- (c) monitoring the implementation of the plans, school policies and other documents, mentioned in paragraph (b);
- (d) advising the principal about strategic matters.

‘(2) The council must carry out its functions in a way that achieves the best learning outcomes for the school’s students.

‘(3) Despite subsections (1) and (2), a school council may not—

- (a) interfere with the principal’s management of the day to day operations of the school and its curriculum; or
- (b) make operational decisions about the use of teaching or learning resources in the school; or
- (c) make decisions about the individual teaching style used, or to be used, at the school; or
- (d) make a decision that is contrary to law or a written policy of the department.

‘School councils do not have certain powers

‘30ZA. A school council may not—

- (a) have control of funds; or
- (b) enter into contracts; or
- (c) acquire, hold, dispose of or deal with, property; or
- (d) sue or be sued.

Division 3—Membership

‘Membership of school councils

‘30ZB.(1) A school council consists of all of the following members—

- (a) the school’s principal;
- (b) if there is an association formed for the school for which the

council is established—the president of the association;

- (c) the elected parent members;
- (d) the elected staff members;
- (e) if the school for which the council is established—
 - (i) does not offer secondary education—any year 7 student who is coopted onto the council as a coopted student member under the council’s constitution; or
 - (ii) offers secondary education—the elected student members;
- (f) the appointed members.

‘(2) All of the following provisions apply to the membership of a school council—

- (a) the number of members of a council must be at least 6 and not more than 15;
- (b) the number of elected parent members and elected staff members must be equal;
- (c) there must not be more than 2 elected student members and 2 appointed members;
- (d) there must be at least 1 elected parent member and 1 elected staff member;
- (e) if the school provides secondary education for year 10, 11 or 12—there must be at least 1 elected student member.

‘(3) The president of an association may, under the association’s constitution, appoint another association member as an alternative association member to attend council meetings in the place of the president when the president is unable to attend the meetings.

‘(4) An alternative association member attending a meeting has the same rights and duties as the president.

‘(5) An official member is not eligible to be an elected or appointed member, and an elected or appointed member is not eligible for appointment by an association’s president as an alternative association member.

‘(6) The elected parent members of a school’s council must be elected—

- (a) if there is an association formed for the school and the association's constitution provides for the election of parent members to the school's council—under the association's constitution; or
- (b) if there is an association formed for the school but the association's constitution does not provide for the election of parent members to the school's council—by a secret ballot of the association's members attending a meeting called by the association's president for electing the parent members; or
- (c) if there is no association formed for the school—under the council's constitution.

'(7) The elected staff members of a school's council must be elected by a secret ballot of all persons who—

- (a) are employed by the department and assigned to the school; and
- (b) attend a meeting called, under the council's constitution, for electing the staff members.

'(8) A coopted student member of a school council—

- (a) does not have the power to vote on a matter before the council despite section 30ZL(3), (4) and (5); and
- (b) may not be elected as the chairperson under section 30ZC or chosen to preside at a meeting under section 30ZL(2).

'(9) An elected student member must be a student in year 10, 11 or 12 at the school, elected by a poll in which only those students at the school in year 10, 11 or 12 may vote.

'(10) A poll mentioned in subsection (9) may take place at the same time as, or be combined with, other elections at the school involving students, including, for example, the election of the school's captain and vice captain.

'(11) In this section—

“appointed member”, of a school council, means a member, appointed under the council's constitution, by the council.

“coopted student member”, of a school council, means a person who is a year 7 student at the school for which the council is established and is coopted as a member of the council under the council's constitution.

“elected parent member”, of a school council, means a person who is a parent of a child attending the school for which the council is established and is elected as a member of the council under subsection (6).

“elected staff member”, of a school council, means a person who is a member of the staff of the school for which the council is established and is elected as a member of the council under subsection (7).

“elected student member”, of a school council, means a person who is a student at the school for which the council is established and is elected as a member of the council under subsection (9).

‘Chairperson

‘30ZC.(1) A school council must elect a member as chairperson.

‘(2) The principal may not be elected as chairperson.

‘(3) Despite section 30ZB(4), if an alternative association member is attending a council meeting in place of the president of an association who is also the chairperson of the council, the alternative association member may not preside at the meeting, unless the alternative association member is chosen to preside under section 30ZL(2).³

‘(4) The chairperson holds office for the term decided by the council (the **“chairperson’s term”**) unless the person’s term of office as a member of the council ends sooner than the chairperson’s term.

‘Terms of office for elected and appointed members

‘30ZD.(1) Each elected or appointed member holds office for the term, not longer than 2 years, provided in the council’s constitution.

‘(2) However, subject to section 30ZB(2), the council’s constitution may provide for up to one-half of the first elected members (or, if one-half of the number of the first elected members is not a whole number, the next highest

³ Under section 30ZB(4), an alternative association member ‘has the same rights and duties as the president while attending in the president’s place’. Under section 30ZL(2), ‘If the chairperson is absent, another member chosen by the members present is to preside.’.

whole number) to hold office for a term of not longer than 3 years.

‘(3) A member elected or appointed to fill a casual vacancy in the office of an elected or appointed member—

- (a) must be the same type of member under section 30ZB as the vacating member; and
- (b) holds office only for the balance of the vacating member’s term.

‘(4) The office of an elected or appointed member becomes vacant if the member—

- (a) dies; or
- (b) resigns by signed notice—
 - (i) for the chairperson—given to the principal’s supervisor; or
 - (ii) for another member—given to the chairperson; or
- (c) is absent from 3 consecutive meetings of the council, of which the member has been given notice under the council’s constitution, without the council’s leave and without reasonable excuse; or
- (d) stops being eligible, under this Act or the council’s constitution, for election or appointment to the office.

‘(5) A member’s resignation takes effect on the day the notice of resignation is given to the principal’s supervisor or chairperson or a later day stated in the notice.

‘(6) If the office of an elected or appointed member of a school council is vacant and, because of the vacancy, the membership does not comply with section 30ZB(2), the council is taken to be validly constituted until the earlier of the following happens—

- (a) the day the vacancy is filled;
- (b) the expiry of 3 months after the day the vacancy arose.

‘Ineligibility on conviction of indictable offence

‘30ZE.(1) A person is ineligible to be an elected parent member, elected staff member or appointed member of a school council if the person has been convicted of an indictable offence, unless the Minister gives an approval under this section.

‘(2) If the Minister considers it would be reasonable, having regard to the circumstances of the indictable offence of which a person has been convicted, the Minister may—

- (a) if the person was a member when convicted—give written notice to the chairperson and the person that the person is restored as a member, and may be subsequently re-elected or reappointed, despite the conviction; or
- (b) otherwise—give written approval for the person to be elected or appointed as a member despite the conviction.

‘(3) On the day the chairperson receives a notice under subsection (2)(a)—

- (a) the person is restored as a member; and
- (b) if another person has been elected or appointed to fill the vacancy, the other person’s appointment ends.

‘(4) If a person is restored as a member under subsection (3), the person’s term of office as a member ends at the time it would have ended if the person had not been convicted of the offence.

‘(5) In this section—

“**convicted**”, of an offence, means the person has been found guilty of the offence, on a plea of guilty or otherwise, whether or not a conviction was recorded.

‘Appointment not affected by other laws restricting employment

‘**30ZF**. If another Act prohibits or regulates a person’s employment, or other engagement in activities, outside of a stated office or position, the Act does not prevent the person from—

- (a) being a member of a school council; or
- (b) carrying out the person’s functions as a member of the council; or
- (c) being paid for expenses incurred in attending council meetings.

‘Division 4—Constitution

‘Constitution for school council

‘30ZG.(1) Each school council must have a constitution.⁴

‘(2) The council’s constitution must provide for the following matters—

- (a) membership of the council, including—
 - (i) eligibility for election as, or to vote for, an elected member; and
 - (ii) eligibility for appointment as an appointed member; and
 - (iii) procedures for election or appointment; and
 - (iv) when an elected or appointed member’s term of office starts and ends; and
 - (v) if there is an association formed for the school for which the council is established—the way in which the president must give notice to the chairperson about the appointment of an alternative association member;
- (b) election of, and other matters relating to, the chairperson;
- (c) conduct of council business;
- (d) the way the council carries out its functions.

‘(3) The constitution may also provide for other matters the council considers appropriate for inclusion in it.

‘(4) However, the provisions of a council’s constitution about membership of the council—

- (a) must comply with section 30ZB;⁵ and
- (b) if there is an association formed for the school for which the council is established—are subject to the provisions of the association’s constitution about the election of an elected parent member.

‘(5) A council may prepare and adopt an amendment of its constitution.

⁴ See section 30ZT (Initial constitution) about the preparation of the constitution applying to a school council on its establishment.

⁵ Section 30ZB (Membership of school councils) provides for the constitution of school councils, including membership.

‘(6) In preparing a proposed amendment, a council must have regard to relevant provisions of the model constitutions.

‘(7) An amendment has no effect until it is approved by the chief executive.

‘(8) The chief executive must not approve an amendment unless the chief executive is satisfied—

- (a) written notice of the proposed amendment was given at least 30 days before the meeting of the council that considered the amendment to the following—
 - (i) the council members;
 - (ii) if there is an association formed for the school—the association;
 - (iii) the school’s staff (including, for example, by displaying the proposed amendment in a staff room);
 - (iv) the school’s students (including, for example, by publishing it in the school’s newsletter); and
- (b) the amendment was adopted by at least the number of members constituting a quorum for the school council;⁶ and
- (c) the amended constitution is consistent with this Act and otherwise lawful.

‘(9) In deciding whether to approve an amendment, the chief executive must also have regard to the following matters concerning the amended constitution—

- (a) whether it provides for a membership that—
 - (i) allows sufficient representation by parents, staff, students and other members of the school community; and
 - (ii) takes into account the profile of the school community;
- (b) whether it provides for the council to carry out its functions in an effective and fair way;

⁶ See section 30ZK (Quorum) to calculate the quorum for a particular school council.

- (c) whether its provisions are otherwise sufficient, clear and appropriate.

‘Model constitutions for school councils

‘30ZH.(1) The chief executive may prepare model constitutions for school councils.

‘(2) Each school council must have regard to the model constitutions when preparing and adopting amendments of its constitution.

‘Division 5—Council business

‘Conduct of business

‘30ZI.(1) Subject to its constitution, a school council may conduct its business, including its meetings, in the way it considers appropriate.

‘(2) However, a council may only make decisions about how it will carry out its functions if it does so at a council meeting at which a quorum is present.

‘(3) This section is subject to this Act, including, for example, section 30ZL(8).⁷

‘Time and place of meetings

‘30ZJ.(1) School council meetings are to be held at the times and places the council decides.

‘(2) However, the council must meet at least twice in each semester.

‘(3) The chairperson—

- (a) may call a meeting at any time; and
- (b) must call a meeting if asked, in writing, to do so by the Minister, the chief executive or at least the number of members constituting a quorum for the school council.

⁷ Section 30ZL (Conduct of meetings)

‘Quorum

‘**30ZK.** A quorum for a school council is the number equal to two-thirds of the number of its members or, if two-thirds is not a whole number, the next highest whole number.

‘Conduct of meetings

‘**30ZL.(1)** The chairperson is to preside at all school council meetings at which the chairperson is present.

‘(2) If the chairperson is absent, another member chosen by the members present is to preside.

‘(3) A question at a meeting (other than a question about an amendment of the council’s constitution) is decided by a majority of the votes of the members present.

‘(4) Each member present at the meeting has a vote on each question to be decided and, if the votes are equal, the member presiding has a casting vote.

‘(5) A member present at the meeting who abstains from voting is taken to have voted for the negative.

‘(6) The council may hold meetings, or permit members to take part in meetings, by telephone, video link, or another form of communication that allows reasonably contemporaneous and continuous communication between the members taking part in the meeting.

‘(7) A member who takes part in a meeting under a permission under subsection (6) is taken to be present at the meeting.

‘Attendance by proxy

‘**30ZM.(1)** A member may not attend a meeting of a school council by proxy.

‘(2) However, the principal may attend up to 2 meetings in each year by proxy.

‘(3) In this section—

“**proxy**” does not include the appointment by the president of an association

of an alternative association member.

‘Disclosure of interests by council members

‘30ZN.(1) This section applies to a member of a school council (the **“interested member”**) if—

- (a) the interested member has a direct or indirect financial interest in an issue being considered, or about to be considered, by the council; and
- (b) the interest could conflict with the proper performance of the member’s duties in relation to the consideration of the issue.

‘(2) As soon as practicable after the relevant facts come to the interested member’s knowledge, the member must disclose the nature of the interest to a meeting of the council.

‘(3) Unless the council otherwise directs, the interested member must not—

- (a) be present when the council considers the issue; or
- (b) take part in a decision of the council about the issue.

‘(4) The interested member must not be present when the council is considering whether to give a direction under subsection (3).

‘(5) If there is another member who must, under subsection (2), also disclose an interest in the issue, the other member must not—

- (a) be present when the council is considering whether to give a direction under subsection (3); or
- (b) take part in making the decision about giving the direction.

‘(6) If, because of this section, a member is not present at a council meeting for considering or deciding an issue, or for considering or deciding whether to give a direction under subsection (3), but there would be a quorum if the member were present, the remaining members present are a quorum of the council for considering or deciding the issue at the meeting.

‘(7) A disclosure under subsection (2) must be recorded in the council’s minutes.

Division 6—Application of other laws**‘Criminal Law (Rehabilitation of Offenders) Act 1986**

‘30ZO.(1) For the application of the *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 9A, to the office of an elected or appointed member of a school council, a person is taken to apply for the office if the person—

- (a) consents to be appointed as an appointed member (whether or not the council has decided to appoint the person); or
- (b) stands for election as an elected member.

‘(2) Subsection (1) does not apply to an elected student member.

‘Libraries and Archives Act 1988

‘30ZP. A school council is a public authority under the *Libraries and Archives Act 1988*.

‘Freedom of Information Act 1992

‘30ZQ.(1) For the application of the *Freedom of Information Act 1992*, each school council is taken to form part of the department.⁸

‘(2) To remove doubt, it is declared that the *Freedom of Information Act 1992*, part 2, does not apply to a school council.

‘Public Sector Ethics Act 1994

‘30ZR.(1) This section concerns the application of the *Public Sector Ethics Act 1994* (the “**Act**”) to school councils.

‘(2) For the application of the Act—

- (a) each school council is a public sector entity; and
- (b) each member of a school council is a public official of the entity; and

⁸ See the *Freedom of Information Act 1992*, section 8(2).

(c) the chief executive is the chief executive officer of the entity.

‘(3) For section 15 of the Act, the chief executive must ensure that a code of conduct is prepared that, after approval under section 17 of the Act, applies to each school council.

‘(4) For section 20(4) of the Act, a reference to the entity’s head office or regional office is a reference to the department’s head office or other departmental office.

‘(5) For section 23 of the Act, a reference to the entity’s annual report is a reference to the department’s annual report.

‘Division 7—Starting up

‘Purpose and application

‘**30ZS.(1)** This division concerns the establishment and initial operation of a school council.

‘(2) This division prevails to the extent of any inconsistency with another provision of this part.

‘Initial constitution

‘**30ZT.(1)** The principal of a State school must prepare a draft constitution for a proposed school council for the State school.

‘(2) Division 4⁹ applies to the preparation as if a reference to a school council amending its constitution were a reference to the principal preparing the proposed council’s draft constitution.

‘(3) In preparing the draft constitution, the principal—

- (a) must consult with the school’s parents, staff and students; and
- (b) may consult with other appropriate entities.

‘(4) If there is an association formed for the school, the president of the association must, under the association’s constitution, call a special meeting of the association (the **“association meeting”**) for approving the draft

⁹ Division 4 (Constitution)

constitution.

‘(5) The principal must call the following meetings for approving the draft constitution—

- (a) if there is no association formed for the school—a meeting of the school’s parents (the “**parent meeting**”);
- (b) a meeting of the school’s staff (the “**staff meeting**”).

‘(6) The chief executive may not establish a school council for a school unless the association or parents meeting, and the staff meeting, were called and the draft constitution was approved as follows—

- (a) if there is an association formed for the school—by secret ballot by a majority of the association’s members attending the association meeting;
- (b) if there is no association formed for the school—by secret ballot by a majority of the parents attending the parent meeting;
- (c) by secret ballot by a majority of the staff attending the staff meeting.

‘(7) However, the chief executive may establish a school council for a school even though the draft constitution was not approved as required under subsection (6), if the chief executive is satisfied that—

- (a) the association, parents or staff, not approving the draft constitution, held at least 3 association meetings, parent meetings or staff meetings, to discuss the draft constitution within 3 months of the principal preparing the draft; and
- (b) the chief executive has regard to the concerns of the association, parents or staff raised at the meetings at which the draft constitution was not approved.

‘(8) The approved constitution applies to the council on its establishment.

‘**Initial membership**

‘**30ZU.(1)** On establishment, the school council consists only of the official members.

‘(2) However, a school council consisting of the official members may only perform the functions necessary for the election of the council’s elected members.

‘First elected and appointed members

‘**30ZV.(1)** As soon as practicable after the school council is established, the official members must, under the council’s constitution, organise the election of the council’s elected members.

‘(2) After the election, the council as constituted by the official and elected members may appoint the appointed members.

‘Division 8—Dissolution

‘Dissolution of school council

‘**30ZW.(1)** A school council is dissolved—

- (a) if the school for which it was established is discontinued; or
- (b) in any other circumstances prescribed under a regulation.

‘(2) On dissolution, the members of the council immediately before the dissolution go out of office.

‘Records

‘**30ZX.(1)** As soon as practicable after the dissolution of a school council, the principal must ensure the council’s records are given to the chief executive.

‘(2) In this section—

“**records**”, of a council, includes all documents held by the council that it has created or acquired in the course of carrying out its functions.

‘Division 9—Miscellaneous

‘School councils not to establish committees or subcommittees

‘**30ZY.** A school council must not establish a committee or subcommittee.

‘Expense of attending meetings

‘**30ZZ.** Each member of a school council is entitled to be paid the amounts decided by the chief executive for the expenses incurred in attending council meetings.

‘Minister’s power to give directions in the public interest

‘**30ZZA.(1)** The Minister may give a school council a written direction if the Minister is satisfied it is necessary to give the direction in the public interest.

‘**(2)** Without limiting subsection (1), a direction may require the council to comply with—

- (a) a policy, standard or other instrument of a public sector unit; or
- (b) another document, including, for example, another policy, standard or instrument.

‘**(3)** The council must comply with the direction.

‘**(4)** A direction to a school council must be addressed to its chairperson and may be sent by post, facsimile or similar facility to the address of the school.

‘**(5)** The Minister must give a copy of each direction to the chief executive.

‘**(6)** The department’s annual report for a year must include copies of all directions given under this section during the year.

‘Protection from liability

‘**30ZZB.(1)** A member of a school council does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.

‘**(2)** If subsection (1) prevents a civil liability attaching to a member, the

liability attaches instead to the State.’.

Omission of s 31 (Preschool not to be a State school)

22. Section 31—

omit.

Amendment of s 36 (Functions of an association)

23. Section 36(1)(b), ‘and the teachers and students at such school’—

omit, insert—

‘and the teachers, other members of the staff and students at the school’.

Amendment of s 37 (Manner of exercising power etc.)

24. Section 37—

insert—

‘**(6)** Despite subsection (3), the executive committee of an association may not remove a person as a member, officer or both a member and officer, of the association.’.

Insertion of new s 39A

25. Part 4, division 2, after section 39—

‘Vacancy of officers of association

‘**39A.(1)** The office of an officer of an association becomes vacant if the officer—

- (a) dies; or
- (b) resigns by signed notice—
 - (i) for the president—given to a vice-president, secretary or treasurer; or
 - (ii) for another officer—given to the president; or
- (c) is absent from 3 consecutive meetings of the association, of

which the member has been given notice under the constitution, without the association's leave and without reasonable excuse.

'(2) An officer's resignation takes effect on the day the notice of resignation is given to a person under subsection (1)(b) or a later day stated in the notice.'

Replacement of s 45 (Financial year)

26. Section 45—

omit, insert—

'Financial year

'45. An association must, by resolution for the purpose, decide which of the following periods constitutes its financial year—

- (a) 1 January in a year to 31 December in the year;
- (b) 1 July in a year to 30 June in the next year;
- (c) 1 October in a year to 30 September in the next year.'

Amendment of s 47 (Power to enter into agreements)

27. Section 47(1), from 'which agreement has as its object'—

omit, insert—

'if the agreement is entered into for the benefit of the students at a State school.'

Replacement of s 49 (Annual subscription)

28. Section 49—

omit, insert—

'Regulations to provide for membership

'49.(1) The regulations may make provision about the way in which a person becomes a member of an association.

‘(2) Subsection (1) is subject to section 33.¹⁰

‘(3) However, a person’s membership is renewable each year at the annual general meeting of the association.

‘(4) A person who is refused membership of an association may make a submission to the Minister about the refusal, and appeal to a Magistrates Court, as if the person had been a member of the association and been removed from the association.’.

Insertion of new ss 56A–56B and pt 4, div 9

29. After section 56—

insert—

‘Disclosure of interests by members of association

‘**56A.(1)** This section applies to an interested member if—

- (a) the interested member has a direct or indirect financial interest in an issue being considered, or about to be considered, by the entity; and
- (b) the interest could conflict with the proper performance of the member’s duties in relation to the consideration of the issue.

‘(2) As soon as practicable after the relevant facts come to the interested member’s knowledge, the member must disclose the nature of the interest to a meeting of the entity.

‘(3) Unless the entity otherwise directs, the interested member must not—

- (a) be present when the entity considers the issue; or
- (b) take part in a decision of the entity about the issue.

‘(4) The interested member must not be present when the entity is considering whether to give a direction under subsection (3).

‘(5) If there is another member who must, under subsection (2), also disclose an interest in the issue, the other member must not—

¹⁰ Section 33 (Formation of parents and citizens association)

- (a) be present when the entity is considering whether to give a direction under subsection (3); or
- (b) take part in making the decision about giving the direction.

‘(6) If, because of this section, a member is not present at an entity meeting for considering or deciding an issue, or for considering or deciding whether to give a direction under subsection (3), but there would be a quorum if the member were present, the remaining members present are a quorum of the entity for considering or deciding the issue at the meeting.

‘(7) A disclosure under subsection (2) must be recorded in the minutes of the entity.

‘(8) In this section—

“**entity**”, in relation to an interested member, means the association or the executive committee or a subcommittee of the association.

“**interested member**” means a member of an association, or the executive committee or a subcommittee of the association.

‘**Honorary life membership of association**

‘**56B.(1)** An association, other than an interim parents and citizens association, may decide to award honorary life membership to a person who is or was a member of the association.

‘(2) However, the awarding of honorary life membership may be given only if the association decides the person has given long and meritorious service to the association.

‘(3) The decision must be made—

- (a) at an annual general meeting of the association; and
- (b) by a two-third majority vote of the members present at the meeting.

‘(4) A person who is the subject of a proposed resolution to award the person honorary life membership of the association must not—

- (a) be present during discussions about the proposal or voting on it; and
- (b) if the person is a member—exercise the member’s right to vote in

any way despite section 40(5).¹¹

Division 9—Removal of member and officers of association

Definitions for div 9

56C. In this division—

“nominated person”, in relation to an association, means—

- (a) a person who is a member, or a member and officer, of the association; or
- (b) if a person is removed as a member, officer or both a member and officer of the association under this division—the person.

“notice of removal” means a notice, under section 56F(3), from an association to a nominated person removing the nominated person.

“officer”, of an association, means a person elected to an office of the association as mentioned in section 39.¹²

“remove”, a nominated person, means—

- (a) if the person is a member only of an association—remove the person as a member of the association; or
- (b) if the person is a member of an association and one of its officers—remove the person as a member and officer of the association, or as an officer of the association only.

¹¹ Section 40 (Meetings)

¹² Section 39 (Officers of an association) provides for the following officers—

- (a) a president;
- (b) at least 1 vice-president, as may be determined by an association by resolution in that behalf;
- (c) a secretary;
- (d) a treasurer;
- (e) such additional officers (if any) as may be determined by an association by resolution in that behalf.

‘Removal of nominated person by association

‘56D. An association may remove a nominated person only under this division.

‘Grounds for removal

‘56E. Each of the following is a ground for removing a nominated person—

- (a) the nominated person is convicted of an indictable offence;
- (b) the nominated person, without reasonable excuse, contravenes the Act or the association’s constitution;
- (c) for a nominated person who is an officer of the association—the nominated person, without reasonable excuse, fails to perform the duties of the office held in a competent manner;
- (d) the nominated person engages in other conduct that is injurious or prejudicial to—
 - (i) the promotion of the interests of, or the facilitating of the development and further improvement of, the State school for which the association is formed; or
 - (ii) the good order and management of the State school for which the association is formed.

‘Procedure for removal of nominated person

‘56F.(1) If the association considers a ground exists to remove a nominated person (the **“proposed action”**), the association must give the nominated person written notice that—

- (a) states the proposed action; and
- (b) states the grounds for the proposed action; and
- (c) outlines the facts and circumstances forming the basis for the grounds; and
- (d) invites the nominated person to show, within a stated time of at least 14 days, why the proposed action should not be taken.

‘(2) If, after considering all written representations made within the stated time, the association still considers a ground to take the proposed action exists, the association may—

- (a) if the proposed action was to remove the nominated person as a member only—remove the nominated person as a member; or
- (b) if the proposed action was to remove the nominated person as an officer only—remove the nominated person as an officer; or
- (c) if the proposed action was to remove the nominated person as both a member and an officer—remove the nominated person as both or as an officer only.

‘(3) The association must inform the nominated person of the decision by written notice.

‘(4) The notice must be given within 14 days after the association makes its decision.

‘(5) If the association decides to remove the nominated person, the notice must state—

- (a) the reasons for the decision; and
- (b) the date, under subsection (6), on which the decision takes effect; and
- (c) that the person may make a submission to the Minister against the decision; and
- (d) the name and address of the Minister; and
- (e) the way in which the submission may be made.

‘(6) The decision takes effect on the later of the following—

- (a) the day when the notice is given to the nominated person;
- (b) the day of effect stated in the notice.

‘(7) However, if the nominated person is removed from office because of the conviction of the person for an offence—

- (a) the removal does not take effect until—
 - (i) the end of the time to appeal against the conviction; and
 - (ii) if an appeal is made against the conviction—the appeal is

finally decided; and

- (b) the removal has no effect if the conviction is quashed on appeal.

‘Submissions against removal

‘56G.(1) A person removed by an association may make a submission against the removal to the Minister.

‘(2) The submission must—

- (a) be in writing; and
- (b) include an address in Australia to which notices for the person may be sent; and
- (c) state fully the grounds for the submission and the facts relied on; and
- (d) include a copy of the notice of removal from the association.

‘(3) The submission must be given to the Minister—

- (a) within 14 days of the notice of removal being given to the person; or
- (b) if the Minister allows a later time for giving the submission—the later time.

‘(4) If a person who has been removed from an association resigns or purports to resign from the association as a member or officer after receipt of a notice of removal, the person may not make a submission under subsection (1).

‘Dealing with submissions against removal

‘56H.(1) If a submission is made to the Minister, the Minister must promptly consider the decision and the submission and—

- (a) affirm the decision; or
- (b) vary the decision; or
- (c) set aside the decision and make a new decision in substitution of the decision to remove the person.

‘(2) After the Minister has decided to affirm, vary or set aside the

decision, the Minister must—

- (a) promptly tell the person of the Minister’s decision; and
- (b) within 7 days after telling the person about the decision—give written notice to the person and relevant association about—
 - (i) the Minister’s decision; and
 - (ii) the reasons for the decision; and
 - (iii) the person’s right to appeal, under section 77AB,¹³ against the Minister’s decision, including the time within which the person may appeal.’.

Amendment of s 57 (Compulsory enrolment and attendance at school)

30. Section 57, from ‘on every school day’ to ‘is enrolled’—

insert—

‘the State school or non-State school, on every school day, for the program of instruction for which the child is enrolled,’.

Amendment of s 62 (Employment of children of school age)

31. Section 62(1), ‘from time to time prescribed’—

omit, insert—

‘prescribed under a regulation’.

Replacement of pt 6 hdg

32. Part 6, heading—

omit, insert—

‘PART 6—ALLOCATION OF STATE EDUCATION

‘Division 1—Application and purpose of part

¹³ Section 77AB (Appeals)

‘Application of part to student below 15

‘62A. A student who is under 15 years at the time of starting a semester at a State educational institution, but does not have any remaining allocation, may attend the institution for all of the semester without making an application under division 3 or 5.¹⁴

‘Allocation of semesters for each student

‘62B.(1) The purpose of this part is to ensure that each student who enrolls in a State educational institution has an allocation of State education.

‘(2) If a student enrolls in year 1 in a State educational institution before the student is 7 years of age, the student has the basic allocation.¹⁵

‘(3) For some students, the principal of a State educational institution must calculate the remaining allocation for the student.

‘(4) Under certain circumstances, an allocation may be increased—

- (a) by the principal of a State educational institution under division 3;
or
- (b) by the chief executive under division 5.

‘Division 2—Calculation of basic and remaining allocations**‘Calculation of allocation where student begins schooling at State educational institution**

‘62C.(1) If a student begins school in year 1 at a State educational institution before the student is 7 years of age, the student has the basic allocation from the start of the semester in the school year in which the student began schooling.

‘(2) However, subsection (1) does not apply to the following students—

- (a) a student who begins schooling at a special education

¹⁴ Division 3 (Extra semesters may be granted by principals) or 5 (Further semesters may be granted by chief executive)

¹⁵ See section 62C(1).

developmental centre;

- (b) a student who received schooling at a non-State school or, in accordance with guidelines approved by the Governor in Council, instruction at a place other than a State educational institution or non-State school;
- (c) a student who received schooling outside of the State;
- (d) a continuing student.

‘Calculation of allocation if s 62C(1) does not apply

‘62D.(1) If a student begins schooling at a special education developmental centre, the student has the basic allocation, calculated from the start of the semester in the school year in which the student attains or attained 6 years of age.

‘(2) If a student is a student mentioned in section 62C(2)(b) or (c) and the student applies to enrol in a State educational institution, the principal must decide the student’s remaining allocation.

‘(3) If a student (other than a student mentioned in subsection (1) or (2)) is enrolled in a year level mentioned in column 1 at the end of semester 2 in 1997, subject to subsection (4), the principal of the State educational institution in which the student was enrolled is taken to have decided that the student has a remaining allocation mentioned opposite in column 2.

Column 1

Column 2

1	22
2	20
3	18
4	16
5	14
6	12
7	10
8	8
9	6
10	4
11	2
12	0

‘(4) If the principal decides that a student’s remaining allocation is other than as set out in subsection (3), the principal must send the student written notice about the principal’s decision by the end of semester 1 in 1998.

‘(5) If the student has been the subject of a dispensation under section 58 for a reason mentioned in section 58(2)(b),(c) or (e) and did not attend a program of education or instruction for all or part of the period of the dispensation (the “**excused period**”), the excused period must not be included in calculating the student’s remaining allocation.

‘Principal must consider remaining allocation for certain students

‘**62E.(1)** This section applies to a decision by the principal of a State educational institution about a student, under section 62D¹⁶.

‘(2) The principal’s decision about a student’s remaining allocation must be made in the way the principal considers appropriate after considering all relevant matters, including, for example—

- (a) the age, ability, aptitude and development of the student; and
- (b) the need to take account and promote continuity of the student’s learning experiences; and
- (c) whether the enrolment is compulsory or non-compulsory; and
- (d) if the student’s enrolment is non-compulsory—the student’s commitment to complete a course of study.

‘(3) If the student has applied to enrol in the State educational institution, the principal must make the decision within a reasonable time of the date of the application to enrol in the State educational institution.

‘(4) After the principal has made a decision about the application, the principal must—

- (a) promptly tell the student about the decision; and
- (b) within 7 days after telling the student about the decision—give written notice to the student about the student’s remaining allocation.

‘(5) The notice must state—

¹⁶ Section 62D (Calculation of allocation if s 62C(1) does not apply)

- (a) the principal's decision; and
- (b) the reasons for the decision; and
- (c) that if the student is not satisfied with the principal's decision the student may make a submission to the principal's supervisor against the decision; and
- (d) the title, name and address of the supervisor; and
- (e) the way in which the submission may be made.

'Annual notice about remaining allocation

'62F.(1) This section applies to all students enrolled in semester 2 in a calendar year in a State educational institution.

'(2) By the end of the calendar year, the principal of the State educational institution must give written notice to each student about the student's remaining allocation after the end of semester 2 of the calendar year.

'(3) The notice must state—

- (a) the principal's decision; and
- (b) the reasons for the decision; and
- (c) that if the student is not satisfied about the decision the person may make a submission to the principal's supervisor against the decision; and
- (d) the title, name and address of the supervisor; and
- (e) the way in which the submission may be made.

'(4) The notice may be included with another report or document given to the student.

'Division 3—Extra semesters may be granted by principals

'Application for extra semesters if no remaining allocation

'62G.(1) This section applies to a student who does not have any remaining allocation.

‘(2) The student may apply, in the approved form, to the principal of a State educational institution for the granting, in a school year, of not more than 2 extra semesters of State education at the State educational institution.

‘(3) The application must be given to the principal before—

- (a) 12 weeks before the start of the semester, or the first of the semesters, to which the application relates; or
- (b) if the principal allows a later time for giving the application—the later time.

‘Principal must consider and decide application for extra semesters

‘62H.(1) The principal must consider the application and make a decision about it in the way the principal considers appropriate after considering all relevant matters, including, for example—

- (a) whether the student is of the age of compulsory attendance; and
- (b) the likely educational outcome of the student attending the institution for the extra semester or semesters; and
- (c) the likely impact on the resources of the State educational institution of the student attending the institution for the extra semester or semesters.

‘(2) However, the principal must make the decision within a reasonable time of the date of the application, having regard to the need to collect and analyse the results of any assessment of the student undertaken during the semester immediately before the semester, or the earlier of the semesters, to which the application relates.

‘(3) After the principal has made the decision, the principal must—

- (a) promptly tell the student about the decision; and
- (b) within 7 days after telling the student about the decision—give written notice to the student about the principal’s decision and reasons for the decision.

‘(4) However, if the principal does not grant the application for the semester, or for both semesters, as applied for by the student, the written notice must also state—

- (a) that the person may make a submission to the principal’s

supervisor against the decision; and

- (b) the title, name and address of the supervisor; and
- (c) the way in which the submission may be made.

‘Limitation on extra semesters granted by principals

‘**62I.** No more than 4 extra semesters may be granted to a student under this division.

‘Division 4—Submissions against principal’s decision

‘Submissions against principal’s decision

‘**62J.(1)** This section applies to a decision of the principal of a State educational institution—

- (a) about the allocation of semesters to a student under division 2, including a decision under section 62D(3) or (4) or 62F; or
- (b) an application for an extra semester or semesters under division 3.

‘**(2)** The student may make a submission against the principal’s decision to the principal’s supervisor.

‘**(3)** The submission must—

- (a) be in writing; and
- (b) state fully the grounds for the submission and the facts relied on.

‘**(4)** The submission must be given to the principal’s supervisor—

- (a) within 14 days of the written notice of the principal’s decision being given to the student; or
- (b) if the principal’s supervisor allows a later time for giving the submission—the later time.

‘Dealing with submissions against principal’s decision

‘**62K.(1)** If a submission is made to the principal’s supervisor, the supervisor must promptly consider the decision and the submission and—

- (a) affirm the decision; or
- (b) vary the decision; or
- (c) set aside the decision and make a new decision in substitution of the decision.

‘(2) After the supervisor has decided to affirm, vary or set aside the decision, the supervisor must—

- (a) promptly tell the student about the supervisor’s decision; and
- (b) within 7 days after telling the student about the decision—give written notice to the student about—
 - (i) the decision of the principal’s supervisor; and
 - (ii) the reasons for the decision; and
 - (iii) the student’s right to appeal, under section 77AB,¹⁷ against the supervisor’s decision, including the time within which the student may appeal.

‘Division 5—Further semesters may be granted by chief executive

‘Application for further semesters if no remaining allocation and after extra semesters

‘62L.(1) This section applies to a student who does not have any remaining allocation and who has been granted 4 extra semesters under division 3.

‘(2) The student may apply, in the approved form, to the chief executive for the granting of not more than 2 further semesters of State education at a specified State educational institution.

‘(3) The application must be given to the chief executive before—

- (a) 12 weeks before the start of the semester, or the first of the semesters, to which the application relates; or
- (b) if the chief executive allows a later time for giving the application—the later time.

¹⁷ Section 77AB (Appeals)

‘Chief executive must consider and decide application for further semesters

‘62M.(1) The chief executive must consider the application and decide the application in the way the chief executive considers appropriate after considering all relevant matters, including, for example—

- (a) whether the student is of the age of compulsory attendance; and
- (b) the likely educational outcome of the student attending the specified State educational institution for the extra semester or semesters; and
- (c) the likely impact on the resources of the specified State educational institution of the student attending the institution for the extra semester or semesters.

‘(2) However, the chief executive must make the decision within a reasonable time of the date of the application, having regard to the need to collect and analyse the results of any assessment of the student undertaken during the semester immediately before the semester, or the earlier of the semesters, to which the application relates.

‘(3) After the chief executive has made a decision about the application, the chief executive must—

- (a) promptly tell the student about the decision; and
- (b) within 7 days after telling the student about the decision—give written notice to the student about—
 - (i) the chief executive’s decision; and
 - (ii) the reasons for the decision; and
 - (iii) the student’s rights, under section 77AB, to appeal against the chief executive’s decision, including the time within which the student may appeal.

‘Chief executive to give notice to principal if further semesters granted

‘62N. If the chief executive grants an application in relation to a student for further semesters, the chief executive must give written notice to the principal of the State educational institution that the student is to attend about the chief executive’s decision.

‘(2) The notice must state—

- (a) the name of the student; and
- (b) the educational level of the student; and
- (c) the period of the extension; and
- (d) other information that the chief executive considers, on reasonable grounds, to be necessary in the circumstances.

‘Limitation on further semesters granted by chief executive

‘620. No more than 2 further semesters may be granted to a student under this division.

‘PART 7—VARIOUS GENERAL PROVISIONS’.

Omission of pt 8 hdg

33. Part 8, heading—

omit.

Insertion of new pt 8 hdg and other provisions

34. After section 77—

insert—

**‘PART 8—APPEALS AND MISCELLANEOUS
MATTERS**

‘Division 1—Appeals

‘Definitions for div 1

‘77AA. In this division—

“aggrieved person” means—

- (a) a person who made a submission to the Minister about the person’s removal from an association and who is aggrieved by the Minister’s decision under section 56H; or
- (b) a student aggrieved by the decision of a principal’s supervisor under section 62K; or
- (c) a student aggrieved by the chief executive’s decision under section 62M.¹⁸

“court” means a Magistrates Court constituted by a Magistrate.

‘Appeals

‘77AB.(1) An aggrieved person may appeal to a court against the decision about which the person is aggrieved.

‘(2) The appeal is to be started, by filing a notice of appeal in the court, within 28 days after the aggrieved person receives notice of the decision appealed against.

‘(3) The appeal is by way of a rehearing on the material that was before the person whose decision is appealed against.

‘(4) The court may—

- (a) allow the appeal and make any order the court considers appropriate; or
- (b) dismiss the appeal.

‘Division 2—Miscellaneous matters’.

Amendment of s 77B (Evidentiary provisions)

34A. Section 77B(b), ‘a disabled person’—

omit, insert—

¹⁸ Section 56H (Dealing with submissions against removal), section 62K (Dealing with submissions against principal’s decision), section 62M (Chief executive must consider and decide application for further semesters)

‘person with a disability’.

Amendment of s 78 (Regulation-making power)

35. Section 78(2)—

insert—

‘(c) the dissolution of an association or school council;’.

Insertion of new ss 82–85

36. After section 81—

insert—

‘Existing resolutions of associations about financial year

‘**82.** A valid resolution of an association about the period that constitutes its financial year and in effect immediately before the commencement of this section continues to have effect until a resolution is made by the association under section 45.¹⁹

‘Removal of officers or members of association

‘**83.(1)** This section applies if provisions of an association’s constitution in effect immediately before the commencement of this section provided for the removal of officers or members of the association.

‘(2) The provisions do not have effect.

‘Application of part to continuing students

‘**84.(1)** A person must not be denied enrolment at a State educational institution merely because the person does not have any remaining allocation if the person was enrolled at the institution or another State educational institution before the end of semester 2 in 1997.

‘(2) Subsection (1) has effect despite part 6.²⁰

¹⁹ Section 45 (Financial year)

²⁰ Part 6 (Allocation of State education)

‘Numbering and renumbering of Act

‘85. In the next reprint of this Act produced under the *Reprints Act 1992*, the provisions of this Act must be numbered and renumbered as permitted by the *Reprints Act 1992*, section 43.’.

**PART 6—AMENDMENT OF EDUCATION
(OVERSEAS STUDENTS) ACT 1996****Act amended in pt 6**

37. This part amends the *Education (Overseas Students) Act 1996*.

Amendment of s 5 (Achievement of object)

38. Section 5(1)(a)—

omit, insert—

‘(a) registration of—

- (i) the principals for State educational institutions; and
- (ii) the directors for the institutes of TAFE; and
- (iii) the chairpersons of the boards for agricultural colleges; and
- (iv) the persons who, in other cases, provide courses for overseas students;’.

Amendment of s 7 (Registration, and amendment, renewal and transfer of registration)

39.(1) Section 7, heading—

omit, insert—

‘Registration and amendment and renewal of registration’.

(2) Section 7(1), after ‘A person’—

insert—

‘prescribed under a regulation’.

(3) Section 7(1)(e)—

omit.

(4) Section 7(3), after ‘a person’—

insert—

‘prescribed under a regulation’.

(5) Section 7(4)(b), ‘, renewed or transferred’—

omit, insert—

‘or renewed’.

Amendment of s 9 (Registration certificates)

40.(1) Section 9(2)(c)—

omit.

(2) Section 9(4)(a)(iv) and (b)(iv), ‘including’—

omit, insert—

‘other than’.

Amendment of s 17 (Acting without or contrary to registration)

41. Section 17—

insert—

‘(3) Despite section 6,²¹ subsection (1) does not apply to the State or a public service officer, or the Commonwealth or an officer of the Commonwealth, in promoting the activities of the State (including a State educational institution, institute of TAFE or agricultural college), the Commonwealth or a registered provider.’.

²¹ Section 6 provides that ‘This Act binds all persons, including the State and, so far as the legislative power of the Parliament permits, the Commonwealth ...’.

Amendment of s 19 (Appeals to court)

42. Section 19—

insert—

‘(2) To remove doubt, it is declared that the principals of State educational institutions, the directors of institutes of TAFE and the chairpersons of the boards of agricultural colleges are persons whose interests are affected by a decision under this Act about the institutions, institutes or colleges.’

Amendment of s 34 (Regulation-making power)

43. Section 34(4), after ‘(3) does’—

insert—

‘and section 7(4) do’.

Amendment of s 35 (Transitional registration)

44.(1) Section 35(1)—

omit, insert—

‘**35.(1)** This section applies to the following persons—

- (a) a person who, immediately before the commencement of this section, was, under the Commonwealth Act, a registered provider of a course (other than the department and the Department of Training and Industrial Relations);
- (b) the principal of each State educational institution, that offered a course in relation to which the department was, immediately before the commencement, the registered provider under the Commonwealth Act;
- (c) the director of each institute of TAFE, that offered a course in relation to which the Department of Training and Industrial Relations was, immediately before the commencement, the registered provider under the Commonwealth Act;
- (d) the chairperson of the board of each agricultural college, that offered a course in relation to which the Department of Training

and Industrial Relations was, immediately before the commencement, the registered provider under the Commonwealth Act.’.

Amendment of schedule (Dictionary)

45. The schedule—

insert—

‘ **“agricultural college”** means a college within the meaning of the *Agricultural Colleges Act 1994*.

“chairperson of the board of an agricultural college” means the person appointed by the Governor in Council, under the *Agricultural Colleges Act 1994*, as the chairperson of the board of trustees of the agricultural college.’.

PART 7—AMENDMENT OF EDUCATION (SCHOOL CURRICULUM P-10) ACT 1996

Act amended in pt 7

46. This part amends the *Education (School Curriculum P-10) Act 1996*.

Amendment of s 16 (Membership of council)

46A. Section 16(2)(f)(ii), ‘Queensland Association of Teachers in Independent Schools’—

omit, insert—

‘Queensland Independent Education Union of Employees’.

Amendment of s 39 (Control of the office)

47. Section 39(2), from ‘, as if’—

omit.

PART 8—AMENDMENT OF EDUCATION (SENIOR SECONDARY SCHOOL STUDIES) ACT 1988

Act amended in pt 8

48. This part amends the *Education (Senior Secondary School Studies) Act 1988*.

Amendment of s 4 (Definitions)

49. Section 4—

insert—

‘**“State educational institution”** means a State educational institution within the meaning of the *Education (General Provisions) Act 1989*.²²’.

Amendment of s 5 (Establishment and membership of board)

49A. Section 5(3)(h)(ii), ‘Queensland Association of Teachers in Independent Schools’—

omit, insert—

‘Queensland Independent Education Union of Employees’.

Amendment of s 41 (Control of the office)

50. Section 41(2), from ‘, as if’—

omit.

²² The *Education (General Provisions) Act 1989*, section 3 defines State educational institution as any educational institution established pursuant to section 13, 14 or 15 of the Act.

PART 9—AMENDMENT OF EDUCATION (TEACHER REGISTRATION) ACT 1988

Act amended in pt 9

51. This part amends the *Education (Teacher Registration) Act 1988*.

Amendment of s 3 (Establishment and membership of board)

51A. Section 3(2)(e), ‘Queensland Association of Teachers in Independent Schools’—

omit, insert—

‘Queensland Independent Education Union of Employees’.

Amendment of s 33 (Control of the office)

52. Section 33(2), from ‘, as if’—

omit.

Amendment of s 37 (Good character of each applicant to be assessed)

53.(1) Section 37(3) and (4)—

renumber as section 37(5) and (6).

(2) Section 37(2), from ‘the board may’—

omit, insert—

‘the board—

- (a) must have regard to the applicant’s criminal history; and
- (b) may consider all other matters the board considers relevant even if the matter happened outside of the State.’.

(3) Section 37—

insert—

‘**(3)** The board may ask the commissioner of the Police Service for a written report about a person’s criminal history.’

‘(4) If asked by the board, the commissioner of the Police Service must give the board a written report about the criminal history of the person, including the criminal history in the commissioner’s possession or to which the commissioner has access.’.

(4) Section 37(6) (as renumbered), ‘and (3)’—

omit, insert—

‘to (5)’.

(5) Section 37—

insert—

‘(7) In this section—

“**criminal history**”, of a person, means the person’s criminal history within the meaning of the *Criminal Law (Rehabilitation of Offenders) Act 1986*, and—

- (a) despite sections 6, 8 and 9 of that Act, includes a conviction of the person to which any of the sections applies; and
- (b) despite section 5 of that Act, includes a charge made against the person for an offence.’.

Amendment of s 44 (Duty of registered teacher convicted of indictable offence etc.)

54. Section 44(1), penalty, ‘2’—

omit, insert—

‘10’.

Insertion of new ss 44A–44C

55. After section 44—

insert—

‘Employing authority to notify board about sexual allegation in certain circumstances

‘44A.(1) This section applies if the employing authority for a school gave written notice to a relevant teacher that the authority was dissatisfied with the

relevant teacher after the employing authority had investigated a sexual allegation involving the teacher and within 6 months of the notice—

- (a) the employing authority dismissed the relevant teacher from the educational staff of the school; or
- (b) the relevant teacher resigned from the educational staff of the school.

‘(2) The employing authority must give written notice of the dismissal or resignation to the board.

‘(3) The notice must include the following—

- (a) the name of the employing authority and, if the name of the authority is different to the name of the school, the name of the school;
- (b) the name of the relevant teacher;
- (c) the date the employing authority gave notice to the relevant teacher of the dismissal or the employing authority was given notice of the resignation, and the date of effect of the dismissal or resignation;
- (d) the sexual allegation, particulars of the sexual allegation and any other relevant information;
- (e) the reasons given by the employing authority for the dismissal or by the relevant teacher for resigning.

‘(4) Regardless of the date of effect of the dismissal or resignation, the notice must be given to the board within 7 days of the employing authority—

- (a) giving notice of the dismissal to the relevant teacher; or
- (b) receiving notice from the relevant teacher of the teacher’s resignation.

‘(5) In this section—

“**employing authority**”, for a school, means the person or entity responsible for the appointment of teachers to the educational staff of the school.

“**relevant teacher**”, in relation to an employing authority, means—

- (a) a person who is a practising teacher at the school for which the employing authority is responsible; or
- (b) a person who was a practising teacher at the school for which the employing authority is responsible.

“sexual allegation” means an allegation that a teacher has—

- (a) committed an offence of a sexual nature, including, for example, carnal knowledge of a girl under 16 years and a sexual assault mentioned in the Criminal Code, section 337;²³ or
- (b) engaged in conduct of a sexual nature (other than an offence of a sexual nature) with a student or a child, whether in the teacher’s capacity as a teacher or otherwise, and the conduct does not satisfy a standard of behaviour generally expected of a teacher.

‘Prosecuting authority to notify board about committal, conviction etc.

‘44B.(1) This section applies if a person is charged with an indictable offence and the commissioner of the Police Service or the Director of Public Prosecutions (a **“prosecuting authority”**) believes, on reasonable grounds, that the person is a registered teacher or, at any time, was a registered teacher.²⁴

(2) If the person is committed for trial for an indictable offence, the prosecuting authority must, within 7 days after the committal, give written notice to the board about the following—

- (a) the name of the person;
- (b) the court in which the person was committed;
- (c) the offence of which the person was committed and particulars of the offence;
- (d) the date of the committal.

²³ Criminal Code, section 337 (Sexual assaults)

²⁴ The office of the commissioner of the Police Service is established under the *Police Service Administration Act 1990*. The Office of the Director of Public Prosecutions is established under the *Director of Public Prosecutions Act 1984*.

‘(3) If the person is convicted of the indictable offence, the prosecuting authority must, within 7 days after the conviction, give written notice to the board about the following—

- (a) the name of the person;
- (b) the court in which the person was convicted;
- (c) the offence of which the person was convicted and particulars of the offence;
- (d) the date of the conviction;
- (e) the penalty imposed by the court.

‘(4) If there is an acquittal, mistrial, presentation of nolle prosequi to a court or decision by the prosecuting authority not to present an indictment, in relation to the indictable offence for which the person was charged, the prosecuting authority must, within 7 days after the acquittal, mistrial, presentation or decision, give written notice to the board about the following—

- (a) the name of the person;
- (b) if relevant—the court in which the person was acquitted, the mistrial took place or the nolle prosequi was presented;
- (c) the offence of which the person was charged and particulars of the offence;
- (d) the date of the acquittal, mistrial, presentation of nolle prosequi to a court or a decision by the prosecuting authority not to present an indictment.

‘(5) A prosecuting authority must give a notice under subsection (3) or (4) even though a notice was given under subsection (2).

‘Board must consider notices under ss 44A and 44B and decide if inquiry necessary

‘44C.(1) As soon as practicable after the board is given a notice under section 44A or 44B, the board must consider the notice and any other information that it considers relevant and decide—

- (a) if grounds exist for the board to conduct an inquiry under

section 50; and²⁵

- (b) whether an inquiry is to be conducted.’.

PART 10—AMENDMENT OF EDUCATION (TERTIARY ENTRANCE PROCEDURES AUTHORITY) ACT 1990

Act amended in pt 10

56. This part amends the *Education (Tertiary Entrance Procedures Authority) Act 1990*.

Amendment of s 31D (Control of the office)

57. Section 31D(2), from ‘, as if’—
omit.

PART 11—AMENDMENT OF PUBLIC SERVICE ACT 1996

Act amended in pt 11

58. This part amends the *Public Service Act 1996*.

Amendment of s 21 (What is a “government entity”)

59. Section 21(2)(h)—
omit, insert—

²⁵ Section 50 (Board may conduct an inquiry about certain persons)

‘(h) a school council established under the *Education (General Provisions) Act 1989*, university or university college;’.

PART 12—AMENDMENT OF WHISTLEBLOWERS PROTECTION ACT 1994

Act amended in pt 12

60. This part amends the *Whistleblowers Protection Act 1994*.

Amendment of sch 5 (Sectional definitions)

61. Schedule 5, section 2(3)—

omit, insert—

‘(3) For this Act—

- (a) a State educational institution or school council is part of the department in which the *Education (General Provisions) Act 1989* is administered; and
- (b) a member of a school council is a public officer of that department.’.

Amendment of sch 6 (Dictionary)

62. Schedule 6—

insert—

‘ **“school council”** means a school council established for a State school, under the *Education (General Provisions) Act 1989*, section 30X.²⁶’.

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²⁶ Under the *Education (General Provisions) Act 1989*, section 30X, the chief executive may, by notice in the Education Office gazette, establish a school council for a State school.