



Queensland

Education and Training Legislation Amendment Act 2009

Act No. 40 of 2009



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Contents

		Page
Part 1	Preliminary	
1	Short title	6
2	Commencement	6
Part 2	Amendment of Education (Capital Assistance) Act 1993	
3	Act amended	6
4	Amendment of s 3 (Definitions)	6
5	Omission of s 6 (Declaration of approved authority)	7
Part 3	Amendment of Education (General Provisions) Act 2006	
6	Act amended	7
7	Amendment of s 50 (State education to be free)	7
8	Amendment of s 51 (Power to charge particular persons or for particular educational services)	7
9	Amendment of s 335 (Definitions for pt 6)	8
10	Amendment of s 365 (Obligation to report sexual abuse of student under 18 years attending State school)	8
11	Amendment of s 366 (Obligation to report sexual abuse of student under 18 years attending non-State school)	9
12	Insertion of new ch 19, pt 1 and pt 2 hdg	10
	Part 1 Pre-preparatory learning program	
	419A Pre-preparatory learning program	10
	419B Application for registration	11
	419C Decision whether to register child	12
	419D Cancellation of registration for transfer to preparatory year	12
13	Amendment of s 420 (Special education)	13
14	Amendment of s 426 (Confidentiality)	13
15	Amendment of s 428 (Collection of demographic information)	14

Contents

16	Amendment of s 429A (Prohibition on use of certain terms)	15
17	Amendment of ch 20, pt 3, hdg	15
18	Insertion of new ch 20, pt 4	16
	Part 4 Transitional provision for Education and Training Legislation Amendment Act 2009	
	511 Programs taken to be pre-preparatory learning programs	16
19	Amendment of sch 4 (Dictionary)	16
Part 4	Amendment of Education (Queensland College of Teachers) Act 2005	
20	Act amended	17
21	Amendment of s 8 (Eligibility for full registration)	17
22	Amendment of s 9 (Eligibility for provisional registration)	17
23	Amendment of s 62 (Replacing certificates of registration or permission to teach)	18
24	Renumbering of ss 62 and 63	18
25	Amendment of s 80 (Requirement for prosecuting authority to notify college about committal, conviction etc.)	18
26	Amendment of s 110 (Notice to be given to college if PP&C committee authorise investigation)	18
27	Insertion of new s 111A	19
	111A PP&C committee may refer matter to QCAT	19
28	Amendment of s 115 (Functions of PP&C committee)	19
29	Amendment of s 130 (Application of div 2)	20
30	Amendment of s 175 (Appointment)	20
31	Amendment of s 211 (Review committee)	20
32	Amendment of s 213 (Notice of review decision)	20
33	Amendment of s 264 (Delegation)	21
34	Amendment of sch 3 (Dictionary)	21
Part 5	Amendment of Education (Queensland Studies Authority) Act 2002	
35	Act amended	22
36	Amendment of sch 2 (Dictionary)	22
Part 6	Amendment of Grammar Schools Act 1975	
37	Act amended	22
38	Omission of s 3 (Notes)	23
39	Amendment of s 44 (Register of donors and subscribers)	23

Part 7	Amendment of James Cook University Act 1997	
40	Act amended	23
41	Amendment of s 15 (Elected members)	24
42	Amendment of s 31 (Deputy chancellor)	24
43	Amendment of s 40A (Chairperson of academic board)	24
44	Amendment of s 57 (Making of university statutes)	24
45	Amendment of sch 1 (Control of traffic and conduct on university land)	24
46	Amendment of sch 2 (Dictionary)	25
Part 8	Amendment of Vocational Education, Training And Employment Act 2000	
47	Act amended	25
48	Amendment of s 45 (Cancellation of qualification or statement of attainment)	25
49	Insertion of new ss 45A–45C	26
	45A Cancellation of qualification or statement of attainment by council	26
	45B Public notice of cancellation of qualification or statement of attainment	28
	45C Offence to falsely claim to hold qualification or statement of attainment	28
50	Amendment of s 83 (Prohibited employers)	29
51	Amendment of s 84 (Revocation of declaration as prohibited employer)	29
52	Amendment of s 230 (Appeal to industrial commission against council or other decisions)	29
53	Amendment of s 244 (Appeal to Industrial Court on question of law)	30
Part 9	Amendment of Vocational Education, Training and Employment Regulation 2000	
54	Regulation amended	30
55	Amendment of sch 5 (Dictionary)	30
Part 10	Amendment of Child Care Act 2002	
56	Act amended	31
57	Amendment of s 5 (Meaning of child care service)	31



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Education and Training Legislation Amendment Act 2009

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An Act to amend the Education (Capital Assistance) Act 1993, the Education (General Provisions) Act 2006, the Education (Queensland College of Teachers) Act 2005, the Education (Queensland Studies Authority) Act 2002, the Grammar Schools Act 1975, the James Cook University Act 1997, the Vocational Education, Training and Employment Act 2000, the Vocational Education, Training and Employment Regulation 2000 and the Child Care Act 2002 for particular purposes

[Assented to 15 October 2009]

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Education and Training Legislation Amendment Act 2009*.

2 Commencement

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

Part 2 Amendment of Education (Capital Assistance) Act 1993

3 Act amended

This part amends the *Education (Capital Assistance) Act 1993*.

4 Amendment of s 3 (Definitions)

Section 3, definition *approved authority*—
omit, insert—

‘approved authority, of an eligible non-State school, means the governing body of the school.’

5 Omission of s 6 (Declaration of approved authority)

Section 6—

omit.

**Part 3 Amendment of Education
(General Provisions) Act 2006**

6 Act amended

This part amends the *Education (General Provisions) Act 2006*.

7 Amendment of s 50 (State education to be free)

Section 50(1)—

omit, insert—

‘(1) Subsection (2) applies to—

- (a) a person enrolled at a State school; or
- (b) a person who is a pre-preparatory age child registered in a pre-preparatory learning program at a prescribed State school;

who is—

- (c) an Australian citizen or permanent resident; or
- (d) a child of an Australian citizen or permanent resident.’

8 Amendment of s 51 (Power to charge particular persons or for particular educational services)

(1) Section 51(1), after ‘school’—

insert—

[s 9]

‘, or a pre-preparatory age child registered in a pre-preparatory learning program at a prescribed State school.’.

(2) Section 51(3)—

omit, insert—

‘(3) The chief executive may charge a fee for—

(a) the education of the person at the State school; or

(b) registration of the pre-preparatory age child in the pre-preparatory learning program at the State school.’.

9 Amendment of s 335 (Definitions for pt 6)

(1) Section 335, definition *exempt person*, paragraph (b)—

renumber as paragraph (d).

(2) Section 335, definition *exempt person*—

insert—

‘(b) a pre-preparatory age child registered in a pre-preparatory learning program at the institution; or

(c) a person with a disability who—

(i) under section 420(2), is being provided with special education at the institution; and

(ii) is not enrolled in the preparatory year at the institution; or’.

10 Amendment of s 365 (Obligation to report sexual abuse of student under 18 years attending State school)

(1) Section 365, heading—

omit, insert—

‘365 Obligation to report sexual abuse of person under 18 years at State school’.

(2) Section 365(1)—

omit, insert—

- ‘(1) Subsection (2) applies if a staff member of a State school (the ***first person***) becomes aware, or reasonably suspects, that any of the following have been sexually abused by another person who is an employee of the school—
- (a) a student under 18 years attending the school;
 - (b) a pre-preparatory age child registered in a pre-preparatory learning program at the school;
 - (c) a person with a disability who—
 - (i) under section 420(2), is being provided with special education at the school; and
 - (ii) is not enrolled in the preparatory year at the school.’.

11 Amendment of s 366 (Obligation to report sexual abuse of student under 18 years attending non-State school)

- (1) Section 366, heading—

omit, insert—

‘366 Obligation to report sexual abuse of person under 18 years at non-State school’.

- (2) Section 366(1)—

omit, insert—

- ‘(1) Subsection (2) applies if a staff member of a non-State school (the ***first person***) becomes aware, or reasonably suspects, that any of the following have been sexually abused by another person who is an employee of the school—
- (a) a student under 18 years attending the school;
 - (b) a pre-preparatory age child registered in a pre-preparatory learning program at the school;
 - (c) a person with a disability who—
 - (i) under section 420(2), is being provided with special education at the school; and

[s 12]

- (ii) is not enrolled in the preparatory year at the school.’.

12 Insertion of new ch 19, pt 1 and pt 2 hdg

Chapter 19—

insert—

‘Part 1 Pre-preparatory learning program

‘419A Pre-preparatory learning program

- ‘(1) The Minister may approve a program focused on literacy and numeracy, for preparing a child for education in the preparatory year, to be a pre-preparatory learning program for a prescribed State school or a prescribed non-State school.

Note—

See chapter 20, part 4 for programs being provided before commencement.

- ‘(2) The Minister may provide, or assist in providing the program, at a prescribed State school or a prescribed non-State school, to a pre-preparatory age child.
- ‘(3) A pre-preparatory age child being provided with a pre-preparatory learning program at a prescribed State school or a prescribed non-State school is not, for this Act—
- (a) a student of the school; or
- (b) enrolled at the school.
- ‘(4) The Minister must review the operation of this section within 5 years after its commencement to decide whether the section remains relevant and necessary.
- ‘(5) In this section—

pre-preparatory age child means a child who will be at least 4 years and 6 months on 31 December in the year proposed for

the child's participation in a pre-preparatory learning program.

prescribed non-State school means a non-State school that, immediately before the commencement of this section, was providing a program—

- (a) focused on literacy and numeracy for preparing a child for education in the preparatory year; and
- (b) approved by the Minister for the school.

prescribed State school means—

- (a) a State school that, immediately before the commencement of this section, was providing a program—
 - (i) focused on literacy and numeracy for preparing a child for education in the preparatory year; and
 - (ii) approved by the Minister for the school; or
- (b) a State school prescribed under a regulation.

'419B Application for registration

'An application for registration of a pre-preparatory age child in a pre-preparatory learning program, at a prescribed State school or a prescribed non-State school must be—

- (a) made—
 - (i) to the principal of the school; and
 - (ii) in the approved form; and
- (b) accompanied by—
 - (i) evidence, satisfactory to the principal, that the child is a pre-preparatory age child; and
 - (ii) any other documents, identified in the approved form, the principal reasonably requires to decide the application.

[s 12]

‘419C Decision whether to register child

- ‘(1) The principal must consider an application under section 419B and decide whether to grant or refuse to grant the application.
- ‘(2) If the principal is satisfied it is in the child’s best interests to be registered in a pre-preparatory learning program at the school, the principal may register the child.
- ‘(3) Subsection (2) applies even if an application for registration of a child does not comply, or fully comply, with section 419B.
- ‘(4) The principal may refuse to register a child if, under section 419D, the child’s registration has been cancelled at another prescribed State school or prescribed non-State school.

‘419D Cancellation of registration for transfer to preparatory year

- ‘(1) This section applies if—
 - (a) a preparatory age child is registered in a pre-preparatory learning program at a prescribed State school or a prescribed non-State school; and
 - (b) the principal of the school is satisfied the child is too mature for the pre-preparatory learning program and would be better served educationally by being enrolled in the preparatory year.
- ‘(2) The principal may—
 - (a) cancel the child’s registration in the pre-preparatory learning program; and
 - (b) enrol the child in the preparatory year at the school.
- ‘(3) In this section—

‘preparatory age child means a child who has reached the age prescribed under a regulation for enrolment in the preparatory year at a State school or non-State school.

‘Part 2 General’.

13 Amendment of s 420 (Special education)

Section 420—

insert—

- ‘(3) Subsection (4) applies to a person with a disability who—
- (a) under subsection (2), is being provided with special education; and
 - (b) is not enrolled in the preparatory year at the school at which the special education is being provided.
- ‘(4) The person is not, for this Act—
- (a) a student of the school; or
 - (b) enrolled at the school.’.

14 Amendment of s 426 (Confidentiality)

(1) Section 426(1)(b)—

omit, insert—

- ‘(b) who, in that capacity, has gained or has access to personal information about—
- (i) a student, prospective student or former student of a State school; or
 - (ii) a pre-preparatory age child—
 - (A) who is or has been registered in a pre-preparatory learning program at a State school; or

[s 15]

- (B) for whom an application for registration has been made under section 419B; or
 - (iii) a person with a disability who—
 - (A) under section 420(2), is being provided with special education at a State school; and
 - (B) is not enrolled in the preparatory year at the school.’.
- (2) Section 426(2)(b)—
- omit, insert—*
- ‘(b) who, in that capacity, has gained or has access to personal information, contained in a transfer note, about—
- (i) a former student or continuing student of the school; or
 - (ii) a pre-preparatory age child—
 - (A) who is or has been registered in a pre-preparatory learning program at the school; or
 - (B) for whom an application for registration has been made under section 419B; or
 - (iii) a person with a disability who—
 - (A) under section 420(2), is being provided with special education at the school; and
 - (B) is not enrolled in the preparatory year at the school.’.

15 Amendment of s 428 (Collection of demographic information)

- (1) Section 428(1)—

omit, insert—

- ‘(1) The chief executive may collect demographic information about any of the following and their parents if the only

purpose of the collection is to give effect to, or manage, an education funding arrangement—

- (a) State school students;
 - (b) pre-preparatory age children registered in a pre-preparatory learning program at a State school;
 - (c) persons with a disability who—
 - (i) under section 420(2), are being provided with special education at a State school; and
 - (ii) are not enrolled in the preparatory year at the school.’.
- (2) Section 428(2), ‘State school students and their parents’—
omit, insert—
‘the persons mentioned in subsection (1)’.

16 Amendment of s 429A (Prohibition on use of certain terms)

Section 429A(1)—

insert—

- ‘(d) ‘P.R.E.P.’;
- (e) any other name, initial, word or description that, having regard to the circumstances in which it is used, may suggest that the licensee is offering education in the preparatory year.’.

17 Amendment of ch 20, pt 3, hdg

Chapter 20, part 3, heading, after ‘provisions’—

insert—

‘for Education (General Provisions) Act 2006’.

[s 18]

18 Insertion of new ch 20, pt 4

After section 510A—

insert—

**‘Part 4 Transitional provision for
Education and Training
Legislation Amendment Act
2009**

**‘511 Programs taken to be pre-preparatory learning
programs**

- ‘(1) This section applies to a program focused on literacy and numeracy for preparing a child for education in the preparatory year that, immediately before the commencement of this section, was—
- (a) being provided by a prescribed State school or a prescribed non-State school; and
 - (b) approved by the Minister for the school.
- ‘(2) The program is taken to be a pre-preparatory learning program for this Act.’.

19 Amendment of sch 4 (Dictionary)

- (1) Schedule 4—

insert—

‘pre-preparatory age child see section 419A(5).

pre-preparatory learning program means a program approved under section 419A(1).

prescribed non-State school see section 419A(5).

prescribed State school see section 419A(5).’.

- (2) Schedule 4, definition *educational program*, paragraph (a)—
omit, insert—

[s 23]

23 Amendment of s 62 (Replacing certificates of registration or permission to teach)

(1) Section 62, heading—

omit, insert—

‘62 Replacing certificate of registration, registration card or certificate of permission to teach’.

(2) Section 62(1), after ‘certificate,’—

insert—

‘registration card,’.

(3) Section 62(3), after ‘certificate’—

insert—

‘or card’.

24 Renumbering of ss 62 and 63

Sections 62 and 63—

renumber as sections 63 and 62.

25 Amendment of s 80 (Requirement for prosecuting authority to notify college about committal, conviction etc.)

Section 80—

insert—

‘(7) In this section—

penalty includes a disqualification order.’.

26 Amendment of s 110 (Notice to be given to college if PP&C committee authorise investigation)

Section 110, heading—

omit, insert—

‘110 Notice to be given to college if PP&C committee authorises investigation’.

27 Insertion of new s 111A

Chapter 5, part 4—

insert—

‘111A PP&C committee may refer matter to QCAT

- ‘(1) This section applies if the PP&C committee reasonably believes that, in relation to a matter mentioned in section 108—
- (a) a ground for disciplinary action against a teacher may exist; and
 - (b) if the ground is established, disciplinary action mentioned in section 160(2)(d) to (h) or (j) should be taken against the teacher.
- ‘(2) The PP&C committee may refer the matter to QCAT without—
- (a) authorising an investigation into the matter; or
 - (b) hearing the matter.’.

28 Amendment of s 115 (Functions of PP&C committee)

Section 115(1)—

omit, insert—

- ‘(1) The functions of the PP&C committee, in relation to a relevant disciplinary matter, are as follows—
- (a) to authorise an investigation into the matter;
 - (b) to refer the matter to QCAT with or without—
 - (i) authorising an investigation into the matter; or
 - (ii) hearing the matter;
 - (c) to hear and decide the matter with or without authorising an investigation into the matter.’.

[s 29]

29 Amendment of s 130 (Application of div 2)

Section 130(b)—

omit, insert—

‘(b) a PP&C matter referred to QCAT by the PP&C committee under section 111A(2) or 123(2)(b).’.

30 Amendment of s 175 (Appointment)

Section 175(1)—

insert—

‘(c) another person the college considers appropriate to be appointed as an investigator.’.

31 Amendment of s 211 (Review committee)

(1) Section 211(4)(c), after ‘allows’—

insert—

‘including material in any submissions made before the end of the submission period’.

(2) Section 211(5)—

omit.

(3) Section 211(4)—

renumber as section 211(5).

(4) Section 211—

insert—

‘(4) The review committee must give the applicant a notice stating that the applicant may make oral or written submissions about the original decision to the committee within 21 days after the notice is given (the *submission period*).’.

32 Amendment of s 213 (Notice of review decision)

Section 213(3), ‘45’—

omit, insert—

‘60’.

33 Amendment of s 264 (Delegation)

(1) Section 264(1)—

insert—

‘(d) an appropriately qualified member of the office’s staff.’.

(2) Section 264—

insert—

‘(4) In this section—

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

Example of standing—

the staff member’s classification level in the office’.

34 Amendment of sch 3 (Dictionary)

(1) Schedule 3, definition *former holder of a permission to teach*, paragraph (b)—

omit, insert—

‘(b) no longer holds a permission to teach.’.

(2) Schedule 3, definition *former registered teacher*, paragraph (b)—

omit, insert—

‘(b) is no longer a registered teacher.’.

38 Omission of s 3 (Notes)

Section 3—

omit.

39 Amendment of s 44 (Register of donors and subscribers)

Section 44(2)—

omit, insert—

- ‘(1A) However, a person who no longer wishes to be a donor or subscriber may ask the board in writing to remove the person’s name and other particulars of the person from the register.
- ‘(2) The secretary to the board must, at the direction of the board—
- (a) amend details of a person’s name or other particulars on the register; or
 - (b) remove from the register the name and other particulars of—
 - (i) a person mentioned in subsection (1A); or
 - (ii) a person who has died; or
 - (c) make any other alterations or amendments to the register required by the board.’.

Part 7 Amendment of James Cook University Act 1997

40 Act amended

This part amends the *James Cook University Act 1997*.

[s 41]

41 Amendment of s 15 (Elected members)

Section 15(3)(d), after ‘convocation’—

insert—

‘eligible under a university statute’.

42 Amendment of s 31 (Deputy chancellor)

Section 31(4)—

omit, insert—

‘(4) The deputy chancellor is to act as chancellor when—

(a) there is a vacancy in the office of chancellor; or

(b) the chancellor can not perform the functions of the office.’.

43 Amendment of s 40A (Chairperson of academic board)

Section 40A(3), ‘2’—

omit, insert—

‘3’.

44 Amendment of s 57 (Making of university statutes)

Section 57(2)(e), after ‘convocation’—

insert—

‘and the voting rights of its members’.

45 Amendment of sch 1 (Control of traffic and conduct on university land)

Schedule 1—

insert—

‘1A Limitation of authorised person’s or security officer’s powers

‘The powers of an authorised person or a security officer may be limited—

- (a) under a condition of appointment; or
- (b) by notice of the vice-chancellor given to the authorised person or security officer.’.

46 Amendment of sch 2 (Dictionary)

Schedule 2, definition *general staff*—

omit, insert—

‘*general staff* means staff of the university including professional and technical staff but does not include academic staff.’.

Part 8 Amendment of Vocational Education, Training And Employment Act 2000

47 Act amended

This part amends the *Vocational Education, Training And Employment Act 2000*.

48 Amendment of s 45 (Cancellation of qualification or statement of attainment)

- (1) Section 45, heading, after ‘attainment’—
insert—

‘**by registered training organisation**’.

- (2) Section 45(2) and (3)—

[s 49]

omit, insert—

- ‘(2) If, after considering all representations made under the fair procedures, the registered training organisation decides not to cancel the qualification or statement of attainment, the organisation must give written notice to the person to whom the qualification or statement of attainment was issued (the **holder**) that no further action will be taken.
- ‘(3) If the registered training organisation decides to cancel the qualification or statement of attainment, the organisation must, as soon as practicable after deciding, give an information notice to the holder.
- ‘(4) A decision under subsection (3)—
 - (a) has no effect if an appeal against the decision is upheld; and
 - (b) otherwise, takes effect on the earlier of the following—
 - (i) the last day to appeal against the decision;
 - (ii) the day an appeal against the decision is decided or otherwise ends.
- ‘(5) If the qualification or statement of attainment is cancelled, the holder must, unless the holder has a reasonable excuse, return the cancelled qualification or statement of attainment to the registered training organisation within 21 days after the decision has effect.

Maximum penalty for subsection (5)—40 penalty units.’.

49 Insertion of new ss 45A–45C

Part 3, division 5—

insert—

‘45A Cancellation of qualification or statement of attainment by council

- ‘(1) The council may cancel a qualification or statement of attainment, by fair procedures prescribed under a regulation, if—

-
- (a) the qualification or statement of attainment was issued by—
 - (i) an entity that is not a registered training organisation; or
 - (ii) a registered training organisation acting outside the scope of its registration; or
 - (b) the registered training organisation that issued the qualification or statement of attainment—
 - (i) did not provide, or fully provide, the training or assessments for the issue of the qualification or statement of attainment; or
 - (ii) did not, in issuing the qualification or statement of attainment, comply with the condition mentioned in section 26(2)(a).
- ‘(2) The council may make whatever inquiries the council considers necessary to help the council decide whether to cancel the qualification or statement of attainment.
- ‘(3) If, after considering all representations made under the fair procedures, the council decides not to cancel the qualification or statement of attainment, the council must give written notice to the following that no further action will be taken—
- (a) the person to whom the qualification or statement of attainment was issued (the *holder*);
 - (b) the registered training organisation or other entity that issued the qualification or statement of attainment.
- ‘(4) If the council decides to cancel the qualification or statement of attainment, the council must, as soon as practicable after deciding, give an information notice to the entities mentioned in subsection (3)(a) and (b).
- ‘(5) A decision under subsection (4)—
- (a) has no effect if an appeal against the decision is upheld; and
 - (b) otherwise, takes effect on the earlier of the following—

[s 49]

- (i) the last day to appeal against the decision;
 - (ii) the day an appeal against the decision is decided or otherwise ends.
- ‘(6) If the qualification or statement of attainment is cancelled, the holder must, unless the holder has a reasonable excuse, return the cancelled qualification or statement of attainment to the council within 21 days after the decision has effect.

Maximum penalty for subsection (6)—40 penalty units.

‘45B Public notice of cancellation of qualification or statement of attainment

- ‘(1) The council must establish and make publicly available, a list of qualifications and statements of attainment cancelled by the council under section 45A.

Example of making a list publicly available—

publishing the list on the council’s website

- ‘(2) The council may also give notice of the cancellation of a qualification or statement of attainment by—
- (a) publishing a notice about the cancellation in a newspaper circulating in the State; or
 - (b) giving written notice of the cancellation to other registering bodies or industry bodies for whom the information is relevant.

‘45C Offence to falsely claim to hold qualification or statement of attainment

- ‘(1) A person whose qualification or statement of attainment is cancelled under section 45A must not claim to hold the qualification or statement of attainment.

Maximum penalty—40 penalty units.

- ‘(2) For subsection (1), a person claims to hold a qualification or statement of attainment if the person—
- (a) makes the claim; or

- (b) does any act likely to induce someone else to believe the person holds the qualification or statement of attainment.’.

50 Amendment of s 83 (Prohibited employers)

- (1) Section 83(6)—
renumber as section 83(7).
- (2) Section 83(5)—
omit, insert—
- ‘(5) If the council decides not to declare an employer to be a prohibited employer, the council must immediately give the employer written notice of its decision.
- ‘(6) If the council decides to declare an employer to be a prohibited employer, the council must immediately give the employer an information notice about its decision.’.

51 Amendment of s 84 (Revocation of declaration as prohibited employer)

- (1) Section 84(6) and (7)—
renumber as section 84(7) and (8).
- (2) Section 84(5)—
omit, insert—
- ‘(5) If the council decides to completely revoke the declaration, the council must immediately give the employer written notice of its decision.
- ‘(6) If the council decides to partly revoke the declaration or to leave the declaration stand, the council must immediately give the employer an information notice about its decision.’.

52 Amendment of s 230 (Appeal to industrial commission against council or other decisions)

- (1) Section 230(1)(b) to (l)—

[s 53]

renumber as section 230(1)(c) to (m).

(2) Section 230(1)—

insert—

‘(b) the council’s cancellation of a qualification or statement of attainment under section 45A(1);’.

53 Amendment of s 244 (Appeal to Industrial Court on question of law)

Section 244—

insert—

‘(2) The *Industrial Relations Act 1999* applies, with any necessary changes, to a proceeding on appeal before the Industrial Court brought under subsection (1).’.

Part 9 Amendment of Vocational Education, Training and Employment Regulation 2000

54 Regulation amended

- (1) This part amends the *Vocational Education, Training and Employment Regulation 2000*.
- (2) The amendment of the regulation in this part does not affect the power of the Governor in Council to further amend the regulation or to repeal it.

55 Amendment of sch 5 (Dictionary)

- (1) Schedule 5, definition *affected person*, paragraphs (b) to (j)—
renumber as paragraphs (c) to (k).
- (2) Schedule 5, definition *affected person*—

insert—

‘(b) for section 45A(1), the following—

- (i) the person to whom the qualification or statement of attainment was issued;
- (ii) the registered training organisation or other entity that issued the qualification or statement of attainment;’.

(3) Schedule 5, definition *relevant section*, paragraphs (b) to (o)—

renumber as paragraphs (c) to (p).

(4) Schedule 5, definition *relevant section*—

insert—

‘(b) section 45A(1);’.

Part 10 Amendment of Child Care Act 2002

56 Act amended

This part amends the *Child Care Act 2002*.

57 Amendment of s 5 (Meaning of *child care service*)

(1) Section 5(1)(b)—

renumber as section 5(1)(a).

(2) Section 5(1)—

insert—

‘(b) a service for providing a pre-preparatory learning program, at a prescribed State school or a prescribed non-State school, to a pre-preparatory age child;’.

[s 57]

(3) Section 5—

insert—

‘(3) In this section—

pre-preparatory age child see the *Education (General Provisions) Act 2006*, schedule 4.

pre-preparatory learning program see the *Education (General Provisions) Act 2006*, schedule 4.

prescribed non-State school see the *Education (General Provisions) Act 2006*, schedule 4.

prescribed State school see the *Education (General Provisions) Act 2006*, schedule 4.’

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